

MONDAY-7:00 P.M.

SEPTEMBER 14, 2009

CITY COUNCIL

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

Mayor Atkinson established a quorum was present and called the meeting to order. He called upon Pastor Roy Moritz for the invocation after which the Pledge of Allegiance was given.

1} APPROVAL OF THE AGENDA:

Mayor Atkinson called for the approval of the prepared agenda.

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

2} PUBLIC PARTICIPATION:

Mr. Don McCabe, Elizabeth City stated September 15th and 16th would be the Fourth Ward and the Mayoral Candidates Forum at the Pasquotank Courthouse. He invited everyone to attend.

3} APPROVAL OF THE MINUTES:

Mayor Atkinson called for action regarding the minutes of August 24, 2009.

A motion was made by Mayor Pro Tem J. M. Baker, seconded by Councilwoman L. A. Hummer to approve the minutes of August 24, 2009 Work Session and August 24, 2009 Regular Meeting. Those voting in favor of the motion were: Baker, Hummer,

***Evans, King, Meggs, Rivers, Stimatz and Watts. Against: None.
Motion carried.***

4} CONSENT AGENDA:

Following the reading of the Consent Agenda, Mayor Atkinson called for action from Council.

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

Consent Agenda:

- a} Authorized the submission of an application to the Tourism Development Authority in the amount of \$1,000 to support the Bocce Ball Bash for Special Olympics.
- b} Call for a public hearing to be held in the City Council Chambers of the Municipal Administration Building on Monday, September 28, 2009 at 7:30 p.m. for consideration of Text Amendment TA-01-09 to amend Article XL, 11-1.5 (J) Development Standard Sign Ordinance Sandwich Board Signs
- c} Approved the following Resolution approving the financing for the purchase of a sanitation truck.

**RESOLUTION #0991
APPROVING FINANCING TERMS
FOR PURCHASE OF
SANITATION TRUCK**

WHEREAS, the City of Elizabeth City, North Carolina (the "City") has previously determined a project for the purchase of one truck for the Sanitation Department (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 August 28, 2009. The amount financed shall not exceed \$20,224.00, the annual interest

rate (in the absence of default or change in tax status) shall not exceed 4.08%, and the financing term shall not exceed five (5) 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 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.

APPROVED, this 14th day of September 2009.

Stephen S. Atkinson
Mayor

Dianne S. Pierce-Tamplen, MMC
City Clerk

4} Accepted the Certification of Sufficiency and adopted the following resolution calling for a public hearing to be held on Monday, September 28, 2009 for consideration of voluntary annexation of Lot #18, South Park Subdivision, Phase I, 1.00 acre and owned by the City of Elizabeth City.

**RESOLUTION #0992
FIXING PUBLIC HEARING ON QUESTION
OF ANNEXATION PURSUANT TO G. S. 160A-31, AS AMENDED
CITY OF ELIZABETH CITY - 1:00 ACRE
ADJACENT TO TIDEWATER WAY**

WHEREAS, a petition requesting annexation of the area described herein has been received; and

WHEREAS, the City Council has by resolution directed the City Clerk to investigate the sufficiency thereof; and

WHEREAS, certification by the City Clerk as to the sufficiency of said petition has been made;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Elizabeth City, North Carolina:

SECTION 1. That a public hearing on the question of annexation of the area described herein will be held at the Municipal Administration Building in the City Council Chambers at 7:30 PM on the Monday, September 28, 2009.

SECTION 2. The area proposed for annexation is described as follows:

All of that certain tract or parcel of land designated as "AREA TO BE RETAINED BY PROPERTY OWNERS ASSOCIATION" and all those certain rights-of-way designated as "TIDEWATER WAY – 60' R/W" and "CAPITAL TRACE – 60' Right-of-Way", as shown and delineated on that certain plat entitled in part "FINAL PLAT FOR SOUTH PARK PHASE I", said plat being prepared by Patrick J. Thompson, Registered Surveyor, dated October 10, 1997, which plat is recorded in Map Book 23, at Pages 18 and 19, of the Pasquotank County Registry, and incorporated herein by reference for a more particular description of the property herein described.

SECTION 3. Notice of said public hearing shall be published in the Daily Advance, a newspaper having general circulation in the City of Elizabeth City, at least ten (10) days prior to the date of said public hearing.

ADOPTED, this 14th day of September 2009.

Stephen S. Atkinson
Mayor

Dianne S. Pierce-Tamplen, MMC
City Clerk

e} Accepted the Certification of Sufficiency and adopted the following resolution calling for a public hearing to be held on Monday, September 28, 2009 for consideration of voluntary annexation of 34.68 acres located off of Wellfield Road and owned by the City of Elizabeth City.

**RESOLUTION #0993
FIXING PUBLIC HEARING ON QUESTION
OF ANNEXATION PURSUANT TO G. S. 160A-58.1
CITY OF ELIZABETH CITY
34.68± ACRE**

WHEREAS, a petition requesting annexation of the area described herein has been received; and

WHEREAS, the City Council has by resolution directed the City Clerk to investigate the sufficiency thereof; and

WHEREAS, certification by the City Clerk as to the sufficiency of said petition has been made;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Elizabeth City, North Carolina:

SECTION 1. That a public hearing on the question of annexation of the area described herein will be held at the Municipal Administration Building in the City Council Chambers at 7:30 PM on Monday, September 28th, 2009.

SECTION 2. The area proposed for annexation is described as follows:

BEGINNING AT A POINT marked by an existing iron rod, which existing iron rod marks the northeast corner of that property, now or formerly, owned by Ema (sic) Jennings (Deed Book 606, Page 420) (Tax map Number P-87-2) in the Pasquotank County Public Registry); thence from said existing iron rod and **POINT OF BEGINNING** and running North 71° 27' 45" West 465.32 feet to an existing iron rod; thence cornering and running North 11° 49' 45" West 849.92 feet to an existing iron rod; thence running North 11° 31' 53" West 583.45 feet to a calculated point; thence cornering and running North 78° 26' 58" East 245.37 feet to a calculated point; thence cornering and running North 11° 33' 02" West 1,112.15 feet to a set iron rod set in the center of a ditch; thence cornering and running along the center of said ditch South 57° 05' 49" East 1,312.91 feet to a set iron rod; thence continuing along the center of said ditch South 52° 26' 37" East 176.59 feet to a set iron rod set in the center of a ditch, which set iron rod is located North 26° 05' 52" West 11,310.14 feet from NCGS Monument "MUSEUM" (N – 934280-5429) and E – 2804027.9120"); thence cornering and running along the center of another ditch South 39° 49' 43" West 1, 148.91 feet to a set iron rod set in the center of said ditch; thence cornering and running along the center of another ditch South 11° 53' 37" East 1,008.74 feet to the existing iron rod and **POINT OF BEGINNING**, containing 34.68 acres, and which property is described and delineated on that survey entitled in part, "Exempt Subdivision of Property to be Conveyed to City of Elizabeth City," dated May 8, 2007, prepared by Paul J. Toti, professional land surveyor, which survey is attached hereto and incorporated herein by reference.

There is also conveyed with this tract a non-exclusive access and easement approximately 27' wide to and from the tract above described and Wellfield Road (16' gravel, unimproved road) and a non-exclusive, access easement to and from the improved, State-maintained portion of Wellfield Road (NC State Road #1309) and the southern terminus of the first easement over and across the 16' gravel road extended off of the said State-maintained portion of Wellfield Road (NC State Road #1309) at a point measuring approximately 2 miles in a westwardly direction along Wellfield Road from its point of intersection with NC State Road #1307.

The first easement is more particularly described as follows:

BEGINNING AT A POINT marked by a set iron rod and marking the southwest corner of that property, now or formerly, owned by Calvary Satellite (Deed Book 787, Page 120, in the Pasquotank County Public Registry); thence from said **BEGINNING POINT** and set iron rod North $06^{\circ} 53' 16''$ West 45.21 feet to a point marked by a set iron rod; thence from said point and set iron rod North $87^{\circ} 49' 45''$ West 28.12 feet to a point marked by a set iron rod in the west margin of a 5' drainage ditch; thence from said point and set iron rod South $06^{\circ} 53' 59''$ East 1,574.24 feet along the west margin of the 5' drainage ditch to a point in the centerline of the unimproved portion of Wellfield Road; thence from said point and along the centerline of the unimproved portion of Wellfield Road North $84^{\circ} 19' 00''$ East 27.55 feet to a point; thence from said point and leaving the centerline of the unimproved portion of Wellfield Road North $06^{\circ} 53' 30''$ West 1,525.18 feet along the west line of the said Jennings et al property and the west line of the property now or formerly conveyed to United States Cellular Corporation (Deed Book 521, Page 449, in the Pasquotank County Public Registry) to the **POINT AND PLACE OF BEGINNING**. Said easement includes the 5' ditch and the 9' gravel road located therein. See the Plat and Survey recorded in Map Book 33, Page 48, in the Pasquotank County Registry, for more particular location of the easement for access as herein described and for the location of the second easement and unimproved 16' gravel road portion of Wellfield Road which leads to the State-maintained portion of Wellfield Road or NC State Road #1309 over which a non-exclusive easement is also conveyed herewith for access to the first easement and tract herein conveyed. See also the plat of United States Cellular Corp. of record in Map Book 16, Page 15 of the Pasquotank County Public Registry for further location and description of the second easement and unimproved, 16' gravel road portion of Wellfield Road (formerly part of the Suffolk & Carolina Railroad right-of-way) leading from the southern terminus of the first easement to NC State Road #1309 or the Wellfield Road.

There is further conveyed with this tract a 60' non-exclusive access and drainage easement across the property, now or formerly, owned by

Calvary Satellite (Deed Book 787, Page 120 in the Pasquotank County Public Registry). Said easement runs along the south line of the Calvary Satellite tract for purposes of ingress and egress to and from the property herein conveyed, and for the purposes of drainage.

SECTION 3. Notice of said public hearing shall be published in the Daily Advance, a newspaper having general circulation in the City of Elizabeth City, at least ten (10) days prior to the date of said public hearing.

ADOPTED, this 14th day of September 2009.

Stephen S. Atkinson
Mayor

Dianne S. Pierce-Tamplen, MMC
City Clerk

f} Authorized a donation of \$750.00 to Northeastern High School to help fund its trip to the New York City Veterans Day parade.

G} Authorized the Reimbursement Agreement with NCDOT for the milling and overlay on Water Street.

End of Consent Agenda

5} PUBLIC HEARING:

a} Text Amendment TA-03-09 to increase the overall size of freestanding based monument style signs in the Halstead Boulevard Overlay District.

Mayor Atkinson called upon Planning Director Brooks for comments.

Ms. Brooks advised this is a proposal to amend the Unified Development Ordinance to modify language for freestanding signs created in the Halstead Boulevard Corridor overlay district. The text amendment would allow for larger square footage for the monument base, yet keep the current message area of 32 square feet the same.

This code amendment is initiated by Danny Flowers, owner of Flowers Printing, which is located at 1725 City Center Boulevard in the Halstead Boulevard Overlay District. He is of the opinion that the 32 square foot message area is very accommodating for most logos, but proposes increasing the dimensions of a solid based monument style sign from 64 square feet to 72 square feet. Increasing the overall area will allow for the use of architectural features and allow for more attractive signage. The Planning Commission was in favor of the request as it was their opinion that by increasing the dimensions of the base, would allow for more creativity in the style of signage, yet keep with the original intent of the Halstead Overlay District.

Mayor Atkinson declared the meeting into public hearing. Since there was no one who wished to speak for or against the proposed amendment, Mayor Atkinson declared the public hearing closed.

A motion was made by Councilman J. A. Stimatz, seconded by Councilwoman V. C. Watts to approve the proposed text amendment TA-03-09. Those voting in favor of the motion were: Stimatz, Watts, Baker, Evans, Hummer, King, Meggs and Rivers. Against: None. Motion carried.

6} REGULAR AGENDA:

a} Appointment to the Historic Preservation Commission

Mayor Atkinson advised the term of Mark Maland expires in June, 2010. Mr. Maland has tendered his resignation. Therefore, he would like to recommend Ms. Roy Golden as a member to fill the unexpired term of Mr. Maland.

A motion was made by Mayor Pro Tem J. M. Baker, seconded by Councilman J. A. Stimatz to approve appointing Roy Golden to fill the unexpired term ending June 30, 2009 on the Historic Preservation Commission. Those voting in favor of the motion were: Baker, Stimatz, Evans, Hummer, King, Meggs, Rivers and Watts. Against: None. Motion carried.

b} Amendment to the Council Code of Ethics

Mayor Atkinson called upon City Attorney Morgan for comments.

Mr. Morgan advised this item is on the agenda tonight for discussion only. Effective August 5th of this year, the Governor signed new legislation which requires that all members of city councils, town councils, boards of education and boards of commissioners adopt a Code of Ethics. The law actually becomes

effective January 1, 2010. The boards involved are required to adopt the Code of Ethics no later than January 1, 2011. We already have been pro active as a city and have a Code of Ethics already on the books. This was first adopted in October 1991 and later revised in 1992 and 1998. Our ordinance will need to be revised somewhat in order to comply with the new law. The key change as he sees it is that all elected or appointed board members are going to be required to have 2 hours of ethics training within 12 months of their election or their appointment. Also required to have 2 hours of ethics within 12 months of any reappointment or reelection. This is something as he understands it with talking with our Clerk that the League and other State officials with whom we deal will be scheduling and making available to these board members. As he reads through the new law it appears to him that there is three primary goals of this new legislation. One is to avoid conflicts of interest; two is to avoid any undue influence from others to board members or from board members to others in the community and three to foster efficient and open government. Our clerk has prepared what he thinks is an excellent draft of a proposed resolution. She got that to him approximately ten days ago. He has made some minor modifications and the resulting documents that he gave to each of you tonight. He would welcome your input. He would appreciate getting faxes or emails from you if you think there are other things that we should cover which we have not or if you think there are things that need to be changed. He would certainly welcome that. He thinks it is a good idea for you to read through what we have prepared and come up with your ideas to what changes if any that you think may need to be made. Then we can discuss this at a later meeting. Our ordinance as it is on the books now applies to other City officials and not just the elected body. He knows the City Manager, City Clerk and the City Attorney are covered by our current ordinance so that is something that we have not been heretofore required to do but not something that is also required under the new legislation but something that he thinks is a good idea that we keep.

7} COMMENTS AND INQUIRES ON NON-AGENDA ITEMS:

Mayor Atkinson said he would go around the table for those wishing to speak.

Councilman Stimatz said he has a couple of items. One is the scrap yard in the Second Ward. He thought that we were taking action to shut that facility down. Now they are building a fence and it looks like they are as active as they were and they are still processing salvage yard materials. It is clearly in violation of the Code and he would like to know what the scoop is there. Putting a fence around an illegal operation doesn't change an illegal operation. He would like an update on that.

The other issue is Rose Harbor. Council gave specific directions to staff on the Rose Harbor property. They were to take action and mediate that. He got an

email today from one of the tenant saying the grass is four feet high and they haven't cut down the rebar or taken away the stuff. He thought that the past directions were pretty clear on that. He would like a report on that at the next meeting.

Councilman Evans stated he had no further comments.

Councilwoman Meggs said this has been a busy week. She attended the ribbon cutting for the Dollar General Store. She attended the DAR meeting yesterday and it was a nice event. The Boys Scouts were represented, the Coast Guard was represented and it was a real nice event. There were a lot of visitors in town this past weekend because of the ECSU ball game as well as there was a Board of Visitors meeting. There was an Alumni Banquet that was very well done that she attended. She wants to congratulate Herbert Small on having the Federal Building named for him. Finally she wants to thank whoever for the paving of the streets in the First Ward.

Councilwoman Watts said she wanted to take this opportunity to thank all of you once again for your generous support in helping those in need. And, also she wanted to thank those of you who actually took her idea to heart and actually went out and started going to the local mom and pop restaurants around town. Finally, she wants to personally thank everyone that is listening to her who helped and was a part of her daughter's wedding this past week or so. They are on their way back from Rome if you care to know.

Councilman Rivers said he wanted to make sure that we continue to try to make sure the 4th of July fireworks are funded. The economy may be down but for those of you on Council when we did not have fireworks one year, everybody on Council received many calls. We said then we would not let the holiday go without a show. He asked Ms. Baker to make sure that we fund the fireworks show instead of waiting until after we don't. We need to show our support to the Tourism Board to make sure we have the July fireworks. He also would like to have the issue of having only six days to pay your utility bill on the next agenda. He would like to have an update on Spaulding Park and Oak Grove and what the costs are for clearing the ditches, the half culverts compared with the piping of the ditches on the next agenda.

Councilman King asked about the sidewalk from Providence Road to Applebee's and where we are at on this.

Mr. Fredette said that the City Manager has been in touch with DOT and he does not know the details of that conversation.

Mayor Pro Tem Baker said she represented the City at the Greening of the Block celebration at the Renaissance Community. That was a really interesting discussion with presentations from Tom Campbell. She talked a little bit about our free energy audits. Also, she would like to say on her first Tourism Board Meeting we decided to not fund or the TB would not take the lead in funding and sponsoring the fireworks. It is hoped that the City and County will use some of their tourism dollars or other funds so the fireworks don't go by the way side. Finally, don't forget the nineteenth Ghostwalk that is scheduled for October 1, 2, and 3, 2009.

Councilwoman Hummer said she feels strongly that 4th of July fireworks should not be allowed to fall. It has been a long time tradition of the City and she thinks that we should make sure it is funded. Also, we still have a serious mosquito problem and she realizes it is hard to cover all the areas but we still need it. One of the things she gets a lot of complaints about is those cutting their grass and raking it in the street or the drainage.

Mayor Atkinson also attended the Herbert Small naming of the Federal Building. It was a great event. Congressman Butterfield was here. It was really a special event. Also, the 9-11 celebration was well attended at the Courthouse. That was a great turnout. This week he also attended the Chesapeake Regional Sleep Center. Of course, Carolina Living had a celebration today and one of the things that was celebrated was Pauline Gregory's 100th birthday.

8} CLOSED SESSION:

Mayor Atkinson called for a motion to retire into Closed Session.

A motion was made by Mayor Pro Tem J. M. Baker, seconded by Councilman D. B. Evans 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: Baker, Evans, Hummer, King, Meggs, Rivers, Stimatz and Watts. Against: None. Motion carried.

9} RETURN TO REGULAR SESSION:

A motion was made by Councilman D. B. Evans, seconded by Councilwoman B. S. Meggs to return to regular session. Those voting in favor of the motion were: Evans, Meggs, Baker, Hummer, King, Rivers, Stimatz and Watts. Against: None. Motion carried.

Mayor Atkinson declared the meeting back into regular session.

10} ADJOURNMENT:

There being no further business to come before the Council at this time, Mayor Atkinson adjourned the meeting at 8:25 p.m.

Dianne S. Pierce-Tamplen, MMC
City Clerk

Stephen S. Atkinson
Mayor