

**MONDAY – 7:00 P. M.**

**OCTOBER 12, 2009**

**CITY COUNCIL**

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

Mayor Pro Tem Baker established a quorum was present and called the meeting to order at 7:05 p.m. She called upon Pastor Tony Rice for the invocation after which the Pledge of Allegiance to the Flag of the United States of America was given.

**1} APPROVAL OF THE AGENDA:**

Mayor Pro Tem Baker called for approval of the prepared agenda.

Councilman E. K. Rivers asked to remove ***Item #8-c - Authorization to Execute Agreement with Airport Authority and Pasquotank County for the Aviation Park*** and place it on the next work session's agenda.

Councilman J. A. Stimatz asked to add an ***update on Rose Harbor and discussion of the Hayes Salvage Yard on Ward Street.***

***A motion was made by Councilman J. S. Stimatz, seconded by Councilwoman V. C. Watts to approve the prepared agenda to include the above noted items. Those voting in favor of the motion were: Stimatz, Watts, Baker, Evans, Hummer, King, Meggs and Rivers. Against: None. Motion carried.***

**2} COMMENTS FROM THE PUBLIC:**

Mayor Pro Tem Baker asked City Clerk D. S. Pierce-Tamplen the number of individuals that had signed up to speak. Upon a reply of three, Ms. Pierce-Tamplen called the first individual up to the podium.

Cynthia Marie Griffin White, Elizabeth City spoke in regards to demolition fees, code enforcement abatements and taxes owed on 517 South Road Street.

Walt Stefanowich, 201 East Cypress Street, Elizabeth City spoke regarding the Ward Street Salvage Yard.

Sam Davis, III, 508 Continental, Elizabeth City spoke regarding the debris and unsightly looks of the Rose Harbor vacant lot.

**3} PRESENTATION – NATIONAL COLONIAL HERITAGE MONTH – OCTOBER 2009:**

Councilwoman L. A. Hummer read the National Colonial Heritage Month proclamation and in the absence of Ms. Shirley Spaeth advised that the City Clerk would forward this proclamation to Ms. Spaeth.

**4} APPROVAL OF THE MINUTES:**

Mayor Pro Tem Baker called for action regarding the minutes.

***A motion was made by Councilman J. A. Stimatz, seconded by Councilman R. E. King to approve the minutes of September 28, 2009 Work Session. Those voting in favor of the motion were: Stimatz, King, Baker, Evans, Hummer, Meggs, Rivers and Watts. Against: None. Motion carried.***

**5} CONSENT AGENDA:**

Mayor Pro Tem Baker asked City Manager R. C. Olson to read the Consent Agenda items. Following the reading, she asked what was the Council's pleasure regarding the Consent Agenda as read.

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

Consent Agenda

a} Approved the following Budget Amendments.

**BUDGET AMENDMENTS  
NUMBER 2009-11  
OCTOBER 12, 2009**

**BE IT ORDAINED**, by the City Council of the City of Elizabeth City that the following amendments be made to the annual budget ordinance for the fiscal year ending June 30, 2010.

**SECTION I.** That the General Fund Contingency (106620.6000) be decreased by \$15,002, the Northeast Homeless Coalition (106620.5875) be increased by \$3,335, the Tabernacle of Faith Outreach (106620.5860) be increased by \$3,334, the New Beginnings Outreach (106620.5876) be increased by \$3,334, and the Food Bank (106620.4610) be increased by \$5,000.

(To record donations from Contingency.)

**SECTION II.** That the Confiscated Drug Funds (103220.0030) and the Police Department Capital Outlay (105100.7400) be increased by \$8,500.

(To record surveillance vehicle (\$3,000) and surveillance camera system (\$5,500) to be purchased with Department of Justice forfeiture funds.)

**ADOPTED**, this 12<sup>th</sup> day of October 2009.

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Jean M. Baker  
Mayor Pro Tem

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Dianne S. Pierce-Tamplen, MMC  
City Clerk

b} Approved authorization to execute grant application to Rural Center Clean Water Partners' Infrastructure Program and adopted the following resolution committing matching funds.

**RESOLUTION #09101  
AUTHORIZING THE CITY OF ELIZABETH CITY**

**TO SUBMIT NC RURAL ECONOMIC CENTER, INC.  
GRANT APPLICATIONS**

**WHEREAS**, the NC Rural Economic Development Center, Inc. is currently accepting grant applications for its Clean Water Partners' Infrastructure Program; and

**WHEREAS**, there are two grant categories for which the City wishes to apply: a Planning Grant for a maximum amount of \$40,000 and a Supplemental Grant for a maximum amount of \$500,000; and

**WHEREAS**, if funded, these grant applications require that the City provide local matching funds in an amount equal to 50% of the grant awards;

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of Elizabeth City that authorization is hereby granted for the submission of grant applications to the NC Rural Economic Development Center, Inc. for a Planning Grant in the amount of \$40,000 and a Supplemental Grant in the amount of \$500,000 under its Clean Water Partners' Infrastructure Program; and

**BE IT ALSO RESOLVED**, that the City of Elizabeth City commits to providing the 50% matching funds required in an amount not to exceed \$270,000 if these applications are funded; and

**BE IT FURTHER RESOLVED**, that Jean M. Baker, Mayor Pro Tem of the City of Elizabeth City is hereby authorized to execute and file the applications on behalf of the City of Elizabeth City to the NC Rural Economic Center, Inc. in the absence of Mayor Stephen S. Atkinson.

**ADOPTED**, this 12<sup>th</sup> day of October 2009 at Elizabeth City, North Carolina.

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Jean M. Baker  
Mayor Pro Tem

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Dianne S. Pierce-Tamplen, MMC  
City Clerk

c} Accepted the piggyback bid for a 2010 Altec aerial device truck for \$115,654.00 and adopted the following Budget Amendment:

**BUDGET AMENDMENT  
NUMBER 2009-12  
OCTOBER 12, 2009**

**BE IT ORDAINED**, by the City Council of the City of Elizabeth City that the following amendment be made to the annual budget ordinance for the fiscal year ending June 30, 2010:

**SECTION I.** That the Electric Fund Balance Appropriated (303990.0000) be increased and Electric Distribution Capital Outlay (308300.7400) be increased by \$115,654.

(To purchase tree-trimming truck.)

**ADOPTED**, this 12<sup>th</sup> day of October 2009.

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Jean M. Baker  
Mayor Pro Tem

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Dianne S. Pierce-Tamplen, MMC  
City Clerk

End of Consent Agenda

**6} REGULAR AGENDA:**

a} Authorization to submit application for Building Reuse and Restoration Grant on behalf of The Chocolate House.

Mayor Pro Tem Baker recognized Mr. Olson for comments.

Mr. Olson stated this is a request from City Staff and one of our local business people for us to submit on her behalf a Building Reuse and Restoration Grant to the NC Rural Center on behalf of the Chocolate House. The Chocolate House is located at 615 E. Main Street. The business is requesting sponsorship by the

City in order to apply for a \$60,000 grant. The Chocolate House is proposing private funding for the purchase of the old Pure Oil Building and to make renovations, do exterior work and roof repair. The total cost of the building renovation project is \$197,353. The grant program awards \$20,000 per job for those businesses that qualify for three additional positions. Recipients will be subject to State audit and reporting requirements. These loans will be forgiven after all requirements are met. The City will not be responsible if these requirements are not met.

***A motion was made by Councilman E. K. Rivers, seconded by Councilwoman V. C. Watts to authorize City staff to submit to the Rural Center a Building Reuse and Restoration grant application on behalf of the Chocolate House. Those voting in favor of the motion were: Rivers, Watts, Baker, Evans, Hummer, King, Meggs, and Stimatz. Against: None. Motion carried.***

b} Preliminary Plat for Tanglewood Plaza:

Mayor Pro Tem Baker called upon Planning Director Brooks for comments.

Ms. Brooks said that TWG1 North, LLC and Liberty Warehouse, LLC requests approval for a ten lot commercial subdivision at Halstead Boulevard Extended and Tanglewood Parkway North. Phase I of this subdivision is 16.73 acres out of a 72 acre parcel. As proposed 8 lots will abut Halstead Boulevard and 2 will abut Tanglewood Parkway. The lots will range in size from 1.10 acres to 2.13. Four new streets will be constructed so that all parcels will have access from interior roads. Stormwater run off from this site will be rerouted to the rear of the property and eventually flow into the bar pit north of the site. The subdivision plat presented to Planning Commission shows an island being constructed at Plaza Trail in order to create a right in-right out onto Tanglewood Parkway from Plaza Trail. There are traffic safety concerns of the vehicles trying to cross over four lanes of traffic from the Walmart- McDonalds site into the proposed subdivision. The proposed island should be designed to prevent such traffic movement. The plat also shows an open ditch adjacent to Halstead Boulevard to be piped with a 36" pipe. The ditch was created as a temporary easement by NCDOT during construction of the Halstead Boulevard to capture run off from Route 17, Halstead Boulevard and farm drainage of the properties. Now that the road has been completed the easement is no longer required by DOT and is a part of the applicant's site. This plat has been presented to the Technical Review Committee twice and to the Planning Commission. Planning Commission recommends approval of the Plat as presented to them with the conditions that all NCDOT permits be obtained, a Property Owners Association be formed to ensure all perpetual maintenance of open space and Stormwater facilities and all engineering and landscaping requirements be met.

Mr. Olson said there is one additional special condition that city staff has been working on with the developer to try to get by an impasse we were having. He would like to include in the record what the special conditions are.

-The developer will provide the City a 20-foot wide easement which will be utilized by the City for the construction of a bike path parallel to Halstead Boulevard.

-The developer, as called for in the original approval, will install 36" culvert that will be designed and engineered and all permits secure by the developer.

-The City does require the developers along the Halstead Corridor to pay a \$25.53 per linear foot sidewalk fee. We are requesting that fee be waived.

-The City will pay \$40,000 from our Stormwater Utility to help defray the cost of culverting the ditch with 36" pipe.

-Allow the developer to go ahead and bid the sidewalk path that is on his property. If the prices are determined to be good prices by the Public Works Director we will then enter into a reimbursement agreement and have the developer go ahead and install our bike path within that area.

Those are the special conditions that City staff would like to add onto the preliminary plat. He thinks members of council have some concerns about some of those conditions.

Mr. Watts asked if the sidewalk route waived fee, the \$25.53, that is being waived to put in the bike route, is that what you are saying.

Mr. Olson said no the swap is that we are waiving the fee because by the developer going head and culverting the ditch the costs of us installing the bike path is less because we no longer have to put up guardrails and other types of safety procedures. Right now that ditch is 4½ - 5 feet deep and we have some concerns and there are some federal regulations that require separations or physical barriers between the bike path and the ditches so people don't run off and get hurt. We are requesting that we waived the \$25.53 per linear foot charge as having offset to the developer to go ahead and do that work.

Ms. Watts said so we are looking at getting a sidewalk and also a bike route as well.

Mr. Olson said that is correct but the City would be responsible for the cost of actually installing the bike path on the developers property. The developer is

providing us a 20' easement to put that bike path on. He has determined the value of that to be roughly \$218,000. He is throwing that into the pot. He is requesting that we waive the sidewalk impact fee and also help defray some of the costs of installing the culvert and that is \$40,000.

Mr. Stimatz said we discussed it in our discussion of not waiving the entire sidewalk fee. He thought we were going to keep a quarter of it. Council talked in closed session and we would like to go back and tell them to pay at least a quarter of the fee. That would be \$12,765.00.

Mr. Olson said what he is relaying to you is the agreement City Staff had with the development people realizing there were some discussions which he cannot go into because it was talked about in Closed Session where the Council may not want to waive the entire fee. That is of course strictly up to the Council.

Mr. Tom Nash stated he was representing TGW1 North LLC and Liberty Warehouse, LLC. which is the developer of this property. With him tonight is Scott Prosser, Sean Tracey who has come from Chicago. They are the developers of the property. Also, Ken Sisk who is with the Division Group which is the company that has engineered this particular subdivision. As you have heard from Ms. Brooks and Mr. Olson this property is part of a 72 acre tract located to the east of Walmart. It fronts on Halstead Boulevard and it was purchased by the owners in April 2008. The development for which we are seeking preliminary plat approval is known as Tanglewood Plaza. This is going to be a 10-lot subdivision that basically fronts on Halstead Boulevard. What we would like to do is to allow Scott Prosser to speak on behalf of the developers.

Scott Prosser stated he works for a firm called Conlon and Company. We have made two fairly substantial acquisitions in Elizabeth City area. One of which is the Tanglewood South which is the 48 acre parcel across the street of the Super Walmart. We own this parcel of land also. Basically, we really believe in Elizabeth City. We have put a lot of our investment dollars to work here. We are very excited about this project. We think it is a great opportunity to put together a really terrific commercial subdivision.

***A motion was made by Councilman E. K. Rivers to approve the preliminary plat submitted by TWG1, LLC and Liberty Warehouse, LLC with conditions recommended by the Planning Commission, the Staff and waive only 3/4 of the sidewalk costs. Councilwoman L. A. Hummer seconded the motion.***

Ms. Watts said she has something to say. She thinks this is a great idea and she thinks it would probably look really good. She just wished that we could save a little bit more money. She is in the mind set that we could possibly get a little bit



more than the quarter, but nevertheless she wants to make it known that she likes the idea and her second disappointment is that we are doing it now. She thinks there is a lot that we could do here in our inner city with establishing sidewalks. This has nothing to do with you all. She knows that Herrington Road and Providence Road need sidewalks and we would like to beautify the city where we live. She just wanted to make that statement. To the Council she certainly wishes that we would also not forget where we live and put in some sidewalks to make our inner city look more beautiful.

Mr. Nash asked to make a point that the actual costs of culverting the ditch and we have two estimates and they are \$170,000 or \$192,000. Perhaps you were given these numbers but this is way over what we had anticipated having to spend to culvert the ditch and yet we are willing to do that as well as give the City the easement for the sidewalk. This is the rationale if you will for the manner we reached in good faith an agreement with the City Manager knowing of course it was subject to this Council. He just wanted to make sure that everybody understood this.

Mr. Stimatz said we had those numbers and based on the lower bid the split was the City paid \$90,000 and you paid \$78,000. By flipping the \$12,765 you pay the \$90,000 and we pay the \$78,000. That is the difference.

Mr. Prosser said then there is the aspect of the land that we would be giving you for free. In our mind we were thinking typically one would have to go through a condemnation process and there would be a monetary compensation as well as legal fees. We believe that in donating this land for free and working with the City and one of the options that was outlined to us was that we could keep the existing ditch but draft some legal protocol that would insure appropriate enforcement to keep that ditch cleaned. We knew that the City really wanted that ditch culverted and you wanted the bike path there. When we were negotiating in our initial negotiations with the City Manager it was our assumption that we were donating the land which had a monetary value of north of \$200,000. In addition, there was the culverting cost of somewhere between \$170 and \$190,000 plus there was an engineering cost which he has already paid tons of thousands dollars to the engineer that designed it originally prior to going out to receive those bids from the General Contractors. We are already in it for hundreds of thousands of dollars by our calculations. That is where we were coming from when we requested 100% relief on the sidewalk contribution fund.

Mr. Rivers said that the reason he made his motion and he stated it in Closed Session but to go before the public he has no problem with working with the developers. He hates to give up the \$40,000 when we set this policy in effect it was exactly what Councilwoman Watts was talking about. We are for growth but

growth needs to be able to support itself. This was to be able to help other areas in the City, but we said that growth pays for growth. To only ask to reduce \$12,765 when we had anticipated \$50,000 and that is giving up a substantial amount. The City Manager sat down and negotiated and that is why we got to this point. Our decisions in terms of when we start giving up the fees that have been set by City Council. That is why he asked for the \$12,765. In reality they are supposed to pay \$50,000. We are giving a savings of \$37,000.

***Those voting in favor of the motion were: Rivers, Hummer, Baker, Evans, King, Meggs, Stimatz and Watts. Against: None. Motion carried.***

City Attorney Morgan asked to interrupt Council for one moment. The item regarding the Preliminary Plat for the Tanglewood Plaza, Mr. Olson and he thought it would be best for the developers should they agree with what the City did tonight to go on record agreeing with the City's preliminary plat approval with those conditions. That was not done earlier.

Mr. Nash said he thinks that it is important to advise that his clients assured him that they accept the conditions and they also are most appreciate of the consideration that the City has given.

c} Economic Impact Study:

Mayor Pro Tem Baker called upon Wayne Harris for comments.

Mr. Harris made a presentation on the Economic Impact Study for the Aviation Park. The analysis indicates that each hangar results in 109 jobs and \$10.7 million of economic activity during construction and 262 ongoing jobs and \$54.2 million in additional economic output in the region each year a hangar is staffed at 150 employees. The analysis used the capital investments and salary structure already in place in DRS Technologies' existing two hangars; thus, the one-time regional economic impact of DRS' construction of those hangars was \$21.4 million and their ongoing contribution to the local economy amounts to \$109 million annually. Although the construction of the air park itself was not specifically included in the Department of Commerce analysis, applying similar multipliers to its \$1.3 million cost would put the total economic output of that project at \$17.4 million. He provided a power point presentation showing the impacts on the economic impacts on our area.

d} Voting Delegate for 2009 Annual League Business Meeting:

Under the NC League of Municipalities Constitution and the voting procedures established by the League Board of Directors, each member municipality sending

delegates to the Annual Conference is required to designate one voting delegate and one alternative voting delegate.

***A motion was made by Councilman J. A. Stimatz, seconded by Councilman E. K. Rivers to appoint Mayor Pro Tem J. M. Baker as the Voting Delegate and Councilwoman B. S. Meggs as the Alternate Voting Delegate for the NCLM Annual Conference. Those voting in favor of the motion were: Stimatz, Rivers, Baker, Evans, Hummer, King, Meggs and Watts. Against: None. Motion carried.***

e} Update on Rose Harbor:

Mayor Pro Tem Baker called upon Councilman J. A. Stimatz for comments.

Mr. Stimatz presented some slides he took this morning showing the present condition of this parcel. We started this discussion in June and we had a Closed Session in August. At that Closed Session Staff was instructed to clean up the above ground debris and capped the site with a layer of dirt. Since the 10<sup>th</sup> of August we haven't done that. The question is why Council's direction not been carried out.

Mr. Olson responded that he, Chief Crudup and Paul Fredette went out to the site roughly two weeks ago. We could not because of the height of the grass determine what items we were going to have the public works department remove and what items that we were going to cap over. The property was recently mowed. We can't go in there and determine which pieces of concrete and rebar that we can remove with a front end loader as we do not want the rebar and the concrete coming up through the cap. Public Works should be able to get to it very shortly. What we plan on doing is going out there on the site and put red paint on those items that we believe can easily be removed and those items that cannot be removed we will try to push them down and then bring in the cap. That is where we are at on this item.

f} Hayes Salvage Yard located on Ward Street:

Mayor Pro Tem Baker called upon Councilman Stimatz for comments.

Mr. Stimatz stated his involvement goes back to the first part of June when a citizen who drives through the neighborhood asked him about the junk yard on Ward Street. He previously sent information to the manager about it in terms of dumpsters not being screened. He drove over there and took pictures and sent staff, council and our attorney an email with photos on the 3<sup>rd</sup> of June. In that email he went on record as reporting a serious violation of the UDO because the

property was not in compliance. A salvage yard is required to have 5 acres of land, 300' setback from residential housing, 8' fence on that side, 6' fences every where else and reinforce ingress and egress points. He asked that this operation be fined everyday. They were in violations and that the city issues a cease and desist order. Clearly, Zoning was already aware of it because the very next day the Zoning Administrator rapidly answered his request for information and in a memo on 4 June indicated that we had received complaints and was taking action to rectify this situation. She went on to say that 30 days after notification, "we can take the matter to the magistrate for further action. We possibly are looking at another 45 to 60 days." He has a couple of questions.

1} He received a file from the City Manager which was somewhat incomplete in terms of enforcement. Do you know when we were first made aware of this zoning violation?

Ms. Brooks responded she can't remember.

2} When did you send the official notification of violation?

Ms. Brooks responded we have had numerous emails with the property owner. She has talked with him many times on the phone. He says that they have outgrown that site and are looking for a new site to move to.

Mr. Stimatz said wait that is more information than he asked for. When did we send the official notification of violation, which he understands has to be a certified letter?

Ms. Brooks said there has not been a certified letter sent to them.

3} What was this operation going to be cited for?

Ms. Brooks responded we have had numerous discussions with the operator about the condition that he leaves his site in. He cleans it up every night and she does have some pictures that were taken today of daily operations and we went back after five o'clock after they had closed up so you could see how it is left. A picture showed the daily operation around three o'clock. Another showed what is on the site, the buildings that they have. You can see they have some storage up under their shed. Those chemicals cannot be put inside the building because of the fire safety issues. These are boxes that have been unloaded for recycling. The materials will be sorted. You can see that they have been bound to put them in their closed screen area. Another showed the screen area. They close it out after they put their product in. We went back after five o'clock today and took additional pictures of what the site looks like when they left. She knows that there have been some issues with the street and the condition they

leave the street in. This is the site where they do most of their processing. As you can see during the day they do have their product out but when they leave at night everything is put up and is behind screens. They are a recycling center because of the way they produce their materials. They bring it in, they sort it, they bind it and it is shipped for another vendor to recycle down.

Mr. Stimatz said going back to his question, you had noted in June 4<sup>th</sup> memo that they were in violation. What were you planning on citing them for?

Ms. Brooks said the condition of their yard. At that time they had piles and mounds of their product lying out and we were getting a lot of complaints about it.

Mr. Stimatz said then no action was ordered and nothing was supposed to be completed. There was no enforcement action.

Ms. Brooks said she is not sure that she agrees with him on that. If you don't count having conversations, going over and visiting them, a form of code enforcement and you are only considering certified mail as form of code enforcement, no, certified mail was not done but we have had numerous visits and conversations with the owners.

Mr. Stimatz said unfortunately it is 4 and a half months later. He showed pictures of the sign. One of the issues here is what is this business? It says what it is. They buy catalytic converters, radiators, aluminum rims, aluminum, brass and copper. They are in the process of recycling metal materials. The next picture showed their dumpster inside the fence line and some of the products which are in there. The next showed a large pile of aluminum scrap that was inside the fence and tons of other stuff. The next picture was a whole pile of aluminum gutters and materials that are sitting in there. In looking at this question when he first looked at it he went to the UDO and it is very clear about what salvage and scrap yards have to do. Again, he outlined it earlier. Any kind of salvage or scrap yard you have to have five acres. There is not five acres on this site. You have to have 300' setbacks. You have to have 8' fences. That was the original point of his discussion. What he did was reviewed the application. What is interesting is that the standard industry classification code does not match the stated use that is written on the paper? They talked about auto parts sales. That is on the cover. This is clearly not an auto parts sales establishment. The SIC is 3714 and that is defined by the federal government as establishments primarily engaged in manufacturing motor vehicles parts and accessories. That is, it makes parts for wholesale distribution.

Mr. Stimatz continued by saying the more correct group is probably if they were going to sell auto parts would have been Industry Group 553 which has auto and

home supply stores; which this is. The other industry group that it could be used is 5015. It is not in our UDO; however, 5012, 5010 and 5014 are included so one could say 5013 falls. On the application itself Section A & B, page 1-3, the application does not have space for the required elements listed in Appendix 3 of the UDO. The UDO has specific requirements that they have to meet and the information has to be provided. That is not provided on this application. Since the space isn't there the information is not there, the application is not completely filled out. The applicant changes the stated use from auto parts sales to the purchasing of recyclable auto parts, non-ferrous metals and auto parts. It is interesting there is no standard industry code for purchasing parts. The purchase of auto parts is partially covered by Industry Code 5015. The resale of non-ferrous metals falls under Industry Group 5093 which is related to establishments primarily engaged in assembling, breaking up, sorting and wholesale distribution of scrap and waste materials. It is clear to the casual observer, the neighbors there and if you look at it this is in fact the majority of the use of the facility in question. They are dealing in scrap metal. The application didn't include Section C and D and he doesn't know why.

Mr. Stimatz continued by saying Application Section E and this is a critical page. This page requires the signature of the property owner. Requires that they validate his statement and then it is to be sworn and notarized. The actual signature is nothing more than a faxed facsimile stamp of the owner's name. The form is not completed and has not been subscribed and sworn too. Page 3 for staff use only has not been filled out and is missing any kind of parking requirements, setback and landscape analyses. It has been marked approved but not signed so we don't know who did the review. Again, an administrator detailed the application for the privilege licenses but it doesn't contain a customer number. It does not contain the Federal ID number or the State License number. There is no determination whether a state license was needed or not needed. The number of employee changes from 2 on the zoning application to 1 on the permit. The SIC listed on this is SIS 343 which is not applicable for the uses mentioned in the application. What is interesting is that it called fabricated metals products, except machinery and transportation equipment. It talks about establishments engaged in fabricating ferrous and non-ferrous metal products such as metal cans, tin ware, hand tools, cutlery, hardware, non-electric hearing apparatus, ordinance (except vehicles and guided missiles) and a variety of metal and wire products, not elsewhere classified. That SIC doesn't fit. It is the one on the application but it doesn't even come close to describing even the original intended purchase. It is clear to him from reading this application that the UDO and city processes were not followed, required information and actions were not taken and that insufficient research was done to validate the actual use of the property. The application is materially incomplete and thus invalid and by extension the zoning permit is invalid and does not allow the current use to even begin much less continue. This only

addresses the failures in city processes, procedures and rules. In addition this is another of the many failures to adequately enforce the standards of the UDO as written. There is no doubt in the minds of myself, other council members and the citizens of the Second Ward that this is a salvage yard and/or a scrap processing operation. To characterize it otherwise is an egregious act. To fail to do our duty is also an egregious act. The language of the Standard Industry Classifications 5093 Scrap and Waste Materials clearly speaks to establishments primarily engaged in assembling, breaking up, sorting and wholesale distribution of scrap and waste materials. That operation is allowed in our City.

Mr. Stimatz said the Zoning Administrator said that in her memo of 4 June. "As you are aware it has mushroomed into outside storage and appears now to be a salvage operation". She advised the applicant on 1 June "that they were in violation of their zoning permit." This was confirmed in a 15 September statement on the online Elizabeth City News and Notes blog and I quote, "City Planning Director June Brooks said Stimatz is correct because originally the business received a permit for a used auto parts business. They have gone beyond what they got a permit for." The business even admits to operating a scrap metal business. From the online article, I quote Tammy Colson, the Human Resources Manager, "There are about 200 customers ever week, who return every week to sell scrap metal, along with others who come in occasionally." He would also note that the business is listed and posted as Hayes Iron and Scrap Metal. No where on the premises is the business advertised or characterized as a purchaser of auto parts. Interestingly the incidence of thefts of recyclable materials has also gone up. That we have failed to act in over four months is unbelievable to him, Council and his constituents. This is an extremely frustrating and confusing situation. Now we have received the City Manager's memo dated 25 September which is our update on enforcement action. It concludes by saying, "While this operation has expanded and tends to be somewhat of a mix between used auto parts sales and recycling materials collection/processing operation, he is of the opinion that they are not a salvage/junkyard and are not a zoning violation." The Manager is technically correct that such an operation is allowed within that zoning; however, what he fails to say is that it must be done within the constraints of our UDO a salvage yard must first of all be on 5 acres of property. Must have 300' setbacks from residential properties, must have 8' fences around the outside, and must have 6' fences everywhere. More importantly he is not the Zoning Administrator. In his 22 September email to staff, Council and our Attorney he said, "Council has been told again and again that the Zoning Administrator is the final authority for zoning decisions and that the only way to get relief is go to the Board of Adjustments. This was made very clear on the debate on the need for a COA for sidewalk signs. We, the Council, was told "I'm sorry-too bad so sad". So, our only resource was for us to change the ordinance. If we can't influence the Zoning Administrator's decision then no one, especially a supervisor, should be

able too. Failure to follow our own rules and procedures and our inconsistent and perceived biased approach to code enforcement places the city into serious jeopardy of being sued by anyone who has been the subject of enforcement action. He recommends that the Zoning Administrator carry out her duties in accordance with the UDO. It is very clear this is a salvage operation.

***Councilman J. A. Stimatz made a motion in accordance with Section 2-115(a) of the City Code of Ordinances to direct the City Attorney to investigate this situation, determine what processes, procedures and rules have been violated, advise Council of the legal status of the application and the applicant, and detail our options for proceeding with enforcement of the UDO. Councilwoman V. C. Watts seconded the motion.***

Councilwoman Hummer said she would like to state that prior to Mr. Stimatz reporting this issue she also reported it. She was told that it was zoned industrial many years ago and there was no other business doing the same thing within close proximity so there was nothing to compare it too. There was nothing we could do about it. She was not being happy with what she was told so she pursued it a little further and then she was told that they had been cited but she has never seen anything on it.

Councilwoman Watts said she wanted to ask Mr. Olson if he was aware that the salvage yards need to be on five acres.

Mr. Olson replied that he will defer to the City Attorney. He believes he should do the investigation as in staff's opinion this is a recycle center. This is a growing trend in the United States right now. These types of businesses are now considered recyclable centers. Under your listed table and your list of items in your UDO it does allow a recycle center as a use by right in that particular zoned district. That is the determination of our Zoning Administrator and he concurs with her. He will be happy to yield to the City Attorney. He thinks he can research the case law concerning recyclable centers and come back with the same opinion of city staff. He agrees the appearance is not the best. He agrees with Mr. Stimatz and Ms. Hummer on that issue but what he has to look at and the Zoning Administrator has to look at is what is allowable in the UDO. You have heavy industrial property zoned right next to residential. It should never have happened. It is an injustice to the residents that live there. Heavy industrial should be out at Knobbs Creek. Our records go back to 1973 and it was zoned M-2 which is now called I-2.

Ms Watts said that normally she knows that whenever you change hands as you just said that generally the new laws, new regulations apply to the new vendor.



Mr. Olson said she was absolutely correct. There is no non-conforming use associated with this. In our opinion it is a use by right. It is allowable in the UDO for a recycle center in an I-2. Salvage yard, Councilman Stimatz is completely right if you rule it as a salvage yard. You need the five acres and everything else. He thinks it is a definition and he will yield to the City Attorney.

Ms. Watts said that is fair enough but it certainly took us a long time to get this underway. Four months is a long time when other people that have trash in their yards were sent fines and all kinds of letters. We ought to be clear across the board, one for all and all for one.

Councilman King asked how we got from an auto selling parts to salvage.

Mr. Olson said the individual takes a catalytic converter which does have recyclable products in it and brings that in. They take it apart then send it out to be melted.

Councilman Rivers asked if Ms. Brooks has his privilege license in front of you.

Ms. Brooks said she has a copy of what he gave us.

Mr. Rivers asked what he put down for the intended use.

Ms. Brooks said purchasing of recyclable auto parts, non-ferrous metals and automobile parts.

Mr. Rivers asked under that would it be classified as a recycling center.

Ms. Brooks replied yes as he says "recyclable". It is what he does with his product. If he were buying up all the stuff and just throwing it out in the yard and leaving it and that is a salvage yard. By him buying it, separating it, bundling it and resending it somewhere else to be used, melted down or whatever he is not a salvage yard. It is a recycling center. Originally the intent was to keep all of the materials inside the buildings, but they started getting so much it started accumulating on the outside of the building. That is when they came in and got more dumpsters and enclosed it with a fence.

Mr. Rivers said he rode by there on Tuesday during the day and then he came by on Wednesday morning. The dirt was gray, it had trash like aluminum spread near the office and if he was a neighbor he would be upset also.

Ms. Brooks explained at the uses that are permitted by right in an I-2 zoning district. This is an I-2 zoning district. The whole issue is the zoning classification of this property is just not compatible when you put it up next to a residential zoning. There should be buffer zones between the heavy industrial and

residential zoned districts. That is the whole problem with this; it was never given an appropriate zoning to begin with. In 1999 it was switched to I-2. Before 1999 dating back to 1973 it was M-2 which was a heavy industrial zoning classification.

Ms. Hummer said another thing they operate on both sides of the city street. The front end loaders cross back and forth hauling all this stuff. There is no way a street sweeper can make it presentable over the weekend. It is so unsightly and so much dirt on our city street she just doesn't understand how a company can use our street in that manner. We are trying to clean up the Second Ward and we need some help and cooperation. We all have to live here and these people are doing business here and they need to take a little more pride in it.

Mr. Rivers asked that a time table be put on this so it can come back.

Mr. Stimatz said he hoped that it would be fairly quick so how about six weeks.

Mr. Morgan stated that would give him plenty of time.

***Those voting in favor of the motion were: Stimatz, Watts, Baker, Evans, Hummer, King, Meggs and Rivers. Against: None. Motion carried.***

## **7} COMMENTS AND INQUIRIES ON NON-AGENDA ITEMS:**

Mayor Pro Tem Baker said she would go around the table for comments.

### City Manager Olson

Mr. Olson stated he wanted to invite everyone including the members of the City Council to the River Road Sports Complex dedication service which will be held this Thursday, October 15<sup>th</sup> at 6:00 p.m. The County and City Parks and Recreation Departments have done an extremely good job. It is a first rated park that they have built over there. It is something that we can all be proud of.

### Councilman Evans

No further comments.

### Councilwoman Watts

Did we ever do anything for Ms Anita Figgs. How is that going?

Mr. Olson said that it has to go back to City Council. The action that the Council took it is supposed to be at the next work session in October. The City Council

does not have a work session in October as some will be attending the League of Municipalities Annual Conference in Greenville.

She also asked how far along are we with the Oak Grove project? How is that coming?

Mr. Fredette stated the bid opening is scheduled for the 15<sup>th</sup>. He received a request today to extend that time frame. At the November 2<sup>nd</sup> meeting he will have a recommendation at that time.

She said last but not least, Perkins Lane is still having trouble with water standing in the road at Ft. Bragg and Lejeune. She would like for Rich to kind of think about that. She thinks you gave her some ideas about gutters on either side of the road. Maybe we can look to see what we can do about that.

Finally, she would like to also say as her last comment to just thank everybody for coming out to vote. She wanted to publicly say congratulations to the Fourth Ward winners. We are very happy that everyone is going to be rooting for the betterment of Elizabeth City. God bless you all.

#### Councilman King

He asked about Providence Road/Applebee's sidewalk.

Mr. Olson replied that the State is in the process of drawing up the sidewalk agreement. The last memo he received from Sterling Baker was about a week ago and he is in the process of getting that approved in Raleigh.

#### Councilwoman Hummer

She asked Mr. Fredette to give an update on the project on West Main Street.

Mr. Fredette stated on the West Main Street project he was told it would be done last week. He has not checked into it today so he does not know the status. It should be done very shortly as he is not aware of any problems out there.

She said she would also like to mention when they first began whatever they do to the surface of the street, whatever that white powder substance was it got under a lot of cars. It could have potentially damaged some brakes.

#### Councilman Stimatz

No further comments.

#### Councilwoman Meggs

She said she just wanted to say she went to the Committee of 100 meeting last Wednesday and she is sorry you were not there because it was the best one that she has been too.

Councilman Rivers

He said first of all he asked Mr. Fredette to get with ECSU for homecoming week and find out what assistance we can give them in preparing for the homecoming. If you would make that call tomorrow he would appreciate it. At the last meeting he asked Mr. Olson to give a report on the South Road Street house. He had asked that it be placed on this agenda and it wasn't.

Mr. Olson stated he provided a memo to Council on this issue. It went out ten days ago.

Mr. Stimatz said he would refresh Mr. Rivers' memory. It was tabled action until the Attorney was consulted.

Mr. Rivers said he wanted to make sure that we know the 30-days was coming up in terms of foreclosure on the house. We need to make sure. We can get caught up in legalities and all of a sudden we can say, "Oh well", we didn't talk to the attorney. He doesn't want foreclosure action taken forth without the City Attorney providing the information. What day is the foreclosure set for?

Mr. Olson said he does not know.

Mr. Rivers said our last meeting was fourteen days ago and we don't have a meeting in October so the 30-days will be up by the time we meet again and foreclosure will have taken place. He can't go along with that and he is not for waiving taxes because city taxes are appropriate but for the demolition he cannot go on board with the demolition when we just gave a company \$38,000 to work with them. He thinks that we can do the same in terms for the demolition costs of the house that was under protest.

***A motion was made by Councilman E. K. Rivers to waive the amount of the demolition costs from the property taxes. Councilwoman V. C. Watts seconded the motion.***

Mr. Olson stated the problem Councilman Rivers is the back taxes for 2006, 2007, 2008 have not been paid either. It was a lot more than that as it was included in the memo.

Mr. Stimatz stated the motion that he made to table this item was based on the fact of the need for the City Manager to consult with the City Attorney concerning a pending lawsuit if that has not occurred then no action can take

place. If you would like to go into closed session to discuss that pending lawsuit then we can.

Mr. Rivers stated he has no problem going into Closed Session. At the last meeting when he brought it up, the attorney was supposed to have this information because we said he had 30-days before going to foreclosure. Now, we don't have an October meeting. Based off the fact that we don't have an October meeting the 30-days will be up prior to then. City staff should have contacted the city attorney to have us a recommendation or if there was legal problems we should have gone in Closed Session before this meeting. He is not prepared to adjourn the meeting without taking action. The same situation that happened eight years ago happened again today. He is not withdrawing his motion but he will yield to go into Closed Session.

***A motion was made by Councilman R. E. King, seconded by Councilwoman V. C. Watts to retire into Closed Session as per NCGS 143-318.11(a) (3), consultation with the City Attorney for attorney client privilege. Those voting in favor of the motion were: King, Watts, Baker, Hummer, Meggs, Rivers and Stimatz. Against: Evans. Motion carried.***

Upon the end of Closed Session

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

Mayor Pro Tem Baker declared the meeting back into regular session.

**8} CONTINUATION DISCUSSION OF ITEM #6:**

Mayor Pro Tem Baker asked Councilman Rivers to repeat the motion that is on the floor.

***A motion was made by Councilman E. K. Rivers, seconded by Councilwoman V. C. Watts to waive the \$5,624.66 fees for the demolition of 517 South Road Street. Those voting in favor of the motion were: Rivers, Watts. Against: Baker, Evans, Hummer, King, Meggs and Stimatz. Motion denied***

**9} ADJOURNMENT:**

There being no further business to come before the City Council at this time,  
Mayor Pro Tem Baker adjourned the meeting at 9:25 p.m.

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Dianne S. Pierce-Tamplen, MMC  
City Clerk

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Jean M. Baker  
Mayor Pro Tem