

**MONDAY-7:00 P.M.**

**SEPTEMBER 27, 2004**

**CITY COUNCIL**

The City Council of the City of Elizabeth City held a City Council meeting on the above date and time in the City Council Chambers of the Municipal Administration Building with Mayor J. H. Bell, Jr. presiding. Counselors present were: C. C. Austin, J. M. Baker, L. A. Hummer, R. E. King, W. A. Lehmann, E. K. Rivers, D. K. Stallings, Sr. and J. B. Walton. Others attending were: City Manager R. C. Olson, City Clerk D. S. Pierce, City Attorney W. H. Morgan, Finance Director S. E. Blanchard, Police Chief W. J. Anderson, Public Works Director C. Grant, III, Inspections Director S. E. Ward, Parks and Recreation Director J. D. Overman, Planning Director R. R. Mack, Fire Chief G. R. Baccus, Human Resource Director K. W. Felton and Electric Superintendent K. F. Clow.

Mayor J. H. Bell, Jr. opened the meeting by welcoming those attending. He called upon the Reverend Charles McKenzie; Pastor of City Road Methodist Church for the invocation after Councilwoman J. M. Baker led the Pledge of Allegiance to the Flag of the United States of America.

Mayor Bell called for approval of the prepared agenda. Councilwoman Hummer asked to remove Item 7-b-Adoption of resolution eliminating NC Highway 34 from Pasquotank County and designating a new primary route number from the southern end of Pasquotank County to the bypass from the Consent Agenda for discussion. Councilman Stallings as to add, Calendar of meetings for the remaining year for discussion. City Manager Olson asked to removed, Presentation by Jon Crouse, Tanglewood Developer. Mayor Bell reminded Council of the item, Resolution in support of Amendment One: Self-Financing Bonds and a Resolution proclaiming October as Fire Prevention Month which was previously added to the prepared agenda. Mayor Bell stated that we also have Mr. David Wasserman, NCDOT for discussion of the NC Eastern Element Concept and a Closed Session for Consultation with the City Attorney as per NCGS 143-318.11(a)(3). There being no other additions/deletions, Mayor Bell called for a motion to approve the agenda with the noted additions. Councilwoman J. M. Baker so moved. Councilman R. E. King seconded the motion. Those voting in favor of the motion were: Baker, King, Austin, Hummer, Lehmann, Rivers, Stallings and Walton. Against: None. Motion carried unanimously.

Mayor Bell recognized Mr. Shawn Carroll, President of the local SPCA for comments. Mr. Carroll stated that he was appearing before Council tonight to seek support for expansion of the SPCA facilities that are being proposed. The present location is extremely small and does not meet the needs for our area. He asked for the Council's support to work with Pasquotank County and Camden County to enlarge the facility to help meet these needs. The local schools have designated a mobile classroom that will be used in providing education for citizens wishing to adopt a pet. If we can offer these types of classes it will help people with their animals and ultimately it will help control

the animals and the costs. Currently there are only fifteen dog kennels and that is nowhere near enough for our area that is growing so rapidly. It is not unusual to receive six or more dogs a day. It is their long range plan to build a much larger facility at a different location as at the present facility there is no room for expansion.

Councilwoman L. A. Hummer expressed her concern and support for the SPCA and asked her fellow counselors to support the SPCA in the planned endeavors.

Councilwoman J. M. Baker stated that she feels that the SPCA is a worthy cause and she too stated that the Council needs to support this project.

Mr. Carroll advised Council that the next meeting of the SPCA is Tuesday, October 5, 2004 and he invited members of Council to attend.

Mayor J. H. Bell, Jr. presented a proclamation to Dena Richardson for Fire Prevention Month – October 2004 and read a proclamation declaring October 2004 as “American Pharmacist Month.

Mayor Bell called for comments from the public. City Clerk D. S. Pierce advised that no one had signed up to speak.

Mayor Bell stated that the time is 7:30 p.m. and he declared the meeting into public hearing for consideration of a petition for voluntary annexation received from Klenke and Byrum. He recognized City Clerk D. S. Pierce for comments. Ms. Pierce stated that the City received a request from John Sawyer, Hyman & Robey Associates for voluntary annexation of an 84 acres contiguous parcel located on River Road. To date all procedures for voluntary annexation have been adhered too. Since no one was present to speak for or against the proposed annexation, Mayor Bell declared the public hearing closed. A motion was made by Mayor Pro Tem E. K. Rivers, seconded by Councilman R. E. King to adopt the following ordinance annexing the Klenke & Byrum 84 acre tract located on River Road into the corporate limits of the City of Elizabeth City. Those voting in favor of the motion were: Rivers, King, Austin, Baker, Hummer, Lehmann, Stallings and Walton. Against: None. Motion carried unanimously.

**ORDINANCE #04095  
TO EXTEND THE CORPORATE LIMITS OF  
THE CITY OF ELIZABETH CITY, NORTH CAROLINA  
KLENKE & BYRUM ANNEXATION**

**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 27<sup>th</sup> day of September 2004 after due notice by publication on the 16<sup>th</sup> and 19<sup>th</sup> days of September 2004; 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 1<sup>st</sup> day of October 2004.

**KLENKE PARCEL:**

**BEGINNING** at an iron pipe in the Westerly margin of the right of way of River Road and running thence along the center of a ditch North 81°41' West 1568.95 feet to an iron pipe; thence North 11°06' East 42 feet to a point; thence North 85°14' West 425.4 feet to an iron pipe; thence North 7°42' East 540 feet to a point; thence South 84°35' East 1059.83 feet to an iron pipe in the Westerly margin of the right of way of River Road; thence the following courses and distances along the Westerly margin of the right of way of River Road, South 13°45' West 100 feet to a point, South 4°18' West 100 feet pipe, this the point of beginning.

**BYRUM PARCEL:**

**BEGINNING** at a point in the Westerly margin of the right of way of River Road in a corner of lands of Isa B. Klenke and running thence North 73°34' West 354.34 feet along the center of a ditch to an iron pipe; thence North 84°35' West 1059.83 feet to a point; thence North 7°57' East 808.57 feet to the edge of farmland and thence the same course 277.05 feet to an iron pipe; thence North 71°57' East 380.82 feet to a point; thence South 74°25' East 1453.45 feet to a point in the Westerly margin of the 635 feet along the Westerly margin of the right of way of River Road to a point; thence South 20°42' West 100 feet along the Westerly margin of the right of way of River Road to a point, this being the point of beginning.

**SECTION 2.** Upon and after the 1<sup>st</sup> day of October 2004, 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 27<sup>th</sup> day of September 2004.

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John H. Bell, Jr.  
Mayor

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Dianne S. Pierce, MMC  
City Clerk

Mayor Bell declared the meeting into public hearing for consideration of a petition for voluntary annexation received from Page Development Corporation. He called upon City Clerk D. S. Pierce for comments. Ms. Pierce stated that the City received a petition for voluntary annexation from Page Development Corporation for a 114.3 acre contiguous tract located on the West of the Pelican Pointe and East of River Road. To date all procedures have been adhered too. Since no one wished to speak for or against the proposed annexation, Mayor Bell declared the public hearing closed. A motion was made by Mayor Pro Tem E. K. Rivers, seconded by Councilwoman J. M. Baker to adopt the following ordinance incorporating Page Development Corporation 114.3 acres into the city limits. Those voting in favor of the motion were: Rivers, Baker, Austin, Hummer, Lehmann, King, Stallings and Walton. Against: None. Motion carried unanimously.

**ORDINANCE #04096  
TO EXTEND THE CORPORATE LIMITS OF  
THE CITY OF ELIZABETH CITY, NORTH CAROLINA  
PAGE DEVELOPMENT CORPORATION**

**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 investigated 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

September 27, 2004 after due notice by publication on the 16<sup>th</sup> and 19<sup>th</sup> of September, 2004; 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 1<sup>st</sup> day of October, 2004.

**BEGINNING** at an iron rod located in the northwest corner of Lot 9, Section II, Breezewood, as shown on map filed in Map Book 19, Page 25, Pasquotank County Registry, said point also being located in the southeastern line of Riverview Estates as shown in plat filed in Map Book 14, Page 8, Pasquotank County Registry, said point also being located in the northeastern right of way line of Breezewood Drive; thence South 51 degrees 25 minutes 14 seconds West 16.0 feet to an iron pipe located at the intersection of the southwestern corner of Riverview Estates and the right of way line of Asbury Drive; thence South 50 degrees 12 minutes 08 seconds West 34.20 feet to an iron rod,  
**THE PLACE AND POINT OF BEGINNING.**

**THENCE FROM SAID POINT OF BEGINNING**, along the right of way line of Breezewood Drive, South 44 degrees 28 minutes 33 seconds East 309.04 feet to an iron rod; thence South 39 degrees 00 minutes 29 seconds East 1232.47 feet to an iron rod; thence North 53 degrees 22 minutes 09 seconds East 504.60 feet to an iron rod; thence South 22 degrees 00 minutes 06 seconds East 836.33 feet (through an iron rod at 826.33 feet) to the mean high water mark of a canal; thence along the mean high water mark of the canal, the following courses and distances: South 71 degrees 15 minutes 58 seconds West 79.79 feet; South 72 degrees 08 minutes 32 seconds West 36.82 feet; South 65 degrees 00 minutes 15 seconds West 41.17 feet; South 64 degrees 23 minutes 47 seconds West 39.11 feet; South 38 degrees 27 minutes 33 seconds West 30.88 feet; South 39 degrees 27 minutes 53 seconds West 97.01 feet; South 46 degrees 59 minutes 21 seconds West 46.83 feet; South 34 degrees 40 minutes 23 seconds West 25.57 feet; South 37 degrees 14 minutes 17 seconds West 11.62 feet; South 55 degrees 08 minutes 52 seconds West 34.59 feet; South 55 degrees 49 minutes 43 seconds West 58.10 feet; South 54 degrees 39 minutes 19 seconds West 109.24 feet; South 55 degrees 30 minutes 12 seconds West 103.14 feet; South 62 degrees 32 minutes 37 seconds West 16.19 feet; South 68 degrees 57 minutes 56 seconds West 43.54 feet; South 57 degrees 02 minutes 56 seconds West 86.60 feet; South 46 degrees 04 minutes 19 seconds West 162.77 feet; South 53 degrees 39 minutes 12 seconds West 122.30 feet; South 61 degrees 54 minutes 23 seconds West 59.64 feet; South 59 degrees 07 minutes 46 seconds West 76.89 feet; South 64 degrees 30 minutes 03 seconds West 73.23 feet; South 55 degrees 16 minutes 06 seconds West 55.88 feet; South 47 degrees 59 minutes 46 seconds West 118.81 feet; South 57 degrees 09 minutes 50 seconds West 148.22 feet; South 71 degrees 49 minutes

50 seconds West 113.07 feet; South 87 degrees 02 minutes 47 seconds West 99.68 feet; South 73 degrees 09 minutes 01 seconds West 71.26 feet; South 63 degrees 59 minutes 54 seconds West 84.48 feet; South 57 degrees 08 minutes 07 seconds West 61.73 feet; South 46 degrees 11 minutes 25 seconds West 97.50 feet; South 50 degrees 29 minutes 16 seconds West 170.18 feet; South 38 degrees 33 minutes 53 seconds West 82.88 feet; South 47 degrees 41 minutes 14 seconds West 69.61 feet; South 75 degrees 35 minutes 41 seconds West 82.61 feet; South 89 degrees 56 minutes 53 seconds West 75.29 feet; North 78 degrees 09 minutes 52 seconds West 70.00 feet; and North 76 degrees 38 minutes 58 seconds West 49.22 feet to a point located in the southeastern corner of property now or formerly owned by G. V. , Inc. as described in deeds filed in Book 610, Page 385 and 388, Pasquotank County Registry; thence along the said G. V., Inc. line, North 16 degrees 23 minutes 42 seconds West 1002.10 feet (through an iron rod at 10.00 feet) to an iron rod located in the southeastern corner of property now or formerly owned by Pasquotank County, as described in the instrument filed in Book 583, Page 563, Pasquotank County Registry; thence along the said line of Pasquotank County, North 10 degrees 43 minutes 48 seconds West 865.65 feet to an iron rod; thence continuing along the line of Pasquotank County, North 54 degrees 50 minutes 20 seconds West 530.51 feet to an iron rod located in the southwestern line of property now or formerly owned by Mary Eley Reid Breheny, as described in instrument filed in Book 279, Page 351, Pasquotank County Registry; thence along the said Breheny line, along an existing ditch, North 62 degrees 09 minutes 33 seconds East 1301.56 feet to an iron rod; thence continuing along the Breheny line, North 50 degrees 12 minutes 08 seconds East 459.56 feet to the place and point of beginning, and being a parcel containing 114.3 acres more or less, and designated as Parcel B and Parcel C on that certain survey entitled, in part, "Exempt Subdivision for Page Development Company, L.L.C.," by Scott L. Temple, PLS, dated January 27, 2004, reference to which is hereby made for a more particular description.

**SECTION 2.** Upon and after the 1<sup>st</sup> day of October, 2004, 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 27<sup>th</sup> day of September 2004.

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John H. Bell, Jr.  
Mayor

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Dianne S. Pierce, MMC  
City Clerk

Mayor J. H. Bell, Jr. declared the meeting into public hearing to gain citizen input on a proposal to implement a moratorium on building permits for properties within the jurisdiction of the City of Elizabeth City and located on the Halstead Boulevard Connector Road. Mayor Bell called upon Planning Director R. R. Mack for comments.

Ms. Mack stated that the proposed moratorium is recommended through March 2005 or consideration of an amendment to the Unified Development Ordinance for an overlay zoning designation. The purpose of the proposed moratorium is to preclude development of property in this area until development standards can be adopted in an overlay zoning designation regulating site characteristics such as façade, setbacks, signage, etc. Since no one wished to speak for or against the proposed moratorium, Mayor Bell declared the public hearing closed.

Councilman W. A. Lehmann stated that he had attended the meeting this morning of the County Commissioners and at that meeting they voted to deny the process to continue as far as a public hearing in essence they kill the moratorium on the County's part. He has heard our City Manager state that he didn't see it serving any purpose for the City to have a moratorium if the County didn't have one as well. Additionally, he has talked with various people throughout the community and he is still convinced that having a moratorium sends the wrong message to economic developers. He doesn't think that our City needs a moratorium to accomplish what we are trying to accomplish. We have the UDO in place, we have the planning department, and we have a planning commission and a city manager that is already working with a sole developer hand in hand. Additionally, there are even some differences of opinion amongst the Planning Director and the City Manager as to whether or not a moratorium is required. Therefore, he made a motion that we do not have moratorium. Mayor Pro Tem E. K. Rivers seconded the motion. Those voting in favor of the motion were: Lehmann, Rivers, Baker, King and Walton. Against: Austin and Hummer. Motion carried.

Mayor Bell stated that above ended our public hearings for this evening. He went back to the agenda and asked for action regarding the Consent Agenda. A motion was made by Mayor Pro Tem E. K. Rivers, seconded by Councilwoman J. M. Baker to approve the following Consent Agenda item. Those voting in favor of the motion were: Rivers, Baker, Austin, Hummer, King, Lehmann, Stallings and Walton. Against: None. Motion carried unanimously.

Consent Agenda

Adoption of the following resolution supporting Amendment One: Self Financing Bonds

**RESOLUTION #04099**  
**SUPPORT OF**  
**AMENDMENT ONE: SELF-FINANCING BONDS**

A Local Economic Development Tool to Create Quality Jobs, Revitalize Communities and  
Attract New Economic Opportunities in North Carolina.

**WHEREAS**, The City of Elizabeth City needs to attract more jobs and economic development; and

**WHEREAS**, self-financing development bonds will have a direct impact on creating new jobs, new investment, and strengthening the tax base in our state; and

**WHEREAS**, communities across the nation have used these bonds successfully to promote sound economic development; and

**WHEREAS**, the use of these bonds will make a difference for every community-urban, suburban, and rural; and

**WHEREAS**, these bonds will give local governments flexibility to pursue multiple types of economic development projects including industrial site development, redevelopment of existing industrial and Brownfield sites, affordable housing and community revitalization; and

**WHEREAS**, these bonds allow North Carolina's local governments to use a new mechanism to invest in public improvements designed to attract private sector investment; and

**WHEREAS**, North Carolina is one of only two states in the nation that does not have this economic development tool; and

**WHEREAS**, self-financing development bonds have received broad bi-partisan support from the General Assembly and the business community, as well as municipal, county and state government and former Governors Holshouser, Martin and Hunt; and

**WHEREAS**, North Carolina will have some of the strongest safeguards in the country to ensure self-financing bonds are used for good purposes; and

**WHEREAS**, these bonds are subject to voter approval on the November 2004 ballot and deserve rightful consideration by the citizens of the State; and

**NOW THEREFORE, BE IT RESOLVED**, that the City Council of the City of Elizabeth City strongly supports self-financing development bonds because now is the time to enhance our ability to create new jobs and investment in our municipality.



**BE IT FURTHER RESOLVED**, that the City Council of the City of Elizabeth City pledges to work to educate and inform citizens of our state and community about self-financing development bonds and pledges to encourage voters to approve Amendment One in November 2004

**ADOPTED**, this the 27<sup>th</sup> day of September, 2004

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John H. Bell, Jr.  
Mayor

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Dianne S. Pierce, MMC  
City Clerk

End of Consent Agenda

Councilman W. A. Lehmann asked to comment that he thinks this is an opportunity for not only our City but other governing bodies to be able to promote economic development through partnerships with private industries. He would like to ask for the support of all the council members and the citizens to help us get this amendment passed on the Second of November. Some of the things that were mentioned here in the accompany paper work struck his mind concerning the public/private partnership for parking downtown. Maybe we can see that vision a reality some day if we can get this Amendment passed.

Mayor Bell asked for confirmation of the appointment of Jim Elliott and James Whidbee as members of the Recreation Advisory Committee. He mentioned that both of these individuals come highly recommended from the Parks and Recreation Director. A motion was made by Mayor Pro Tem E. K. Rivers, seconded by Councilman D. K. Stallings, Sr. to confirm the appointments of Jim Elliott and James Whidbee as members of the Recreation Advisory Committee. Those voting in favor of the motion were: Rivers, Stallings, Austin, Baker, Hummer, Lehmann, King and Walton. Against: None. Motion carried.

Mayor Bell stated that the next item for consideration is the recreation impact fees for the River Bend Condominiums. Planning Director R. R. Mack introduced Mr. Ballinger, the developer for the River Bend Condominiums. He is here to represent the developers. Mr. Thomas Nash, RBC's attorney, has indicated that his client was never notified of the \$9,888.05 fee during the developmental process. For that reason, RBC is requesting City Council to waive the required fees. City Council was polled regarding this matter and a majority of those responding indicated that the City should not waive the required fees. Mr. Ballinger is asking that Council reconsider.

Mr. Ballinger stressed that he was not aware of the Recreation Fees requirement. He went through the proper process on all the steps that are required. Then when they went to record the final plat did they find out that these fees were due. He already has contracts on two of the units

and has no way to capture the cost of these fees. Phase II has not been started yet, therefore there would be no problem with the fees there. He is here asking for release on these four units.

Councilman W. A. Lehmann questioned the amount that is owed on this first phase if they are all sold. At this point you have sold two and have contracts on two others. Those are the four units that the \$9,888.05 is owed on.

Mr. Ballinger stated that it is more complicated than that. It is actually a building with nine condominiums. When we record the plat it shows two units. When we went to record one unit we paid the fees on the second unit and in this case it hasn't yet been sold. We have a contract on it, but we haven't gone to closing yet. They are going down like a duplex.

Mr. Lehmann asked of the ten units, how many have you not paid a recreation fee on.

Mr. Ballinger replied six. The amount on those is roughly \$21,000.

Mayor Bell stated that he would like to make a comment. He has a real problem with when we make a mistake and it seems like we are continuing to make these mistakes. This has got to stop sometime. We are quick to pass it on. He thinks that the City should eat this debt. Until we become responsible and when we make a mistake we will be the ones that will have to pay for it. Until we realize this he doesn't really see an end to it.

Mayor Pro Tem E. K. Rivers offered the suggestion that we meet at a happy compromised, perhaps on a 50/50 cost share.

Councilman W. A. Lehmann stated that what he would like to do is charge the developers the recreational fee and in turn charge our former Planning Director the \$9,888.05 that was not applied when it should have been applied. That is not going to happen therefore we are in a situation that is not really good for anybody.

Councilwoman J. M. Baker stated that our UDO is not a secret document. It is out there for everybody to abide by its rules. It is serving us well into the future. She is not opposed to working with somebody, but certainly the mistake is not all ours. The document is out there and these are the rules that you are supposed to go by. If it is a mistake, she does not know where the mistake is. She does not think that our UDO states that we need to interpret and tell a developer what the rules are. They are there for the public to read. She is in favor of abiding by our own documents.

Councilwoman L. A. Hummer asked isn't this all spelled out in our UDO? Most developers see our UDO and didn't Mr. Ballinger see our UDO at the beginning?

Following further discussion, a motion was made by Councilman W. A. Lehmann, seconded by Councilman D. K. Stallings, Sr. to accept the staff's recommendation and deny the request of the RBC Developer, Mr. Ballinger to waive recreational impact fees for River Bend Condominiums. Those voting in favor of the motion were: Lehmann, Stallings, Austin, Baker, Hummer, King and Walton. Against: Rivers. Motion carried.

Mayor Bell recognized City Manager for comments regarding the Eastern NC Element of the Strategic Highway Plan. On August 9, 2004 and August 23, 2004 City Staff presented to the Council a resolution supporting the Eastern NC Element to the NC Strategic Highway Corridor Plan. The matter was tabled at both meetings and requested additional information and to have an opportunity to review reference maps of the proposed projects. NCDOT would not release copy of the maps until after their Board approves them. Mr. David Wasserman was invited to appear before Council and answer questions.

Mr. David Wasserman, NCDOT Planning Board. He presented a little background on why this project is even being done. They have been reactive. This concept is a new visionary approach. It is being proactive and also looking at the entire system. We are going to try to make improvements on the existing highway facilities. In occasions that may not be the case, as we may have to build a by-pass. The goal is to present an upfront vision for these corridors. It will affect planning decisions, design decisions and day to day decisions, etc. What they are trying to do with this concept is promote mobility. This concept will help quality for economic prosperity by using the existing corridors we hope to minimize the impact fee requirement. It is also a wiser use of limited dollars. To obtain objective criteria, we looked at mobility. They looked at freeways, expressways-Type I, Expressways-Type II, Boulevards-Type I, Boulevards-Type II and Thoroughfares. He discussed the existing needs upgrades and recommendations on all of the above. NC158 basically from I-95 all the way out to 168 is proposed as an expressway. US17 is being proposed as a freeway from Virginia to South Carolina. He asked to state again that this is a vision plan and there is no time table set for this. Now that we have this vision we have to look to see what is out there today. What are the existing facilities like, then going from that we have all these TIP projects that we are looking at to see how they will influence those to make sure they will fit into the vision. We will be able to affect some of these projects, but not all of them. We are going to develop a policy that endorses this concept. Our board adopted this in September. We are also adopting a joint policy with the Department of Commerce and the Governor's office as well. We are going to create a long term vision for each corridor. Following questions and answers, a motion was made by Mayor Pro Tem E. K. Rivers, seconded by Councilwoman C. C. Austin to adopt the following Resolution of Support of the Eastern North Carolina Element of the North Carolina Strategic Highway Corridors Concept. Those voting in favor of the motion were: Rivers, Austin, Baker, Hummer, King, Lehmann, Stallings and Walton. Against: None. Motion carried unanimously.

**RESOLUTION #040910**  
**SUPPORTING EASTERN NORTH CAROLINA ELEMENT OF THE**  
**NORTH CAROLINA STRATEGIC HIGHWAY CORRIDORS CONCEPT**

**WHEREAS**, a coalition of NCDOT Board of Transportation Members from Divisions One, Two, Three, Four and Six and who represent the forty (40) counties generally considered to comprise eastern North Carolina, have united together and formulated a regional plan which, upon implementation, will provide a grid of freeways and expressways at strategic locations through eastern North Carolina; and

**WHEREAS**, historically, economic growth in eastern North Carolina has been hampered by the lack of a strategically located system of fully controlled access highways which would otherwise facilitate commerce and transportation through the region; and

**WHEREAS**, the adoption and implementation of such a plan will improve transportation and facilitate growth and prosperity throughout eastern North Carolina by providing for greater mobility and connectivity which shall benefit all of eastern North Carolina's residents, municipalities, and counties; and

**WHEREAS**, the adoption and implementation of such a plan will provide environmental stewardship in that the majority of the plan will maximize the use of existing corridors; and

**WHEREAS**, it is widely known that the majority of traffic fatalities in North Carolina occur on rural two-lane roads, and the addition of freeways to eastern North Carolina's transportation network would increase safety for residents and tourists in the region; and

**WHEREAS**, it is a stated goal of the City of Elizabeth City to promote transportation as a regional issue requiring regional solutions, while the question of support was placed before the City Council and the consensus was to support the Eastern North Carolina Element as an integral part of the Statewide Strategic Highway Corridors Concept: and

**NOW, BE IT THEREFORE RESOLVED**, that the City Council of the City of Elizabeth City supports the efforts of the coalition of the North Carolina Board of Transportation members and North Carolina Department of Transportation Staff who have formulated this regional plan, the inclusion of the Eastern Element of the Strategic Highway Corridors Concept or System and as a part of the Statewide Transportation Plan, and the North Carolina Department of Transportation who will ultimately administer this plan to provide for a grid of fully controlled access highway corridors that will ultimately facilitate safety, growth and prosperity through eastern North Carolina.

**ADOPTED**, this the 27<sup>th</sup> day of September, 2004.

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John H. Bell, Jr.  
Mayor

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Dianne S. Pierce, MMC  
City Clerk

Mayor Bell recognized Building Inspector S. E. Ward for comments regarding the adoption of Flood Damage Prevention Ordinance & Maps. Mr. Ward stated that at the last City Council

meeting, a public hearing was held to receive comments regarding the proposed adoption of the new FEMA flood damage prevention ordinances and maps. The matter was tabled for further consideration. The update flood maps and flood insurance study have now been received from the State and the City is required to adopt the revised ordinance and accompanying maps prior to the October 5<sup>th</sup>, 2004 FEMA deadline. Based on the proposals there are approximately five properties that are in the “floodway”. Tammy Riddle and Ed Curtis were present to address any questions.

Councilman Lehmann asked about the concerns of the residents that do not understand since the subdivision has been there since 1985 and realistically we have had some very heavy rain and they have not experienced any flooding in there. Their question is that even after the initially evaluation that was done by FEMA for that encroachment zone, some of those lot owners still feel like their properties should not be in the encroachment zone because they are higher than what maybe FEMA thinks that they are. I can understand the concept as far as to how those elevations were taken and how accurate they are but he is not so sure that the definition of the encroachment zone is all that accurate where all that time has been spent by people actually visiting the site. Have the questions and concerns of those residents been addressed?

Ms. Riddle stated that she has met with the citizens and she hopes that their concerns are being addressed. The encroachments are not based on elevations, but on the cross section areas that carry the flow.

Following additional discussion and review, a motion was made by Councilwoman C. C. Austin, seconded by Councilman R. E. King to adopt the following Flood Damage Prevention Ordinance without the freeboard. Those voting in favor of the motion were: Austin, King, Baker, Hummer, Lehmann, Rivers, Stallings and Walton. Against: None. Motion carried unanimously.

Ms. Len Deatheridge asked to address Council. She said that the one thing that has been on her mind is that this concerns a lot of property that is going to be affected by this encroachment area. The property will therefore be devalued, therefore, will there be new appraisals conducted and will our tax rate go down.

**ORDINANCE #04097**  
**FLOOD DAMAGE PREVENTION**

Non-Coastal Regular Phase

**ARTICLE 1. STATUTORY AUTHORIZATION, FINDINGS OF FACT,  
PURPOSE AND OBJECTIVES.**

**SECTION A. STATUTORY AUTHORIZATION.**

**Municipal:** The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; Parts 3, 5, and 8 of Article 19 of Chapter 160A; and Article 8 of Chapter 160A of the North Carolina General Statutes, delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry.

Therefore, the City of Elizabeth City, North Carolina, does ordain as follows:

**SECTION B. FINDINGS OF FACT.**

- (1) The flood prone areas within the jurisdiction of the City of Elizabeth City are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- (2) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities, and by the occupancy in flood prone areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated, flood proofed, or otherwise unprotected from flood damages.

**SECTION C. STATEMENT OF PURPOSE.**

It is the purpose of this ordinance to promote public health, safety, and general welfare and to minimize public and private losses due to flood conditions within flood prone areas by provisions designed to:

- (1) restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion, flood heights or velocities;
- (2) require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (3) control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters;
- (4) control filling, grading, dredging, and all other development which may increase erosion or flood damage; and,
- (5) prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

#### **SECTION D. OBJECTIVES.**

The objectives of this ordinance are:

- (1) to protect human life and health;
- (2) to minimize expenditure of public money for costly flood control projects;
- (3) to minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) to minimize prolonged business losses and interruptions;
- (5) to minimize damage to public facilities and utilities (i.e. water and gas mains, electric, telephone, cable and sewer lines, streets, and bridges) that are located in flood prone areas;
- (6) to help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize flood blight areas; and,
- (7) to insure that potential homebuyers are notified that property is in a Special Flood Hazard Area.

#### **ARTICLE 2. DEFINITIONS.**

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance it's most reasonable application.

“Accessory Structure (Appurtenant Structure)” means a structure, which is, located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common urban accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms, and may or may not be located on the same parcel as the farm dwelling or shop building.

“Addition (to an existing building)” means an extension or increase in the floor area or height of a building or structure.

“Appeal” means a request for a review of the floodplain administrator's interpretation of any provision of this ordinance.

“Area of Shallow Flooding” means a designated AO Zone on a community's Flood Insurance Rate Map (FIRM) with base flood depths determined to be from one (1) to three (3) feet. These areas are located where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

“Area of Special Flood Hazard” see “Special Flood Hazard Area (SFHA)”

“Basement” means any area of the building having its floor subgrade (below ground level) on all sides.

“Base Flood” means the flood having a one (1) percent chance of being equaled or exceeded in any given year.

“Base Flood Elevation (BFE)” means a determination as published in the Flood Insurance Study of the water surface elevations of the base flood.

“Building” see “Structure”

“Chemical Storage Facility” means a building, portion of a building, or exterior area adjacent to a building used for the storage of any chemical or chemically reactive products.

“Development” means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

“Disposal” defined as in NCGS 130A-290(a) (6).

“Elevated Building” means a non-basement building, which has its reference level; raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.



“Encroachment” means the advance or infringement of uses, fill, excavation, buildings, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

“Existing Manufactured Home Park or Manufactured Home Subdivision” means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is pre-FIRM.

“Flood” or “Flooding” means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) the overflow of inland or tidal waters; and,
- (2) the unusual and rapid accumulation of runoff of surface waters from any source.

“Flood Boundary and Floodway Map (FBFM)” means an official map of a community, issued by the Federal Emergency Management Agency, on which the Special Flood Hazard Areas and the floodways are delineated. This official map is a supplement to and shall be used in conjunction with the Flood Insurance Rate Map (FIRM).

“Flood Hazard Boundary Map (FHBM)” means an official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the Special Flood Hazard Areas have been defined as Zone A.

“Flood Insurance” means the insurance coverage provided under the National Flood Insurance Program.

“Flood Insurance Rate Map (FIRM)” means an official map of a community, issued by the Federal Emergency Management Agency, on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated.

“Flood Insurance Study (FIS)” means an examination, evaluation, and determination of flood hazard areas, corresponding water surface elevations (if appropriate), flood insurance risk zones, and other flood data in a community issued by FEMA. The Flood Insurance Study report includes Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs), if published.

“Floodplain” or “Flood Prone Area” means any land area susceptible to being inundated by water from any source.

“Floodplain Management” means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including but not limited to emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

“Floodplain Administrator” is the individual appointed to administer and enforce the floodplain management regulations.

“Floodplain Regulations” means this ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power which control development in flood-prone areas. This term describes federal, state or local regulations in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

“Flood proofing” means any combination of structural and nonstructural additions, changes, or adjustments to structures, which reduce or eliminate risk of flood damage to real estate or improved real property, water and sanitation facilities, or structures with their contents.

“Flood Prone Area” see “Floodplain”

“Floodway” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

“Flood Zone” means a geographical area shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map that reflects the severity or type of flooding in the area.

“Floor” see “Lowest Floor”

“Functionally Dependent Facility” means a facility, which cannot be used for its intended purpose unless it is located in close proximity to water, such as a docking, or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities.

“Hazardous Waste Management Facility” means a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste as defined in NCGS Article 9 of Chapter 130A.

“Highest Adjacent Grade (HAG)” means the highest natural elevation of the ground surface, prior to construction, next to the proposed walls of the structure.

“Historic Structure” means any structure that is:

- (a) listed individually in the National Register of Historic Places (a listing maintained by the US Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register;

- (b) certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (c) individually listed on a State inventory of historic places;
- (d) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified
  - (1) by an approved state program as determined by the Secretary of Interior, or
  - (2) directly by the Secretary of Interior in states without approved programs.

“Lowest Adjacent Grade (LAG)” means the elevation of the ground, sidewalk, patio slab, or deck support immediately next to the building after completion of the building. For Zone A and AO, use the natural grade elevation prior to construction.

“Lowest Floor” means the subfloor, top of slab or grade of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or limited storage in an area other than a basement area is not considered a building's lowest floor provided that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

“Manufactured Home” means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term “manufactured home” does not include a “recreational vehicle”.

“Market Value” means the building value, excluding the land (as agreed to between a willing buyer and seller), as established by what the local real estate market will bear. Market value can be established by independent certified appraisal; replacement cost depreciated by age of building (Actual Cash Value) or adjusted assessed values.

“Mean Sea Level” means, for purposes of the NFIP, the National Geodetic Vertical Datum (NGVD) as corrected in 1929, the North American Vertical Datum (NAVD) as corrected in 1988 or other vertical control datum used as a reference for establishing varying elevations within the floodplain, to which Base Flood Elevations (BFEs) shown on a FIRM are referenced. Refer to each FIRM panel to determine datum used.

“New Construction” means structures for which the “start of construction” commenced on or after the effective date of the original version of this ordinance and includes any subsequent improvements to such structures.

“Nonconforming Building or Development” means any legally existing building or development, which fails to comply with the current provisions of this ordinance.

“Non-Encroachment Area” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without

cumulatively increasing the water surface elevation more than one (1) foot as designated in the Flood Insurance Study report.

“Obstruction” includes, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, channelization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation or other material in, along, across or projecting into any watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water, or due to its location, its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream.

“Post-FIRM” means construction or other development, which started on or after January 1, 1975 or on or after the effective date of the initial Flood Insurance Rate Map for the area, whichever is later.

“Pre-FIRM” means construction or other development, which started before January 1, 1975 or before the effective date of the initial Flood Insurance Rate Map for the area, whichever is later?

“Public Safety” and/or “Nuisance” means anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

“Recreational Vehicle (RV)” means a vehicle, which is:

- (a) built on a single chassis;
- (b) 400 square feet or less when measured at the largest horizontal projection;
- (c) designed to be self-propelled or permanently towable by a light duty truck; and,
- (d) designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.

“Reference Level” is the portion of a structure or other development that must be compared to the regulatory flood protection elevation to determine regulatory compliance of such building. Within Special Flood Hazard Areas designated as zones A1-A30, AE, A, A99, AO, or AH, the reference level is the top of the lowest floor.

“Regulatory Flood Protection Elevation” means the elevation to which all structures and other development located within the Special Flood Hazard Areas must be elevated or flood proofed, if non-residential. Within areas where Base Flood Elevations (BFEs) have been determined, this elevation shall be the BFE. In areas where no BFE has been established, all structures and other development must be elevated or flood proofed, if non-residential, to two (2) feet above the highest adjacent grade.

“Remedy a Violation” means to bring the structure or other development into compliance with State or Community floodplain management regulations, or, if this is not possible, to

reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

“Retrofitting” means measures, such as flood proofing, elevation, construction of small levees, and other modifications, taken on an existing building or its yard to protect it from flood damage.

“Riverine” means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

“Salvage Yard” means property used for the storage, collection, and/or recycling of any type of equipment whatsoever, whether industrial or noncommercial, and including but not limited to vehicles, appliances and related machinery.

“Special Flood Hazard Area (SFHA)” is the land in the floodplain subject to a one (1%) percent or greater chance of being flooded in any given year as determined in Article 3, Section B of this ordinance.

“Solid Waste Disposal Facility” means any facility involved in the disposal of solid waste, as defined in NCGS 130A-290(a) (35).

“Solid Waste Disposal Site” defined as in NCGS 130A-290(a) (36).

“Start of Construction” includes substantial improvement, and means the date the building permit was issued provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

“Structure” means a walled and roofed building, a manufactured home, a gas or liquid storage tank that is principally above ground.

“Substantial Damage” means damage of any origin sustained by a structure during any one year period whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. See definition of “substantial improvement”. *Substantial damage also means flood-related damage sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.*

“Substantial Improvement” means any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure, taking place during any one-year period whereby the cost of which equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures, which have incurred “substantial damage”, regardless of the actual repair work performed. The term does not, however, include either:

- (a) any correction of existing violations of State or Community health, sanitary, or safety code specifications which have been identified by the community code enforcement official and which are the minimum necessary to assure safe living conditions; or,
- (b) any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

“Variance” is a grant of relief from the requirements of this ordinance.

“Violation” means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Articles 4 and 5 is presumed to be in violation until such time as that documentation is provided.

“Watercourse” means a lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

“Water Surface Elevation (WSE)” means the height, in relation to mean sea level, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

### **ARTICLE 3. GENERAL PROVISIONS.**

#### **SECTION A. LANDS TO WHICH THIS ORDINANCE APPLIES.**

This ordinance shall apply to all Special Flood Hazard Areas within the jurisdiction, including Extra-Territorial Jurisdictions (ETJ) if applicable, of the City of Elizabeth City and within the jurisdiction of any other community whose governing body agrees, by resolution, to such applicability.

**SECTION B. BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREAS.**

The Special Flood Hazard Areas are those identified by the Federal Emergency Management Agency (FEMA) or produced under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its Flood Hazard Boundary Map (FHBM) or Flood Insurance Study (FIS) and its accompanying flood maps such as the Flood Insurance Rate Map(s) (FIRM) and/or the Flood Boundary Floodway Map(s) (FBFM), for the City of Elizabeth City dated January 26<sup>th</sup>, 2004, which with accompanying supporting data, and any revision thereto, including Letters of Map Amendment or Revision, are adopted by reference and declared to be a part of this ordinance. The Special Flood Hazard Areas also include those defined through standard engineering analysis for private developments or by governmental agencies, but which have not yet been incorporated in the FIRM. This includes, but is not limited to, detailed flood data:

- (1) generated as a requirement of Article 4, Section C(11 & 12) this Ordinance;
- (2) preliminary FIRMs where more stringent than the effective FIRM; or
- (3) post-disaster Flood Recovery Maps.

**Municipal:** In addition, upon annexation to the City of Elizabeth City or inclusion in the Extra-Territorial Jurisdiction (ETJ), the Special Flood Hazard Areas identified by the Federal Emergency Management Agency (FEMA) and/or produced under the Cooperating Technical State agreement between the State of North Carolina and FEMA as stated above for the Unincorporated Areas of Pasquotank County, with accompanying maps and other supporting data, and any revision thereto, are adopted by reference and declared to be a part of this ordinance.

**SECTION C. ESTABLISHMENT OF FLOODPLAIN DEVELOPMENT PERMIT.**

A Floodplain Development Permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities within Special Flood Hazard Areas as determined in Article 3, Section B.

**SECTION D. COMPLIANCE.**

No structure or land shall hereafter be located, extended, converted, altered, or developed in any way without full compliance with the terms of this ordinance and other applicable regulations

## **SECTION E. ABROGATION AND GREATER RESTRICTIONS.**

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

## **SECTION F. INTERPRETATION.**

In the interpretation and application of this ordinance, all provisions shall be:

- (a) considered as minimum requirements;
- (b) liberally construed in favor of the governing body; and,
- (c) deemed neither to limit nor repeal any other powers granted under State statutes

## **SECTION G. WARNING AND DISCLAIMER OF LIABILITY.**

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur on rare occasions. Actual flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the Special Flood Hazard Areas or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the City of Elizabeth City or by any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

## **SECTION H. PENALTIES FOR VIOLATION.**

Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$50.00 or imprisoned for not more than thirty (30) days, or both. Each day such violation continues shall be considered a separate offense resulting in a separate fine of up to \$50.00 per day for each day the violation remains in existence. Nothing herein contained shall prevent the City of Elizabeth City from taking such other lawful action as is necessary to prevent or remedy any violation.

## **ARTICLE 4. ADMINISTRATION.**

### **SECTION A. DESIGNATION FLOODPLAIN ADMINISTRATOR.**

The Zoning Administrator, hereinafter referred to as the "Floodplain Administrator", is hereby appointed to administer and implement the provisions of this ordinance.



**SECTION B. FLOODPLAIN DEVELOPMENT PERMIT AND CERTIFICATION REQUIREMENTS.**

- (1) **Plans and Application Requirements.** Application for a Floodplain Development Permit shall be made to the floodplain administrator on forms furnished by him or her prior to any development activities proposed to be located within flood prone areas. The following items/information shall be presented to the floodplain administrator to apply for a floodplain development permit.
- (a) A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:
- i) the nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, the location of utility systems, proposed grading/pavement areas, fill materials, storage areas, drainage facilities, and other proposed development;
  - ii) the boundary of the Special Flood Hazard Area as delineated on the FIRM or other flood map as determined in Article 3, Section B or a statement that the entire lot is within the Special Flood Hazard Area;
  - iii) flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in Article 3, Section B;
  - iv) the boundary of the floodway(s) or non-encroachment area(s) as determined in Article 3, Section B;
  - v) the Base Flood Elevation (BFE) where provided as set forth in Article 3, Section B; Article 4, Section C(11 & 12); or Article 5, Sections C, D and B(5);
  - vi) the old and new location of any watercourse that will be altered or relocated as a result of proposed development;
  - vii) preparation of the plot plan shall be by or under the direct supervision of a North Carolina registered land surveyor or professional engineer and certified by same, except that minor work may be exempted from this requirement at the discretion of the Zoning Administrator, and the surveyor's or engineer's Official Seal must appear on the plot plan.
- (b) Proposed elevation and method thereof, of all development within a Special Flood Hazard Area including but not limited to:
- i) Elevation in relation to mean sea level of the proposed reference level (including basement) of all structures;

- ii) Elevation in relation to mean sea level to which any non-residential structure will be flood-proofed;
  - iii) Elevation in relation to mean sea level to which any proposed utility systems will be elevated or flood proofed;
- (c) If flood proofing, a flood proofing certificate and back-up plans from a registered professional engineer or architect certifying that the non-residential flood-proofed development will meet the flood-proofing criteria in Article 5, Section B(2) and Section C(2).
- (d) A Foundation Plan drawn to scale which shall include details of the proposed foundation system to ensure all provisions of this ordinance are met. These details include but are not limited to:
  - i) Proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/piers);
  - ii) Should solid foundation perimeter walls be used in floodplains, details of sufficient openings to facilitate the unimpeded movements of floodwaters in accordance with Article 5, Section B(4);
- (e) Usage details of any enclosed space below the regulatory flood protection elevation.
- (f) Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage;
- (g) Copy of all other Local, State and Federal permits required prior to floodplain development permit issuance (i.e. Wetlands, Erosion and Sedimentation Control, Riparian Buffers, Mining, etc.)
- (h) If floodplain development permit is issued for placement of Recreational Vehicles and/or Temporary Structures, documentation to ensure Article 5, Section B(6 & 7) of this code is met.
- (i) If a watercourse is proposed to be altered and/or relocated, a description of the extent of watercourse alteration or relocation; an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.

- (2) **Floodplain Development Permit Data Requirements.** The following information shall be provided at a minimum on the Floodplain Development Permit to ensure compliance with this code.
- (a) A description of the development to be permitted under the floodplain development permit issuance.
  - (b) The Special Flood Hazard Area determination for the proposed development per available data specified in Article 3, Section B.
  - (c) The regulatory flood protection elevation required for the reference level and all attendant utilities.
  - (d) The regulatory flood protection elevation required for the protection of all public utilities.
  - (e) All certification submittal requirements with timelines.
  - (f) State that no fill material shall encroach into the floodway or non-encroachment area of any watercourse, if applicable.
  - (g) *If in an A, AO, AE or AI-30 zone, specify the minimum foundation opening requirements.*
  - (h) *State limitations of below BFE enclosure uses (if applicable). (i.e., Parking, Building Access and Limited Storage only).*
- (3) **Certification Requirements.**
- (a) *An Elevation Certificate (FEMA Form 81-31) or Flood proofing Certificate (FEMA Form 81-65) is required after the reference level is completed. Within twenty-one (21) calendar days of establishment of the reference level elevation, or flood proofing, by whatever construction means, whichever is applicable, it shall be the duty of the permit holder to submit to the floodplain administrator a certification of the elevation of the reference level, or flood proofed elevation, whichever is applicable in relation to mean sea level. Said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same. When flood proofing is utilized, said certification shall be prepared by or under the direct supervision of a professional, North Carolina licensed engineer or architect and certified by same. Any work done within the twenty-one (21) day calendar period and prior to submission of the certification shall be at the permit holder's risk. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further progressive work being permitted to proceed.*

*Failure to submit the certification or failure to make said corrections required shall be cause to issue a stop-work order for the project.*

- (b) A Final As-Built Elevation Certificate (*FEMA Form 81-31*) or Flood proofing Certificate (*FEMA Form 81-65*) is required after construction is completed and prior to Certificate of Compliance/Occupancy issuance. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of final as-built construction of the elevation or flood proofed elevation of the reference level and all attendant utilities. Said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same. When flood proofing is utilized, said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to Certificate of Compliance/Occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make said corrections required shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.
- (c) If a manufactured home is placed within an A, AO, AE, or A1-30 zone and the elevation of the chassis is above 36 inches in height, an engineered foundation certification is required per Article 5, Section B(3).
- (d) If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation shall all be submitted by the permit applicant prior to issuance of a floodplain development permit.
- (e) Certification Exemptions. The following structures, if located within A, AO, AE or A1-30 zones, are exempt from the elevation/flood proofing certification requirements specified in items (a) and (b) above:
  - i) Recreational Vehicles meeting requirements of Article 5, Section B (6) (a);
  - ii) Temporary Structures meeting requirements of Article 5, Section B (7); and
  - iii) Accessory Structures less than 150 square feet meeting requirements of Article 5, Section B (8).

**SECTION C. DUTIES AND RESPONSIBILITIES OF THE  
FLOODPLAIN ADMINISTRATOR.**

Duties of the floodplain administrator shall include, but not be limited to:

- (1) Review all floodplain development applications and issue permits for all proposed development within flood prone areas to assure that the requirements of this ordinance have been satisfied.
- (2) Advise permittee that additional Federal or State permits (i.e., Wetlands, Erosion and Sedimentation Control, Riparian Buffers, Mining, etc.) may be required, and if specific Federal or State permits are known, require that copies of such permits be provided and maintained on file with the floodplain development permit.
- (3) Notify adjacent communities and the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
- (4) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.
- (5) Prevent encroachments within floodways and non-encroachment areas unless the certification and flood hazard reduction provisions of Article 5, Section E are met.
- (6) Obtain actual elevation (in relation to mean sea level) of the reference level (including basement) of all attendant utilities of all new or substantially improved structures, in accordance with Article 4, Section B(3).
- (7) Obtain the actual elevation (in relation to mean sea level) to which the new or substantially improved structures and all utilities have been flood proofed, in accordance with Article 4, Section B(3).
- (8) Obtain actual elevation (in relation to mean sea level) of all public utilities, in accordance with Article 4, Section B (3).
- (9) When flood proofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with Article 4, Section B(3) and Article 5, Section B(2).

- (10) Where interpretation is needed as to the exact location of boundaries of the Special Flood Hazard Areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article.
- (11) When Base Flood Elevation (BFE) data has not been provided in accordance with Article 3, Section B, obtain, review, and reasonably utilize any Base Flood Elevation (BFE) data, along with floodway data and/or non-encroachment area data available from a Federal, State, or other source, including data developed pursuant to Article 5, Section C (4), in order to administer the provisions of this ordinance.
- (12) When Base Flood Elevation (BFE) data is provided but no floodway nor non-encroachment area data has been provided in accordance with Article 3, Section B, obtain, review, and reasonably utilize any floodway data, and/or non-encroachment area data available from a Federal, State, or other source in order to administer the provisions of this ordinance.
- (13) When the exact location of boundaries of the Special Flood Hazard Areas conflict with the current, natural topography information at the site, the property owner may apply and be approved for a Letter of Map Amendment (LOMA) by FEMA. A copy of the Letter of Map Amendment issued from FEMA will be maintained by the floodplain administrator in the floodplain development permit file.
- (14) Permanently maintain all records that pertain to the administration of this ordinance and make these records available for public inspection.
- (15) Make on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the floodplain administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the floodplain administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action.
- (16) Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this ordinance, the floodplain administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor, which is punishable by a fine of up to \$50.00 per day for each day the violation continues.
- (17) Revocation of floodplain development permits as required. The floodplain administrator may revoke and require the return of the floodplain development

permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable State or local law may also be revoked.

- (18) Make periodic inspections throughout all special flood hazard areas within the jurisdiction of the community. The floodplain administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.
- (19) Follow through with corrective procedures of Article 4, Section D.

#### **SECTION D. CORRECTIVE PROCEDURES.**

- (1) Violations to be corrected: When the floodplain administrator finds violations of applicable State and local laws, it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law pertaining to their property.
- (2) Actions in Event of Failure to Take Corrective Action: If the owner of a building or property shall fail to take prompt corrective action, the floodplain administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating
  - (a) that the building or property is in violation of the Flood Damage Prevention Ordinance;
  - (b) that a hearing will be held before the floodplain administrator at a designated place and time, not later than ten (10) days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and,
  - (c) that following the hearing, the floodplain administrator may issue such order to alter, vacate, or demolish the building; or to remove fill as appears appropriate.
- (3) Order to Take Corrective Action: If, upon a hearing held pursuant to the notice prescribed above, the floodplain administrator shall find that the building or development is in violation of the Flood Damage Prevention Ordinance, he or she shall make an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than sixty (60) days. Where the

floodplain administrator finds that there is imminent danger to life or other property, he may order that corrective action be taken in such lesser period as may be feasible.

- (4) Appeal: Any owner who has received an order to take corrective action may appeal the order to the local elected governing body by giving notice of appeal in writing to the floodplain administrator and the clerk within ten (10) days following issuance of the final order. In the absence of an appeal, the order of the floodplain administrator shall be final. The local governing body shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.
- (5) Failure to Comply with Order: If the owner of a building or property fails to comply with an order to take corrective action from which no appeal has been taken, or fails to comply with an order of the governing body following an appeal, he shall be guilty of a misdemeanor and shall be punished in the discretion of the court.

#### **SECTION E. VARIANCE PROCEDURES.**

- (1) The Board of Zoning Adjustments as established by the City of Elizabeth City, hereinafter referred to as the “appeal board”, shall hear and decide requests for variances from the requirements of this ordinance.
- (2) Any person aggrieved by the decision of the appeal board may appeal such decision to the Court, as provided in Chapter 7A of the North Carolina General Statutes.
- (3) Variances may be issued for the repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- (4) In passing upon variances, the appeal board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and:
  - (a) the danger that materials may be swept onto other lands to the injury of others;
  - (b) the danger to life and property due to flooding or erosion damage;
  - (c) the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - (d) the importance of the services provided by the proposed facility to the community;
  - (e) the necessity to the facility of a waterfront location, where applicable;



- (f) the availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
  - (g) the compatibility of the proposed use with existing and anticipated development;
  - (h) the relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
  - (i) the safety of access to the property in times of flood for ordinary and emergency vehicles;
  - (j) the expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,
  - (k) the costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.
- (5) A written report addressing each of the above factors shall be submitted with the application for a variance.
- (6) Upon consideration of the factors listed above and the purposes of this ordinance, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.
- (7) Variances shall not be issued within any designated floodway or non-encroachment area if any increase in flood levels during the base flood discharge would result.
- (8) Conditions for Variances:
- (a) Variances may not be issued when the variance will make the structure in violation of other Federal, State, or local laws, regulations, or ordinances.
  - (b) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
  - (c) Variances shall only be issued upon:
    - i) a showing of good and sufficient cause;
    - ii) a determination that failure to grant the variance would result in exceptional hardship; and

- iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
  - (d) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the Base Flood Elevation (BFE) and the elevation to which the structure is to be built and a written statement that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced reference level elevation. Such notification shall be maintained with a record of all variance actions.
  - (e) The floodplain administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.
- (9) *A variance may be issued for solid waste disposal facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in Special Flood Hazard Areas provided that all of the following conditions are met. A Floodplain Development permit may be issued for such development only if a variance is granted.*
- (a) *The use serves a critical need in the community.*
  - (b) *No feasible location exists for the use outside the Special Flood Hazard Area.*
  - (c) *The reference level of any structure is elevated or flood proofed to at least the regulatory flood protection level.*
  - (d) *The use complies with all other applicable federal, state and local laws.*
  - (e) *The City of Elizabeth City has notified the Secretary of the North Carolina Department of Crime Control and Public Safety of its intention to grant a variance at least thirty (30) days prior to granting the variance.*

## **ARTICLE 5. PROVISIONS FOR FLOOD HAZARD REDUCTION.**

### **SECTION A. GENERAL STANDARDS.**

In all Special Flood Hazard Areas the following provisions are required:

- (1) All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.

- (2) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- (3) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damages.
- (4) Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding. These include but are not limited to HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric meter panels/boxes, utility/cable boxes, appliances (i.e., washers, dryers, refrigerator, etc.), hot water heaters, electric outlets/switches.
- (5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
- (6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.
- (7) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
- (8) Any alteration, repair, reconstruction, or improvements to a structure, which is in compliance with the provisions of this ordinance, shall meet the requirements of “new construction” as contained in this ordinance.
- (9) Non-conforming structures or other development may not be enlarged, replaced, or rebuilt unless such enlargement or reconstruction is accomplished in conformance with the provisions of this ordinance. Provided, however, nothing in this ordinance shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this ordinance and located totally or partially within the floodway, non-encroachment area, or stream setback, provided that the bulk of the building or structure below the regulatory flood protection elevation in the floodway, non-encroachment area, or stream setback is not increased and provided that such repair, reconstruction, or replacement meets all of the other requirements of this ordinance.

- (10) New solid waste disposal facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted in Special Flood Hazard Areas. A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be located in a Special Flood Hazard Area only if the structure or tank is either elevated or flood proofed to at least the regulatory flood protection elevation and certified according to Article 4, Section B (3) of this code.

### **SECTION B. SPECIFIC STANDARDS.**

In all Special Flood Hazard Areas where Base Flood Elevation (BFE) data has been provided, as set forth in Article 3, Section B, or Article 4, Section C (11 & 12), the following provisions are required:

- (1) Residential Construction. New construction or substantial improvement of any residential structure (including manufactured homes) shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation.
- (2) Non-Residential Construction. New construction or substantial improvement of any commercial, industrial, or other non-residential structure shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation. Structures located in A, AO, AE and A1-30 Zones may be flood proofed to the regulatory flood protection elevation in lieu of elevation provided that all areas of the structure below the required flood protection elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the official as set forth in Article 4, Section B (3).
- (3) Manufactured Homes.
  - (a) New or replacement manufactured homes shall be elevated so that the reference level of the manufactured home is no lower than the regulatory flood protection elevation.
  - (b) Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement in accordance with the State of North Carolina Regulations for Manufactured/Mobile Homes, 1995 Edition, and any revision thereto adopted by the Commissioner of Insurance pursuant to NCGS §143-143.15 or a certified engineered foundation. Additionally, when the elevation would be met by an elevation of the chassis thirty-six (36) inches or less above the grade at the site, the chassis shall be supported by reinforced piers or other foundation elements of at least

equivalent strength. When the elevation of the chassis is above thirty-six (36) inches in height, an engineering certification is required.

- (c) All foundation enclosures or skirting shall be in accordance with Article 5, Section B (4).
  - (d) An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or subdivisions located within flood prone areas. This plan shall be filed with and approved by the floodplain administrator and the local Emergency Management coordinator.
- (4) Elevated Buildings. New construction or substantial improvements of elevated buildings that include fully enclosed areas that are below the regulatory flood protection elevation shall not be designed to be used for human habitation, but shall be designed to be used only for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises, be constructed entirely of flood resistant materials below the regulatory flood protection level in A, AO, AE, and A1-30 zones and meet the following design criteria:
- (a) Measures for complying with this requirement shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. To meet this requirement, the foundation must either be certified by a professional engineer or architect or meet the following minimum design criteria:
    - i) Provide a minimum of two openings on different sides of each enclosed area subject to flooding.
    - ii) The total net area of all openings must be at least one (1) square inch for each square foot of each enclosed area subject to flooding.
    - iii) If a building has more than one enclosed area, each area must have openings on exterior walls to allow floodwater to directly enter;
    - iv) The bottom of all required openings shall be no higher than one (1) foot above the adjacent grade; and,
    - v) Openings may be equipped with screens, louvers, or other opening coverings or devices provided they permit the automatic flow of floodwaters in both directions.
    - vi) Foundation enclosures:

- 1) *Vinyl or sheet metal skirting is not considered an enclosure for regulatory and flood insurance rating purposes. Therefore such skirting does not require hydrostatic openings as outlined above.*
  - 2) *Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires hydrostatic openings as outlined above to comply with this ordinance.*
- (b) Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment used in connection with the premises (standard exterior door) or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be partitioned or finished into separate rooms, except to enclose storage areas.
- (5) Additions/Improvements.
- (a) Additions and/or improvements to pre-FIRM structures whereas the addition and/or improvements in combination with any interior modifications to the existing structure
    - i) are not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more non-conforming than the existing structure.
    - ii) are substantial improvements, both the existing structure and the addition and/or improvements must comply with the standards for new construction?
  - (b) Additions to post-FIRM structures with no modifications to the existing structure shall require only the addition to comply with the standards for new construction.
  - (c) Additions and/or improvements to post-FIRM structures whereas the addition and/or improvements in combination with any interior modifications to the existing structure
    - i) are not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction.
    - ii) are substantial improvements, both the existing structure and the addition and/or improvements must comply with the standards for new construction?

- (d) Where a fire wall or independent perimeter load-bearing wall is provided between the addition and the existing building, the addition(s) shall be considered a separate building and only the addition must comply with the standards for new construction.
- (6) Recreational Vehicles. Recreation vehicles placed on sites within a Special Flood Hazard Area shall either:
- (a) be on site for fewer than 180 consecutive days and be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and has no permanently attached additions); or
  - (b) meet all the requirements for new construction, including anchoring and elevation requirements of Article 4, Section B and Article 5, Sections A and B (3).
- (7) Temporary Structures. Prior to the issuance of a floodplain development permit for a temporary structure, the following requirements must be met:
- (a) Applicants must submit to the floodplain administrator a plan for the removal of such structure(s) in the event of a hurricane or flash flood warning notification. The plan must include the following information:
    - i) a specified time period for which the temporary use will be permitted;
    - ii) the name, address, and phone number of the individual responsible for the removal of the temporary structure;
    - iii) the time frame prior to the event at which a structure will be removed (i.e. minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);
    - iv) a copy of the contract or other suitable instrument with a trucking company to insure the availability of removal equipment when needed; and
    - v) designation, accompanied by documentation, of a location outside the Special Flood Hazard Area to which the temporary structure will be moved.
  - (b) The above information shall be submitted in writing to the floodplain administrator for review and written approval.
- (8) Accessory Structures. When accessory structures (sheds, detached garages, etc.) are to be placed within a Special Flood Hazard Area, the following criteria shall be met:

- (a) Accessory structures shall not be used for human habitation (including work, sleeping, living, cooking or restroom areas);
- (b) Accessory structures shall be designed to have low flood damage potential;
- (c) Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;
- (d) Accessory structures shall be firmly anchored in accordance with Article 5, Section A (1);
- (e) All service facilities such as electrical and heating equipment shall be installed in accordance with Article 5, Section A (4); and
- (f) Openings to relieve hydrostatic pressure during a flood shall be provided below regulatory flood protection elevation in conformance with Article 5 Section B (4) (a).
- (g) An accessory structure with a footprint less than 150 square feet does not require an elevation or flood proofing certificate. Elevation or flood proofing certifications are required for all other accessory structures in accordance with Article 4, Section B (3).

**SECTION C. SUBDIVISIONS, MANUFACTURED HOME PARKS  
AND MAJOR DEVELOPMENTS.**

All subdivision, manufactured home park and major development proposals located within Special Flood Hazard Areas shall:

- (1) be consistent with the need to minimize flood damage;
- (2) have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;
- (3) have adequate drainage provided to reduce exposure to flood hazards; and,
- (4) have Base Flood Elevation (BFE) data provided if development is greater than the lesser of five (5) acres or fifty (50) lots/manufactured home sites. Such Base Flood Elevation (BFE) data shall be adopted by reference per Article 3, Section B to be utilized in implementing this code.

**SECTION D. STANDARDS FOR FLOODPLAINS WITHOUT  
ESTABLISHED BASE FLOOD ELEVATIONS.**



Within the Special Flood Hazard Areas established in Article 3, Section B, where no Base Flood Elevation (BFE) data has been provided, the following provisions shall apply:

- (1) No encroachments, including fill, new construction, substantial improvements or new development shall be permitted within a distance of twenty feet each side from top of bank or five times the width of the stream whichever is greater, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- (2) If Article 5, Section C (1) is satisfied and Base Flood Elevation (BFE) data is available from other sources, all new construction and substantial improvements within such areas shall also comply with all applicable provisions of this ordinance and shall be elevated or flood proofed in accordance with elevations established in accordance with Article 4, Section C (11 & 12). When Base Flood Elevation (BFE) data is not available from a Federal, State, or other source, the reference level, including basement, shall be elevated at least two (2) feet above the highest adjacent grade. *(Two (2) feet is minimum but a State standard)*

**SECTION E. STANDARDS FOR FLOODPLAINS WITH BFE BUT WITHOUT ESTABLISHED FLOODWAYS OR NON-ENCROACHMENT AREAS.**

Along rivers and streams where Base Flood Elevation (BFE) data is provided but neither floodway nor non-encroachment areas are identified for a Special Flood Hazard Area on the FIRM or in the FIS, no encroachments, including fill, new construction, substantial improvements, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

**SECTION F. FLOODWAYS AND NON-ENCROACHMENT AREAS.**

Located within the Special Flood Hazard Areas established in Article 3, Section B are areas designated as floodways or non-encroachment areas. The floodways and non-encroachment areas are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. The following provisions shall apply to all development within such areas:

- (1) No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any

increase in the flood levels during the occurrence of the base flood. Such certification and technical data shall be presented to the floodplain administrator prior to issuance of floodplain development permit.

- (2) If Article 5, Section F (1) is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this ordinance.
- (3) No manufactured homes shall be permitted, except replacement manufactured homes in an existing manufactured home park or subdivision provided the following provisions are met:
  - (a) the anchoring and the elevation standards of Article 5, Section B(3); and
  - (b) the no encroachment standards of Article 5, Section F (1) are met.

#### **SECTION G. STANDARDS FOR AREAS OF SHALLOW FLOODING (AO ZONES).**

Located within the Special Flood Hazard Areas established in Article 3, Section B, are areas designated as shallow flooding areas. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. The following provisions shall apply within such areas:

- (1) All new construction and substantial improvements of all structures shall have the lowest floor, including basement, elevated to the depth number specified on the Flood Insurance Rate Map (FIRM), in feet, above the highest adjacent grade. If no depth number is specified, the lowest floor, including basement, shall be elevated at least to the regulatory flood protection elevation as defined for the Special Flood Hazard Areas where no BFE has been established.
- (2) All new construction and substantial improvements of non-residential structures shall have the option to, in lieu of elevation, be completely flood proofed together with attendant utilities and sanitary facilities to or above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Certification is required as per Article 4, Section B (3) and Article 5, Section B (2).

#### **ARTICLE 6. LEGAL STATUS PROVISIONS.**

**SECTION A. EFFECT ON RIGHTS AND LIABILITIES UNDER  
THE EXISTING FLOOD DAMAGE PREVENTION  
ORDINANCE.**

This ordinance in part comes forward by re-enactment of some of the provisions of the flood damage prevention ordinance enacted September 13, 1999 as amended, and it is not the intention to repeal but rather to re-enact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued thereunder are reserved and may be enforced. The enactment of this ordinance shall not affect any action, suit or proceeding instituted or pending. All provisions of the flood damage prevention ordinance of the City of Elizabeth City enacted on September 13, 1999, as amended, which are not reenacted herein, are repealed.

**SECTION B. EFFECT UPON OUTSTANDING BUILDING  
PERMITS.**

Nothing herein contained shall require any change in the plans, construction, size or designated use of any development or any part thereof for which a floodplain development permit has been granted by the floodplain administrator or his authorized agents before the time of passage of this ordinance; provided, however, that when construction is not begun under such outstanding permit within a period of six (6) months subsequent to passage of this ordinance or any revision thereto, construction or use shall be in conformity with the provisions of this ordinance.

**SECTION C. EFFECTIVE DATE.**

This ordinance shall become effective upon adoption.

**SECTION D. ADOPTION CERTIFICATION.**

I hereby certify that this is a true and correct copy of the flood damage prevention ordinance as adopted by the City Council of the City of Elizabeth City, North Carolina, on the 27<sup>th</sup> day of September 2004.

**WITNESS** my hand and the official seal of the City of Elizabeth City, North Carolina, this the 28th day of September 2004.

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John H. Bell, Jr.  
Mayor

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Dianne S. Pierce, MMC  
City Clerk

Mayor Bell recognized City Manager R. C. Olson for comments regarding taxicab franchises. Mr. Olson stated that the City has received notice that we presently have four (4) taxicab franchises available. Taxicab franchises are highly sought after and the City presently have a number of current applications on file. In the past, City staff would present to the Council all applications that were pending and the Council would then pick to whom the franchise would be awarded. People wanting franchises have criticized this process in the past. After conferring with the City Attorney, City staff would like to recommend that the following new process be followed: All qualified applications would be placed into a lottery and four applications would be drawn. Those four applications would then be forwarded to the City Council, who would issue the franchises. The lottery process would then be used in the future when a franchise became available and any applications on file would then be placed in the lottery for selection.

Councilman D. K. Stallings, Sr. asked to be excused from discussion and vote on this item as he has a conflict of interest. A motion was made by Councilwoman L. A. Hummer, seconded by Mayor Pro Tem E. K. Rivers to excuse Councilman D. K. Stallings, Sr. from discussion and vote on the above item due to a conflict of interest. Those voting in favor of the motion were: Hummer, Rivers, Austin, Baker, King, Lehmann and Walton. Against: None. Abstention: Stallings. Motion carried.

Following further discussion, a motion was made by Mayor Pro Tem E. K. Rivers, seconded by Councilwoman L. A. Hummer to accept the recommendation for a lottery to be used in the selection process for the taxicab franchises, to award the four franchises from the list of applications presently on file using this method and further moved that the franchise ordinance that the staff was working on about a year ago be brought forward for further study. Those voting in favor of the motion were: Rivers, Hummer, Austin, Baker, King, Lehmann and Walton. Against: None. Abstention: Stallings. Motion carried.

Councilwoman J. M. Baker presented a request to consider the use of a "roll call" voting method at City Council Meetings. She feels that this type of voting will eliminate some of the confusion when members of Council have a split vote on any issue. She is suggesting that the Clerk call upon each member by name in order to record his/her vote. This would make it more clear to those viewing the meetings on television and/or present in person. A roll call vote would not be necessary on any of the standard unanimously votes. A motion was made by Councilwoman J. M. Baker, seconded by Mayor Pro Tem E. K. Rivers that it is stated who votes in a non-unanimous vote who votes opposition to the motion. Those voting in favor of the motion were: Baker, Rivers, Austin, Hummer, King, Lehmann, Stallings and Walton. Against: None. Motion carried unanimously.

Mayor Bell called for discussion of the resolution eliminating NC Highway 34 from Pasquotank County and designating a new primary route number from the southern end of Pasquotank County to the By-pass.

Councilwoman L. A. Hummer stated that she asked that this be brought back as she has some concerns regarding signage on this road as well as the possibility of losing money by creating this road as a primary road instead of leaving it in as secondary road. It is her understanding that there is more money in the State's budget for secondary roads than there is for primary roads. She also feels that this road needs some "No Through Trucks" signs placed on it.

Councilman Walton expressed his concerns about there being more state money designated for secondary roads than there is for primary roads. He also expressed his concern regarding the fact that Dr. Martin Luther King Street is in very bad shape and needs repairs very bad.

Following further discussion, a motion was made by Councilwoman L. A. Hummer to adopt the proposed resolution with a provision for the placement of signs along the way. Councilman D. K. Stallings, Sr. seconded the motion.

After more discussion, Mayor Pro Tem R. K. Rivers made a substitute motion that we table action on this item until after the Manager's meeting with Anthony Roper, DOT District Engineer Wednesday. Councilman W. A. Lehmann seconded the motion. Those voting in favor of the motion were: Rivers, Lehmann, Austin, Baker, Hummer, King, Stallings and Walton. Against: None. Motion carried unanimously.

Mayor Bell stated that Councilman D. K. Stallings, Sr. asked to place on the agenda discussion of the meetings calendar. Mr. Stallings asked Council to consider changing the meeting dates for the rest of the year to the first and third Mondays. This month's second meeting is scheduled the Monday that the majority of Council will be attending the NCLM Annual meeting and then the second meeting in November is the week of November and that is Thanksgiving Week and some members will be traveling that week.

Councilman Lehmann stated that he was reluctant to change the schedule that we all agreed to at the beginning of our terms. We wrestled with this item at length and the reason that we changed the meeting schedule was to allow those wishing to attend the County's meetings and vice versa. He is very reluctant to change that for the very reason that we originally change it.

Mayor Bell said that we have some commitments already scheduled and we have a calendar set and Mr. Stallings said early in the year that he had some commitments and we still adopted this schedule. We have a calendar set and if we need to change one meeting that is fine.

Councilman Lehmann suggested that we meet on the 11<sup>th</sup> and depending on the work load and whether or not should we have a meeting. Can that decision be made mid October?

Mayor Bell advised that we would wait until the 11<sup>th</sup> to make that decision.

A motion was made by Councilman J. B. Walton, seconded by Councilwoman J. M. Baker to retire into Closed Session for consultation with the City Attorney as per NCGS 143-318.11 (a) (3). Those voting in favor of the motion were: Walton, Baker, Austin, Hummer, King, Lehmann, Rivers and Stallings. Against: None. Motion carried unanimously.

A motion was made by Councilwoman C. C. Austin to return to regular meeting of Council. Councilman D. K. Stallings, Sr. seconded the motion. Those voting in favor of the motion were: Austin, Stallings, Baker, Hummer, King, Lehmann, Rivers and Walton. Against: None. Motion carried unanimously.

Mayor Bell called for comments from the Manager and members of Council.

Councilwoman Hummer stated that she inquired today about leaf pick-up as it seems that the leaves are not being picked up and she was advised by the Manager that the truck is down and that is why the leaves are not being picked up. She asked to point out that in the summer issue of the publication, "Friends of the Institute" newsletter, our Master Municipal Clerk, Dianne Pierce, has an article published that she wrote about Fleming Bell, our number one advisory with the Institute of Government. She feels this is quite an accomplishment. She also stated that having been involved with another pay study a couple of years ago, she would like to suggest that Council advise staff to look at some other cities and make some additional comparison. The City Clerk's position in the other cities we need to make sure that they hold a Masters like our Clerk does. That is important and that makes a difference in the salary. She would also like to propose a discussion of televising the work sessions. I have gotten a lot of calls about this recently.

Mayor Pro Tem Rivers said for the record for the next meeting to find out how we are coming with the Master Drainage Plan that we are waiting for from McDowell for the Oak Grove community.

Councilwoman C. C. Austin said that she would like to recognize Belinda Arnold. She hears from a lot of her people about how she is so helpful and cooperates so much when they call about bills or excessive bills and she explains it to them. It seems like she is doing a very good job. She just wanted to give her a pat on the back for that.

Councilman R. E. King passed.

Councilman D. K. Stallings, Sr. stated that he would like to thank God for bringing Dianne back after her surgery. She has been in our prayers and thoughts. He echoes what Councilwoman Hummer said about our Clerk. She has been an access to me during

my time on Council. One other thing he asked about was the fence on Paxton Street. Also, a sign on Grice Street.

Councilwoman Baker stated that she has two things. One is a request from the Crime Watch to register bikes, motorized and otherwise. Some kind of license plate on them or some number on them, but something that will identify them. She also reminded everyone that October 8, 2004 is the deadline to register to vote.

Councilman J. B. Walton said that signage in the Spaulding Park community is completed and looks good. At ECSU the residence hall is opened and a lot of kids still cross the highway and he thinks that is a dangerous area there.

Councilman W. A. Lehmann passed.

There being no further business to come before the Council at this time, a motion was made by Councilman D. K. Stallings, Sr., seconded by Mayor Pro Tem E. K. Rivers to adjourn. Those voting in favor of the motion were: Stallings, Rivers, Austin, Baker, Hummer, King, Lehmann and Walton. Against: None. Motion carried unanimously.

Mayor Bell adjourned the meeting at 10:35 p.m.

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Dianne S. Pierce, MMC  
City Clerk

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John H. Bell, Jr.  
Mayor