

MONDAY-7:00 P.M.

OCTOBER 11, 2010

CITY COUNCIL

The City Council of the City of Elizabeth City held its second regular meeting of the month on the above date and time in the City Council Chambers of the Municipal Administration Building with Mayor R. A. McLean presiding and members J. M. Baker, M. E. Brooks, L. Hill-Lawrence, L. A. Hummer, R. E. King, B. S. Meggs, J. A. Stimatz and J. B. Walton. City staff attending was: City Manager R. C. Olson, City Clerk D. S. Pierce-Tamplen, City Attorney W. H. Morgan, Planning Director J. C. Brooks, Police Chief C. E. Crudup, Human Resource Director K. W. Felton, Deputy City Clerk V. D. White, Parks and Recreation Director B. V. White, Inspections Director S. E. Ward, Public Utilities Director P. A. Fredette and Finance Director S. E. Blanchard.

Mayor R. A. McLean established a quorum was present and called the meeting to order. He called upon former Mayor Charles Foster for the Invocation after which the Pledge of Allegiance was given to the Flag of the United States of America.

1} APPROVAL OF THE AGENDA:

Mayor McLean called for approval of the prepared agenda.

A motion was made by Mayor Pro Tem L. A. Hummer, seconded by Councilwoman J. M. Baker to approve the agenda as presented. Those voting in favor of the motion were: Hummer, Baker, Brooks, Hill-Lawrence, King, Meggs, Stimatz and Walton. Against: None. Motion carried.

2} COMMENTS FROM THE PUBLIC:

Mr. Darrell McKinley, 1716 Providence Road, Elizabeth City spoke regarding the high water in Oxford Heights. Mr. Olson has met with the residents of Oxford Heights and he told them there was nothing that he could do about the water problems. When asked to stop annexing all the property that drains into Knobbs Creek Basin he just looked at us. He has appeared before Council asking Council to quit annexing land and authorizing the building of developments but Council could not find a way to vote no to any annexation requests. He recently drove around Elizabeth City and the land that was not built upon the land was full of water. He drove by land that had been annexed and paved with drainage and this was dry. The engineers told us that the drainage ditches would control the flow of water. He put 22-years in the United States Navy and all of his sea time

was on riding US Submarines. The water that comes down the ditches faster than the water left the fields. Apparently there is a discrepancy in what has been told to us over the years. He is glad that the summer was hot and dry because that is the only thing that helped to keep Oxford Heights from flooding. The first five inches of rain stays in the swamp. He wishes the City would sell a copy of the broadcasts of Council meeting so he could buy it.

Mr. Gyrell Lee, 108 Mackey Drive, Elizabeth City stated he was a citizen of Elizabeth City and he has two issues he would like to discuss. There are some serious issues going on in the police department as to conduct. He came here to get information on a city ordinance. They are giving out citation for cars. He is young and he is not perfect. He is not trying to get any pity from anybody. He has been to jail over a paint job, tires being too big on his vehicle, he has had them jump on him and fracture his left wrist and then charges were never filed. It is serious issues for young certain black males. It is getting out of hand. For people that are young like him that is trying to make it everyday it is sucking him dry because all his money is going for certain things that he feels like he hasn't done. He is not perfect because some things like speeding he does. You have police officers out here getting under oath making up stories; tell individuals when they see them that they are going to get them or whatever like that. He goes out and tries to make a way everyday. He is a single parent but they don't take the time out to try to understand that or know that. They just look at you and how your clothes look, etc. He would like for council to look into what he is saying.

2} PROCLAMATION/PRESENTATION:

Mayor McLean called upon Councilwoman B. S. Meggs to read the proclamation and Mayor McLean presented the Arbor Day Proclamation to Mike Cox declaring October 15, 2010 as Arbor Day in Elizabeth City. Mr. Cox made brief remarks.

3} CONSENT AGENDA:

City Manager Olson read the items on the Consent Agenda.

A motion was made by Councilwoman J. M. Baker, seconded by Councilman R. E. King to approve the following Consent Agenda. Those voting in favor of the motion were: Baker, King, Brooks, Hill-Lawrence, Hummer, Meggs, Stimatz and Walton. Against: None. Motion carried.

CONSENT AGENDA:

a} Accepted the Clerk's Certification of Sufficiency of Petition for Voluntary Annexation submitted by JOG Development for Northside Park located on US 17 North and contains 17.76 acres of Property; and adopted the following Resolution calling for a public hearing to be held on Monday, October 27, 2010 at 7:30 p.m. in the City Council Chambers of the Municipal Building.

**RESOLUTION #10101
FIXING PUBLIC HEARING ON QUESTION
OF ANNEXATION PURSUANT TO G. S. 160A-58.2
NORTHSIDE PARK – JOG DEVELOPMENT, LLC
17.76 ACRES – US 17 NORTH**

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

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

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

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

SECTION 1. That a public hearing on the question of annexation of the area described herein will be held at the Municipal Administration Building in the City Council Chambers at 7:30 PM on Wednesday, the 27th day of October, 2010.

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

BEGINNING, at a point located in the northern margin of U. S. Highway 17 at the southeast corner of the JOG Development, LLC property. Said point also being the southwest corner of the Marsha Lynn Williams property and is located approximately 5,638 feet from the nearest existing city limits. Thence from said point of beginning N 64° 10' 38" W a distance of 395.04 feet along the northern margin of U. S. Highway 17 to a point; thence N 24° 11' 48" E a distance of 10.20 feet to an offset in the right-of-way of said highway; thence N 21° 18' 14" E a distance of 453.92 feet along the eastern line of the State Employees Credit Union property; thence N 14° 25' 06" W a distance of 261.88 feet to a point in the western line of said Credit Union property; thence S 36° 01' 35" W a distance of 357.62 feet to a point; thence along a curve described as follows: radius of 230.00 feet, delta of 14° 43' 20", length of 59.10 feet, a chord bearing of S 28° 39' 54" W and a chord distance of 58.94 feet; thence continuing along the western line of said Credit Union S 21° 18' 14" W a distance of 227.76

feet to a point; thence along a curve terminating in the northern margin of U. S. Highway 17 and described as follows: radius of 20.00 feet , delta of 86° 28' 37", length of 30.19 feet, a chord bearing of S 21° 56' 04" E, and a chord distance of 27.40 feet; thence along the northern margin of said highway N 65° 10' 23" W a distance of 90.17 feet to a point; thence N 21° 18' 14" E a distance of 212.51 feet along the eastern line of the James Hewitt property to a point; thence N 65° 16' 46" W a distance of 279.50 feet to the northwest corner of the James Hewitt property; thence along the eastern line of the Freddie Wilson Berry property N 27° 22' 22" E a distance of 19.86 feet to a point; thence continuing with the Freddie Wilson Berry property and the Wilbur R. Berry property N 36° 01' 35" E a distance of 626.80 feet to the northeast corner of the Wilbur R. Berry property; thence along the Beau, LLC property N 35° 46' 12" E a distance of 226.58 feet to a point; thence continuing with the Beau, LLC property and the Betty M. Turner property S 62° 32' 30" E a distance of 780.66 feet to a point; thence along the western line of the Eulalie P. Harris property and the Marsha Lynn Williams property S 21° 16' 17" W a distance of 1,052.01 feet to the point and place of **BEGINNING**. Said parcel contains 17.76 acres as per plat prepared by McDowell & Associates, P. A., entitled in part "Annexation Plat for the City Elizabeth City, Petition by JOG Development, LLC", and dated September 15, 2010.

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

ADOPTED, this 11th, day of October, 2010.

Roger A. McLean
Mayor

Dianne S. Pierce-Tamplen, MMC
City Clerk

b} Adopted the following Preliminary Resolution to Close Pool Street:

**RESOLUTION #10102
TO CLOSE NORTH POOL STREET
BETWEEN
ELIZABETH STREET AND PEARL STREET**

WHEREAS, NCGS 160A-299 authorizes the City Council to close public streets and alleys; and

WHEREAS, the City Council considers it advisable to conduct a public hearing for the purpose of giving consideration to the closing of the North Pool Street located between Elizabeth Street and Pearl Street and North Road Street and Martin Luther King Drive:

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

- 1} A public hearing will be held at 7:30 PM on the 22nd day of November, 2010 in the City Council Chambers of the Municipal Administration Building to consider a resolution closing that portion of the North Pool Street that is located between Elizabeth Street and Pearl Street and North Road Street and Martin Luther King Drive.
- 2} The City Clerk is hereby directed to publish this Preliminary Resolution once a week for four successive weeks in the Daily Advance, or other newspaper of general circulation in the area.
- 3} The City Clerk is further directed to transmit by registered or certified mail to each owner of property abutting upon that portion of said street a copy of this Preliminary Resolution.
- 4} The City Clerk is further directed to cause adequate notices of this Preliminary Resolution and the scheduled public hearing to be posted as required by NCGS 160A-299.

ADOPTED, this the 11th day of October 2010.

Roger A. McLean
Mayor

Dianne S. Pierce-Tamplen, MMC
City Clerk

c} Authorized City Manager to enter into an Agreement with Rivers & Associates, Inc. subject to approval from the NCDOT for the engineering design, permitting, and the construction bidding phase of the sidewalk project along the west side of Hughes Boulevard from Providence Road to the Farm Fresh shopping area.

End of Consent Agenda

4} PUBLIC HEARINGS:

a} TA-01-10 to amend the Unified Development Ordinance Section 2-4, definition of Internet Sweepstakes Café to delete accessory use.

Mayor McLean called upon City Manager Olson for comments.

Mr. Olson stated this item is consideration of TA-01-10 to amend the UDO definition of Internet Sweepstakes Café to delete accessory use. The text amendment would delete machines from being used as an accessory use to a primary use. He called upon Planning Director J. C. Brooks for comments.

Ms. Brooks said what we have done from direction from Council we have amended the definition of Internet Sweepstakes. We limit it to a principle business enterprise and have deleted it as an accessory use. This application has gone to the Planning Commission and they recommended approval of changing the definition.

Mayor McLean declared the meeting into Public Hearing. Since there was no one present that wished to speak, Mayor McLean declared the public hearing closed.

A motion was made by Councilman J. A. Stimatz, seconded by Mayor Pro Tem L. A. Hummer to approve TA-01-10 to amend the definition of Internet Sweepstakes Café to delete accessory use. Those voting in favor of the motion were: Stimatz, Hummer, Baker, Brooks, Hill-Lawrence, King and Meggs. Against: Walton. Motion carried.

b} TX-02-10 to amend the Unified Development Ordinance Section 11-2.1, 11-2.3A and Table 11-2.1 to exempt parking requirements in the Central Business District.

Mayor McLean called upon Planning Director Brooks for comments.

Ms. Brooks stated this text amendment is to exempt parking requirements in the Central Business District. Council asked staff to initiate parking exempts in the

downtown business district in order to encourage businesses to locate there. The UDO currently allows the Zoning Administrator to reduce the number of parking spaces for businesses that are oriented to walk-in traffic. Over the past five years staff has waived off street parking except for employee parking. There are 1215 parking spaces in the Central Business District. There are 407 on street, 439 in City and County lots and approximately 369 in private lots. Staff looked at the boundaries of the Municipal Service District and determined that because of the irregularities in crossing over multi zoning districts and because it is not a part of the UDO staff would have a difficult time using this district as a bench mark. Staff proposes adding language to Section 11-2.1b, 11-2.3 and Table 11-2-1 which exempts parking in the Central Business District. This amendment was heard at the September Planning Commission meeting and it was recommended by the Commission to approve this text change.

Mayor McLean declared the meeting into public hearing. Since no one signed up to speak for or against the proposed change, Mayor McLean declared the public hearing closed.

A motion was made by Councilman J. A. Stimatz, seconded by Councilwoman J. M. Baker to approve TA-02-10 as recommended by the Planning Commission with the addition of the word "in" in front of the word "article" in the last sentence of Section 11-2.1b. Those voting in favor of the motion were: Stimatz, Baker, Brooks, Hill-Lawrence, Hummer, King, Meggs and Walton. Against: None. Motion carried.

c} RZ-04-10 request from Bald II, LLC to rezone 1.1 acres from AD-Apartment District to O&I Office and Institutional at 1221 Carolina Avenue.

Mayor McLean called upon City Manager Olson for comments.

Mr. Olson stated this is a rezoning request from Ball II, LLC to rezone 1.1 acres from AD-Apartment District to O&I-Office and Institutional at 1221 Carolina Avenue. He called upon Planning Director Brooks for comments.

Ms. Brooks stated this is a request by Bald II, LLC to rezone 1.1 acres of property at 1221 Carolina Avenue from Ad-Apartment District to O&I – Office and Institutional. The site currently has a 30,000 square foot two story structure located on it and it's surrounded by multi-family, single family and the river. Over the years it has been used as a part of the hospital, college campus and physical fitness club, restaurant and offices. The sole use in the building now is an attorney's office. Because a physical fitness club is classified as a non-conforming use in the AD district and has been closed more than six months, the non-conforming status has been lost. The applicant desires O&I Zoning in order

to re-establish commercial uses in the building. Previous uses in the building fit better with the O&I and not an AD Zone classification. Staff has concerns over the restrictedness of the AD Zoning of this site. If the building remains vacant it will further deteriorate and become a blight to a stable residential neighborhood. This rezoning was heard at the September Planning Commission. There was opposition from the neighborhood over the O&I Zoning Classification. After much discussion, Planning Commission recommended denial of this rezoning.

Councilman Brooks said what the applicant is trying to do is get some use out of his building because if it isn't being used it will deteriorate and go from bad to worse.

Ms. Brooks replied that is correct. The uses in the building before were non-conforming and once he ceased use for six months he can no longer use them as that same use.

Mayor McLean declared the meeting into public hearing.

City Clerk D. S. Pierce-Tamplen advised that we have seven individuals that have signed up to speak.

Gilliam Carlsen, 1203 Riverside Avenue, Elizabeth City spoke regarding her opinion on the rezoning of 1221 Carolina Avenue. She advised that over 220 Elizabeth City residents have signed a petition requesting Council to uphold the Planning Commission decision regarding the rezoning of the former health club property at 1221 Carolina Avenue. It is clearly inappropriate for this historic Riverside neighborhood. The intended use of the O&I zoning is to provide a buffer between residential and blight industrial zones. This property is bounded on three sides by residential properties. On the fourth side by a fifty foot wide dedicated public right-of-way stretching from the front of the former health club property almost all the way to the Pasquotank River bulkhead. This dedicated public right of way is documented in city plans dated 1902, 1923, 1980, 1981 and is outlined in the Registry Dealer Sales from River Enterprises to Bald, II LLC dated 2003. There is no light industry in the neighborhood. She gave a copy of the petition to Mayor McLean and Mayor Pro Tem Hummer.

Ms. Jane Harris, 1101 Park Drive, Elizabeth City stated that she lives approximately two blocks from the requested rezoning site. She would like to respectfully ask the Council not approve the request for the change in zoning. The reasons for her request and opposition to the rezoning application are:

1} the use of the former health club and swimming pool was non-conforming under the City's UDO because it was located within an all residential zoned area. The non-conforming use means it is not a permitted use within the current

zoning classification and not permitted in the surrounding properties as zoned for residential use. It was allowed as a non-conforming use only because it was grandfathered at the time of the City's adoption of its zoning districts.

2} She would be more understanding of the owner's request for the zoning change if there had been a fire or some type of natural disaster that had forced the closure of the health club and swimming pool. However, that is not the case and the owner closed the operation and it has remained closed beyond the allowed number of days for its reopening. The current zoning of the property is AD and is a compatible and proper zoning classification for this site under the City's UDO and for the surrounding residential properties.

3} To allow the requested rezoning to O&I will open the site to many future potential non-residential uses. Although the current owner may have plans for the use of the site for reopening the former health club and pool, there can be no assurance that he will own and operate the facility in the future. His intentions may be good but everyone's circumstances can change over time. The sale of the property to others in the future will allow the site to operate within a totally surrounding residential zoned as areas operated.

4} As she understands the table of permitted uses under the UDO the swimming pool can be used on the site under accessory uses and structures. A club can be operated in the AD zoning district as a permitted special use. A swim and tennis club can also be used as a permitted use. These potential allowed uses may possibility serve the owner's intentions for a health club and swimming pool as formerly operated on the site.

5} Another reason for requesting that the O&I Zoning be denied is that the definition in the UDO states one of the objectives of this district, O&I, is to encourage land uses which serves as a buffer as an adequate buffer between intensive non-residential uses and residential uses. There are no non-residential uses adjoining this property and non within more than a half mile or further. The O&I will not serve as a buffer in any way for the surrounding residential properties. The requested zoning for O&I will create an isolated non-residential area inside an all residential use area.

6} Her final reason for requesting that the propose rezoning from AD or O&I be denied is that the City's Planning Board has unanimously recommended the property not be rezoned. At its meeting on September 14, 2010 the Planning Board reached that decision. She sincerely hopes that you will follow the decision and recommendation of the individuals who serve as your appointed representatives of that board. The Planning Board's purpose is to evaluate and interpret planning issues and she believes its members are the most knowledgeable of the zoning and planning rules and their application.

In closing, if the property is zoned residential now and the former use of the property was non-conforming before, the closure of this operation of the business on the site, the rezoning to O&I will be in contradiction to the City's adopted UDO residential use for this area as well as all of the surrounding areas. What would be the reason to return the site again non-residential zoning issues? The site is currently zoned properly as AD and the owner should make and develop his plans in accordance with the requirements of that zoning classification which would be compatible with the surrounding residential areas and uses.

Mr. David Harris, 1101 Park Drive, Elizabeth City stated he has lived in this neighborhood since he was five years old. He grew up in Williams Circle and has lived in his current home for the past 30-years. He would like to respectfully request that you deny the petition to rezone the property from residential to O&I. The City's UDO site identified this site and residential. All the property surrounding this site is and has been residential for 63-years. He believes the site was properly identified and zoned at the time your ordinance was adopted and it should remain residential. The applicant as stated could have the best intentions for the use of this site but like all of us he had no guarantee for the future. Someone else could easily purchase the property at some point and make any available O&I permitted uses open and operated on this site without having to come back before you at all.

Ms. Martha Johnson, 915 Rivershore Road, Elizabeth City said she is here to speak against the rezoning of the Riverwind property to any uses that would allow an eight story building on the waterfront. As evidence by this crowd tonight and by crowds every time this issue has been on the agenda there is considerable strong feelings and general suspicious surrounding the rezoning application and the type of commercial uses intended by the owner. She is requesting that any council member who might have a conflict of interest or who might expect to derive future benefit from any initiative involving the Riverwind property voluntarily recuse themselves and decline from voting on this issue. She also asks that City Council deny this rezoning request.

Mr. Edwin Taylor, 805 Rivershore Road, Elizabeth City stated he is opposed to an O&I rezoning because it opens the opportunity for them to have retail and any other establishment which has been done before. He is opposed to the O&I request for rezoning.

Mr. Rick Crisper, 1306 Preyer Avenue, Elizabeth City stated when it rains in this area we get a pretty good pond in this area. He has to go along with everybody else. There is just too much open ended with this zoning. It could cause a real problem in the neighborhood. That being said he hates for a man to own a

piece of property and not be able to do anything to it and have it to continue to be an unused sitting structure. Work with this neighborhood and he thinks we would all be willing to do that to help with some ideas that would allow Dr. Bald to use this piece of property. He believes this zoning should be denied because it is just too opened ended. He would like to see the building and that piece of ground used.

Mr. Brant Wise, Engineer for the project, stated as Council recalls we originally had requested to relocate Carolina Avenue. When you remove all the personal attacks the main objections that we heard from the neighborhood was the lost of view for the river. City Council asked us to come back with an alternative to closing Carolina Avenue. In an effort to please Council and to satisfy the neighbors we withdrew our request. During the original public hearing the majority of the speakers stated that they did not have a problem with the health club as the building. In fact, Ms. Gilliam stated that, "I, do not have any problem at all with the Health Club which has been allowed to deteriorate". She went on to state, "I would have no problems, he could make it six stories tall on the current footprint and leave our public street where it is now." Another statement was, "Why can't they work with what they have?" This is what we are trying to do with our request. Based on these comments he has tried to give the community what they have asked for. Leaving the road as is and work with what we have. As stated, we have a building that is already built. The County built it as part of COA and they sold it to a private developer. Now we are trying to work with what the city has for rezoning and we are trying to prevent the building from deteriorating. The reality is if we can't get the rezoning and cannot do anything with the building since the uses are limited in the Apartment District zoning, if the building does deteriorate what benefit is that to the community. The neighborhood obviously is not happy with the deterioration of the building as it currently stands. We cannot fix drainage issues or other problems as it becomes a hang out for people. The land use plan shows this property as a high density apartment district. It goes beyond residential. It is not just a regular subdivision with single family zones. This particular lot that we are speaking of is 1.2 acres. It would allow for 24 apartments. The property across the street which Dr. Bald also owns is also zoned Apartment District. It would allow for 52 units. The request is to rezone the property that has housed the fitness center to O&I. The O&I is considered a transitional buffer between high intensity uses. Everybody is focused on industrial and commercial but it is still high intensity uses. 52 unites is a high intensity use on two acres of land. The subject property has operated as an O&I use for 42 years. The hospital has been here since the early 1900's. City Council has acted on rezoning three other parcels from residential to O&I. The Planning Board has presented these with unanimously approval to rezone residential properties to O&I. All three of these approvals were of existing structures so that they could comply with parking and set back requirements as well as their respective uses. These prior properties

that were rezoned were either R-6 or R-8 making our site more suitable for this request as we are an apartment district zoned instead of residential zone. The most recent request was actually approved by this Council in August of this year. That was just eight weeks ago. We are asking for the same fair treatment as these other people have been granted. As of today's date, the prior to these was in 2006. According to the Planning Staff there has been no complaints from these previously three rezoning by the neighbors for their respective uses. Planning Staff doesn't recall having ever receiving a call regarding our current uses. Based on these four instances it shows that O&I can exist in harmony with the residential zoning exactly as the Land Use Plan indicates. He asks Council to weed through the personal vendettas and based your decision on the merits that they have presented and the fact that the zoning request is found to be appropriate for the area and the recommendation for approval by the Planning Staff. In conclusion, he asks that you consider the Land Use Plan supports endorsing the O&I as a transitional buffer from a higher intensity use such as 52 apartments. The subject property has historically operated as an O&I use and in harmony with the community for more than 42 years. City Council has seen the wisdom to rezone three other residential sites to O&I which over the course of four years has not generated any complaints from neighbors. He appreciates the comments from the community and asks that Council will grant our request.

Since no one else wished to speak for or against the proposed rezoning, Mayor McLean declared the public hearing closed.

Councilwoman Meggs said first of all she hopes this is correct. She asked for a show of hands of those that have come up here asking that this issue be denied. She thinks it lets you know that this is not something that this community wants. This is her Ward and she tries so hard to do what her ward expects of her to do. She knows how disappointed they would be if it was not denied. She knows how they were so happy when the Planning Commission asked that it be denied but then the staff decided it was not to be denied. It didn't matter what the Planning Commission wanted. She seems to think why have the Planning Commission if we don't listen to them. She asks Council to truly think about this and if you were living in this Ward and you knew that O&I could mean a lot of different things to a lot of different people. She is not singling out anyone single person but she hopes that you will consider this.

Councilman Stimatz said he has some problems with the O&I because it does open doors to a lot of things. His question for Mr. Wise is what uses he is proposing for the building that can't be done under the current AD. He had asked for this earlier from staff and that was what is the list of accessory and customary uses for structures. He never got that. Can they have a maintenance facility connected with this place? Could he have a garage? Could he have a community center? Could he have sales and management offices? Is that

considered an accessory use? What are they planning to put there that won't fit under AD?

Ms. Brooks replied that in discussions with the applicant prior to the hearings they wanted to be able to reopen the fitness center plus have offices up on the second floor and make the building more useful like it use to be.

Mr. Stimatz said that the swimming and the tennis club are allowed under the AD. He would suggest that as the Planning Administrator that you have well within your authority that any racket club including a racket ball club would fall under that definition. The question is the offices. That is why he brought the question up. Can't they have on site offices for sales and management, financing, etc. etc. as part of the use? Again that sounds like a decision that you would have to make.

Ms. Brooks continued by saying swimming and tennis clubs if you look in the UDO under the design standards it requires a minimum of two acres and it doesn't fit within the design standards neither does a sports and recreation club. The private club with recreational facilities requires a minimum of three acres. In order to use the building under either of these classifications they don't meet the minimum land requirements and would have to require a variance from the Board of Adjustments.

Mr. Stimatz asked the City Attorney it appears that these usages are historic uses. Staff speaks about it and one of the speakers spoke about it. Mr. Wise brought this issue up and he quotes one of the people. This stuff was all grandfathered in the UDO, can we restore the grandfathering for just those usages.

Mr. Morgan replied no. The only use that remains grandfathered is the office component of this property. There is one attorney office still located there. In his opinion he believes the applicant could continue to use the building for offices. That part of the use remains grandfathered but the others expired six months after they stopped being used for those purposes.

Mr. Stimatz asked if we had any authority to give them special consideration. Again, he goes back to historic O&I usage. There is nothing between the big O&I and AD. There is no room to maneuver.

Mr. Morgan replied except with the swim and tennis club, a Special Use Permit is required and it is possible that the Board of Zoning Adjustments could find that due to the particular nature of this property and the historical uses of the property that this would be a situation that warranted granting that special use permit. Mr. Olson and he left the room a little while ago because of the petitions

that were handed out. We received two petitions tonight and he assumes they are identical petitions. The reason that becomes an issue is because North Carolina law allows a protest petition to be filed in a rezoning case. But, they are very technical rules that apply to those protest petitions. First thing that comes to mind is that the petitions have to be received by the City no sooner than two days prior to the scheduled meeting. They have to be turned in by State Law to the City Clerk. The reason that becomes important, the Protest Petition if it is signed by the proper percentage of adjoining or near by land owners for Council to rezone this property would require a super majority or a three fourths majority vote. It is his understanding that these petitions are being presented for the first time tonight and nothing has been turned in to the City Clerk's office prior to tonight's meeting. In his opinion, they do not qualify as protest petitions under state law.

Mr. Stimatz said so it is an all or nothing deal.

Mr. Morgan said except for the fact that the Special Use Permit procedures through the Board of Zoning Adjustments might work here. That is a Quasi-Judicial Board that acts independently of this Council. As to extending the grandfather's status he doesn't believe that we are authorized to do that under State Law.

Mr. Stimatz asks if we ever created a list of customary accessory uses instructions in addition to what is in the UDO like he asked for. Did you ever come up with that list?

Ms. Brooks said the answer is no but customary and accessory have to relate to the use itself and it has to be on the same site. Do you have something specific that you are thinking about that she could address. The Health Club cannot be considered an accessory to the apartments if that is your line of thought because it is on a separate parcel. It is not on the same parcel with the current apartments.

Mr. Stimatz said which is why moving the road would have helped.

Councilwoman Baker said this is in her Ward too and she would like to do what is best for the Ward and what is best for the City. She knows that these apartments will bring increased tax revenue, significantly increase tax revenues for the City. But, she would like to ask what precedent has been set that Mr. Wise referred to.

Ms. Brooks replied that there have been three rezonings where City Council has rezoned from a Residential Zone District to an O&I District. One was Saint

Stephens Church, one was the Edenton Company on North Road Street and the other one is the Lamb house up on West Main Street.

Ms. Baker said when the Health Club was opened at Riverwind did we have any issues at that time.

Mr. Books said as far as the current staff, none of them could recall us receiving any complaints from the physical fitness part of the club. There may have been issues that were addressed by other departments.

Ms. Baker said she is concerned and she knows some people want to stop people from doing a lot of things that people would like to do but she certainly doesn't want to stop anybody from making a living or developing their own property. She certainly doesn't want to see the property turned into the current zoning that we don't want either. She doesn't think the neighbors have thought this through on what the possibilities could be. That is a little scary.

Councilwoman Hill-Lawrence asked how the citizens would have known the information regarding the protest petitions.

Mr. Morgan replied that it would have been encumbered upon any one to familiarize themselves with the law if he wants to file a protest petition.

Ms. Hill-Lawrence asked if there were any written things that we have.

Mr. Morgan said our procedures do address a Protest Petition formality.

Councilman Brooks said there is an uncovered thing that is going on here. It seems distorted from where he is sitting. When you have so many citizens come up here and he is agreeing with Ms. Lawrence, the citizens had no way of knowing that it had to be done in advance. They had no way of knowing. He knows they could have done the research but they didn't know. When he listened to Mr. Wise he was thinking that he has property that he can't do anything with. He can do offices because he presently has an office located there.

Mr. Morgan said the office use can remain as that use is grandfathered. The office is there now.

Mr. Brooks said when you talk about the fitness center he will have to get a special use permit from the BZA. The issue that we are running into is that he might down the road sell it to someone else and they will do something different.

He usually goes with the citizens when they come up here but there is something there with this. We have been dealing with this for a while now. Mr. Wise has property that is just going down the drain, so what do you do.

Mr. Stimatz said he will be honest and he can't vote for this. We are opening a Pandora box. For him, it is the same argument we had when we looked at the eight lots on Charles Creek. If we had made them all O&I we would have ended up with eight strip malls because we had no control on what would end up on that property. He would also like to follow up with Ms. Lawrence's comments. One of the things we asked for tonight was a list of the process flow diagram for upper procedures for various things. It would be good to have a line in that about protest petitions with time lines showing the procedures. We need to put that on line so people can see what the process is for a) starting a change and b) influencing a change. He is with Michael. This is really hard. His question is this. We talk about clubs then we talk about a physical fitness center and then we talk about a private club or rec facility. What is the difference amongst all of those?

Ms. Brooks replied that a private club under the design standards requires it to be a minimum of three acres.

Councilman Walton said there has been a hospital there before, then a college was there and he thinks most of the community is at a hard ball position. He thinks if the contractor came in and said we aren't going to put anything there, people would vote against that. That is not the way it should be. He thinks the last young man that got up and said he might like to come back up to the podium a little later because he hates to see somebody with land and can't do anything with it. He thinks he shouldn't do anything with it that the community doesn't approve of. He still thinks there is a meeting of the minds. He thinks if Mr. Wise and the last young man that came up would get together they could work things out. There is nothing wrong with meeting together. Don't become hard ball. They might put something there that you will like.

Mr. Olson said that we don't have the right to do conditional zoning. Conditional Zoning would solve all of the problems because you could specify the types of uses that you would allow in there under Conditional Zoning. Until our Joint Land Use Plan gets approved by CAMA we will be unable to do that. Hopefully, within the next sixty days it will be approved. Then the City Council can do Conditional Zoning where you can put perimeters on it. If you rezone it O&I he can do anything he wants to in the O&I and not have to bring it back to Council. He could just get a zoning permit. He thinks that is the uncertainty that the citizens have which can be addressed through conditional zoning but we don't have that option right now.

Mr. Walton asked Mr. Wise if that was what he wanted. He thinks there are still some parts of the conversation that is not being done. People need to talk to each other. That is the only way you can communicate.

Mr. Wise said it is his understanding when you are making a rezoning request that the intended use is not to be considered in the rezoning request. That is the first point of order here. Second is that it is such that in the apartment district everybody is talking about an eight story building well he is sorry but several of the adjoining neighbors have said that they don't mind an eight story building but the reality is in the apartment district there is no height limitations for a building. We can build it as high as the fire department can reach with their ladder truck. The stipulation in the Zoning Ordinance reads for every foot you go above forty feet you have to increase your building setbacks. As long as we have a wide enough piece of property we can go 100 foot plus. Our request and since it has been brought out is to continue operating as the offices and to expand the offices above and to use the health club below. His question would be to the City Attorney is that where you are saying that we can have the offices as a grandfathered use, does that allow us to expand the offices or are we limited to what is currently there now. This building is 32000 square feet. That is a lot of building to have to come up with uses. That is why the health club is there, the pool is there and the racket ball courts are all there. The nice finished wood floors are there. We have a structure that is ready to go and be used but yet a lot of these uses are not approved in the apartment district zone. For the most part we are allowed everything except for the two issues he would like and they are is the office use and the physical fitness use. Those are clearly not allowed in AD. That is the reason that we need to go to O&I.

Councilman Stimatz said now that you have given him a glimmer of hope how soon after the approval of the Land Use Plan would we be able to go to and have conditional zoning.

Mr. Olson replied that it would probably be 90-days. One of the reasons he brought that up was he is not sure how the City Council is going to vote on this issue, but if there is a vote to deny then the UDO does not allow an individual to bring back another rezoning request for one year. There may be an opportunity if we do get conditional zoning to relieve him of that obligation and have it brought back sooner than the one year period of time.

Mr. Stimatz asked if we could delay consideration until that time. If we don't take action then nothing happens. We could table action on this item for 120 days.

Mr. Wise asked how long ago did you work on the Land Use Plan and it is still not approved.

Mr. Stimatz said if you push it you will not like the answer that you will get. You will be cut off for a long time.

A motion was made by Councilman J. A. Stimatz, seconded by Councilwoman J. M. Baker to table action on this item until the first meeting in February, 2011 to allow us to put in place conditional zoning procedures.

Mayor McLean called for discussion of the motion.

Mr. Brooks said let him get all this together in his head. If we get the conditional land use and get that in order that means we will be the middle man between the residents and the land owner. So, we can ease the resident's minds by making sure he doesn't put something there that won't be conducive to the neighborhood.

Mr. Olson said he believes that is a correct interpretation. You are able to put more limitations on the uses within the zoned district than you can right now. If the individual changes the usage he will have to come back to you for those changes. Right now as you can see in the zoning table, O&I allows probably 45-50 different uses and AD allows 20 uses but you can keep the existing AD zoning and put restrictions or conditions on what can be used for that particular use within this zoned district.

Ms. Hill-Lawrence said her concern is at the end of 120-days we are going to be at the same place that we are now. We still will be at the same place. We need to make a decision.

Ms. Baker said that she thinks 120-days will give the neighbors time to get together and make it a really good project and solve all the issues before it even gets here again. It started out being a nasty vindictive thing because of a fence and it has gotten a little crazy. She wants to do the right thing for the neighborhood, her Ward and for the City. You need a meeting of the minds to work it out. She thinks that could happen. She knows most of these people and they can make it happen.

Councilwoman Meggs said she apologize because she did not know we could turn in these petitions. She knew that Ms. Carlsen had the petitions way last week but she just didn't know.

Mr. Stimatz said as Councilman Walton has brought out this gives the parties time to set down and discuss what is going to be amendable on both ends. He doesn't believe that we are going to be in the same place. It gives us the

opportunity to be in a different place and to work this out. If it doesn't work out then we are back in the same place and we can make a decision. There is hope that we will have the ability to resolve this. That is why he is voting to table this. He sees the possibility of a win-win.

Ms. Hill-Lawrence said she wants us to be mindful that we are talking about an established community. If it was a community where you have younger families who are bringing up children and would like the kinds of activities that the developers are proposing, but we have a mature neighborhood here. The people are established and comfortable with what they have and the kind of community that they have. So sometimes in situations like that to uproot it and try to put another design or another face to it can be a challenging situation. That is why she thinks that we should vote not because her vote will be the same tonight as it will be in 120 days. She thinks most of the votes will be the same tonight as it will be in 120 days. She wants you to be mindful of the kind of community that we are talking about as well as the choices that we make.

Mayor Pro Tem Hummer said she feels like we were here tonight to vote on the motion to deny. That was the Planning Commission's recommendation. She thinks the motion to table is just a lack of courage to vote for what is best for the people.

Councilman King said he has one question for Mr. Wise. Explain the apartment thing to him. He must be missing something. You are talking about building 52 apartments in this community?

Mr. Wise said that there is currently an apartment building on the property across the street from what we are requesting. There are two parcels. One is the Health Club Fitness Center and the other is the old Albemarle Hospital. The old Albemarle Hospital parcel is approximately five story building and has 49-50 units already in it. The zoning district is AD and it allows between 22-24 units per acre so at 2.2 acres it would allow for us to have 52-54 units on the site where the old hospital currently stands. For the health club property which is about 1.2 acres which would allow for us to have 24-25 units on that property. Basically, if you read down the AD zoning the uses that were allowed is we can have a boarding house, a family care home, a group care facility and then modular homes, single-family detached, multi-family/apartments so we are limited in those types of uses for the property.

Mr. King said he understands what the residents are saying because it is possible that you can turn it into a group home.

Mr Wise said that we can do that now. We could deny that. He understands exactly what they are saying. You talk about an established community and now

we are going to have apartments. You are saying you can bring anything in there.

Mr Wise said currently it is zoned Apartment District so we are by right allowed to have apartments on that property. We are allowed to have a group care. We are allowed to have family care on that property by the current zoning. It is not what we are asking for. We are asking to be able to continue to operate and expand the offices that are in the building and to be able to reopen the health club fitness center at the bottom of the property.

Mr. Brooks said he wants to make it clear that the whole thing is to get the developer and the community together in some type of neutral space. When the residents came up before, he went along with the residents because he believed they were right. They didn't want to close Carolina Avenue and they didn't want a fence up. If he recalls correctly we told Mr. Wise to go back and do something different. Well, a couple of meetings later Mr. Wise came up and withdrew his request. So we did a public hearing and now we are up here again. He is with Tony here. If Rich didn't tell us about the conditional land use clause then we would have had to vote on it tonight. But, to see if we could come to some kind of common ground it is best to postpone it. If we don't get the conditional land use that will mean we will definitely have to vote on it. He doesn't think we will be in that place. He thinks somewhere down the line somebody will get together and talk. It is like Mr. Wise has said, there are certain things he can do there anyway based on the current zoning but he doesn't want to do that. He thinks to get to common ground, we need to see if we can get the conditional land use plan so the City can be a buffer and make sure that everybody is content. That is all we are trying to do. It is not a matter of being a coward or not to vote on it. The point is we are trying to get the developer and the residents to work together and come to a common ground.

Mayor Pro Tem Hummer said Mr. Wise you told her in a conversation that you were going to meet with the people. This was when this all started before you withdrew the moving of Carolina Avenue thing, but then several residents have told her that didn't take place. She trusts that will take place this time. That is what everybody wants you to do. She hopes it will take place.

Mayor McLean called for a roll-vote on the motion to table until the first meeting in February, 2011:

Brooks	Yes
Stimatz	Yes
Meggs	No
Hummer	No
Walton	Yes

Baker	Yes
King	Yes
Hill-Lawrence	No

Roll Call Vote was 5 yeas and 3 nays. Motion carried.

a} Appointments to Board of Zoning Adjustments:

Mayor McLean called upon City Manager Olson for comments. Mr. Olson advised that the City Attorney will handle this issue.

Mr. Morgan stated that during your last council meeting there was a question regarding the appointment of a member of the Board of Zoning Adjustments whose term expires and the Mayor sought to have that individual reappointed to the position. This individual is married to a woman who is on the Planning Commission. The question arose regarding the potential conflict of interest. Not so much as a financial conflict of interest but perhaps the issue of bias could arise if one member of the Planning Commission has a discussion with an individual who might later be ruling on the same item that came before the Planning Commission in the second persons position on the Board of Adjustments. That raised an issue and one that we properly sought guidance from the School of Government on. We have gotten a written opinion from the SOG that has indicated that there is no conflict there but that perhaps it would be a good idea to reiterate to the two individuals in question how they are not to discuss items that may come before their boards. Mr. Olson or he would be glad to send out a letter to the two individuals in question just reminding them of their duties and role. It is his understanding that both of them have done a good job in their appointed roles and we know how difficult it is to get qualified persons to serve on these boards and committees.

Mayor McLean stated that he spoke with Mr. Etheridge and he told him that if it was going to cause a conflict or turmoil within the Council he would withdraw his name. He thought that was not necessary and he asked him not too. Therefore, he puts forth Mr. Oliver Etheridge's name for confirmation as a member of the Board of Zoning Adjustments with a 3-year term ending October 11, 2013.

A motion was made by Councilwoman B. S. Meggs, seconded by Councilman M. E. Brooks to confirm Oliver Etheridge as a member of the Board of Zoning Adjustments to serve a three-year term ending October 31, 2010.

Councilman Stimatz stated he is the one that raised this issue. In the world that he grew up in even the appearance of impropriety is to be avoided. In reading

the memo from the attorney there is a risk that there could be a violation of due process rights of the applicant or even the rights of the opponents to the Applicant. He personally finds that unacceptable so he will be voting against this appointment.

Councilwoman Baker stated that she agrees with Councilman Stimatz. We had comments last meeting that it didn't quite pass the smell test. She still doesn't think it does and she will be voting against it as well.

Councilman Walton said that he thinks that anytime you find somebody that wants to serve as everybody cannot serve and he thinks this person is a qualified person.

Mayor McLean called for roll-call vote on the motion.

Brooks	Yes
Stimatz	No
Meggs	Yes
Hummer	Yes
Walton	Yes
Baker	No
King	Yes
Hill-Lawrence	Yes

Roll Call Vote was 6 yeas and 2 nays. Motion carried.

b} Appointments to Parks and Recreation Board:

Mayor McLean said at our last meeting there was consideration of appointments to the Parks and Recreation Board, we were according to our Rules and Procedures we were suppose to select someone to serve on the joint Parks and Recreation Board by October 1, 2010. At the last meeting the Mayor recommended to you two individuals to serve in that capacity. The first name being submitted is David Kleinschuster of Elizabeth City and the second name of Myrtle Rivers. At this time he would like for Council to confirm these nominations.

A motion was made by Councilman M. E. Brooks to confirm the appointments to the Parks and Recreation Board of Dr. David Kleinschuster and Myrtle Rivers.

Ms. Baker stated she would like to vote on these individuals separately. She just doesn't think a grandmother is the right person to be on that board. She thinks people with children and people that are interested in the youth of this area that

have new ideas would be a better choice. She would like to take these one at a time.

A substitute motion was made by Councilwoman J. M. Baker, seconded by Councilman J. A. Stimatz to vote on these two candidates one at a time. Those voting in favor of the motion were: Baker, Stimatz, Hill-Lawrence, Hummer, King and Meggs. Against: Brooks and Walton. Motion carried.

Mayor McLean called for a motion to appoint Dr. David Kleinschuster.

A motion was made by Councilman M. E. Brooks, seconded by Councilman J. B. Walton to confirm the appointment of Dr. David Kleinschuster as a member of the Parks and Recreation Board: Baker, Brooks, Hummer, King, Meggs, Stimatz and Walton. Against: Hill-Lawrence. Motion carried.

Mayor McLean called for a motion to appoint Ms. Myrtle Rivers as a member of the Parks and Recreation Board. He asked to say that he does take exception with Councilwoman Baker reference that "grandmothers" do not get involved with young people. His wife is a grandmother as we have four granddaughters and she is very much involved in the process relative to recreation, being on the cheerleader squad and she is very much involved and he hopes we would not vote against grandmothers for the simple fact they are grandmothers. Mayor McLean stated we would do a roll-call vote on the forthcoming motion.

A motion was made by Councilman M. E. Brooks, seconded by Councilman J. B. Walton to confirm the appointment of Myrtle Rivers as a member of the Parks and Recreation Board.

Brooks	Yes
Stimatz	No
Meggs	No
Hummer	No
Walton	Yes
Baker	No
King	No
Hill-Lawrence	Yes

Roll Call Vote was 5 yeas and 3 nays. Motion denied.

Mayor McLean said what he is asking that you do is to, according to the Rules and Procedures; you can make a recommendation if you have the application information supporting the candidate that you wish to appoint tonight.

Ms. Hill-Lawrence asked weren't there some more people already on the list.

Mayor McLean said according to the rules and procedures those names need to come to his office with the applications for him to review. He can get those hopefully within the next two or three days so that we can go ahead and make the proper arrangements to select someone else to serve on the Parks and Recreation Board.

Mayor McLean called for a vote for the confirmation of Councilman Johnnie Walton as a member of the Parks and Recreation Board.

A motion was made by Councilman M. E. Brooks, seconded by Councilman J B. Walton to confirm the appointment of Councilman J. B. Walton as a member of the Parks and Recreation Board.

Councilman Stimatz called for a point of order. Are you opening the floor for nominations?

Mayor McLean said no.

Mr. Stimatz said he feels he has the right to nominate someone else and he would like to nominate Rickey King.

Mr. Walton said he gives up on you Rickey. He is not going to fight against Rickey now. That is what you want. That is the vision that you want. He will vote for Rickey. He will give it to Rickey. You are not going to use him like that.

Ms. Hill-Lawrence said we should still vote.

Mr. Brooks said he with drew his name. So you are recommending Councilman King.

Mr. Walton said yes. To keep these other four or five people from having to vote against him he will give it to Rickey. He already knows how it is going to go. That is what you call political bullying.

Mr. Brooks said if Councilman Walton withdrew and he nominated Rickey and he didn't withdraw, that means lets vote for Rickey.

Mr. Walton asked Rickey if he wanted it.

Mr. King said he will do it.

A motion was made by Councilman M. E. Brooks, seconded by Councilman J. B. Walton to nominate Councilman R. E. King as a member of the Parks and Recreation Board. Those voting in favor of them motion were: Brooks, Walton, Baker, Hill-Lawrence, Hummer, King, Meggs and Stimatz. Against: None. Motion carried.

Councilwoman Baker asked to make a comment. She is not opposed to Grandmothers. She is a grandmother.

Mayor McLean said you said it Ms. Baker.

Ms. Baker said just on this committee. On this committee and she would like a business person, somebody that has young children that knows what young children are into that can find new ways to involve our youth. She thinks that is what the Task Force is about. She is not against grandparents or Myrtle Rivers. She likes Myrtle Rivers.

Mayor McLean said Councilwoman Baker you have made your case and that is what you have to live with because you said it as he did not.

c} Broadcast of Council Meetings:

Mayor McLean called upon Councilman M. E. Brooks for comments.

Mr. Brooks said he had it placed on the agenda. He was recently going through the channels on the TV the other day and he came upon the Council broadcast and he noticed from half of Tony on back is not on camera and Rich and the Attorney is not on TV. The camera stays still. He thinks the person that is talking should be the one the camera is on. We have the ability to zoom in on the individual speaking and we need to do that because it sounds crazy if you have a person speaking and they are not on camera. You have from Betty on down to Hill-Lawrence. The rest whether they are speaking or not you don't see them on camera. He thinks that we should make it so when someone is speaking the camera should be on them. The City Manager brought it to his attention that if someone has the floor that is who you have the camera on. If Stimatz has the floor and someone interrupts him, he still has the floor and the camera should stay on him.

A motion was made by Councilman M. E. Brooks, seconded by Councilman R. E. King that we scan the camera to the individual speaking so that the public can get a clear picture of who is speaking.

Mr. Olson said that our camera in the back of the room has the capability of panning, going from left to right or zooming in on the speakers or pulling back to see the body as a whole. Back when we had the University televising our meetings which was about four or five years ago, the camera operator would zoom in on whoever was speaking and then zoom back out. We were instructed three or four years ago to just keep a fixed camera. Also, if you watch the rebroadcast of the meetings you will notice that the picture is yellow. That is because of the fluorescent lighting we have here which can be greatly reduced or eliminated when we zoom in and zoom out. That is the technical issues associated with the camera. It just means the person operating the camera has to do a little bit more work when he operates the camera.

Mayor McLean said what you are saying is Council voted some time ago to not zoom. Now we are voting now to tell the operator it is ok to zoom. Mayor McLean called for a vote on the motion to allow the camera man to zoom in and zoom out.

Those voting in favor of the motion were: Brooks, King, Baker, Hill-Lawrence, Hummer, Meggs, Stimatz and Walton. Against: None. Motion carried.

d} Water Street-Southern Avenue Storm Water Improvements:

Mayor McLean called upon City Manager Olson for comments.

Mr. Olson said as Council can remember especially during our budget process we had discussion concerning improving the intersection of Water, Sheppard, Southern and Riverside. Discussion at that particular time centered on a roundabout type of configuration. We were authorized to hire URS Engineering to come in and do design plans. They have done that plus provided detailed cost estimates. He called upon Public Utilities Director P. A. Fredette to the podium to tell you what those costs estimates reflect.

Mr. Fredette said he wanted to go back a little bit further. This subject was introduced to City Council in May 2008 and in the memo prepared for you it identified the five items that were a key to this decision. The number one item still continues is to eliminate wind-tide flooding in that intersection. The number two reason was to improve the vertical alignment of the approach to the new Charles Creek Bridge to improve the driver's sight distance. On February 2009 Council approved moving forward with preliminary design and then final design. Budget consideration of that project was tabled or taken out of the current budget because of some unknowns. We have since completed first the roundabout which was somewhat controversial and we compared that to the

conventional intersection that exists there today. Two cost estimates came in and the cost estimate for the roundabout is approximately \$650,000. If we configure in the intersection that we have today the cost estimate is about \$400,000. The primary issue don't forget is just to raise the elevation of that intersection so that we eliminate a wind tide. Just in the last month we had over 30-inches of water in the center of that intersection. It was impossible to get a car through there. What the engineers have done is given us two options to raise the intersection. Both of them raise the intersection about two feet which is just a little above the intersection of Park and Southern Avenue where you have flooding anyway. What it will do is it will allow a vehicle to go through the intersection. The center of the intersection will be dry as the intersection flares out. There will be much reduced water. Instead of 30 inches of water there could be as much as 12 inches of water but cars can get through there. At this point we are basically looking for direction. We ask that you give the City Manager authorization to proceed with the final design on one of the options that you selected and then to present you a budget amendment at a later date for whatever the construction costs will be. The final point he will make is both the police and fire departments are strongly supporting trying to get the water out of that intersection. He has had a meeting with the local Community Watch Group and they supported it. They weren't really excited about the roundabout but they were excited about getting the water out of the intersection.

Councilman King said he voted for the roundabout when it first came about. His question now is, as he goes through Southern Avenue and he looks at Sheppard Street to Walston Street will this roundabout help that area.

Mayor McLean asked to clear up something. The roundabout is out. They don't want to do the roundabout. He is not recommending the roundabout.

Mr. Olson said what the issue is staff has a hard time justifying spending \$200,000 extra dollars especially in these hard economic times to put a roundabout in. As you can see from the design this is adequate and it meets our needs. This elevation especially with the last rain storm, we can raise the intersection but when you get out and down by the basketball courts where Charles Creek is and if the water is too high there you can't go anywhere anyway. That is why this elevation is tied to that elevation. We could have raised this intersection a lot higher but it doesn't do you any good if you are just going to go another 700 feet up the road and then you can't go anywhere because of water there. That is what happened during the last major rain event. That is why the elevation is fixed where it is now. You will have the same height of water on Southern Avenue by the basketball courts as the intersection. You can go through it. The last thing we want to do is get you through the intersection and get you up there at Charles Creek and you can't turn around and you are backing down the street. That is why we are proposing this

particular drainage that you have here. That by the Museum of the Albemarle will continue to be flooded and will continue to hold water. We cannot address that issue because of the storm water pipes in that area.

Councilwoman Meggs asked where does the water go.

Mr. Fredette stated that intersection is connected by a pipe that goes directly to the river. The river comes up the water comes up in the road. The river goes down the water goes down on the road. It is not generally a rain fall event type flooding but a river event. The water in the intersection is directly related to the height of the river.

Councilwoman Baker said that we have been told a few months ago that when this intersection was redone that DOT was not going to replace the traffic signal. Is that still the case? That is why we went with the roundabout.

Mr. Fredette said that is what started this project. The State told him that intersection did not warrant a traffic light and once it was taken down they would not replace it. With the proposed configuration we are not proposing to take down the lights. They will die by themselves. We are not going to kill them. With the roundabout we would have eliminated the need for the lights and we would have complied with the warrants for the intersection. If you go with the proposed alignment about the only thing you will see is a raise in the road level and the appropriate road gratings' on the sides of the road. The urgency of this project is to blend it into the bridge project which should be completed in May of next year. We want to make it look like one project instead of two separate projects.

Ms. Baker said when the light dies by itself it will not be replaced then.

Mr. Fredette said DOT will be responsible to eliminate it or configure the intersection to accommodate traffic if there is a configuration required.

Ms. Baker said will the utility lines in that area be put underground with either of these two projects or will we lose any utility lines if we redo this intersection. There are some pretty heavy ones in that area.

Mr. Fredette said the engineers did not look at it but there is no intent to move or address utility lines in that area. In a roundabout configuration there may be slight movement of the poles but not a move from above ground to below ground.

Mr. Brooks said if he is not mistaken didn't we take the roundabout out of the budget. So are you asking to amend the budget and put it back in?

Mr. Fredette said he is asking that you reconsider it.

Mr. Olson stated what the City Council did is you removed it from the budget but you did not spend the money that was allocated toward that capital expenditure. Our funding sources at this time would be Powell Bill funds which could be used to go ahead and address the surface of Brooks Avenue but not the underline utility issues with the sewer line under Brooks Avenue. That has to come out of the water and sewer fund. The other funding source would be the Storm Water Utility account and there is not a problem with the storm water utilities on Brooks Avenue as they are all operating just fine. What we have done is part of it will come from Powell Bill and part of it will be coming out of the Utility Fund. If Council wants us to go forward we will have a meeting with NCDOT since it is their road to see if they will cost share like they did in Oak Grove and several other projects.

Mr. Brooks said he is really concerned now about Brooks Avenue because we don't want it to get to the unbearable. He has seen you pull rabbits out of the hat before with Road Street and Pearl Street.

Councilman Stimatz said you pretty much answered his question about source of funds. His only question is what is the portion from each fund and how much do you think DOT will be willing to cost share?

Mr. Olson stated he would hope that DOT will throw \$100,000 toward this particular project. The balancing act that we have we can not use Powell Bill funds on State Roads. Of course two of these roads are State Roads. Riverside is not and Sheppard is not so what we cannot use then we would substitute in the Storm Water Utility account funds to do that balancing act of the revenue.

A motion was made by Councilman J. A. Stimatz; authorize the City Manager to complete the design of-----

Mayor McLean stated another councilman had a question.

Mr. Stimatz said excuse him but he had the floor Mr. Mayor.

Mayor McLean said you don't have the floor when he is going to recognize another councilmember.

Mr. Stimatz said Mr. Mayor he had the floor and when he has the floor he can do anything including making a motion.

Councilman J. A. Stimatz made a motion to authorize the City Manager to complete the design of the intersection improvement project for a standard intersection not for a roundabout and prepared a budget amendment for the construction of this project in the current fiscal year to be brought to us later after you have met with DOT.

Mayor McLean said he is going to do something right here that he didn't want to do. But, Councilman Stimatz as Mayor you are going to respect me as Mayor. You may not respect Roger McLean but you are going to respect the position of Mayor. There was another hand up that he wants to recognize before you make the motion. So he will stop it at that. There is a motion on the floor, is there a second.

Councilman J. B. Walton seconded the motion.

Mayor McLean called for discussion.

Councilman King said he is with Councilman Brooks on Brooks Avenue. Rich, is there some type of way that we can move this because we need \$281,000 to do Brooks Avenue.

Mr. Olson said that we can utilize Powell Bill funds to do the surface of Brooks Avenue. He believes the cost to resurface it was \$50,000. However, the underlying issue is the water and sewer utilities underneath the street and that is our problem as we have no money in our water and sewer fund to fix the problem before we fix the top of the street.

Mr. Brooks stated that is the issue we had with Brooks Avenue as opposed to North Road Street. It needs extensive stuff done and they said you can get away with doing Brooks Avenue by fixing the joints.

Mr. Olson said Brooks Avenue was a slip lining and repair. That is why there were some collapsed pipes that we were going to be cut out and repaired. But, as Council is well aware with the cost of the problem that we had at the Waste Water Treatment Plant the discussions concerning doing North Road Street and Brooks Avenue basically went out the window. There is just no money in the storm water utility to do that.

Mayor McLean said that we budgeted \$600,000 for the roundabout. Is that right?

Mr. Olson answered that is what we had in the budget before it was removed by the Council.

Mayor McLean said the money is still there so it is going to cost us about \$400,000 based on the new design. Is there anyway that we can use some of those funds to put a backflow system from the river. What he means by that as you know right now if the river is up here the water from the river goes down into the City. If the river goes down then the water drains from the City to the river. There is a backflow system that we need to put into place to stop the river coming into the City during high tide.

Mr. Olson said what you normally do is put a flapper valve on that pipe that goes into the water but unfortunately that flapper would stay shut even if you have a rain event so you cannot get the water out of the intersection in a rain event into the river. That is why we have to pump over on Church Street and over here on Water Street.

Mayor McLean asked could you put a valve over the sensor.

Mr. Olson said you would still have to have the pump station do that and that's \$200,000 by itself.

Mayor McLean said there is a motion on the floor and he called for the vote. Once we approve this motion we are approving the funds to support this project.

Mr. Olson said what we would do is we would go forward and put the project out to bid and then we would come back with the actual costs of the project and then we would do a budget amendment at that time if you decide to approve that contract. He personally believes the engineers estimates are a little bit on the high side. He believes we can do the project for less than what the engineers says but we don't know until we put it out to bid and get some hard numbers.

Those voting in favor of the motion were: Stimatz, Walton, Brooks, Hill-Lawrence, Hummer, King and Meggs. Against: Baker. Motion carried.

Councilwoman Meggs said that the paper that was placed at your seat came from Linda Etheridge and it shows a roundabout that is located in New Bern and also in Raleigh.

5} COMMENTS AND INQUIRIES ON NON-AGENDA ITEMS:

City Manager Olson said he had no further comments.

Councilwoman Baker said she had no further comments.

Councilman Brooks said first of all the young man that came up and spoke earlier about the situation he is going through he would like to talk with the Chief sometime tomorrow. When you have young people that are trying to do good and feel like they are being harassed unnecessarily for a young person to come up here with their pants not hanging down and with a suit and tie on and express his concerns he feels that there has to be some truth in there somewhere. Let's help our hope line to our children when they are trying to help themselves. He wanted to talk about the elections. He went to the Board of Elections because personally he believes that two years is too short a time for anybody to be effective on Council. He thinks that we need to start the process of trying to get it back to four years not with this Council but the next council that will be elected. Attorney Morgan, he would like for you to get all the information you possibly can on this issue. He thinks if you get the information he would like to have it. He would like to bring it back before Council next time.

Councilman King said he has two things. One thing is we talked about flags last month. Where are we at with those?

Mr. Olson replied that we are working on the flags. We have a design that we like and we have a location that we like but that is something that he would like to present to City Council at a council meeting.

Mr. King asked if we would have them up by Veterans Day.

Mr. Olson replied not where we are proposing to put them up permanently but we can have something up on a temporary basis.

Mr. King said that would be fine. He would like for the Council to join him on Veterans Day and we will lay a wreath in front of the flags representing all branches of the military. We do it at Westlawn on Memorial Day and also he would like for the City Council to do one within the City. When we do one at Westlawn we pick it up and he would like to see one stay all day.

Councilwoman Hill-Lawrence said she doesn't have too much to report. Some of the residents of the Fourth Ward have been talking to her about public safety and they have not forgotten that we had two murders there earlier in the year. They are really concern about that again so we are going to be doing something about the issue of public safety in the very near future.

Councilwoman Meggs stated she had no further comments.

Councilman Stimatz said he has been accused of a lot of things but not having respect for the office of the Mayor is a new one. He has all the respect for that

office especially if the officer holder understands the rules. He quotes from our procedures. He also read the following from Roberts Rule of Order. He prepared this three years ago. The previous Mayor had the tendencies to interrupt people on Council, cut them off in their debate. And he did it once too often. He did it to him. He wrote these rules down and hoped he would never have to read them but now he does. Principles governing discipline. Rules governing assignment of the floor. When assigned the floor a member may use it for any proper purpose or accommodations of purposes. Interruption of member assigned the floor. He cannot be interrupted by any other member or the chair except for a specific reason. A call for the order of the day will not be conformed to, in other words, follow the agenda. The raising of a question of privilege, we don't have privilege in chambers. So that doesn't apply. A point of order which was not called for and a call for a separate vote. What are the special circumstances? None of these applied in this case. He has all the respect for the chair when the chair follows the rules, understands the rules and applies them fairly to all of us. That is how he feels. He would also like to say that he went to the candle light service. It was very moving. It is very difficult. We have had these in other neighborhoods and it is never easy to lose anyone especially a child. A random act of violence is just hard to deal with. He thinks the one thing that was clear that we all need to be talking to our maker whoever or whatever we believe that might be everyday and putting out positive thoughts that we have peace here and everywhere. It is important. He sees too many people that are afraid. He talked with constituents that have had their houses shot into. We hear about it in other neighborhoods. It is critical when you go to a crime watch meeting and people talk about it. People just want to live quietly in peace with their neighbors and not have problems. That is all anybody wants. It seems to be getting more and more difficult every day. All he can say is when you are out there putting out positive thoughts putting out thoughts to the universe as his old pastor use to say, "My thoughts are prayers and he is always praying". So whatever you are thinking it is a prayer. If it is bad then guess what you are praying bad. He urges everyone to put out good thoughts about violence and doing away with it and living together and getting along.

Mayor Pro Tem Hummer stated that a few days ago, we lost two former members of our City Council. They were Pete Hooker and David Bosemworth. She had the pleasure and privilege of working with both of them when she first came on City Council. They served our City well. Mr. Mayor she would like to join with you if you would like to call for a moment of silence for Mr. Bosemworth and Mr. Hooker.

Mayor McLean called for a moment of silence.

Councilman J. B. Walton stated he has said this many times that words are real cheap. People will say anything out of their mouths a lot of times. But he does

know that the young man that came up earlier tonight that he feels like he is being targeted. But, you know black males you have 18 million of those in this world. That is only 6% so there are 282 million people out there. But homicide in the black male community is 40% and that is a big percentage. We have got to find something to do with these black males. Because black on black crimes is really hurting the whole world. He is hurting his space. He knows people up here talk about love and all that good stuff but you don't show it when you put black on black. We have crime right up here. That is what he said earlier. You are not going or I am not going to against Rickey King just because you put him out there. He wouldn't think he would go against him. That is not working for some reason. Now, he will give him that appointment because he doesn't care because if somebody had to vote on it he would probably know who would have voted against him. He probably would have lost but he never would have done that to him. He may take him behind the back of the building and tell him what black on black crime is all about. That is when people pit you against each other. What you need to do now is send him a receipt over there. "Paid in full". If he owes you something then pay him in full. You talk about all that love you have for mayors, two weeks ago or two meetings ago you talked about Mr. Foster. You owe him an apology. There isn't any apology in you. Words are cheap. You shouldn't have said that about Reverend Foster. When he came here tonight he thought he was coming here to tackle you. But he did the grace. Reverend Foster was the Mayor two mayor's ago. You don't remember what you said do you? Will you pull those verbatim minutes for him next week, City Clerk please? Now, he will remind you what you said about Reverend Foster but you don't say it about any other Mayor. You want this Mayor to follow your lead. If everybody else is following your lead why do you want one Mayor to follow your lead? Political bullying is what you do.

Councilman Brooks said when we have a work session it starts at 5:30 and we go right into the Council meeting at 7:00 p.m. Sometimes we don't get out until quarter to twelve and at one time we had a meal when we had long sessions like that. He thought it was going to be in our policies when we have those long sessions we need to eat. We need to consider that as it is a long time sitting here from 5 to 12. The City Manager told him he didn't think it was a good idea because we might get sleepy during the meeting.

Mayor McLean said he wants to send his condolences to the families of Pete Hooker and David Bosemworth as well as the Mid-Atlantic Christian University families. He stands with them and he attended the memorial services last week. Our prayers are with them. ECSU is having their homecoming on October 30th. All of you are going to be invited the viewing stand. The City does a good job in terms of helping the University putting that on. He attended the Committee of 100 meeting. Wayne Harris was one of the main speakers along with Randy Keaton. He also had a chance to go to the police academy. That was very

good. He learned a lot that night. Mr. Olson was one of the presenters along with Sgt. Brite and Lt. Etheridge. That is a good program if you have not had a chance to look at the program. He wants to thank the City Manager and the Director of Finance for meeting with him last week to discuss budgets. We are going to be meeting monthly on the budget to look at the details and find out ways that we can come up with to make our budget more effective as well as to find some type of way to address our deferred maintenance issues and problems that we have. Members of Council are welcome to attend. We meet on the first Monday of the month. He also attended a birthday celebration in South Mills. We had Mr. Manley who celebrated his 85th birthday. The last thing he wants to say is about this city council here. When he ran for Mayor he knew what he was getting into. He didn't run for Mayor to be in a position to advise but to be able to bring about a change with what he thought we should do for the citizens of Elizabeth City. We have to reduce the utilities bills. We have got to come up with a way of serving our customers better. We have to do something for our youth. That is not going to change about him. No matter what we do here we try to bully one another and come up with situations and he does want to talk about Councilman Stimatz. Councilman Stimatz talks all night long. He talks all night long. He interrupts people and he doesn't give other members a chance to speak but that is Councilman Stimatz. That is what he does but when it comes to this chair he is in charge here. If he asks him to do something he expects for him to do that. Now, all night long everybody has had a chance to say what they wanted to say. We have rules on talking all night and asking four or five questions at one time. We have to make sure that we give each council member a chance to talk because here again other members have good ideas. My idea is that we are going to do what he promised the people that he was going to do as a citizen. He does want to apologize to Myrtle Rivers and he wants to apologize to his good friend Johnnie Walton. He wasn't treated right tonight because here again we are not on the path to bring about consensus to make sure that we are able to do what we need to do to move this city forward. He doesn't plan to sit here in a quad mar to talk about things that this council uses to talk about. We have got to move to deal with infrastructure, programs, create jobs and we have to move through that cultural. We can't afford to stay where we are or where we have been. He wants to thank the City Staff, all the employees of the City who are trying to help us to make this City what it should be. As Mayor that is what he plans to do. This City Council meeting will not be used as a forum to try to show people that they know it all when nothing is really being done. We sit here and we go at each other all night long and when we walk out of this meeting nothing is being done. He will say to each one of his colleagues, when he ran for the position of Mayor he ran because he wanted to do something for the people. He won because the people voted for him. That is why he won. If he runs again he will win because the people voted for him. He says to you right now he doesn't want you to step back into this council chambers thinking that we are going to continue to do things the way we are doing things. We have got

to move forward and we have got to work with one another and we have got to understand that there shouldn't be meetings before the meetings or meetings after the meetings. We have got to work for the best for the City and the citizens. As Mayor he plans to do that.

6} ADJOURNMENT:

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

A motion was made by Councilman R. E. King, seconded by Councilwoman L. Hill-Lawrence to adjourn the meeting. Those voting in favor of the motion were: King, Hill-Lawrence, Baker, Brooks, Hummer, Meggs, Stimatz and Walton. Against: None. Motion carried.

Mayor McLean adjourned the meeting at 9:42 p.m.

Dianne S. Pierce-Tamplen, MMC
City Clerk

Roger A. McLean
Mayor