

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

Mayor Atkinson established that a quorum was present and opened the meeting. He called upon Councilman R. E. King for the invocation after which the Pledge of Allegiance was given.

1} APPROVAL OF THE AGENDA:

Mayor Atkinson called for Council action on the prepared agenda.

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

2} AUDIT REPORT:

Mayor Atkinson called upon Ms. Windborne for comments.

Ms. Windborne stated she was here to present the Comprehensive Annual Financial Report for Fiscal Year ending June 30, 2009. We have issued an unqualified opinion and they are the highest level you can receive and it means that the Financial Statements are fairly presented in all material in accordance with Generally Accepted Accounting Principles. We did issue a management letter this year. We have a couple of findings. She discussed the balance sheet and the revenues and expenditures for your governmental funds. She referred to the unreserved General Fund Balance which is \$2,949,285. Under the General Fund Revenues which is \$582,869. When we talk about the fund balance in the General Fund one of the things that you are most interested in is the percentage

of Fund Balance available. We get that by comparing that amount to the expenditures for the year. That percentage for June 30, 2009 is 32%. When we take out the Power Bill it drops to 17%. It is pretty close to where you were on June 30, 2008. The net lost for the year for the Electric Fund was \$356,587 and the net increase for the Water and Sewer Fund was \$3,121,177. That is roughly half of that amount was actually due to a grant for the Hughes Boulevard Water Improvement Grant which was 1.4 million. What you are seeing as the grant proceeds would be shown as revenues but the expenditures are getting capitalized. That number while 3 million looks rather large half of it is due to those expenditures being capitalized. She asked to point out with the Water and Sewer your current liabilities are still greater than your current assets. We talked about this last year and you received a letter from the Local Government Commission asking what are you going to do about it. You are going to get another letter this year as that amount is still the same which is roughly \$9,000 to the good to what it was last year. You need to be prepared for that and to probably start thinking about either decreasing expenditures or increasing revenues to try to get that percentage to look better. The management letter she mentioned because they are related. In May, 2009, City Council approved a 30-day bridge loan to the Elizabeth City-Pasquotank Regional Airport to assist them in obtaining the Vision 100 grant to be used for the Aviation Commerce Park. When the Airport repaid this loan to the City, the ten percent (10%) Grant match for both this program and the State Aid to Airports program was deducted from that payment, effectively causing the City to have paid the match. From discussions with the City Manager and the Airport Manager, it appears that there was an assumption that the City would pay this match; however, this was not approved by City Council until August 2009, well after the payment had been made, nor was the Finance Officer made aware of this. This has been reported in the financial statements at June 30, 2009, as Finding 2009-1 for the federal program and Finding 2009-2 for the state program. We recommend that better and clearer communication between staff and City Council occur and that the communication is documented in City Council's minutes. The third finding was on the Rural Center Development Grant and that was related to reporting. The Grant Agreement actually says you need to submit monthly reports or quarterly reports. Even though there was a lot of communication back and forth and they knew what was going on but the actual reports were not done. That has been done now. She also pointed out the Certificate for Achievement for Excellence in Financial Reporting that is issued by the GFOA was given to the Finance Department for the June 30th, 2008 Financial Statement.

A motion was made by Mayor Pro Tem J. M. Baker, seconded by Councilman R. E. King to accept the Comprehensive Financial Report for the Fiscal Year ending June 30, 2009. Those voting in favor of the report were: Baker, Evans, Hummer, King, Meggs, Rivers and Stimatz. Against: None. Motion carried.

3} INTERNET CAFÉS:

Mayor Atkinson called upon Planning Director Brooks for comments.

Ms. Brooks said tonight on the regular agenda you will have a public hearing for a Code Amendment for Internet Sweepstakes. She briefly described what an Internet Sweepstakes Café is. She thinks everybody knows what Internet Café is as you go in and you buy computer time and you search the web or whatever. The new trend is the Internet Sweepstakes. In addition to be able to go in and use the computer these new businesses you can buy time where you go on line and you play games and you win money. The way that it has been described it is similar to the McDonald's Monopoly Game. She has visited the one in Williamston. Basically the way it has been explained to her by talking to numerous different municipalities is that a business owner will come in and buy a software package from one of the sweepstakes type of dealers and what they do is they are like the host for the software. A person will go into the business and he will buy internet time. He can do the traditional internet type of use or they can sit there and play games. The owner of the software predetermines the game pay out. What she has been told is there a 93% payout when people get on the games and play. The business owner doesn't know who is going to win or how much they are going to win because he is not in control of how the sweepstakes prizes or money are done. The computers are connected to a server and the server in the business is connected to the software provider. It is not all determined on site. It is predetermined at an off site location. In our proposed Code Amendment we have proposed that they be limited to General Business and Highway Business. We also did a hundred and three hundred foot perimeter around that showing that while staff did not proposed putting a limitation on residential structures, daycares, churches, etc. but if that were proposed basically you would rule out the possibility of these types of uses going in the city. In the staff recommendation we are recommending that a conditional use be required for all of these types of uses. We also have some development standards that we are proposing. We are proposing if they choose to do any type of beverages or food products that they comply with the State Health Department and the gaming operation be open so that when you walk in you can see what is going on and not behind closed doors. We are also proposing that there be a property separation between one internet sweepstakes business and another internet sweepstakes business of 1,000 feet. We have a lot of interest in Port Elizabeth shopping center and there is a possibility that you may be able to get two of these types of businesses out there. There is plenty of parking but we think that there should be a space limitation between the types of businesses. We are proposing that each business be limited to 220 terminals and the hours of operation be between 8:00 am and midnight and an age limitation of 21 years.

Councilman Stimatz said it looks like gambling. He realizes that the State has not ruled on it yet. That is an issue he has. If it is not gambling then why are they asking for a 21 year old age limit? The reason he says that is the issue that we have in the City is for something for the eighteen to twenty year old to do. He would ask that you call some jurisdiction and see what kind of issues they have had. We talk about the gaming operation shall be visible and this goes back to an earlier signage issue with window signs so do we want to make special conditions that you have to have windows in the front and how much of the inside has to be visible from the outside for the police.

Ms. Brooks said the proposed text amendment came from an individual who wanted to get this in our ordinance. Many jurisdictions have no age limits. It was up to the proprietor to determine what age they wanted. We have found that most of these businesses do put an age limit on it.

Mr. Stimatz wanted to know what the Police Chief would like to have visible to the officers. They are putting in cameras and locking the doors and they say they are subject to robberies. They have identified themselves as a high value target. Do you allow this in a building such as Levels where you can't see inside at all or does it have to be a building with sidewalk windows that come down to a certain level and can't be impaired with any signage?

Chief Crudup said that they talked with about five or six different jurisdictions. Most of them have a storefront view. We can see inside the business to make sure everything is as it should be.

Mr. Stimatz said that he thinks that we should have ahead of time some objective standard by which to measure that whether it is good or not. If you can come up with an objective measure then you might as well write it in the ordinance. His feeling is here is the chance to tell them what you want to be able to see.

Chief Crudup said he would like the chance to visit some places to see what we can do.

Mr. Stimatz said we could drag it out until next year and he doesn't want to hold up someone from setting up their business.

Mayor Pro Tem Baker said she just wonders if there is an agency or organization to oversee the software. Is there a periodic check to see they are paying out 93% or what they are paying out? Who drives that and who watches it to make sure that the software providers are doing what they say that they are doing?

Ms. Brooks said she can't answer that question as she doesn't know.

Councilwoman Hummer said since the General Assembly hasn't ruled on it yet that tells her something. Senator Marc Basnight has concerns about it and that tells her something. Also she doesn't think Elizabeth City is ready for the gaming industry to come here. We are trying to do everything that we can to project a positive image and it bothers her after hearing the question from Mr. Stimatz that children can go in. We get a lot of criticism that we aren't doing anything for children and yet there is a possibility that we could act on something that could be harmful to children and it is gambling and she is not ready to bring it here.

Councilman King said that if we are going to bring this type of business here then the age limit should be 18. A kid going in at 13 or 14 he just doesn't see it because it is a form of gambling.

Councilwoman Meggs asked if we got any revenue from this type of business.

Mr. Stimatz asked if we could charge so much for the terminals.

Mr. Morgan said he doesn't see why we couldn't. Of course, you would have the ad valorem tax revenues based upon the ownership of the personal property. He tells you one thing that Ms. Hummer mentioned concerns him from a legal point of view and that is this: while we all see this as perhaps as a form of gambling, every jurisdiction in North Carolina that has tried this use has been forbidden from doing so by the courts. His feeling is that by handling this by conditional use permit which must come to Council for approval. That gives you pretty much power in determining what sort of objective rules you want to impose to allow something like this. As long as we treat all of them the same there is not a challenge that can be presented. Rather than saying we don't want this from his legal point is that we should not do that but rather impose reasonable objective standards that any applicant would need to follow in order to operate this business.

Mr. Stimatz said that is the reason he thought that it came before us because we don't have a choice. We have to have a text amendment. We have to have something that allows this. The only question is what form it is going to take. As much as he doesn't particular want it to come here he thought that we didn't have a choice about having something. The question is are we going to control the form?

Mr. King said his concern would be the hours. What would the hours be?

Ms. Brooks said that we have proposed 8:00 a.m. to midnight. We found in a lot of jurisdictions they do not control the hours. The one in Williamston has changed their hours from 10:00 a.m. to 3:00 a.m. They did that because they hit the second shift people that were interested in coming in. They don't necessarily stay open until 3:00 a.m. but they do have business from the second shift employees.

Ms. Hummer said that since we have received legal advice that we can't turn this down then we should give the Chief of Police longer than 7:30 to tell us what he would like to see placed in this amendment.

Mr. Stimatz said we are only passing the ordinance tonight. They would still have to come back for the special use permit. They would still have to come before Council for that. At that time we could have that objective standard written even though it isn't codified it could still be our standard.

Mr. Morgan said as long as we publish that as being the standard we use for all applicants.

Mr. Stimatz asked if we were clear on what we are doing? Eighteen years of age, hours 8:00 to midnight Monday through Saturday is fine but let's give Sunday some respect.

Mr. Morgan said that we cannot legally separate Sunday from the other days of the week.

3} EXCUSE COUNCILMAN EVANS FROM MEETING:

Mayor Atkinson stated that Councilman D. B. Evans asked to leave the meeting due to illness.

A motion was made by Councilman J. A. Stimatz, seconded by Councilman R. E. King to acknowledge the request to be excused received from Councilman D. B. Evans. Those voting in favor of the motion were: Stimatz, King, Baker, Hummer, Meggs and Rivers. Against: None. Motion carried.

4} CLOSED SESSION:

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

A motion was made by Mayor Pro Tem J. M. Baker, seconded by Councilwoman L. A. Hummer for consultation with the City Attorney on General Legal matters to preserve attorney/client

privileges as per NCGS 143-318.11 (a) (3); and, consultation with the City Attorney to preserve the attorney/client privileges between attorney and the public body which is privilege is hereby acknowledged as per NCGS 143-318.11 (a) (3) – Teen Challenge verses City of Elizabeth City. Those voting in favor of the motion were: Baker, Evans, Hummer, King, Meggs, Rivers and Stimatz. Against: None. Motion carried.

Upon the end of the Closed Session:

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

Mayor Atkinson declared the meeting back into full session.

5} ADJOURNMENT:

Mayor Atkinson called for a motion to adjourn the Work Session Meeting.

A motion was made by Councilman J. A. Stimatz, seconded by Mayor Pro Tem J. M. Baker to adjourn the meeting. Those voting in favor of the motion were: Stimatz, Baker, Hummer, King, Meggs and Rivers. Against: None. Motion carried.

Mayor Atkinson declared the meeting closed at 7:08 p.m.

Dianne S. Pierce-Tamplen, MMC
City Clerk

Stephen S. Atkinson
Mayor