

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 C. L. Foster presiding. Council members attending were: J. M. Baker, M. E. Brooks, L. A. Hummer, B. S. Meggs, E. K. Rivers, D. K. Stallings, J. A. Stimatz and J. B. Walton. Staff members attending were: City Manager R. C. Olson, City Clerk D. S. Pierce-Tamplen, Deputy City Clerk V. D. White, Planning Director J. C. Brooks, Parks and Recreation Director J. D. Overman, Fire Chief W. C. Pritchard, Finance Director S. E. Blanchard, Human Resource Director K. W. Felton, Inspections Director S. E. Ward, Police Chief C. E. Crudup, Public Utilities Director P. A. Fredette and Electric Superintendent K. F. Clow.

Mayor Foster welcomed those attending and called upon Reverend Toni Wood for the invocation after which City Clerk D. S. Pierce-Tamplen led the Pledge of Allegiance to the Flag of the United States of America.

**1} APPROVAL OF THE AGENDA:**

Mayor Foster called for action regarding the prepared agenda.

Councilman E. K. Rivers asked to remove ***Item 9-e Part-time employee to a Closed Session item*** and to move ***Item 9-d Voluntary Annexation of Aviation Park Property to a Closed Session Item***. He also asked to table ***Item 7-c Traffic Calming Policy until the next meeting***.

Councilman M. E. Brooks asked to add, ***Oxford Heights***.

***A motion was made by Councilman J. A. Stimatz, seconded by Councilwoman J. M. Baker to approve the prepared agenda to include the above noted items. Those voting in favor of the motion were: Stimatz, Baker, Brooks, Hummer, Meggs, Rivers, Stallings and Walton. Against: None. Motion carried.***

**2} COMMENTS FROM THE PUBLIC:**

Mayor Foster asked the Deputy Clerk if we had anyone to sign up to speak. Upon a reply of three, Ms. White called Mr. John Snowden to the podium.

Mr. John Snowden, 180 Maple Road, stated that he is the owner of the Independent, a newspaper that is based out of Currituck, North Carolina. He will

begin to include news from Elizabeth City in his paper. He also spoke regarding his opinion on Closed Session requirements.

Ms. Tracy Gibbs spoke concerning her feelings regarding a recent traffic check that her husband was subject too.

Mr. Cedric Seymour spoke regarding a recent forum that he had at the Courthouse and to advise that another one is being planned for the near future.

**3} PROCLAMATION:**

Mayor Foster called Assistant Fire Marshall Danny Ellenwood to the podium to receive a proclamation proclaiming the week of October 1-6, 2007 as Fire Prevention Week.

Mr. Ellenwood invited the Council to their annual Fire Safety Show featuring "Sparky and the Danger Ranger" that will be held October 2-5, 2007 from 9:30 a.m. - 11:00 a.m. daily at College of the Albemarle auditorium. Family night will be October 4<sup>th</sup> at 7:00 p.m. They currently have approximately 3,000 school and daycare children schedule to attend.

**4} CONSENT AGENDA:**

Mayor Foster asked the City Manager to read the Consent Agenda. He called for action regarding the same.

***A motion was made by Councilman E. K. Rivers, seconded by Councilwoman J. M. Baker to approve the following Consent Agenda items as presented. Those voting in favor of the motion were: Rivers, Baker, Brooks, Hummer, Meggs, Stallings, Stimatz and Walton. Against: None. Motion carried.***

Consent Agenda:

1177 North Road Street.

b} Award of contract to Barnhill Contracting Company, Inc. in the amount of \$175,561 for the Roanoke Avenue Area Drainage Improvements – Phase I

<u>Bidder</u>	<u>Amount of Bid</u>
George Raper	\$185,885.00
Barnhill	\$175,561.00

c} Called for public hearings to be held on Monday, October 08, 2007 at 7:30 p.m. in the City Council Chambers of the Municipal Administration Building for each of the following:

1} Consideration – Application RZ-04-07 for rezoning of 85.88 acres and owned by Tanglewood Development, LLC and 17 South Developments, LLC.

2} Consideration Application RZ-05-07 for the rezoning of 180.27 acres owned by Tanglewood Development, LLC

End of Consent Agenda:

**5} PUBLIC HEARINGS:**

a} Annexation of 85.88 acres:

Mayor Foster called upon City Manager for comments on the first public hearing regarding the annexation of 85.88 acres of property located on the south side of Halstead Boulevard, east of the intersection of US 17 and Halstead Boulevard Connector.

Mr. Olson advised the Petition for Voluntary Annexation has followed the proper procedures for voluntary annexation into the City limits. This property is owned by Tanglewood Development, LLC and 17 South Developments, LLC.

Mayor Foster declared the meeting into public hearing for consideration of the Voluntary Annexation Petition for the 85.88 acres. Since no one wished to speak for or against the proposed annexation, Mayor Foster declared the public hearing closed. He called for action from the members of Council.

***A motion was made by Councilman E. K. Rivers, seconded by Councilman J. A. Stimatz to approve the following ordinance annexing 85.88 acres owned by Tanglewood Development, LLC and 17 South Developments, LLC and located on the south side of Halstead Boulevard Extension, east of the intersection of US 17 and Halstead Boulevard Extension into the corporate limits of the City of Elizabeth City with an effective date of October 1, 2007. Those voting in favor of the motion were: Rivers, Stimatz, Baker, Brooks, Hummer, Meggs, Stallings and Walton. Against: None. Motion carried.***

**ORDINANCE #07091  
TO EXTEND THE CORPORATE LIMITS OF  
THE CITY OF ELIZABETH CITY, NORTH CAROLINA**

**TANGLEWOOD DEVELOPMENT, LLC  
AND  
17 SOUTH DEVELOPMENTS, LLC  
85.88 ACRES  
HALSTEAD BOULEVARD EXTENSION**

**WHEREAS**, the City Council has been petitioned under G. S. 160A-31, as amended, to annex the area described herein; and

**WHEREAS**, the City Council has by resolution directed the City Clerk to cause to be investigate the sufficiency of said petition; and

**WHEREAS**, the City Clerk has certified the sufficiency of said petition and a public hearing on the question of this annexation was held at City Hall at 7:30 p.m. on the 24<sup>th</sup> day of September 2007 after due notice by publication on the Friday, September 14, 2007 and Sunday, September 16, 2007; and

**WHEREAS**, the City Council does hereby find as a fact that said petition meets the requirements of G. S. 160A-31, as amended;

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

**SECTION 1.** By virtue of the authority granted by G. S. 160A-31, as amended, the following described territory, is hereby annexed and made part of the City of Elizabeth City as of the October 1, 2007:

**BEGINNING** at a calculated point, which calculated point is located North 07° 38' 44" East 10,374.42 feet from NCGS Monument "CAMA" (Grid Coordinates N – 924910.4402' and E 2795739.9830'); thence from said Point of Beginning and running South 79° 19' 28" West 1,470.58 feet to a calculated point set in the eastern right-of-way margin of U. S. Highway 17 (R/W by Monuments): thence cornering and running along the eastern right of way margin of U. S. Highway 17 and the northbound exit ramp to Halstead Boulevard in the following courses and distances: running north-northwest along a curve (Curve Data: Radius is 7,754.25' Delta is 00° 19' 59"; bearing is North 17° 42' 36" West; and Chord Distance is 45.08 feet) a distance of 45.08 feet to an existing right-of-way monument; thence running North 17° 52' 35" West 62.77 feet to and existing right-of-way monument; thence running North 13° 03' 29" West 318.12 feet to an existing right of way monument; thence running North 00° 59' 43" West 118.92 feet to an existing right-of-way monument; thence running North 11° 06' 01" East 285.27 feet to an existing right-of-way monument; thence running North 18° 02' 47" East 350.98 feet to an existing right-of-

way monument; thence running North 09° 57' 37" East 197.49 feet to an existing right-of-way monument, which marks the point of intersection of the northbound exit ramp to Halstead Boulevard and the southern right-of-way margin of Halstead Boulevard Extended (N.C. 344 – R/W by Monuments); thence cornering and running along the southern right-of-way margin of Halstead Boulevard Extended the following courses and distances: North 76° 54' 31" East 157.62 feet to an existing right-of-way monument thence running North 67° 59' 48" East 100.38 feet to an existing right-of-way monument; thence running North 79° 19' 28" East 1,714.74 feet to an existing iron rod; thence running North 79° 19' 28" East 1,114.66 feet to a calculated point; thence cornering and running away from Halstead Boulevard Extended South 10° 40' 32" East 983.52 feet to a calculated point; thence cornering and running South 79° 19' 28" West 1,952.20 feet to a calculated point and running South 10° 40' 32" East 342.46 feet to the calculated point and **POINT OF BEGINNING**, containing 85.88 acres, and being that same property described and delineated on that plat entitled in part, "Annexation Map For Tanglewood Development, LLC" dated July 5, 2007, prepared by Paul J. Toti, professional land surveyor.

**SECTION 2.** Upon and after the 1<sup>st</sup> day of October 2007, the above described territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the City of Elizabeth City and shall be entitled to the same privileges and benefits as other parts of the City of Elizabeth City. Said territory shall be subject to municipal taxes according to G. S. 160A-58.10.

**SECTION 3.** The Mayor of the City of Elizabeth City shall cause to be recorded in the office of the Register of Deeds of Pasquotank County, and in the office of the Secretary of State in Raleigh, North Carolina, an accurate map of the annexed territory, described in Section 1 hereof, together with a duly certified copy of this ordinance. Such a map shall also be delivered to the County Board of Elections as required by G. S. 163-288.1.

**ADOPTED** this the 24<sup>th</sup> day of September 2007

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Charles L. Foster  
Mayor

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Dianne S. Pierce-Tamplen, MMC  
City Clerk

b} Annexation of 180.27 acres:

Mayor Foster called upon the City Manager for comments on the next public hearing regarding the annexation of 180.27 acres of property located on the north side of Halstead Boulevard, east of Tanglewood Parkway and south of the City Wellfield property.

Mr. Olson advised the Petition for Voluntary Annexation has followed the proper procedures for voluntary annexation into the City limits. This property is owned by Tanglewood Development, LLC and contains 180.27 acres.

**ORDINANCE #07092  
TO EXTEND THE CORPORATE LIMITS OF  
THE CITY OF ELIZABETH CITY, NORTH CAROLINA  
TANGLEWOOD DEVELOPMENT, LLC  
180.27 ACRES  
HALSTEAD BOULEVARD EXTENSION**

**WHEREAS**, the City Council has been petitioned under G. S. 160A-31, as amended, to annex the area described herein; and

**WHEREAS**, the City Council has by resolution directed the City Clerk to cause to be investigate the sufficiency of said petition; and

**WHEREAS**, the City Clerk has certified the sufficiency of said petition and a public hearing on the question of this annexation was held at City Hall at 7:30 p.m. on the 24<sup>th</sup> day of September 2007 after due notice by publication on the Friday, September 14, 2007 and Sunday, September 16, 2007; and

**WHEREAS**, the City Council does hereby find as a fact that said petition meets the requirements of G. S. 160A-31, as amended;

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

**SECTION 1.** By virtue of the authority granted by G. S. 160A-31, as amended, the following described territory, is hereby annexed and made part of the City of Elizabeth City as of the October 1, 2007:

**BEGINNING AT A POINT** marked by a calculated point set in the northern right-of-way margin of Halstead Blvd Extended (NC 344 – R/W by Monuments), which point is located South 84° 34' 19" West 790.29 feet from "Tanglewood Control Monument 3" (Grid Coordinates N – 936716.2635'; and E –

2797655.1499'); thence from said calculated point and **POINT OF BEGINNING** and running away from Halstead Extended North 10° 40' 48" West 904.34 feet to a calculated point; thence cornering and running South 79° 19' 22" West 100 feet to a calculated point; thence cornering and running North 10° 40' 48" West 201.76 feet to a calculated point; thence running north-northwest along a curve (Curve Data: Radius is 530.00'; Delta is 80° 27' 43"; Bearing is North 50° 54' 39" West; Tangent is 448.38'; and Chord Distance is 684.62 feet) a distance of 744.29 feet to a calculated point; thence cornering and running South 10° 40' 44" East 22.68 feet to a point; thence cornering and running South 79° 19' 35" West 587.61 feet to an existing iron rod; thence running north-northwest along a curve (Curve Data: Radius is 479.33'; Delta is 37° 58' 51"; Bearing is North 81° 40' 59" West; Tangent is 164.96'; and Chord Distance is 311.96 feet) a distance of 317.74 feet to a calculated point; thence cornering and running South 71° 50' 37" West 479.32 feet to a calculated point set in the eastern right-of-way margin of U. S. Highway 17 – Bypass (R/W by monuments); thence cornering and running along the eastern right-of-way margin of U. S. Highway 17 - Bypass North 18° 09' 29" West 509.85 feet to a R/W Monument; thence running north-northwest along a curve (Curve Data: Radius is 12,906.61'; Delta is 04° 14' 07"; Bearing is North 16° 02' 25" West; Tangent is 477.25'; and Chord Distance is 953.85 feet) a distance of 954.07 feet to a calculated point; thence cornering and running away from U. S. Highway 17- Bypass North 79° 41' 08" East 508.71 feet to a calculated point; thence cornering and running South 10° 18' 52" East 312.11 feet to a calculated point; thence cornering and running North 77° 25' 45" East 702.39 feet to a calculated point; thence running North 81° 01' 45" East 1,248.56 feet to a calculated point; thence running North 80° 18' 16" East 1,479.84 feet to a calculated point, which calculated point marks the northeast corner of that property, now or formerly, owned by Tanglewood Development, LLC (Deed Book 960, Page 707, in the Pasquotank County Public Registry); thence cornering and running South 07° 41' 07" East 738.38 feet to a calculated point; thence cornering and running south-southeast along a curve (Curve Data: Radius is 856.30'; Delta is 06° 05' 08"; Bearing is South 89° 17' 40" East; Tangent is 45.52'; and Chord Distance is 90.91 feet) a distance of 90.95 feet to a calculated point; thence cornering and running South 10° 40' 32" East 1,940.39 feet to a calculated point; thence cornering and running South 55° 40' 40" East 70.71 feet to a calculated point set in the northern right-of-way margin of Halstead Boulevard Extended, which calculated point is located South 79° 09' 30" West 1,642.00 feet from "Tanglewood Control Monument 2" (Grid Coordinates N – 937317.5312' and E – 2800428.0487'); thence cornering and running along the northern right-of-way margin of Halstead Blvd Extended South 79° 19' 12" West 1,981.27 feet to the calculated point and **POINT OF BEGINNING**, containing 180.27 acres and being a portion of that property described and delineated on that plat entitled in part, "Annexation Map for Tanglewood Development, LLC," dated July 31, 2007, revised August 3, 2007 and revised August 10, 2007, prepared by Paul J. Toti, professional land surveyor.

**SECTION 2.** Upon and after the 1<sup>st</sup> day of October 2007, the above described territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the City of Elizabeth City and shall be entitled to the same privileges and benefits as other parts of the City of Elizabeth City. Said territory shall be subject to municipal taxes according to G. S. 160A-58.10.

**SECTION 3.** The Mayor of the City of Elizabeth City shall cause to be recorded in the office of the Register of Deeds of Pasquotank County, and in the office of the Secretary of State in Raleigh, North Carolina, an accurate map of the annexed territory, described in Section 1 hereof, together with a duly certified copy of this ordinance. Such a map shall also be delivered to the County Board of Elections as required by G. S. 163-288.1.

**ADOPTED** this the 24<sup>th</sup> day of September 2007

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Charles L. Foster  
Mayor

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Dianne S. Pierce-Tamplen, MMC  
City Clerk

**6} REGULAR AGENDA:**

a} Amend Police Department's Budget:

Mayor Foster called upon City Manager Olson for comments.

Mr. Olson replied that both of the City's K-9 teams are currently in Fayetteville, NC attending a seven-week narcotics detection certification course that will conclude in the first week of October. The ECPD has historically appropriated \$5,000 annually for canine food, veterinarian examinations and visits, medicine and associated training equipment which is expended annually.

In response to some concerns expressed by some members of City Council and Community Watch Groups it is being requested to bring back cost estimates for K-9 vests and associated equipment costs to complete the K-9 program



***A motion was made by Councilman E. K. Rivers, seconded by Mayor Pro Tem L. A. Hummer to authorize a budget amendment to transfer \$2,000.00 from the department's regular salaries and wages line item (105100-0200) to the dog expense line item (10-5100-3320) in order for the department to purchase the K-9 vests and replacing worn bite sleeves and other leads and leashes. Those voting in favor of the motion were: Rivers, Hummer, Baker, Brooks, Meggs, Stallings, Stimatz and Walton. Against: None. Motion carried.***

b} Review of Site Plan for Quail Run Commercial Center on Oak Stump Road.

Mayor Foster called upon City Manager Olson for comments.

Mr. Olson stated that this is an appeal of the City's TRC Staff's approval of the Quail Run Commercial Center on Oak Stump Road. This is basically at the five point intersection near the location of Dollar General. He called upon the Planning Director for comments.

Ms. Brooks stated that the applicant is requesting City Council to review the site plan for a proposed commercial development on Oak Stump Road. The applicant received approval of the site plan at the August 22, 2007 TRC Committee with the exception of having ingress and egress off Oak Stump Road. The applicant is requesting that this decision will be overturned in hopes that he will be allowed to develop the site as proposed. This proposed development is a five unit development within one building. All five units have the possibility of being retail. The following guidelines should be used to review a site plan: The plan protects the public from unsafe and inefficiently traffic conditions; the plan is in accordance with all the City's codes and ordinances; the plan will not materially endanger public health or safety; the plan will not substantially injure the value of the adjoining or abutting property and the Plan will be in harmony with the area to which it is to be located. The property in question is part of a larger subdivision platted in 1991. The original subdivision consisted of four lots. In 2003 parcel four was split into two lots. The Dollar General was built on Parcel 4-A and Parcel 4-B remained vacant. As part of the platting process staff required a no access easement to Oak Stump Road and a cross access easement for drainage, utilities, parking ingress and egress to be recorded on the plat for both parcels.

Staff is of the opinion that it would be in the City's best interest that access to this site should be in accordance with Section 9.1.3(d) and no access should be created along Oak Stump Road. The City considers Oak Stump Road, a major thoroughfare along this area. It serves as one of the access points to Point

Elizabeth Shopping Center, the major access businesses along Skippers Way, Northeastern High School, as well as the subdivisions of Briarwood, Chesterfield, Summerfield and Northeastern Terrace. Oak Stump Road is classified as a major thoroughfare in the ***Elizabeth City Thoroughfare Plan*** prepared by the North Carolina Department of Transportation.

The City's position at the time of development of the Dollar General building was that access should be in accordance with Section 9.1-3(b) Highway Business and all access would be Skippers Way. With every development proposal since 2003, the City has maintained its' position that in the best interest of the public, no access should be created along Oak Stump Road. While Mr. Davenport vacated the non-ingress/egress easement, the City's position has not changed. Vacating the easement does not negate the need to have a controlled access in this area or lessen the safety needs for the public. The City still supports the decisions of the original design of lot 4A and the recorded plat of 2003 for cross access easements.

Mr. Mike Davenport responded giving a little history of how we arrived to this point. In August 2005, he entered into a contract to purchase this Lot 4B. That contract was subject to his satisfaction that we would be able to get a driveway on this property. Once the contract was executed he had a period of time and he came to the City of Elizabeth City and talked with Angela Welsh who was a member of the Planning Department. He still has her card with her handwriting on the back that referred him to the same City ordinances that were just spoken about. In the UDO it states that every lot shall have abutting or have direct access to a public street. There is no service drive or street abutting this property. What they are asking us to do is drive through Dollar General parking lot to access our site. In January we closed on the lot because he had read the UDO and felt like we had reasonable enough information to close on the lot. In April we met with DOT's representative Jerry Jennings on site. We proposed about four different configurations on how to access the site. We submitted those to him and they came back to us with a letter that says that they will allow an entrance to the site as a right hand only off of Oak Stump Road. With that information we proceeded to draw up a site plan and submitted that site plan to the City and it shows the right hand entrance on to their site. In June 2006 that plan was approved with the exception of the driveway. There was never a vote on approving it with a driveway. In the fall of 06 we began the process to find out why our driveway was not allowed and the Planning Department informed us that it was because of a plat that stated that there was no access to Oak Stump Road. His attorney determined that the way that the no access was put on the plat was not legal. It was not subject to any city regulation as it was a parcel split that was exempt from the City's regulations and could not be bound by any type of requirements. At that time Lot 4B became its own lot and then fell into your own lot requirements that say every lot shall abut and have direct access to

a public maintained street. It doesn't say that you should go through someone else's parking lot. It says direct access. We drew up a plat to vacate the statement on the plat that they said was the reason that we couldn't have the driveway. It took several letters to even get a response. We got a lot of confused messages from the City Manager's office and ultimately when we decided that we were going to take them to court over this issue, the City Attorney advised the City Manager that he really needed to allow his Planning Director to sign off on the plat which they did. By this time it was July of 07. In September 07 we resubmitted a site plan and went through the same process again and once again the City Manager made a motion to deny the access or approve the site plan without the access. All the department heads agreed and once again it was denied. This time citing other reasons of why we couldn't have the driveway. We are confident that we have a legal right to have access to Oak Stump Road. We are not asking for a huge driveway. All we want to do is have an access to our property from Oak Stump Road. All we are asking for is to be able to make a right hand turn while in a right hand turning lane which has arrows starting in front of Dollar General that this is a right hand turn only lane. We cannot image how that can be such a big deal to turn right in a right hand turn lane. He met with Mr. Olson several times and to no avail, no compromise, no working with us in any way, shape or form. We were basically ignored. We are confident that legally we have a right to this access and more importantly we think that the access makes sense. We don't want to have a garbage truck to have to drive through the Dollar General parking lot and then having to back up through that same parking lot.

Councilwoman Baker asked about the vehicles coming from the south on Oak Stump would they not be able to enter into this driveway.

Mr. Davenport replied that vehicles coming from the south would not be able to turn into this driveway. We proposed to put do not enter signs facing from the entrance towards the school. The shape of the driveway itself is designed to prevent entering from the south.

Councilman Stimatz stated that given the location of the screen now, can a garbage truck pick that up at that location or would it have to be moved elsewhere.

Mr. Olson replied that it is a commercial hauler and not the city hauler. It would be a front loader and yes it could pick it up.

Mr. Stimatz stated that he has some other questions. He noted that we characterized the area as having 34 accidents. He would like to point out that we are not sure where those accidents were. We don't know if they were on Ehringhaus or Oak Stump or Hughes Boulevard. We don't know which direction

they were in. So when you say that there were 34 accidents in the area it is a red herring. For all we know they were all on Ehringhaus. We don't know as we don't have the data. The other question that he has for staff is, the Statute that you site says, "discourage" it doesn't say prohibit. It says discourage small lot development along major highways. Now, you characterize Oak Stump Road as a major thoroughfare which is nice but the UDO refers to a major highway. If he is correct Oak Stump Road is not a major highway.

Ms. Brooks replied that the City uses DOT's Thoroughfare Plan and its Thoroughfare Plan designates Oak Stump Road as a major thoroughfare.

Mr. Stimatz continued by saying that he finds it hard to believe that Oak Stump Road is a highway. It is not designated as a highway. It doesn't have a highway designation; it doesn't have a route number so how can it be a highway if it doesn't have one of those designations.

Mr. Olson said that we only have certain designations under our Master Thoroughfare Plan. It is basically a major thoroughfare. He doesn't believe any of our highways are considered major highways. They are just considered major thoroughfares within the community.

Mr. Stimatz said that he begs to differ as Hughes Boulevard is designated as a major highway since it is 17 South.

Mr. Olson said that if he is not mistaken the definition in the Master Thoroughfare Plan says just that. It doesn't designate highways per se.

Mr. Stimatz said that he is looking at our thing and it says a major highway. He has a real problem making Oak Stump Road a major highway. Halstead Boulevard is a major highway. He asked this question a couple of meetings ago about Hoffler Plaza and why they have ingress and egress directly out of Hoffler Plaza onto Halstead Boulevard. They changed the routing to take onto the service street which is more in keeping with what you want. How did that get approved? There is no turn lane on Halstead Boulevard. There are only two traffic lanes. And, you can exit from there either way into the traffic which is more dangerous than what they are proposing here. He doesn't know when Hoffler Plaza was platted or what the rules that were in effect were. He doesn't find the definition of a major highway to apply. It is interesting that it says that it requires vehicular access from service drives and other local commercial streets. He has a very easy time saying that Oak Stump Road is a local commercial/residential street. If we are going to classify Oak Stump Road as a major thoroughfare/highway for the purpose of this ordinance, then he guesses you have to classify Church Street and a few other streets around the city as highways. He does not think that is what they are.

He would also like to ask this question. How did this restriction on the plat get put on it in the first place?

Mr. Olson replied that it dealt directly when Lot #4 was subdivided into 4A and 4B. There is quite a bit of history associated with this entire subdivision dating back to 1987. The way that they did this in staff's opinion is they circumvented the subdivisions rules and regulations. He would like to say not Mr. Davenport but the previous owners have done that. They came in for a lot split of Lot #4 which they could not do because they did not have direct access on to Oak Stump Road. That is why the Planning Director at the time required that they have a cross access agreement to allow them access directly to Skippers Way. If he did not do that then they would have had to gone through the whole subdivision process. It could not be handled administratively by staff.

Mr. Stimatz said that the correct way to handle it would have been to say it is a subdivision issue and have it platted accordingly and we will go from there. Staff made an incorrect decision at the time.

Mr. Olson said that he disagrees with him totally. At the time, the owner of the subdivision basically said that what he would do was to put that no access agreement on there. That is why it was allowed to go through. That is why it was handled administratively instead of being handled through the normal subdivision process. Now, two years later another individual comes and wants something different.

Mr. Stimatz said that if we thought that we were right then and it was a correct decision then why did we take it off.

Mr. Olson replied that it was on the advice of the City Attorney. In his opinion he did not believe that it was worthy of a legal challenge of whether or not be could deny executing the plat.

Mr. Stallings said with that said then we need to go ahead and make a motion and move forward. That was our Attorney's opinion.

Mr. Davenport stated that they have had two years to research this thing. The reason that the City Attorney said that it had to be removed is because a parcel split of this size is not subject to any set of subdivision regulations by state statute. They could not enforce any of the regulations, easements or any of that could not be enforced on a parcel split. It is illegal. When the City Attorney told them that is when it was removed.

Mr. Olson said no that it had nothing to do with that. The issue was rather or not the Planning Director had the legal right to withhold her signature from the plat. That was the issue at hand.

Councilman Walton said that time is not ticking for him. He feels like he has as much time as he needs. He feels like that they need to take as much time as they need to get this corrected if there is a wrong. Because he thinks that Mr. Davenport you said that the property was sold to you on the pretense that you would be able to get that right of way. The City did not promise you that the person that sold it to you did.

Mr. Davenport said that in the contract it was subject to him fulfilling his own diligence to see if we could acquire a driveway. When he came to the City he was told by Angela Welsh and she showed me the UDO that says we have a right to direct access to a public street and upon her showing him that then he waive his conditions and closed on the lot. It was not the lot owner but the City who told him he had a right to have a driveway.

Mr. Walton said that he has previously said that whoever gets into the office needs along with TRC and the Planning Commission needs to get together along with City Council to know what is going on. He is getting sick and tired of it coming right back to us after everybody else have okayed it or denied it. Then it comes back with us and people are just working with us or supposed to be working along with us. He just doesn't feel good about making decisions where other people have denied or approved. We all need to know what is expected and then go from there. Now, if this person is telling him that we can make a right way and how big is your building going to be. How many occupants are there going to be.

Mr. Davenport said that the building is 6,000 square feet. Compared to WalMart it would be their pharmacy. It is half the size of the Dollar General next door. We are not talking about a lot of traffic. There is no way to determine how many but we are not talking about a lot of traffic.

Mr. Walton said that he also feels that whoever gets there needs to set down and make a comprehensive plan. We still need to be ready to change for these other people if it is going to make things better. We shouldn't be so hard balled that we can't make adjustments.

Councilman Brooks said that he is trying to get all of this in his head. Some of you are talking legal terms and one attorney is not here. He said, she said and he is just like the audience as he is just trying to weed through all of this. He would like to hear the attorney's position on this.

Mr. Olson replied that the attorney's issue is more a legal issue than one of a technical review issue concerning whether or not the Planning Director could withhold her signature from a plat. She had refused to execute that because when she looked at the history associated with the subdivision and when this subdivision was originally platted back in 1987 concessions were made to basically enlarge Skippers Way. It was anticipated at that time that Skippers Way would be the only entrance in and out of that particular four lot subdivision. You are dealing with Lot #4 right now. There are four other lots that basically abut 17 South and Lot 4A abutting Oak Stump Road.

Mr. Brooks asked how many employees do you plan to have there.

Mr. Davenport replied that he would estimate 25-30 employees but not all at one time. Most of the businesses will be closed when the kids are going to school. The kids go to school early in the morning and most businesses don't even open until 9:00 a.m. and from school at 3:30 p.m. in the afternoon it is not going to be bad because it is in only and the school traffic is going back to 17 South. It will not conflict with school traffic.

Mr. Olson said that the other issue that staff has is unfortunately people do not go just the right way in. They also come out that exit even though it will be posted. A primary example is CVS on Ehringhaus where they have that triangle that is supposed to require you to turn a certain direction. You can go by there everyday and see people violating that. The developer has done as much as he could possible do to the entrance in to prohibit that but it is human nature that you come back out even though it is posted and everything else. That is another concern that we have. We have faced this issue several times. Walgreens is another example. One of the concerns that we have is the number of accidents that we have had in that area. Councilman Stimatz is right we have 11 accidents since October 31, 2006 and that is on Oak Stump Road. Those accidents could have happen anywhere from Hughes to past the high school. We don't have enough information on our CAD system to say exactly where they happened. The majority of the accidents happen between 2:00 -4:00 in the afternoon in that location. Granted the Wal-Mart store moving has definitely helped some but because of the configuration of Ehringhaus and Hughes everyone still cuts through the Wal-Mart parking lot if they want to go to Northeastern High School. When you have multiple curb cuts it just becomes very confusing for drivers.

Mr. Davenport said that you can't deny one individual the right to his property because you have a traffic pattern that was created by somebody else that is a very good traffic pattern. It is not our fault that people cut through Wal-Mart and as to the legal issue that really has been resolved because they have already signed off on the plat upon the advice of the city attorney. That is done and

over. The plat does not reflect any "no access" any longer. That has already been recorded at the courthouse.

Mr. Olson said that this is where we get into the argument and he is not going to belittle this. The gentleman bought the lot realizing that there was no access from Oak Stump Road. There is a cross access agreement that allows them access to Skippers Way and that is how the subdivision was originally platted back in 2003. That is the issue that City staff has as we are trying to keep the integrity of our Code in place.

Mayor Pro Tem Hummer said that she has several things. On the traffic issue, there was a study done by DOT in the late 90's because there were similar residential developments taking place on the way up Oak Stump Road. They found no problem. Council based their decision on DOT's findings. It bothers her to hear that Walgreens and CVS had a like problem and they were allowed to locate there. CVS is in a very dangerous intersection and this would not be at an intersection. Another thing he says that someone on the Planning Staff signed off which gave him the opinion he could go to closing. We had other businesses, a florist, that almost went broke trying to do everything required of them as far as parking and interpretation of the Code. We have had a lot of trouble over the years with the interpretation of our UDO. She drove out to this area and the street between Hardees and Dollar General she believes that Sawyers has put a warehouse or an expansion of their store back there. How do those tractor trailers get out of there once they go up? It looks like there is a street that cuts back toward the school but it is blocked off. Isn't that an outlet? She just doesn't understand how these other things are in place. It just seem like there is a problem somewhere. He thinks this gentleman is caught in the middle.

Councilwoman Meggs asked Mr. Davenport that when he purchased the land, it was your understanding by one of our city planners that you were supposed to be able to have a way in order to get on your lot.

Mr. Davenport replied absolutely.

Mr. Stimatz said that he would like to go back to something that Ms. Brooks brought up. She said that there are five areas of consideration in addressing these issues. He would like to go over them and give his take on each one. First is that we cannot create an unsafe traffic condition. Since DOT has okayed the plan he finds it difficult to believe that DOT would sign off on an unsafe traffic condition. He doesn't think that we violated that. Does it meet the code? It appears that 9-7.2(a) is the governing UDO paragraph not the one on HB since it is not designated as a major highway. He thinks that we meet that one. Third, it cannot threaten public safety. He doesn't think that we have proven that it is going to threaten public safety. Three out of five you are doing ok on.



Fourth, you cannot injure other property. Since the turn in only affects you, it appears that there is no injure to anyone else. Fifth says that it must be in harmony with the area. He finds it interesting that we have right turn lane and we are only allowing a right turn exit off of, we are not allowing a right in and a right out which would be less in harmony. It doesn't create any cross roads or backflows so it appears to be in harmony with the area. Given those five criteria that is his read that the plaintiff has successfully met all of these. He finds it difficult not to allow relief.

Councilman Walton said still again he will go along with some of the things that Tony has said. He would still like to have the Attorney present to ok what has been said about his part of it. Every time it seems like something major comes up with him to be here he gets on the sick side. We need him here.

Mr. Davenport said with all respect it is not a legal issue. He thinks that Mr. Stimatz just pointed out that it meets the criteria. There is no legal issue. The Planning Department is not telling us that it is illegal. They are not saying that.

Mr. Walton said that he is just an everyday layman that made city council and he would still like to have the City Attorney's word on this. We pay him big dollars to say yes or nay to certain things.

Mr. Davenport stated he understands that but if we have to come back and go through all this again; this has been dragging on for two years.

Mr. Walton said that you have not been talking with him for two years as you called him one time and he sees you tonight. If you have been going on that long give him enough time that he needs to make his decision.

Councilman Rivers said that he has heard legal from both sides and conversations started and he would like for the City Attorney to be here. Therefore he would like to make a motion to table. He is not one that likes to prolong anything as businessmen need money and interest keeps on going. He started off saying legally and he feels that our attorney needs to tell us whether you can or can't deny, etc.

***A motion was made by Councilman E. K. Rivers, seconded by Councilman D. K. Stallings to table action on this item until the next meeting. Those voting in favor of the motion were: Rivers, Stallings and Walton. Against: Baker, Brooks, Hummer, Meggs and Stimatz. Motion was denied.***

***A motion was made by Councilman D. K. Stimatz, seconded by Councilman D. K. Stallings to provide relief to the developer and***

**allow the right turn from Oak Stump Road into their property. Those voting in favor of the motion were: Stimatz, Stallings, Baker, Brooks, Hummer, Meggs, Rivers and Walton. Against: None. Motion carried.**

3} Voting Delegate for the NCLM Annual Conference Business Meeting.

Mayor Foster advised that council will need to select a voting delegate and an alternate voting delegate to represent Elizabeth City at the Business Meeting during the Annual Conference of the League of Municipalities.

**A motion was made by Councilman J. A. Stimatz, seconded by Councilwoman B. S. Meggs to approve Councilwoman J. M. Baker as the voting delegate and Councilman M. E. Brooks as the alternate voting delegate. Those voting in favor of the motion were: Stimatz, Meggs, Baker, Brooks, Hummer, Rivers, Stallings and Walton. Against: None. Motion carried.**

4} Oxford Heights:

Mayor Foster called upon Councilman M. E. Brooks for comments on this item.

Councilman Brooks stated that it came to his attention that the swamp behind Oxford Heights had a rise of some kind of substance a few weeks ago. It was strange because they were 20 inches below the normal rain fall. They said that they have discussed it with Rich and he would like to have an update on what is going on with that.

Mr. Olson said that we are perplexed with this situation. The Public Works Director went there and looked and drove the entire area. We had no water leaks. We had no issues associated with the wastewater treatment plant and we have no idea why that substance was coming up through the ground. We do not know what the substance is.

Public Utilities Director P. Fredette said that when he heard about it he went to the area to try to find out what was going on. He has no evidence to substantiate his theory but in his opinion there is a blockage between Church Street and Main Street. He can't substantiate how that happened and he can't give you a reason why it happened other than the water was high.

**7} COMMENTS AND INQUIRES ON NON-AGENDA ITEMS:**

Mayor Foster advised that he would go around the table and call upon the Manager and each member of Council for comments.

City Manager Olson stated that he would encourage members of council to attend the Fourth Fire and Safety Show. He went to his first one last year and he thoroughly enjoyed it.

He would also like to remind everyone that at 10:00 tomorrow morning at the Fine Arts Center we have the installation of Chancellor Willie Gilchrist.

Mayor Pro Tem Hummer stated that she would like to have a detailed report on the incident that the lady spoke about during the Public Participation about Sawyertown. She would like to hope that no one would say because you live in Sawyertown.

Councilman Brooks said that he has noticed the increase of the police presence on Roanoke Avenue. If they are willing to pay the tickets for speeding let it be said and let it be done.

He ran into an incident before he got on council and he understands what the young lady was saying. He does understand what the officer was doing.

He asked what happened to the money that we diverted from Roanoke and put on Southern Avenue. Are we ever going to get that money back so that we can complete Roanoke?

Mr. Olson replied that it is still one of the projects on the State NCDOT TIP. It has been pushed backwards and he has had discussions on this matter. He has informed them that our Number One priority is basically Roanoke from Road Street to the Health Department. It is in very bad shape.

Councilwoman Baker stated that it was a pleasure to be at Chancellor Gilchrist reception tonight. It was very well done. It was nice to hear all the well wishes from State and Federal Officials.

Councilman Rivers said the he would also like to have the follow-up Mayor Pro Tem Hummer talked about.

Councilman Stallings said that he would like to echo them as he would like to see the officer's name and the reason that he followed him back to the house.

He asked when the start up date was for Roanoke Avenue.

Mr. Olson replied two weeks.

Mr. Stallings continued by saying that when we do start up he would like to get some road signs up saying which streets are blocked.

Finally he stated that we need to send somebody to clean up the debris on the left hand of Providence.

Councilman Meggs stated that she had no further comments at this time.

Councilman Walton stated that he was rushing to get to the chancellors event tonight and on Spruce and Highland it is almost like a swimming pool. We need to fix that spot. He also would like to know how the signs policy is going. Do we have a sign off on it?

Mr. Olson replied that yes you do.

Mr. Walton asked how that was going because for some reason one of his signs was taken away from one of those locations. He knows if his sign was incorrectly put somewhere there are a lot of signs all around town. Some of them cannot be correctly put in place.

Mr. Olson said that the City Planning Staff has been going out doing their sign police work in the last couple of days. We have taken 20 signs that were in City Staff's opinion outside of the areas that they should have been in. They are all up in the Planning Office. We have called the candidates that they belong too. We have not destroyed them and we have told them to stop by and pick them up.

Mr. Walton said that he has not got a call but he needs his sign. One sign somewhere and he wants it back.

Councilman Stimatz stated that while we are on the locations. The only place that we can have signs on any right or way is the designated area. We can have signs on private property. One thing he would like to note is that he knows that you have painted some of them but in some places it is hard to see the paint.

He would like to have a current update on the 25 mph speed limit on Road Street request. Did we ever hear back from that? He would like to know at the next meeting.

He also asked that we work on the tar paper house on Road Street. He would like an update on that at the next meeting.

He would like to thank his fellow council members for taking the initiative to support the funding for the canine program. He feels that is a good investment

on our parts. He knows that Ms. Franzese is very happy as she was instrumental in getting this program up and running.

He would like to thank the Informed Voters League for the opportunity to speak at their format. He felt that it was very well done. He thought that Mr. McCade did an excellent job as the moderator. He felt that we had some really good questions and he appreciates that opportunity.

He went to the NC University System symposium and it was a wonderful meeting. A lot of information was brought out. A lot of people were speaking from their hearts. He would like to make one comments. There has been a lot of stuff in the papers about our schools system lately that we have problems in our schools. A lot of people are saying that we don't have any problems. He heard a lot of dialog at the symposium that indicates that there is some kind of problems with our school system. He has talked with a number of realtors who indicate that people are looking for housing outside the City because they foresee it as a problem with the school system. Just yesterday he ran into a constituent who now works in Camden because she got fed up with the school system. Now if we don't have a problem that is one thing. We clearly have a perception that there is a problem which means we have a problem that needs to be fixed. It was clear at that meeting that businesses are not happy with the level of education the students are coming out with out of high school. The levels of interpersonal skills, teamwork skills, communications skills, etc. are lacking. It went on and on. If that is not an indicator that we need to do something then he must be really crazy.

Councilman Walton said that he would like to say that if you have never worked in the school system then you shouldn't talk about it.

Mayor Foster stated that he would like to thank the Chamber of Commerce and the Informed Voters League for the forums. He also thanked those in the audience for their patience and your presence tonight.

**8} CLOSED SESSION:**

Mayor Foster stated that it is time on our agenda that we need to retire into Closed Session.

***A motion was made by Councilman E. K. Rivers, seconded by Councilwoman J. M. Baker to retire into Closed Session for discussion of personnel as per NCGS 143-318.11 (a) (6) and for consideration of a proposed contract for acquisition of the Hollowell Property as per 143-318.11 (a) (5). Those voting in favor of the motion were: Rivers, Baker, Brooks, Hummer,***

**Meggs, Stallings, Stimatz and Walton. Against: None. Motion carried.**

Upon the end of the Closed Session.

**A motion was made by Councilman E. K. Rivers, seconded by Councilman M. E. Brooks to return to regular session of Council. Those voting in favor of the motion were: Rivers, Brooks, Baker, Hummer, Meggs, Stallings, Stimatz and Walton. Against: None. Motion carried.**

**9} ADJOURNMENT:**

There being no further business to come before the Council at this time, Mayor Foster entertained a motion for adjournment.

**A motion was made by Councilman E. K. Rivers, seconded by Councilman M. E. Brooks to adjourn the meeting. Those voting in favor of the motion were: Rivers, Brooks, Baker, Hummer, Meggs, Stallings, Stimatz and Walton. Against: None. Motion carried.**

Mayor Foster adjourned the meeting at 9:15 p.m.

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Dianne S. Pierce-Tamplen, MMC  
City Clerk

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Charles L. Foster  
Mayor