

**City Council Regular Session  
March 28, 2016**

The City Council of the City of Elizabeth City met in regular session on Monday, March 28, 2016 in Council Chambers, located on the 2<sup>nd</sup> floor of the Municipal Administration Building, 306 E. Colonial Avenue, Elizabeth City, NC.

MEMBERS PRESENT: Mayor Joe Peel  
Councilwoman Jean Baker  
Councilman Ray Donnelly  
Mayor Pro Tem Anita Hummer  
Councilman Tony Stimatz  
Councilman Michael Brooks  
Councilman Rickey King  
Councilman Darius Horton  
Councilman Johnnie Walton

MEMBERS ABSENT: None

OTHERS PRESENT: City Manager Rich Olson  
City Attorney Bill Morgan  
Finance Director Sarah Blanchard  
Planning Director June Brooks  
Police Chief Eddie Buffalo  
Electric Superintendent Karl Clow  
Assistant to the Manager Angela Cole  
Human Resources Director Katherine Felton  
Public Utilities Assistant Director Larnetta Brothers  
Deputy Fire Chief Barry Overman  
ECDI Director Wade Nichols  
IT Director Matthew Simpson  
Inspections Director Stanley Ward  
Parks and Recreation Director Bobbi White  
City Clerk Vivian White

The City Council regular session was called to order by Mayor Joe Peel at 7:05 p.m. Mayor Peel welcomed everyone to the meeting and recognized Pastor Phil Dowdy to give the invocation, after which Mayor Peel led the Pledge of Allegiance.

**1. Agenda Adjustments and Approval:**

Mayor Peel requested Council's pleasure regarding approval of the prepared agenda.

Mayor Peel announced that continuation of the Parks and Recreation Master Plan presentation from the Work Session would be added as Item 2(a).

Mayor Peel announced that the Committee Reports from the Work Session would be added as Item 7(c).

Councilman Brooks requested to add "Masters Touch Church" to the Regular Agenda for discussion.

**Motion was made by Mayor Pro Tem Anita Hummer, seconded by Councilman Rickey King, to approve the agenda with any necessary adjustments. Those voting in favor of the motion were: Baker, Donnelly, Hummer, Stimatz, Brooks, King, Horton, and Walton. Against: None. The motion carried.**

**2. Statement of Disclosure:**

The City Clerk read the Statement of Disclosure. No conflict of interest disclosures regarding items listed on the agenda were made.

a. Presentation/Consideration – 2016 Parks and Recreation Master Plan Update  
(continued discussion from Work Session):

Mayor Peel announced that presentation of the recently completed Parks and Recreation Master Plan began during the Work Session. He noted that the Council did not quite finish the discussion; and therefore, added the item to the agenda for its completion. Mayor Peel turned the discussion over to Parks and Recreation Director Bobbi White and Derek Williams of Benesch to complete their review.

Mr. Williams reviewed in detail his recommendations for park acreage needs, recreation facility needs, facility proposals, special use facilities needs, senior centers and services needs, and needs for renovations to existing parks; as well as trends in parks and recreation facilities. He noted that additional information regarding these matters was detailed within the written report provided.

Mr. Williams also reviewed the list of capital improvements being recommended by his report. He said that the improvements had been divided into immediate, intermediate, and long range needs for the Council's consideration. He stated that all needs identified required an approximate \$15.8 million capital improvement plan. He cautioned the Council to understand that, although the plan represented a 10-year time period, it would not be expected that all improvements identified could be accomplished in that time. He congratulated the City on its track record for receiving grants in the past for park needs and stated that grant funding would be a possible source to provide for the current needs identified.

Councilman Stimatz opined that the number of responses received from the survey conducted did not represent a sufficient sampling. He pointed out that the City had approximately 20,000 residents and surveys were returned by only 101. He encouraged a broader survey be conducted possibly using an online source such as Survey Monkey. He pointed out that the Council had also requested that a survey of all school children be conducted to determine their desires for park and recreation facilities. Councilman Stimatz suggested that school facilities should be considered when contemplating recreation opportunities for residents of the City and County. He stated that the report contained some very good recommendations that the Council should and would consider.

Councilman Walton stated that the Master Plan represented a blueprint that could be modified in the future as needs changed. Mr. Williams agreed and stated that the plan should be flexible.

Mayor Peel requested the Council's pleasure regarding adoption of the plan as submitted.

**Motion was made by Councilwoman Jean Baker, seconded by Councilman Darius Horton to approve and adopt the 2016 Elizabeth City-Pasquotank County Parks and Recreation Comprehensive Master Plan as presented. Those voting in favor of the motion were: Baker, Donnelly, Hummer, Stimatz, Brooks, King, Horton and Walton. Against: None. Motion carried.**

**3. Presentations:**

a. Proclamation for Linemen Appreciation Day – April 18, 2016

Mayor Peel read and presented a proclamation to Karl Clow, Electric Department Superintendent recognizing April 18, 2016 as Linemen Appreciation Day in Elizabeth City; and urged all citizens to remember the selfless work the City's linemen do every day to keep the lights on. Mr. Clow thanked Mayor Peel and the City Council for the proclamation on behalf of the Electric Department personnel.

b. Adoption of Resolution Awarding Gun and Badge to Retiring Police Officer and presentation to Sergeant Rick Pureza.

Mayor Peel requested the Council's pleasure regarding adoption of the following resolution.

**Motion was made by Councilman Tony Stimatz, seconded by Councilman Rickey King to adopt the following resolution awarding to Sergeant Rick Pureza his service weapon and badge in conjunction with his retirement, which is effective April 1, 2016. Those voting in favor of the motion were: Baker, Donnelly, Hummer, Stimatz, Brooks, King, Horton and Walton. Against: None. Motion carried.**

**RESOLUTION # 2016-03-02  
AWARDING BADGE AND SERVICE SIDEARM  
TO RETIRING POLICE OFFICER**

**WHEREAS**, G.S. 20-187.2 provides that retiring members of municipal law enforcement agencies may receive, at the time of their retirement, the badge worn or carried by them during their service with the municipality; and

**WHEREAS**, G.S. 20-187.2 further provides that the governing body of the municipal law enforcement agency may, in its discretion, award to a retiring member the service sidearm of such retiring member; and

**WHEREAS**, Sergeant Rick D. Pureza served as a member of the Elizabeth City Police Department for a period of 29 years and will retire from the City of Elizabeth City on April 1, 2016.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Elizabeth City, North Carolina that the badge and service weapon worn and/or carried by Sergeant Rick D. Pureza be awarded to him on the occasion of his retirement.

**ADOPTED** this 28<sup>th</sup> day of March 2016.

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Joseph W. Peel  
Mayor

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Vivian D. White, CMC/NCCMC  
City Clerk

Mayor Peel invited Sergeant Rick Pureza, Chief Eddie Buffaloe and Captain John Young to join him at the podium. Mayor Peel thanked Sergeant Pureza for his 29 years of service to the community and read and presented the above resolution to him. Sergeant Pureza expressed his appreciation for being able to serve the City of Elizabeth City during his law enforcement career.

*(Clerk Notation: Mayor Peel moved the agenda forward at 7:30 p.m. in order to hold the scheduled Public Hearings. He advised the audience present that those registered to offer Public Comments would follow the public hearings.)*

**3. Comments from the Public:**

Lori Cain, 723 Dawson Street, Elizabeth City, NC informed the Council about water damage she felt was being done to her home because of actions of the City. She asked for something to be done to keep the water from Charles Creek off her property and from going under her home. She stated that motorists cannot travel down Dawson Street because of the flooding.

*Clerk Notation:* During the February 22, 2016 and March 14, 2016 Council meetings, supporters and members of The Master's Touch Church spoke during the Public Comments portion of the Council's agenda to encourage the Council to amend the

City's Noise Ordinance to exempt churches. During this March 28, 2016 meeting, four individuals spoke in support of the Master's Touch Church request to exempt churches from the Noise Ordinance. These individuals are listed by name and address, as follows:

1. Rahtina Stallings, 99 Seagull Drive, Elizabeth City, NC
2. Kerita Snowden, 1203 Southern Avenue, Elizabeth City, NC
3. Pastor Timothy Stallings, Jr., 99 Seagull Drive, Elizabeth City, NC
4. Timika Staton, 311 Betty Drive, Elizabeth City, NC

**4. Consent Agenda:**

*(Clerk Notation: Items "a" through "e" recommended for approval by the Finance Committee during their meeting of March 24, 2016.)*

Mayor Peel recognized Mr. Olson to read the items on the Consent Agenda into the record. Mr. Olson recommended approval of all items as follows:

**Beginning of Consent Agenda:**

- a. Consideration – Authorization to submit an application to the TDA in the amount of \$2,500 to support Coast Guard Day 2016;
- b. Consideration – Adoption of the following various budget amendments required for accounting purposes and Adoption of the following Capital Project Ordinance for traffic signal construction at Halstead and Mt. Everest Drive:

**BUDGET AMENDMENTS**

**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 fiscal year ending June 30, 2016:

**SECTION I.** That the General Fund Balance Appropriated (103990.0000) be decreased, and Transfer from Capital Reserve Fund (103970.3050) be increased by \$59,861.30.

That the Capital Reserve Fund Balance Appropriated (513990.0000) and Transfer to General Fund (516615.9000) be increased by \$59,861.30.

**(To close out inactive Capital Reserve Fund.)**

**SECTION II.** That the General Fund Lot Clearing Revenue (103920.0010) and Police Department Code Enforcement Expenditure (105100.4601) be increased by \$10,000.

**(To record additional funding for code enforcement.)**

**SECTION III.** That the Solid Waste Contingency (405800.6000) be decreased by \$19,388 and Debt Service Solid Waste Vehicle (405800.8101) be increased by \$19,388.

**(To record debt payments to be made this fiscal year for leaf truck.)**

**ADOPTED**, this the 28<sup>th</sup> day of March, 2016.

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**Joseph W. Peel**  
Mayor

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Vivian D. White, CMC/NCCMC  
City Clerk

**HALSTEAD BOULEVARD/MOUNT EVEREST DRIVE  
TRAFFIC SIGNAL CONSTRUCTION  
CAPITAL PROJECT ORDINANCE**

**BE IT ORDAINED** by the City Council of the City of Elizabeth City, North Carolina, that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following capital project ordinance is hereby adopted:

**SECTION I.** The project authorized is the Halstead Boulevard/Mount Everest Drive Traffic Signal Construction to be financed with developer fees.

**SECTION II.** The officers of this unit are hereby directed to proceed with the project within the terms of the project documents and the budget contained herein.

**SECTION III.** The following revenues are anticipated to be available to complete this project:

(463490.1000)	Pavilions at Tanglewood	\$ 96,100
(463490.2000)	Stockbridge Development	96,100

**SECTION IV.** The following amount is appropriated for this project:

(466016.7301)	Halstead Capital Improvements	\$192,200
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**SECTION V.** Copies of this capital project ordinance shall be made available to the Budget Officer and Finance Director for direction in carrying out this project.

**ADOPTED**, this the 28<sup>th</sup> day of March, 2016.

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Joseph W. Peel  
Mayor

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Vivian D. White, CMC/NCCMC  
City Clerk

- c. Consideration – Adoption of the following Budget Amendment for Downtown Improvement Grant Program in the amount of \$41,192;

**BUDGET AMENDMENT**

**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 fiscal year ending June 30, 2016:

**SECTION I.** That the General Fund Transfer from Aviation Park Fund (103930.6300) and General Fund Downtown Improvement Grant (106600.4300) be increased by \$41,192.

That the Aviation Park Fund Balance Appropriated (633990.0001) and Aviation Park Fund Transfer to General Fund (639008.9103) be increased by \$41,192.

**(To transfer additional funding for Downtown Improvement Grants.)**

ADOPTED, this 28<sup>th</sup> day of March 2016.

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**Joseph W. Peel**  
Mayor

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**Vivian D. White, CMC/NCCMC**  
City Clerk

- d. Consideration – Award of Downtown Improvement Grant Program Application to Island Breeze Grill in the amount of \$20,000;
- e. Consideration – Adoption of the following ordinance declaring street closings for the annual North Carolina Potato Festival:

**ORDINANCE #2016-03-01**  
**AN ORDINANCE DECLARING A ROAD CLOSURE FOR THE ANNUAL NORTH CAROLINA POTATO FESTIVAL**

**WHEREAS**, the City Council of Elizabeth City acknowledges a long tradition of providing an annual springtime festival for the pleasure of its citizens; and

**WHEREAS**, the City Council of Elizabeth City acknowledges its citizens realize a financial benefit from holding the annual North Carolina Potato Festival event; and

**WHEREAS**, the City Council of Elizabeth City acknowledges the festival event requires approximately six days to install signing and traffic control, amusement and entertainment structures and equipment, food and other retail vendors, and other attractions, and also requires approximately ten (10) hours for removing same, and litter;

**NOW THEREFORE BE IT ORDAINED**, by the City Council of Elizabeth City pursuant to the authority granted by G.S. 20-169 that they do hereby declare a temporary road closure during the day(s) and times set forth below on the following described portion of a State Highway System route:

**Date(s) and Times:** 10:00 a.m. Tuesday, May 17, 2016 until 3:00 a.m. Monday, May 23, 2016

**Route Description(s):** S Water/Southern Avenue Street (SR 34/1164) between E Ehringhaus Street (US Business Highway 17) and Shepard Street; E Ehringhaus Street, westbound lanes from S McMorrine Street to S Water Street (SR 34/1164)

**Date(s) and Times:** 6:00 p.m. Thursday, May 19 until 3:00 a.m. Monday, May 23, 2016

**Route Description(s):** E Ehringhaus Street (US Business Highway 17), eastbound lanes from McMorrine Street to S Water Street; S Water Street (SR 34/1164) from E Ehringhaus Street (US Business Highway 17) to E Church Street

**Date(s) and Times:** 10:00 a.m. Friday, May 20, 2016 until 3:00 a.m. Monday, May 23, 2016

**Route Description(s):** S Water Street (SR 34/1164) from E Church Street to E Fearing Street

**Date(s) and Times:** 1:00 p.m. Friday, May 20, 2016 until 3:00 a.m. Monday, May 23, 2016

**Route Description(s):** South and North Water Street (SR 34/1164) from E Fearing Street to E Elizabeth Street

This ordinance to become effective when signs are erected giving notice of the limits and times of the event, and implementation of adequate traffic control to guide through vehicles around the event area.

**SECTION I. EFFECTIVE DATE:** This Ordinance as revised herein shall take effect immediately upon adoption.

**SECTION II. SEVERABILITY CLAUSE.** If any section, or part of provision of this Ordinance is declared unconstitutional or invalid by a court of competent jurisdiction, then it is expressly provided and it is the intention of the City Council of the City of Elizabeth City in passing this Ordinance that its parts shall be severable and all other parts of this Ordinance shall not be affected thereby and they shall remain in full force and effect.

**READ, CONSIDERED, AND ADOPTED** at a regular meeting of the City Council of the City of Elizabeth City, North Carolina, during which a quorum was present, held on the 28<sup>th</sup> day of March, 2016.

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Joseph W. Peel  
Mayor

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Vivian D. White, CMC/NCCMC  
City Clerk

- f. Consideration – Amendment to the City’s Special Event Policy to incorporate NCDOT requirements for street closure.

**End of Consent Agenda.**

**Motion was made by Councilman King, seconded by Councilman Donnelly to approve the Consent Agenda as presented. Those voting in favor of the motion were: Baker, Donnelly, Hummer, Stimatz, Brooks, King, Horton and Walton. Against: None. Motion carried.**

**5. Public Hearings:**

**Motion was made by Councilman Johnnie Walton, seconded by Councilman Michael Brooks to take the minutes of the public hearings in verbatim form.**

**Councilman Stimatz offered a friendly amendment to take the minutes in a near-verbatim format. Councilman Walton accepted the friendly amendment.**

**Councilman Walton clarified that he only wished to have discussion among Councilmembers transcribed in near verbatim form, not comments made by staff or members of the public.**

**Those voting in favor of the motion were: Baker, Donnelly, Hummer, Stimatz, Brooks, King, Horton and Walton. Against: None. Motion carried.**

- a. Consideration – Hold a Public Hearing to gather public comment regarding revisions to the Downtown Maintenance Code.

Mayor Peel recognized Angela Cole for her comments on this matter. Ms. Cole stated that this item had been revised pursuant to comments made by the City Council during the February 22, 2016 work session. She stated that suggestions made by the Councilmembers as well as the downtown partners, ECDI, the TDA and the Coast

Guard, had been reflected as requested.. She stated that no additional changes had been made to the proposed ordinance.

Mayor Peel inquired if there were questions by Councilmembers. Hearing none, he declared the public hearing open and inquired of the City Clerk if persons were present who wished to be heard. Upon her reply that no one wished to speak, he declared the public hearing closed.

**Motion was made by Councilwoman Jean Baker, seconded by Councilman Ray Donnelly, to adopt the following ordinance revising the Downtown Maintenance Code as presented. Those voting in favor of the motion were: Baker, Donnelly, Hummer, Stimatz, Brooks, King, Horton and Walton. Against: None. Motion carried.**

**ORDINANCE #2016-03-02  
TO AMEND CHAPTER 10 BUILDING AND BUILDING REGULATIONS,  
ARTICLE II. CODES, DIVISION 3 DOWNTOWN MAINTENANCE CODE  
SECTIONS 10-87  
IN THE CITY OF ELIZABETH CITY CODE OF ORDINANCES**

*WHEREAS*, a community's downtown is the face it presents to the world; its condition speaks volumes about the health of the local economy, whether or not local residents and property owners reinvest in themselves, and even the history of the town's development;

*WHEREAS*, a vibrant downtown – or the lack of one – affects the community's ability to attract and retain residents, businesses and institutions, jobs, and investment that enable a town to endure and thrive; and

*WHEREAS*, the evolution of shopping habits, transportation methods, and development patterns have contributed to drastic changes in downtown economies; and as a result, less available capital and less traffic have led to neglected buildings and vacant storefronts; and

*WHEREAS*, the City Council believes that the historic commercial district is an important asset to our community and should be a source of community pride; and

*WHEREAS*, the intent of the Ordinance by way of Code Enforcement is to improve the safety, health and welfare of all citizens within the city's jurisdiction; and

*WHEREAS*, the City Council has identified several goals and objectives, including improving the quality and safety of all neighborhoods by developing aesthetic-based ordinances to address blight in neighborhoods; and

*WHEREAS*, the City Council hereby adopts revisions as noted by deletion and addition in the following Chapter 10 Buildings and Building Regulations, Article II Codes of the City of Elizabeth City Code of Ordinances:

**SECTION I. ARTICLE II. CODES SECTION 10-86**

**Sec. 10-86. Short title.**

This division shall be known as the "downtown maintenance code" and may be cited as such. (Code 1993, § 4-76; Ord. of 4-6-1998, § 1)

**SECTION II. ARTICLE II. CODES SECTION 10-87**

**~~Sec. 10-87. Duties and responsibilities of property owners.~~**

~~(a) Walls. Where a wall of a building has become exposed as a result of demolition of adjacent buildings, said wall must have all doors, windows, vents or other similar openings closed with material of the type comprising the wall. No protrusions or loose material shall be in the wall. The exposed wall shall be painted, stuccoed or bricked so as not to detract from the aesthetics and value of adjacent property and weatherproofed, if necessary, due to the construction or construction material to prevent deterioration of the wall. The party causing the exposure of the wall shall bear the obligation of compliance with this subsection.~~



~~(b) Painting. All exterior surfaces which have been painted shall be maintained free of peeling and flaking. Where ten percent or more of the aggregate of any painted surface shall have peeling or flaking or previous paint worn away, the entire wall shall be repainted. (Code 1993, § 4-77; Ord. of 4-6-1998, § 2)~~

**SECTION III. ARTICLE II. CODES SECTION 10-87.**

**Sec. 10-87. Scope and Applicability.**

Aesthetic considerations may constitute a valid basis for the exercise of police power if the public benefit outweighs private harm including: protection of property values, preservation of the character and integrity of the community, promotion of the comfort, happiness, and emotional stability of area residents.

- (a) The provisions of the ordinance shall apply to all commercial premises, buildings, structures and accessories thereto within Elizabeth City's Central Business District zoning classification. The Minimum Housing Code for the City of Elizabeth City shall apply to residential structures; for combination structures, both codes will apply, with the more restrictive provision controlling in case of a conflict between the two. This code establishes minimum standards for the initial and continued occupancy and/or use of all such buildings, and does not replace or modify standards otherwise established for the construction, repair, alteration, preservation or use of the building, equipment or facilities subject to the code.
- (b) It shall be the responsibility of the owner of all buildings, structures, and/or premises to ensure that said buildings, structures, and/or premises are maintained in compliance with all applicable provisions set out here. Abatement of the following violations below may require varying levels of conformance with the Historic Preservation District Overlay of the Elizabeth City Historic Preservation Commission (HPC) and, in turn, requiring varying levels of review and approval that may include the National Register of Historic Districts and standards for historic preservation set out by the Secretary of Interior.
- (c) The provisions of this code apply whether the structure or building is occupied or vacant. All unoccupied or vacant structures or buildings shall be secured by the owner (or their representatives or any party in interest) to reasonably prevent the entry of unauthorized persons or the occurrences of damage creating conditions not permitted by law.
- (d) In the event any provision, standard or requirement of this article is found to be in conflict with any provision of any other ordinance or code of the city or State, the provision which establishes the higher standard or more stringent requirement for the promotion and protection of the health, safety, or welfare of citizens and the peace and dignity of the city shall control.

**SECTION IV. ARTICLE II. CODES SECTION 10-88.**

**Sec. 10-88. Maintenance Standards for Downtown Commercial Structures.**

- (a) All commercial premises shall be maintained in a state of good repair that prevents further decay from wind, rain, and external weather and reasonably secures the building from any unauthorized entry by humans, animals or birds. All commercial premises shall be free of nuisances and any hazards to the safety of occupants, customers or other persons utilizing the premises or to pedestrians and/or vehicles passing thereby, and shall remain in compliance with all enforceable state and/or local building and fire codes. Without limitation of the

foregoing requirement, the existence of any of the following conditions shall be deemed to be a violation of this section and must be corrected:

- (1) Such damage by fire, wind or other causes as to render the building unsafe;
  - (2) Dilapidation, decay, unsanitary conditions or disrepair, which is dangerous to the health, safety and welfare of the occupants or other people in the city;
  - (3) Defects significantly increasing the hazards of fire, accident or other calamities;
  - (4) Any violation of the city fire prevention code which constitutes a condition which is unsafe and/or especially dangerous to life;
- (b) To facilitate and ensure that the conditions listed above are satisfied, all owners and/or tenants of commercial premises shall be required comply with the following:
- (a) **Commercial waste. Control the accumulation of garbage, trash, or rubbish, which creates health and sanitation concerns.** All garbage and solid waste, including cigarette butts, shall be disposed of in approved containers in a safe and sanitary way (*Reference Elizabeth City Code Sec. 74-12. Cleaning sidewalks*);
  - (b) **Sidewalks. Remove ice, snow, leaves, dirt or other natural waste from sidewalks on a regular basis.** All waste shall be disposed of in approved containers or neatly placed at the back of curb for sanitation service pick up;
  - (c) **Structures.** Remove all broken glass, loose shingles, loose wood, crumbling stone or brick, loose or broken plastic or other dangerous objects or similar hazardous conditions **immediately**. Exterior surfaces shall be maintained in such material or treated in such a manner as to prevent deterioration and shall be repaired or replaced with like or similar material according to its original use. Approval must be received from the Elizabeth City HPC for historical structures with proposed material changes; Prompt repairs of broken glass to previous or original condition, wooden frames or hard surface materials should be completed in short term to maintain the appearance and safety of the building;
  - (d) **Loose building objects and appurtenances.** ~~The building and environs shall be kept free of~~ Objects and elements protruding from building walls, roof and environs which are unsafe or not properly secured or which can create a **hazard must be removed**. For example, abandoned electrical boxes and conduits, wires, sign brackets, advertising sign structures, attached or freestanding awnings, marquees and their supporting members and other similar attachments and structures shall be maintained in good repair and shall not cause a safety hazard to the occupants, pedestrians or other residents of, or visitors to the city;
  - (e) **Exterior porches, balconies, and fire escapes.** All exterior porches, landings, balconies, stairs and fire escapes shall maintain the bannister height required by applicable fire and/or building code. They shall be maintained to minimize the hazard of falling, and the same shall be kept structurally sound, in good repair and free of defects;

- (f) Storm water appurtenances. Loose gutters and downspouts shall be replaced or repaired as necessary and shall be appropriately located so as not to drain across the sidewalk, or cause a hazard to pedestrian, vehicular traffic or adjacent or nearby property;
- (g) Secondary structures. Attached or unattached accessory structures shall be kept in good repair and not cause a safety hazard;
- (h) Windows. Loose windows must be repaired and have sashes of proper size and design and shall be free from rotten wood, broken joints or broken or loose mullions. Broken or cracked glass that could be in danger of falling or shattering **shall be removed**. Covering an opening left by broken glass with sheets of wood will not be permitted for more than 30 days. Temporary boarding materials, including wood and paper, shall be replaced immediately, **unless a valid building permit has been issued for the property and renovation activity has occurred within 30 days, as noticed by the building inspector and/or code enforcement officer**.
- (i) Walls. Where a wall of a building has become exposed as a result of demolition of adjacent buildings, said wall must have all doors, windows, vents or other similar openings closed with material of the type comprising the wall. No protrusions or loose material shall be in the wall. The exposed wall shall be painted, stuccoed or bricked so as not to detract from the aesthetics and value of adjacent property and weatherproofed, if necessary, due to the construction or construction material to prevent deterioration of the wall. The party causing the exposure of the wall shall bear the obligation of compliance with this subsection.
- (j) Painting. All exterior surfaces which have been painted shall be maintained free of peeling and flaking. Where ten percent or more of the aggregate of any painted surface shall have peeling or flaking or previous paint worn away, the entire wall shall be repainted. (Code 1993, § 4-77; Ord. of 4-6-1998, § 2).

**SECTION V. ARTICLE II. CODES SECTION 10-89.**

**Sec. 10-89. Investigation.**

Whenever it appears to the code enforcement officer that a nonresidential or mixed use building or structure has not been properly maintained so that the safety or health of its occupants or members of the general public may be jeopardized for failure of the property to meet the minimum standards established by Section 10-88, the code enforcement officer shall undertake a preliminary investigation. If entry into the structure for purposes of investigation is necessary, such entry shall be made pursuant to a duly issued administrative search warrant **by the courts** or with permission of the owner, the owner's agent, a tenant, or other person legally entitled to permit entry. The code enforcement officer shall have permission to inspect all exterior areas of the building, structure, or premises as allowed by Section 42-61 Right of entry.

**SECTION VI. ARTICLE II. CODES SECTION 10-90.**

**Sec. 10-90. Complaint and hearing.**

If the preliminary investigation discloses evidence that a building is in violation of the minimum standards, the code enforcement officer shall issue and cause to be

served upon the owner of such building a complaint stating the charges and containing a notice that a hearing will be held before the Board of Adjustment per the Board's rules. The owner shall have the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint notice. Any person desiring to do so may attend such hearing and give evidence relevant to the matter being heard. The rules of evidence prevailing in courts of law or equity shall not be controlling in hearings under this section but any evidence received must be relevant and material. Following the hearing, the Board shall dismiss the complaint if no violation is determined. If the Board finds that violations of this article exist, the Board shall order compliance setting forth a maximum of up to 90 days within which to correct the violations.

**SECTION VII.** ARTICLE II. CODES SECTION 10-91.

**Sec. 10-91. Service of complaints and orders.**

- (a) Complaints and all orders issued by the code enforcement officer shall be served by the code enforcement officer upon persons either personally or by certified mail. When service of a complaint or order is accomplished personally or by certified mail, such service is hereby deemed to be complete on the day of delivery to or receipt by the person served. When service is made by certified mail, a copy of the complaint or order shall also be sent by regular mail. Service shall be deemed sufficient if the certified mail is unclaimed or refused and/or the regular mail is not returned by the post office within ten days after mailing. If regular mail is used, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected.
- (b) If the identities of any owners or the whereabouts of persons are unknown and the same cannot be ascertained by the code enforcement officer in the exercise of reasonable diligence, or, if the owners are known but have refused to accept service by certified mail and the code enforcement officer makes an affidavit to that effect, then the serving of such complaint or order upon the owners or other persons may be made by publication in a newspaper of general circulation in the city at least once per week or two successive weeks. When service is made by publication, a copy of the complaint or order shall be posted in a conspicuous place on the premises affected by the complaint or order; in the case of the complaint, it must be posted at least ten days prior to the hearing.

**SECTION VIII.** ARTICLE II. CODES SECTION 10-92.

**Sec. 10-92. Failure to comply with orders.**

- (a) If the owner fails to comply with an order to repair the building or structure, the code enforcement officer may cause such structure to be repaired, and pending such repairs, may order the building to be vacated and closed;
- (b) The actual cost incurred by the city in remedying the threat or potential violation of this article shall be charged to the property owner as and in the manner provided for liens listed in the county tax supervisor's office. In addition, the city shall include a fee of administration, investigation, researching, travel and monitoring of the cleanup in an amount as set from time to time by the city council which shall also be paid by the property owner, or charged as a lien against the property.
- (c) If charges for the removal or abatement of a violation are not paid within 30 days after the receipt of a statement of charges, such charges shall become a lien upon the land or premises where the public nuisance existed and shall be collected as unpaid taxes, as provided in G.S. 160A-193.

- (d) Each day such threat or potential violation of this article exists after notification to the property owner and/or any other person in possession of, or any other person in control of, or any person responsible for such condition upon such property shall constitute a separate and distinct misdemeanor punishable by law. This remedy shall be in addition to any abatement action taken by the city.
- (e) Each day that a violation continues after notification that such violation exists shall constitute a separate and distinct offense for purposes of the penalties and remedies set forth in this section.
- (f) This article may be enforced by any one, all, or any combination of the remedies authorized in the code.

**SECTION IX. EFFECTIVE DATE:** This Ordinance, as revised herein shall take effect immediately upon adoption.

**SECTION X. CODIFICATION.** The provisions of this Ordinance shall be published as appropriate in the City of Elizabeth City Code of Ordinances as soon as practicable after its adoption.

**SECTION XI. SEVERABILITY CLAUSE.** If any section, or part of provision of this Ordinance is declared unconstitutional or invalid by a court of competent jurisdiction, then it is expressly provided and it is the intention of the City Council of the City of Elizabeth City in passing this Ordinance that its parts shall be severable and all other parts of this Ordinance shall not be affected thereby and they shall remain in full force and effect.

**SECTION XII.** All ordinances and sections of the Elizabeth City Code, and parts thereof, inconsistent herewith be and the same hereby are repealed to the extent of such inconsistencies.

**READ, CONSIDERED, AND ADOPTED** at a regular meeting of the City Council of the City of Elizabeth City, North Carolina, during which a quorum was present, held on the 28<sup>th</sup> day of March, 2016.

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Joseph W. Peel  
Mayor

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Vivian D. White, CMC/NCCMC  
City Clerk

- b. Consideration – Hold a Public Hearing to gather public comment on an Annexation Petition submitted by the Ralph O. Davis Testamentary Trust et al for 16.022 acres located at Halstead Boulevard between Millbrooke Circle and Body Road.

Mayor Peel recognized City Manager Olson for his comments. Mr. Olson stated that the City had received a letter on February 24, 2016 from John Morrison, the attorney representing the Ralph O. Davis Testamentary Trust, requesting that the previously denied petition be resubmitted to the City Council for further consideration. Mr. Olson said that there had been no changes to the previously submitted annexation petition. He advised that there is nothing in the City's Code or in State Statutes to prevent resubmission of the annexation petition. He advised that the School of Government had advised that a new Certificate of Sufficiency was not required. He reviewed the ordinance as provided for the Council's consideration.

Mayor Peel declared the Public Hearing open and the following persons were called to the podium to speak in the order in which they registered:

1. Peter Thomson, 2128 Rivershore Road, Elizabeth City NC stated that he represented the Ralph O. Davis Testamentary Trust through his firm, Nortech Realty. He said that the estate of Ralph and Pricilla Davis had been left to seven people, a church and a children's home. He stated that the real estate market had declined drastically in the last few years and he felt that this was the estate's best chance to sell the property. He asked the Councilors to think of the heirs as people and not a corporation.
2. Rhonda Twiddy, 310 Harrier Court, Elizabeth City, NC stated that she was present to represent the Elizabeth City Area Chamber of Commerce Board of Directors. She stated that the Chamber Board of Directors is in favor of the annexation request. She said that the Chamber feels that the proposed apartment complex location is compatible with the City's land use plan and that the project is good for the City. She encouraged the City Council to favorably consider the annexation request and its companion rezoning petition.
3. Paul Jones, 517 Millbrooke Circle, Elizabeth City, NC expressed his objection to the proposed annexation and rezoning petition. He said that the rezoning request was unacceptable to the residents of the Millbrooke Subdivision, which is adjacent to the property in question. He opined that the Council would not be following its own Ethics Disclosure Policy that required actions that would provide the public confidence in the integrity of its government if the denial of the annexation request was overturned. He urged the Council to deny the annexation request.
4. Ronny Williams, 518 Millbrooke Circle, Elizabeth City, NC expressed his objection to the proposed annexation request. He suggested that the Council should be of one accord because citizens were watching the actions taken.

Mayor Peel declared the public hearing closed.

**Motion was made by Councilman Tony Stimatz, seconded by Councilwoman Jean Baker to adopt the following ordinance to extend the corporate limits of the City to include the two parcels identified therein.**

*Clerk notation: The following Councilor discussion is provided in a modified verbatim format pursuant to the motion made by Councilman Walton.)*

Councilman Donnelly: I'd like to make it very clear that everyone understands why I voted against annexation to begin with. I had requested that the whole issue be tabled at the last meeting and I had no support on the Council for that. I was looking for more information regarding the development and the developer. I was also hoping to get substantive information from the residents at Millbrooke. Everything I've heard has been speculative. So I am voting in favor of the annexation based on that. Thank you Mr. Mayor.

Councilwoman Baker: I just take objection to the comment made that someone believes in God and assumes that everybody else here doesn't. That's incorrect, Mr. Williams. I believe in God like you do. And I submit most of the people do. Thank you.

Councilman Walton. Yes and Mr. Donnelly, you say you got more information. Why didn't you all pass it around to everybody else? My email works, too. Everybody was given the same information at the same time. I haven't gotten anything different. Only thing I got different is I went by the Planning Department and got a copy of that application and I'll show you that later after some of these comments are made because it's very important that comments are made because you – Donnelly done made his – he wanted to get it out of the way – he don't want his heart to be beating all fast. So he said, I'm going to go and get mine out of the way early. There's some more up here probably - heart that's beating right fast – they want to get theirs out of the way too. I still stick to my guns because I – the procedure process was done wrong. Procedure was wrong. Daily Advance – they the root of a lot of this stuff because they always telling half sides. Young lady a while ago came up here and said that the Planning

Department voted 7 to 1 – Rich will you tell them how many people on that Planning Department?

Mr. Olson: The Planning Commission – there's seven people on there, there's alternates, too.

Councilman Walton: Well it can't be a 7 to 1 vote then if I'm using my math right. You know, they put anything in the paper to sell a paper and make the other side look good. That's incorrect – it can't be 7 to 1. Developer wrote in the Daily Advance – won't hurt Millbrooke – proposal to add subdivision – it's on 1-25. Gregory estimated the complex would bring about 1600 trips per day to the area. Do ya'll know how much 1600 per day – to me that sounds like – that's in the Daily Advance too, ya'll, so you know if it don't sound right, it's the Daily Advance again. That's how they do things. 2-8 - confidential was sent by Mr. Morgan. So I can't talk about it, but Mr. Stimatz written in my email – do ya'll know – make it clear Mr. Morgan. Given them some examples of what they can't talk about during the annexation. Why is he so involved in it? Why? That early – we hadn't even got the information yet – and he's trying to prove a point. Trying to tell us how to talk and what to do. That's what he did. On the 10<sup>th</sup>, another letter – we met on the 8<sup>th</sup> and we voted 6 – 2 now, majority – super majority. 6 – 2 – that's 75% of the people up here voted for it and we done lost so many percent already. So it doesn't look good, ya'll, because they already have their mind made up like I said the last meeting – all they wanted was more time to influence other people to come on their side. We already lost one now – let's see how it's going to go from this point on. Now, on February 10, the DA – the Daily Advance – I can call that DA from now on – Brooks project is at a risk to the public safety – 6 to 2 vote against the complex. 2-11, Daily Advance, apartment vote may halt road fix. We shouldn't be fixing a road by putting an apartment in people's back yards. To fix a road? We didn't do that on Colonial Avenue – how much more money did we spend on it, Mr. Olson?

Mr. Olson: I don't have those figures.

Councilman Walton: It was a lot of money wasn't it? I can't hear you. You tell them, you know the figures.

Mr. Olson: Councilman Walton, I really don't know what you are talking about.

Councilman Walton: Well, we added 400 more thousand dollars to that project on – not Colonial, but Church. I'm sorry, got my C's messed up. You know what I'm talking about. I got a little Daily Advance in me too. How much money was spent on it?

Mr. Olson: Councilman Walton, I have no idea.

Councilman Walton: A lot of money, a lot – well look that up for us when you get a chance. That's Church Street – it's a different territory – that's Ward 2. Now, City hoped to use \$1.3 million from fees for road. Mayor Joe Peel and Second Ward Councilman Tony Stimatz both said Monday that City staff had planned – Tony already in the equation – I didn't know anything about it – to use \$1.3 million payment of water and sewer impact fee to cover the long awaited utility project on Road. Daily Advance got into it again. Donnelly, Hummer unanswered questions spurred no vote. Donnelly said I just didn't feel comfortable with how quickly it was moving. Hummer says she had unanswered questions as well – but she could not be reached for comment. Daily Advance, Our View, Council failed the leadership test. Boy, you knocking us down. I know what you talking about now Mr. Williams. Council failed the leadership test – of course making sense has never been something Brooks is known for. That's what they said. It is, however, something we believe of Donnelly, King and Hummer. Regardless of their motivation, it certainly wasn't leadership. Here's hoping they'll exercise some now and change their mind about Gregory's project. Got one already. The letter from Attorney Morrison to Morgan – I can't discuss that neither, ya'll – but they keep tagging each other, ya'll. Daily Advance - Council asked to reconsider apartments – that's on the 24<sup>th</sup>. Leaders of Chamber asked to reconsider; Mr. Gardner, entrepreneur asked to reconsider; and Hezekiah Brown – he's the guy that's going to fix up the other shopping mall that we have. Zack Robertson, downtown property owner, that we have given a couple of loans to fix up his buildings; Phyllis Bosomworth, real estate agent; Alex Rich, real estate agent. There was a memo sent by Mr. Olson on May to the City Council

talking about the letter from Mr. Morrison. Daily Advance, again, Council to reconsider – they still trying to keep their hands in this project, ya'll. Daily Advance, Council okays hearing on apartment complex – that's why we're here. Council rejects complex 6 – 2 – Daily Advance says the man immediately withdrew the annexation – I mean the rezoning after he heard the vote count. That's not how it happened. That's not how it happened. And everybody up here might have a different version but what I saw was this – I explained at the last meeting. We voted down the annexation, the attorney asked the Mayor for a recess, those three went in the back, took a certain amount of time with the rest of the City Council sitting out here. Eight members sitting out here waiting for their return. They said a five minute recess – took longer. Ten to fifteen maybe, I don't know, but it was more than five minutes. When he came back out, we were going to get on the rezoning and if people were here, they'd tell you the same thing. Mr. Olson took that developer out in the hallway and then when they came back in from the hallway, the developer said I will withdraw my application for the rezoning. That procedure to me was not right. I'm not trying to hurt anybody's feelings, I'm just telling you the truth. And that's all I can do. That's all I can do. Now, what they talked about out there, I don't know. But it didn't look good. As I've told them before, it's not illegal what you did, but it didn't look good. Thank you Mr. Mayor.

Councilman Brooks: Yes. First of all, I thank the people in Millbrooke for coming and showing that you will stand your ground. I love the fact that you are standing up with your back straight. Because Dr. King said "a man can't ride your back unless it's bent, so stand straight." Continue to stand straight. As long as you fight for yourself, Brooks gonna fight with you. We have a memorandum and it doesn't matter what the Daily Advance say about me because I tell you specifically – Daily Advance supported me one time when I first ran for Council. I lost. They didn't support me the last five times – I won every time. So I thank the Daily Advance. If they ever support me, I will withdraw my name, because I won't win. Now we have a memorandum from the City Manager to the Mayor and Members of Council. I want to make sure that I'm heard because sometimes it's not clear when you listen at it on the video or on the television replayed. It states – it references previous voluntary annexation information. It says Mayor Peel requested that City staff provide information regarding previous petitions for voluntary annexation that have been considered and acted on by the City Council. That's the 6 – 2 vote, a super majority. As is my customary practice I am providing the results of our research to all members of the Council. It says staff's research began with the large involuntary annexation of 1998 and since that time, the City has not denied any petition for voluntary annexation since 2000. The City has annexed 1,781 acres by 15 separate voluntary annexation ordinances. Now, if you listen to what I said, it sounds good – it sounds like we are definitely doing the developer wrong. But let me continue with my thoughts on the matter. First of all, you got to compare apples with apples. Chances are I was on Council when this occurred. My question is how many of those voluntary annexations were opposed? If someone come and want to annex some property in and no one opposes it, the City Council has no reason to deny it. The next question is how many of these voluntary annexations were less than 200 yards from a high crime area – with shooting and every other thing going on? None. I guarantee you, it's none. The next question I would ask is how many had a possible increase of from 216 residents. See, if you have 216 residents and I can speak on it – and I'm surprised – I'm amazed that the Council is not listening to me. This is what I do. I live right down the street from the area they're trying to annex. Traffic is already bad coming out of the area – there's not traffic study that they can do to correct that. Watch. They're proposed putting 216 apartments – 216 places for people to residence. If it's already have a traffic problem and you have just two people in each one of those apartments – that's over 400 cars – 400 additional traffic – 400 cars of additional traffic already a congested area. I live there. I'm not going to listen to anyone tell me anything different. That's just like coming in my house and telling me what suit I need to wear the next day. I'm not going to let you do that. Or telling me how to be black – it's not racist – I'm not going to let no one tell me how to, you know. So – and I didn't need to put that out there – but I had to get it out there. The problem that I'm having is – and you can shake your head – but I live there – so you can shake your head all you want to. And the people that come up here and for the annexation I have never seen them in that area. Never. N-E-V-E-R. Never. Now the problem I have with that is if they would come there just ride past or just go through Roanoke, I be just as thrilled. But I notice this – I noticed this – that



everyone before every Council meeting – whether it's a work session or our regular meeting – the Clerk reads a statement of disclosure. And I'm very impressed with that statement because in that statement it talks about people having the interest and all kind of good words – what impartial and interest and all that good stuff. It sounds good. The people that came up here that wanted the annexation to go forth they was in real estate. They were in real estate. There's something wrong with that. The ones that came up here and opposed it, each one of those are in real estate. What happened to impartial and interest? As a matter of fact you have people on this Council that's in real estate – what happened to impartial and interest?

Mayor Peel: (gavel) Let's have order.

Councilman Brooks: What happened to impartial and interest. I was amazed that Councilman Donnelly and I will help you out a little – because you seem to need some help with the information that's being put out. That's not negative towards you, okay? Because you said you got more information. So I'm getting ready to give you some information. Now if you are firm in your vote and someone else convinces you otherwise, the information I'm about to give you – it should say – wait a minute, I need to speak with my vote. When I finish this information – because the information I'm giving now – it doesn't matter to me – those who want the annexation – it doesn't matter. The people from Millbrooke are the ones that voted me in. And I tell you right now I will also support them because they have supported me. What bothers me was I remember – I said they were loyal – when it was time to vote and we ran for election. They were loyal – they went and voted for me. I read it in the paper – I won't get too far – you had Council people that went over there to the voting place and see how many people at Millbrooke voted. This what I find amazing. Those same Council people would not help me fight to pave South Road Street and South Road Street on the left side is in their Ward and they didn't know that. They had time to go and see how many people in Millbrooke – but they didn't take the time to see who they represented on South Road Street. Something's wrong with that. And the reason why I'm talking is because I had a whole lot stuff, you know, I couldn't sleep last night – had to get this off my chest. You know, so – it doesn't matter if it goes through with a vote, I think it need to be investigated because we didn't have just a majority – you guys don't understand - we had a super majority. Just a majority vote would have denied the developer. But we had a super majority. For this thing to change around and all of a sudden we don't have a super majority – the public is not naïve in this. Something happened and it wasn't information. So, I'll say this cause I want to give you some information and you can do with it what you want. But the bottom line is it's on the internet and you can play it about as many times you want to play it back. And if people in Millbrooke want to consider - to continue to pursue, it's their prerogative. I'm just giving the information to help them pursue because I have no one to threaten me to sue and I'm not concerned with that. My job is given by the North Carolina General Statutes – we are the legislative body. It doesn't matter to me what the commission said – the Planning Commission – it doesn't matter what they say. This Council is the governing body – we are the legislative body of this City. That's why they have to come to us. Now, I'll get this out of the way and I'm through because I want to – bear with me Mayor, I'm going in that – deal with annexation stuff then I'll be through. This is the tail end of everything. When you read our preamble to the Constitution, it starts with the words “we the people of the United States in order to form a more perfect union.” That perfect union is what we call democracy. It's a democracy. I believe this until the vote come up whether to annex property off Halstead Boulevard by a developer. The vote on Council was 6 – 2 – again super majority or like Councilman Walton says, 75%. It was in line with our democracy. It was in line with our democracy. Which in my view we're trying to lean towards a more perfect union. Even the Elizabeth City Charter says when the Council votes on something with a majority vote – that's it. Even our Charter says that. So I'm trying to figure out why it's all this being broken. What went on that we don't know about? But I will continue. We talked the residents voted not to have the development put out by them. The issue was – one of the issues was – safety. Safety was an issue like I addressed. It's 216 residents – if each resident only had one car, that's 216 additional cars on an already congested area. And if it's two cars, that's two times 216. You know, so I think that's a problem. And then we use safety as an issue – the last time I talked about the problem that we had at the corner of Roanoke Avenue – the shooting and carrying on – you know? It's bad. If it was four miles away, it would be okay. But it's

not four miles away, it's only two hundred yards away. Now I understand this and we got some smart people in Elizabeth City – if I could afford to pay \$1,000 to \$1,300 per month not counting the utilities to live in an apartment, it won't be next to that kind of stuff. And if I lived – and if I was in the midst of that kind of stuff and if I was in the market of selling drugs, those are the people that I want to target. If you can pay \$1,300 per month plus utilities, you can afford to buy my drugs.

Mayor Peel: Mr. Brooks, you're really into rezoning here.

Councilman Books: Well, we talking about annexation.

Mayor Peel: Right.

Councilman Brooks: And I'm getting there – I'm dealing with the annexation and I'm gonna get all this out so you can hit that gavel Mr. Mayor but I want to finish this because I didn't say nothing during the work session and I'm just having my piece now. And when I finish this, I'll be through until we talk about the other issue I put on, I'm not gonna go on. I want to continue on. It's a thin line between the zoning and annexation and I don't know when the line is crossed, but I want to make sure they have the information they need in order to pursue it, if they choose to. This is the information Mr. Donnelly that I think will be beneficial for you. In 1984, the NAACP sued the City of Elizabeth City and Pasquotank County, North Carolina. NAACP challenged at-large voting schemes – they said they were deliberately designed to prevent the election of blacks and generally dilute the black voting influence. They said, under Section 5 of the Voting Rights Act, we allege that the City annexed several areas without first pre-clearing these areas with the Justice Department or the United States District Court for the District of Columbia as required by the Voting Rights Act. I have heard nobody on the Council said - I have heard nobody on the Council say that they have pre-cleared this through the Department of Justice. No one said it. So you are violating – if this is passed tonight – you are violating Federal Law. You're violating Federal Law. This is it, so don't think that everybody that's sitting up here is - don't know how to read - that we dropped out of elementary school. Section 5 clearance protects and thereby reinforced Section 2 gains. The question is – is there an instance of a subsequent attempt by local jurisdiction to modify the election method that had been put in place following litigation under Section 2 of the Voting Rights Act or Section 5 Pre-Clearance to protect and therefore reinforce Section 2. Go look it up. Go look it up. That's information – you didn't get that because I've heard no one talk about that. And the reason why I talk about that, Mr. Mayor, is because we did a redistricting – Rich know – his hands were in it. We did a redistricting I think it was 2011 – May 2, 2011 back then. And even the City Manager know the reason why they did – we had to draw Oxford Heights and Adams Landing out of the Third Ward – they was in the Third Ward – because of the 10% Rule. See, by annexing this development out there without pre-clearing through the Justice Department we still violate the 10% Rule. And if I'm wrong, it's okay. No one on this Council at this time gonna prove otherwise because it's Federal Law. This is Federal Law. We not in this ship alone. Millbrooke is not alone in this. This is Federal Law. And what happened was – this is very detrimental – because you got to understand that I talked to a Councilmember and they said – Third, 3A said that – they said that they wanted it there. I said you must be talking about 3A. Those in the Third Ward that are over there by Northeastern High School – that's probably what you're talking about. The ones that's in 3B – and I'll tell you the difference in the make-up – and I'm still on the subject of annexation – believe me I'm going to pull it in sooner or later – Tony you talked during the whole work session all by yourself...

Mayor Peel: Come on Mr. Brooks, let's stay on topic.

Councilman Brooks: Yes, but Tony talked during the whole work session, Mr. Peel and you didn't tell him to be quiet. He talked the whole work session – I didn't say a word, so I'm getting a chance to – that's why I didn't say a word because I know this going to be kind of lengthy because I did my homework. If you mad because I did my homework, be mad. You can wind your finger up all you want to, but I've told you more information, but you got your mind made up. In 3B you have – the Justice Department did this. Listen, in 3B you have 1,192 black voters. But, you only have 105 white voters – that's a huge number. Justice Department set it up – when the NAACP sued the City of Elizabeth City, the Justice Department set it up so the First and Second Wards would

be predominantly white and the Third and Fourth Wards would be predominantly black. The problem they ran into was that 10%. And we have some lawyers out there – go do your homework – if I’m wrong I’ll bite the bullet. I don’t have no problem with wrong. That means when it was printed and we did the redistricting that means we must have been wrong. And I doubt that very seriously. The average – the developer is telling the annexation – and I’ll back off – I got some more stuff to say, but I know somebody gonna say something after I finish talking. So I’ll save that and talk back at them. The developer said that the average rent is going to be from \$1,000 to \$1,300 per month. That’s not counting electric rates. The average rate rental property in Elizabeth City is \$846 per month. The unemployment rate is 15.9% - that was as of 2013. 15.4% percent, I’m sorry – 15.4%. The problem with that is if we talk about the uniformity of - Ms. Twiddy came up there and talked about uniformity – you know, and you must understand – so I had to give it to ya’ll one time because after this, everybody got their own decision but they ain’t doing their homework, they just listening to what the Daily Advance say. I’m giving you the information. Ms. Twiddy was talking about the 7 – 1 vote and it was really 6 – because there’s only 6 – and talked about that vote. But you got to understand that it is our Council is the governing body. I lost my thought, so I know it’s time to shut up now. Hallelujah, praise God. And those the ones that don’t live in the Third Ward. It’s amazing Mr. Peel didn’t tell them to be quiet. You know? And you might not like what I’m saying, but I got a right to say it. And when the Daily Advance was talking about – I’m still on annexation – the thing that bothered me was they was talking about the paving of South Road Street from Herrington Road to Ehringhaus, which is where the people in the First Ward represent to include you, Donnelly – the Department of Transportation said that they would be paving that beginning in May. Now the real bumpy road from Ehringhaus Street back – those are businesses. It’s been bumpy since I was a kid. You know? So, we got to continue to give the right information out, and I ask the attorney ‘cause you had time to look that up – I see you on your iPhone and stuff – when you talk about the 10% Rule and what happens is if it’s contrary to what I’m saying and then the redistricting that they did in May 2, 2011 was incorrect. Because if you saying it ain’t contrary, I’ll pull and read every minute of it. Read every second of it because I know what it said that’s where I got my information from. The safety, the 10% Rule, Pre-Clearance through the Justice Department – all that have to be done. That’s the information that we need. And if the vote changed from a super majority to those that want the property over there being the majority, I think it need to be investigated. We also need to stand true to the word that we talk about our statement of disclosure – we need to stand true and firm to that. Don’t just say it because it sounds good. Let’s stand firm to that. Thank you Mr. Mayor.

City Attorney Morgan: Mr. Mayor, may I make one comment?

Mayor Peel: Yes, go ahead.

City Attorney Morgan: Just regarding the pre-clearance requirement – the Supreme Court did do away with that in April of 2014 in the case of Shelby County, Alabama v. Holder Attorney General. So it’s no longer required in those states where pre-clearance had previously been required that that be done.

Councilman Brooks: Yes and since the City Attorney said it, I looked it on this iPhone I’m not going to stand to that might be true or not – I will look it up myself, so as far as I’m standing the 10% Rule still stands until I find otherwise. Thank you.

City Attorney Morgan: This was the pre-clearance requirement.

Councilman Brooks: It’s okay. It’s okay.

Mayor Pro Tem Hummer: I really don’t want to be a part of this conversation but I will. At the meeting where the vote came down against the annexation, and I voted against the annexation, I didn’t come to the meeting with the intent of voting for the annexation. I had some concerns and after hearing all the comments during that meeting before the vote, I was even more concerned. All I wanted was the site plan – that’s all I wanted. And I was under the assumption that I could make a motion to have a site plan brought back to City Council before it was finalized. I started to make my motion and I was told it was not an option. I don’t vote for something when I still have questions. And I would also like to say that no one owns my vote but me. And a few days after that, I did my

own research – I managed to get a copy of the site plan (not these little things you see on the monitor up there) but the big site plan. And with all my research I had all my questions answered, and I felt that I was right in not voting. And I know some people need me to explain that so I just did. Thank you.

Mayor Peel: I am going to give Ms. Hummer the gavel. I, too, would like to commend the people of Millbrooke for being here and participating in this. One of the reasons that I said to Mr. Jones – what I did – is there are really two distinct things that we are talking about. The first one is annexation. We had a speaker tonight to come up and represent the people that own this property. They are trying to get the property annexed so they can sell it because part of it is in the City and part of it is not. And so it becomes a more valuable piece of property. So, whether there are apartments built on it, another car dealership, a mall, whatever gets built there, it's in these owners of the property interests to have it annexed into the City. Now contrary to what you just heard, we are the legal body of Elizabeth City, but we exist because the state has created us. There's a good example of this just occurred when the legislature met last week and passed whatever that bill was called – Bill 2, and reversed action that was taken by the Charlotte City Council. We report to them. The state has very specific laws that this Council has to follow. When we get sworn into office, we swear to uphold the laws of the land and part of those are in the State Constitution. Now in annexation, back in 1998, the law was changed and cities prior to that could forcibly annex property into the City. Can't do that anymore. And the main reason that people want to be annexed is because of the services that the City provides. So if you look at the regulations that the City Clerk has to justify, verify, certify have been met, basically it's that it's contiguous, which means it's next to, the City. It's not a half mile away. It's connecting, bordering on the City border. This property is. And the second thing in looking at the services is can the City provide those services without any undue hardship to the City. And if it meets those things, you really don't have too much choice. Now Mr. Walton has talked about the secret meeting that the attorney and City Manager and I had two meetings ago. Here's why we had that meeting. Because Mr. Morgan was sharp enough to realize when the Council voted down the annexation that the City was just opened up to a lawsuit. And if we voted the next item down, we would have been sued – no questions asked. Because we have rules that we have to follow and when we look at these decisions – just like the Planning Commission and the Planning Department that's already approved these things twice have looked at the same rules; and while Mr. Brooks is correct, we can overrule those, but when we do that we have to do it for reasons and information that they might not have had. And there really, legally, this Council in my opinion and the opinion of our attorney, we put ourselves in a grave situation at the last meeting and he called a recess to figure out how to keep us from getting in any deeper. In the meantime, my understanding is, Mr. Gregory spoke to the City Clerk and pulled the item off the agenda. So that's what happened. It was trying to protect us, protect your tax dollars because that's who pays if we get sued. And so, hopefully that clarifies the meeting and he didn't think that was a discussion that needed to take place in the open. But we're dealing here with two different items – the first that we're talking about now is simply are we going to annex this property.

Councilman Brooks: I got a question. So, if you do the annexation - if you do the annexation and if you don't do the rezoning, you're up for a lawsuit and if you do the rezoning and don't do the annexation, you're in for a lawsuit. So why bring it to us anyway? I mean that's what I understand.

Mayor Peel: Well the reason is because it's a process. And it comes through a process and it takes time; and over that period of time you may get more information into the process than you had before. And there really, I don't think, there's any information that's been added. I understand that there are people that don't want the apartments. I get that. But when you look at the criteria, there's not anything that really is real that you can justify voting against it. Now, and I'll address – you've been talking about the crime over there in that neighborhood. If you look at what the rules – this is a rezoning issue – that has nothing to do with annexation. Not one thing. But it does have in a way something to do with rezoning. But not really because what you have to look at - is what is being built going to add to the crime in the existing neighborhoods. And fair market value apartments are not adding to the crime in this community. The example

is that Tanglewood Apartments had two calls in about the last seven months. That's certainly not going to add to the crime. So, you know, you can have crime all around it and whether people want to live there or not is a choice they're going to make. But, you know, the apartment operators do all kinds of records checks, criminal record checks, they inspect the units, they are going to have video cameras in there, so it's not going to be a place that people are really going to come and go without some type of supervision. I just wanted to make those points and clarify that because I think it's important for people to understand.

Councilman Brooks: You answered it pretty good, so basically, if we approve one and deny the other, we're up for a lawsuit either way. It's just a process.

Mayor Peel: It is a process.

Councilman Brooks: So, we're going through the process – a process that we can't vote against because we'll get sued. That's what I'm understanding.

Mayor Peel: I think you got that right in this case.

City Attorney Morgan: Mr. Mayor, if I may add now – excuse me Mr. Walton – just very briefly – keep in mind also that the request for the rezoning is contingent upon the favorable vote on the annexation. It is, as I recall. And that's perfectly legal to do it that way. Several properties out in the Tanglewood area where handled the same way several years ago.

Councilman Brooks: So you're saying – and I just want to be clear in my head – because if it's not clear in my head I'm thinking it's not clear in theirs either – so if the annexation is denied like it was last time, there is no reason to do the rezoning. Is that what I'm hearing? Okay. Thank you.

Councilman Walton: It's definitely not that way, ya'll, cause the rezoning belongs to the City. We can do anything we want with that piece of land. The annexation is including some of the County's...

Mr. Olson: Everything that is being requested to be rezoned is in the City's ETJ right now.

Councilman Walton: Okay, but why I gave you that Mr. Attorney – look over both those and see if it's the same on both of those applications if you will. I got that from the Planning Department. But like Mike was saying, annexation and zoning is so close to each other. Property owners have to go and petition. Am I right or am I wrong Mr. Olson.

Mr. Olson: You have the legal right to rezone the property right now under the rules of the ETJ. You can rezone the property and not annex it into the City, okay? But if you do so, I think there is a legal argument that can be made that you still have to provide the services to that area. So what you have is you are providing services to an area that's not on your tax roll.

Councilman Walton: That's why I changed it on February 8 that you put both of them in the same category, because like you said, if you don't annex, you can't rezone it in the first place.

Mr. Olson: No, the City can rezone the property because it's within the ETJ.

Councilman Walton: Well, let me tell you something about Currituck. Seem like they have the guts – Freeman's tried to put a place up – now like I say, I'm not knocking the Daily Advance again because sometimes, they give you some right answers. This is an answer. This guy named McRee responded that the County's memorandum on the matter cites the 1978 North Carolina Supreme Court case of *George v. Town of Edenton*. That a waiting period is designed to prevent the public from having to come out again and again to argue against the zoning that has been denied. Says it right here.

Mr. Olson: Councilman Walton, the City Council took no action on the rezoning petition because the applicant withdrew that application.

Councilman Walton: Well, I'm saying you know, it's not like other people are scared of getting sued. They just have a Council that has some backbone, you know? Halifax County is the same ones. I mean we voted 6 – 2 and now we done lost two in a matter of a couple weeks. Okay and that other thing, this realtor came up – see if this makes any sense to ya'll, didn't make no sense to me. Phyllis Bosomworth and Alex Rich also called for Council to reconsider the project. Like Gardner, Bosomworth warned the Council was discouraging investment the City greatly needs. Our community has a dwindling population and this is an opportunity for us to bring new people to our area. It would help us grow our economy, she said. Rich also argued that the City needs residential development before it will see more business growth. In my occupation I get a lot of people who tell me what we need in Elizabeth City – we need an Olive Garden, we need a nice steakhouse, we need a big movie theater, but what we really need are rooftops, Rich said, meaning new residences. If I was in the real estate business, rooftops would be important because I would sell a house here, a house over here, a house over there, a house somewhere else, house over here. Why is he trying to put an apartment building in a congested area? Doesn't make sense to me for a realtor to do those type of things. You know, they put people in the paper every day. We have a plenty of those vacant homes and he talking about putting a rooftop and a little secluded area and it's going to help our economy. My son called me and said "dad did you know that Elizabeth City is the number ninth City the worse place to get a job. Number ninth. Out of all the cities in North Carolina. We're number nine. Why would people come here? They're not coming here to get a job. There ain't no jobs. The jobs we had in the City we put them out there in the outskirts of the City. Yeah – Hibbetts, Freidman's – we supposed to have created so many jobs, nah – we creating a lot of traffic at Wal-Mart, but Wal-Mart was there all along. But people have left – it's a ghost town uptown now. And Hezekiah, he's going to house Southgate Mall. Then there's a place over there on the other side – old Wal-Mart – ghost town, ya'll. Because we have moved places that was paying property taxes out there and everybody say – wow, it's so nice. Wrong. All you did was relocate the jobs. That has nothing to do with it but it has a lot to do with it. We have to stop – we settlers in this City – we settle for anything. People come up here and tell us whatever they want to tell us and we will settle for it. We got to stop that, ya'll. We got to complain about the things we don't want to happen. The way things looking now, we're going to be worse than number ninth. We're going to be a tier one a long time. We're going to be a tier one City a long time if things keep going the way they going. Thank you Mr. Mayor. But Currituck will fight it – Currituck.

Mayor Peel: Okay, does anyone else have anything that they need to say? Let's have order please. Sergeant-at-Arms if you please address those who are speaking out of turn. Is there any other discussion? Okay, we have a motion and a second to approve the annexation. All those in favor say aye. Any opposed say nay.

Councilman Walton: Roll count.

Mayor Peel: Okay. Madam Clerk.

The City Clerk called the roll with the following votes recorded:

**Mr. Brooks: Nay**  
**Mr. Stimatz: Yes**  
**Mr. Horton: Nay**  
**Ms. Hummer: Yes**  
**Mr. King: Yes**  
**Ms. Baker: Yes**  
**Mr. Walton: Nay**  
**Mr. Donnelly: Yes**

Mayor Peel: The motion carries.

Councilman Walton: Now who has the right to bring it up next time? Because, you know, when the developer lost, who put it back on the agenda, Mr. Olson?

Mr. Olson: The owner of the property requested that it be resubmitted and reconsidered by the City Council.

Councilman Walton: We have never done that. Robert's Rules says a majority wins – majority wins. We voted on our last agenda. Did we not vote on our last agenda?

Mr. Olson: Yes sir.

Councilman Walton: And we should have gone through the process of the whole agenda. Nobody should have a right to take it off now and put it on later.

Mr. Olson: The applicant resubmitted a valid petition to the City Council for consideration. You are required to hear that.

Councilman Walton: Look at the application – see if it's true the same application.

Mr. Olson: The difference is the application number for the rezoning.

Councilman Walton: Let me get to it, because the rest of them are going to vote the same way they did on the annexation.

Mayor Peel called for the next agenda item.

**ORDINANCE #2016 – 03 - 03  
TO EXTEND THE CORPORATE LIMITS OF  
THE CITY OF ELIZABETH CITY, NORTH CAROLINA  
Two Parcels Identified as 14.193 acres of the total 28.435 acres of Tax Block P90-  
29C and the Entirety of Tax Block P90-29-1 (1.829 acres).**

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

**WHEREAS**, the City Clerk has certified as to the sufficiency of said petition; and

**WHEREAS**, the City Council adopted Resolution #2016-03-01 calling for a public hearing on the question of this annexation, which was held in Council Chambers, located in the Municipal Administration Building, 306 E. Colonial Avenue, Elizabeth City, NC at 7:30 p.m. on the 28th day of March 2016 after due notice by publication on March 17, 2016 and March 23, 2016; and

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

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

**SECTION 1.** By virtue of the authority granted by G. S. 160A-31, the following described territory is hereby annexed and made part of the City of Elizabeth City as of March 28, 2016, contingent upon adoption of an Ordinance approving Rezoning Application RZ-01-16:

BEGINNING at a point marked by an iron rod set situated on the Northwestern margin of Millbrook Circle (60' R/W), which iron rod set is further situated South 36° 25' 44" West a distance of 9,015.93 feet and South 77° 47' 53" West a distance of 741.88 feet from NCGS Monument "Bible" (NC Grid – NAD'83 N940922.46', E2819828.15'); running thence from said point of beginning South 57° 27' 08" East a distance of 723.71 feet to a calculated point, cornering; running thence South 27° 03' 49" West a distance of 542.06 feet to a point marked by an iron rod set, cornering; running thence South 60° 38' 24" East a distance of 305.90 feet to a calculated point situated on the Western margin of Body Road (SR 1139; 60' R/W), cornering; running thence along a curve in the Western margin of Body Road having a Length of 269.12 feet, a Radius of 2,910.45 feet, a Delta of 5° 17' 53", a Tangent of 134.66 feet, a Chord of 269.03 feet and a Direction of South 32° 41' 01" West to a point marked by an iron rod set, cornering; running thence North 63° 05' 24" West a distance of 999.74 feet to point marked by an iron rod set, cornering; running thence North 27° 06' 15" East a distance of 345.30 feet to a calculated point, cornering; running thence North

27° 02' 18" East a distance of 301.04 feet to a calculated point, cornering; running thence North 27° 11' 01" East a distance of 190.77 feet to a calculated point situated within the 60 foot right of way of Millbrook Circle, cornering; running thence North 26° 34' 17" East a distance of 56.79 feet to a point marked by an iron rod set situated on the Northwestern margin of Millbrook Circle, being the POINT AND PLACE OF BEGINNING, containing 16.022 acres.

Being the same lots or parcels of land shown and delineated as "618,240 SF. TO BE REZONED 14.193 ACRES TO BE REZONED" and "79,690 SF. TO BE REZONED 1.829 ACRES TO BE REZONED" on that certain plat prepared by Paul J. Toti, P.L.S., under date of October 20, 2015, entitled in part "Voluntary Annexation to Elizabeth City and Rezoning Plat Petitioned by Masuki Inc."

**SECTION 2.** Upon and after the 28th day of March 2016, the above described territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the City of Elizabeth City and shall be entitled to the same privileges and benefits as other parts of the City of Elizabeth City. Said territory shall be subject to municipal taxes according to G. S. 160A-58.10.

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

**ADOPTED** this the 28th day of March 2016.

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Joseph W. Peel  
Mayor

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Vivian D. White, CMC/NCCMC  
City Clerk

- c. Consideration – Hold a Public Hearing to gather public comment on RZ-01-16, submitted by Masuki, Inc., to rezone approximately 21.265 acres from R-15 to AD, located at Halstead Boulevard between Millbrooke Circle and Body Road.

Mayor Peel announced the matter before the Council and recognized Planning Director June Brooks to provide the background information for the request.

Ms. Brooks provided an explanation of the Rezoning Request submitted by Mark Gregory on behalf of Masuki, Inc. She noted that the request is to rezone 21.265 acres from R-15 to AD. She stated that the property is located at the southeast intersection of Halstead Boulevard, a major thoroughfare; adjacent to Millbrooke Circle, a local street; and Body Road, a minor thoroughfare. She stated that the request is a resubmittal of RZ-02-15, which was withdrawn after Council's denial of the annexation in February. She described the surrounding land uses as commercial to the north, agricultural to the west and south and Millbrooke Subdivision to the east. She said that the applicant proposes to construct fair market apartment units on the property if the rezoning is approved. She advised that an official site plan has not been submitted, but staff has met to discuss the conceptual proposal. She reported that water and sewer are available to the site and two means of ingress/egress will be provided. She stated that conversations with NCDOT had taken place regarding the increase in traffic and a storm water study has been performed and reviewed. Ms. Brooks described the amenities proposed for the project and she said that technical review will occur once the appropriate zoning is in place. She stated that the City Council must consider all the uses that would be allowed in the existing R-15 zoning classification and all the permitted uses allowed in the AD zoning classification. She referred the Council to the



table included in their agenda packet that outlined the uses for both classifications. She advised that if the property is rezoned to AD, any use within that classification may be established. She said that when making a determination regarding a rezoning request, Planning Department staff considers the area's zoning pattern, adjacent land uses, the Joint Elizabeth City-Pasquotank County Land Use Plan, as well as impacts on roads and City services. She stated that Planning Department staff also takes into account the impact the rezoning would have on adjacent properties. She discussed the City's Land Use Plan and explained its impact on the request to the Council. She noted that the Urban Land Institute's publication had been provided to the Council and pointed out that it addressed the concerns that had been expressed by the Millbrooke residents. She noted that no evidence to substantiate any of the claims had been found.

Ms. Brooks stated that the Planning Commission had recommended approval of the request by a 5-1 vote.

Mayor Peel inquired if members of the Council had questions for Ms. Brooks.

*(Clerk notation: The following Councilor discussion is provided in a modified verbatim format pursuant to the motion made by Councilman Walton.)*

Councilman Walton: For an application to be resubmitted, what has to happen?

Ms. Brooks: Since there was no action taken on the rezoning application by Council, the applicant can resubmit the application - based on an interpretation received from the School of Government.

Councilman Walton: Doesn't it have to be an identical application?

Ms. Brooks read the memo she had received from David Owens of the School of Government, which stated that if the application was formally withdrawn by the applicant and no City action was taken, the applicant would need to start over from the beginning with a new petition. She noted that any waiting period in the zoning ordinance would not apply since there had been no denial or other City action. She said that the exact same petition could be resubmitted but it would have to go through the regular process again.

Councilman Walton: I see how the puzzle is coming together now. I see why the developer was taken to the outside so he could have all those things told to him. And that's why we are where we are now. Because he was given the advice. He was given the advice to do those things. Because, you know, people make rules and then they know the weakness of the rules. They know the weaknesses of it.

Councilman Brooks: I have a question.

Mayor Peel: Do you have a question of Ms. Brooks?

Councilman Brooks: Yes. You said that because it wasn't - we didn't go through with the total thing - that means that we voted on the annexation so in part if they are separate but a whole - so basically, why did the annexation come back up? Why didn't just the rezoning come back up? Based on what you read there. Because we voted on the annexation.

Ms. Brooks stated that the information she provided only applies to the rezoning process, not the annexation process.

Councilman Brooks: So how did the annexation come back up? That's what I'm asking you.

Ms. Brooks stated that there is no state law that sets a time limitation to re-hear annexation processes.

Councilman Brooks: Okay so there's no set law.

Mayor Peel: Okay, thank you Ms. Brooks.

Councilman Walton: Let me read it again – what Currituck did. I've got to find it. But you're talking about that Planning Committee and there are only two people on that committee that has some experience – Mr. Witosky and Mr. Gary White. Mr. Witosky because he had been on the Planning Committee quite often. Gary White – he's been a Commissioner. You know, they go through these same types of things. Gary voted it down twice. Twice. The other four members - they have been newly elected, friends of Councilmembers – I mean to me that Planning Committee is suspect. Witosky is the only one that had experience.

Mayor Peel: Mr. Walton, if you can hold those comments, we need to have the public hearing and then we'll talk about it.

Mayor Peel declared the Public Hearing open. The City Clerk called the following persons to the podium in the order in which they registered.

1. Ronny Williams, 518 Millbrooke Circle, Elizabeth City, NC stated that he understood better what was going on. He said he didn't have anything to say and hoped the Council was doing the right thing.
2. Mark Gregory, P. O. Box 374, Camden, NC indicated that he had no comments.
3. Tom Nash, 117 Nixonton Loop, Elizabeth City, NC stated that he served as the attorney for Masuki, Inc. He said that the matter at hand is not about paving Road Street and is not about the NAACP or the Daily Advance. He said that the matter is about his client's right to come before this Council with a request for rezoning. He stated that all the other things had nothing to do with the subject at hand; and he said that there is no Federal violation involved. He reviewed the four criteria that the Council must consider when making a rezoning decision and opined that his client had met all requirements. He stated that his client had every right to withdraw his rezoning request during the earlier meeting and that there was nothing underhanded about the withdrawal.
4. Hezekiah Brown, 106 Terilynn Way, Elizabeth City, NC stated that he had intended to observe the process during the meeting, but felt that he must speak because a Councilmember had called him out. He stated that he had worked tirelessly to try to bring business to Southgate Mall and asked what was wrong with that endeavor. He noted that the Council had talked about the unemployment rate and noted that there could not be jobs without people and businesses. He said that he was appalled by what some members of Council were against and pointed out that he had not heard any positive solutions.
5. Crystal Copeland, 532 Millbrooke Circle, Elizabeth City, NC stated that the residents of Millbrooke had been promised a copy of the environmental impact study and the traffic study for the development and she had learned that the studies had not been completed. She expressed her opposition to the rezoning because she felt that there was no protection that the proposed development would not end up being Section 8 housing.
6. Paul Jones, 517 Millbrooke Circle, Elizabeth City, NC expressed his opposition to the proposed apartment development. He stated that when the residents of Millbrooke purchased their homes, the properties bordered R-15 zoning not AD. He acknowledged that although businesses are located nearby, there are no apartments. He said that was the reason he purchased his home. He took exception to the urban study referenced by Planning Director June Brooks during her comments. He requested a copy of the traffic study and the storm water study that had been performed for the project.
7. Kisseih Bonsu, 632 Millbrooke Circle, Elizabeth City, NC expressed his opposition to the proposed apartment complex being built adjacent to his

residential property in Millbrooke Subdivision. He said that he was a returning veteran and was disappointed with the proposed complex. He stated that he felt the complex would devalue his property and increase traffic. He said that he feared the complex would become Section 8 housing.

8. Alice Redding, 914 Riverside Avenue, Elizabeth City, NC, expressed her support for the rezoning request from the perspective of a private land owner who also has property that she hopes to be able to develop. She stated that the owners of the property have a right to receive financial gain from their property. She noted that she understood wanting to control everything built around your property, but pointed out that real life is that progress is going to happen whether you want it or not. She stated that progress should benefit as many people as possible.
9. Selma White, 108 W. Cypress Street, Elizabeth City, NC stated that she wanted to address the articles published in the Daily Advance about Councilman Brooks. She said that she thought Mr. Brooks cared about the people he represents. She stated that she also feels for the residents living in Millbrooke and understands how they feel about the proposed project. She encouraged the Council to consider their concerns when making the decision.

Mayor Peel declared the public hearing closed.

**Motion was made by Councilman Tony Stimatz, seconded by Councilwoman Jean Baker to adopt the following ordinance to approve the rezoning request RZ-01-16 and the properties described therein.**

Mayor Peel: Mr. Brooks.

Councilman Brooks: Yes, I want to address a few things. Normally I get – I go out there when someone call my name and I can't respond to them right then. But, you're a lawyer, Mr. Nash – that's what you do, you know? I respect that. And Mr. Brown, you should never address my name and go sit down because you know there's something coming back at you. One thing I want to say, and stuff, you haven't been coming to all the meetings. And I will stand with Millbrooke to the end. I'm going to stand with them to the end. One thing, you haven't been to all the meetings, so you are talking off the cuff. The people at Millbrooke, as I understood it, no matter what our choir section was clapping you for – the people at Millbrooke, as I understand from the beginning, they wasn't opposed to growth. I think you said that one time. They were never opposed to growth. They said they had no problem with businesses being around them, they said they had no problem with single family dwellings, you know? So when you come up here and say we don't have any positive solutions, those were solutions. That's what they wanted. Those were the solution. So are you Dr. Hezekiah Brown, so you shouldn't, you got to, you know, tone it down a little, you know? I talk to Dr. Brown a lot, so it's okay - we understand that. And the same for you Mr. Nash. It's okay, you have your opinion. But you have to understand one thing I learned while I was at University, and I love this, they talk about world view. World view. Your world view and my world view are totally different because of our experiences. You know that. And what you see by driving through Roanoke, I see something totally different. It's totally different, Mr. Nash, believe me. And the way it look like the annexation going to go through too, but it's okay. I don't want to be the one that says I told you so. I don't want to be that one. I'm trying to say let's put a damper on things before they start to get bad. And see, when you go on the other side of Roanoke, Mr. Nash, that's low income housing. And even around where the homestead is, that's nothing but open field. And you open the door to this and that means there's nothing but fields on both sides of Halstead back down to Peartree Road. It could be nothing but apartments. Because if we approve one, we have no justification for not approving the other. And that whole picture – I don't want to throw darts at the Council meeting. That's not the purpose. I live there. I'm down there – I see the crime. I see the traffic. So no one's going to come from three blocks away or ten miles away and tell me what I live every day. That's what they are trying to do. You can't do that. I'm not going to listen at no study. When I'm right there every day and seeing it and you gonna tell me some study? I'm right there, I've been studying it for almost 50 years. And somebody gonna come here and tell me what it's

like over there? It's an impossibility. And that's aggravating, but that's as hard as I'm gonna get tonight. I won't get no harder than that, believe me, I won't get any harder because I respect you Mr. Nash. You handled my real estate. I respect Dr. Brown also, but whenever you know – whenever you come up here and I have the word behind you, normally if it was a couple years ago I would have took it up to 110 in 25 mph. I have no desire to do that because I think you understood or understand what I just said. And I like what Selma said. Those that are shaking their head, they don't know nothing about that area. They don't know anything about that area. Nothing. And I admire..... Thank you for your service young man. I'm a veteran also. It's got to be heartbreaking for him. The people that's fighting against him living in safety and security – he took a bullet for them. You can't put a price on that man's life for trying to defend what he believes our Constitution. Like I stated earlier the Preamble said. You know? It doesn't make any sense to me to change your vote. I talked to one Councilmember and they said well Rich said that the people in the Third Ward said they have no problem with it. And my thing was, they might live by Northeastern and further out, they don't live in 3B. It's a whole different animal. The worldview is totally different. You can say what you want to, it's different. And I believe that life and death – and I'm not going to preach – is in the power of the tongue. And I submit to you – and I'll tell you this right now – I curse that land that it will not develop against the will of the people. And it shall come to pass in Jesus name.

Mayor Peel: Anyone else? Mr. Walton.

Councilman Walton: Yes. Mr. Paul Jones. I feel for you. The way your actions are, you are a Christian person and you have that attitude and I appreciate that in you. But you see, I wasn't made quite that way. I always wanted to be a Walton. My mother was a Jenkins, so you know, Waltons were different from Jenkins. But the Waltons were quiet people, the Jenkins were not. I got a part of both of them. Don't blame me for it, but you are a Christian man and I love the way you carry yourself. But see I can't carry myself on this Council. Cause some of you don't know, four or five years ago walking down those steps a Councilmembers was – up here now – whistling Dixie. And this lady looked back at him and said "that's nice. Nice job." I've been holding that. I told my wife and a few other people, but Elizabeth City got problems ya'll. And as I said it's the ninth worst place to get a job. And he's talking about it's going to bring growth here? I mean, after they get here, what they gonna do? You not going to give them your job. We got a lot of attorneys, man. We done had three people to represent this group. Morrison, Nash, Peter Thomson – whose coming next? This business is gonna save – you said what they gonna say about us – they also say it about you all. They got some slick attorneys and all of them fit together along with that Council that has a vision that people will run behind him to make happen. The same people that stood up that's for the apartments, they the same ones if someone up here tell him them to run around town and you better be back in five minutes – they'll try to do it. That's how bad this certain people are in this City. Come on, stand up. Don't settle for anything and everything. Brown talked about 2020 Vision – he was on it. Those people stood up – they want it. They want it. They're on so many committees – they just love getting on committees so they can show their little bit of power. Ain't got nothing. I mean, they'll follow the visionary head - Mayor Peel is a visionary, ya'll. He can make you think it can happen. But out of that 2020 Vision came the Charter School on campus – lot of ya'll don't know what a Charter School is. Coast Guard Park – that's Tony's baby. Right out there. Getting ready to spend \$139,000 on that park – getting ready to clear up some more land for it. Yeah. That's what we fighting against Mr. Nash. People out there saying sure wish something better to do. Something better to do? I'm trying to stop what they're trying to do. They are tearing this City down. They're tearing it down. Weatherization - \$360,000 a year? To help 80 people? We got 10,000 and they gonna help 80. You do that three or four times, man, you can put Road Street and all those streets you want to do. Can do them all. But we support stuff – it's sad ya'll – I'm telling you. I know I don't look at it quite like you all do, but we got to be from a different world or something, because it's sad how people get played, man. And get settled for anything. When ya'll see that commercial on TV – the settlers – that's us – we are the settlers. I commend these people for coming up here. The Planning Committee – as I said earlier, Mr. Witosky has been on the Planning Committee quite often and he brought up the point on December 15 – now look at the sheet ya'll, you see where the rezoning is. There is also another lot down there that nobody is on. He said he talked

to a developer and that developer said that they want to be there also. Now that might not be a top end apartment buildings. He said he was worried about the foot control – people going from one place to the next. That’s what Mr. Witosky said. In the Planning Committee. Legal staff as I said previously – three different lawyers been up here already. Mr. Nash, I don’t even think you were here on the 8<sup>th</sup>. Were you here? You said people said this and said that – and you weren’t even here. They told you what they may have said or you put it in a lawyer’s term. You making it fit another way. I was here. I can fit the puzzle because I saw it. I could fit it. June was sitting over here, the developer was sitting over there – the guy with the blue on – he’s my buddy. But when they came back out of the backroom – I’m sorry that was funny – they came out of that backroom, Rich went over to the developer and they went out in the hallway. I don’t know what was said. He only knows. And I can’t ask him to say it because he’s not gonna say it. But, as I said Currituck denies Freeman’s. Ya’ll know what Freeman’s is? I talking high end – that’s a high end store too. Their second request for rezoning – Currituck – they don’t mind denying people. Mr. McRee responded that the County’s memorandum on the matter cites the 1979 North Supreme Court Case of George v. Town of Edenton. This went all the way to the Supreme Court, ya’ll – so it’s got to be on record – that a waiting period is designed to prevent the public from having to come out again and again. And that’s what you all have been doing. To argue against a rezoning that has been denied. Thank you Mr. Mayor.

Mayor Peel: Any other comments? Okay, we have a motion to approve the rezoning and a second.

Councilman Walton: Show of hands, same thing. I mean a roll call.

The City Clerk called the roll with the following votes recorded:

**Mr. Brooks: Nay**  
**Mr. Stimatz: Yes**  
**Mr. Horton: Nay**  
**Ms. Hummer: Yes**  
**Mr. King: Yes**  
**Ms. Baker: Yes**  
**Mr. Walton: Nay**  
**Mr. Donnelly: Yes.**

Mayor Peel: The motion carries.

**Ordinance # 2016-03-04**  
**Rezoning Request RZ-01-16**  
**(PINs 891303431311, 891303420383, and a portion (14.193 acres) of PIN**  
**891303326681)**

**WHEREAS**, on March 8, 2016 , the Planning Commission reviewed Petition RZ-01-16 by MaSuKi Inc., (Mark Gregory) to rezone approximately 21.265 acres from Residential R-15 to Apartment District (AD) and further identified as PINs 891303431311, 891303420383, and a portion (14.193 acres) of PIN 891303326681 ; and

**WHEREAS**, the Planning Commission considered public comment given at that meeting; and

**WHEREAS**, the allowed uses in the Apartment District (AD) zoning district will be compatible with the areas mixed land use; and

**WHEREAS**, the proposed zoning will be consistent with the area’s mixed zoning patterns; and

**WHEREAS**, the Joint Pasquotank County/Elizabeth City Land Use Plan was considered; and,

**WHEREAS**, after consideration of the technical merits of the request, the Planning Commission recommends approval.

**NOW THEREFORE, BE IT ORDAINED** that the City Council of the City of Elizabeth City does hereby approve this request to amend the Official Zoning Map to show that a portion of the above referenced parcel as AD (Apartment District).

**ADOPTED**, this the 28<sup>th</sup> day of March, 2016.

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Joseph W. Peel  
Mayor

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Vivian D. White, CMC/NCCMC  
City Clerk

**7. Regular Agenda:**

- a. Consideration – Reappointment of Anthony J. Turner to serve an additional four-year term on the Pasquotank ABC Board.

Mayor Peel introduced this item and requested the Council’s pleasure regarding the appointment:

**Motion was made by Councilman Brooks, seconded by Councilman Horton to reappoint Anthony J. Turner to serve an additional four-year term on the Pasquotank ABC Board. Those voting in favor of the motion by roll call vote were: Baker, Donnelly, Hummer, Stimatz, Brooks, King, Horton and Walton. Against: None. Motion carried.**

- b. Consideration – Adoption of Budget Meetings Calendar for fiscal year 2016-2017.

Mayor Peel introduced this item and requested the Council’s pleasure.

**Motion was made by Councilman King, seconded by Councilwoman Baker to adopt the budget meetings calendar for fiscal year 2016-2017 as presented.**

**Councilman Stimatz asked to make a friendly amendment that the Council require the budget meetings to be broadcast. Councilors King and Baker accepted the friendly amendment.**

**Those voting in favor of the motion were: Baker, Donnelly Hummer, Stimatz, Brooks, King, Horton and Walton. Against: None. Motion carried.**

Meeting Date	Action
April 11, 2016	Present staff budget
April 18, 2016	Review General Fund
May 2, 2016	Review Enterprise Funds
May 16, 2016	Review City Council Changes
May 23, 2016	Call for Public Hearing during Regular Session
June 13, 2016	Hold Public Hearing during Regular Session
June 27, 2016	Adopt Fiscal Year 2016-2017 Budget during Regular Session

**c. Committee Reports:**

- a) EC-PC Economic Development Commission: Mayor Pro Tem Hummer, Councilwoman Baker, Councilman King and Mayor Peel

Councilwoman Baker stated that during the last EDC meeting, a discussion was held regarding companies that are looking to locate in Elizabeth City. She stated that after the meeting, a retreat was held to discuss the various areas of economic development.

- b) Central Communications Advisory Board: Councilman Brooks

Councilman Brooks had no report.

- c) Fireman's Relief Fund Board: Councilman Brooks

Councilman Brooks had no report.

- d) NC Eastern Municipal Power Agency: City Manager Olson and Mayor Peel

Mr. Olson stated that the monthly meeting had been cancelled.

- e) Elizabeth City Downtown, Inc.: Councilman Donnelly

Councilman Donnelly announced that the Potato Festival is still in need of volunteers. He noted that ECDI is also working to put together the summer's Mariners' Wharf Film Festival. He announced that Eclectic Jewelry had opened on Fearing Street.

- f) Elizabeth City Area Chamber of Commerce Board: Mayor Peel

Mayor Peel stated that the Chamber's Business Expo was a big success.

- g) Finance Committee: Mayor Pro Tem Hummer, Councilman Donnelly, Councilman Horton and Mayor Peel

Mayor Pro Tem Hummer stated that all items discussed by the Finance Committee had been forwarded to the City Council for consideration.

- h) Parks and Recreation Advisory Board: Councilman Walton

Councilman Walton stated that the Board had discussed the Parks and Recreation Master Plan that the Council adopted earlier in the meeting.

- i) Elizabeth City/Pasquotank County Airport Authority: Councilman Stimatz

Councilman Stimatz stated that there was not enough to discuss on an agenda so the last meeting had been cancelled.

- j) Storm Water Advisory Board: Councilman Stimatz, Councilman King and Councilman Brooks

Councilman Stimatz noted that the Board meets once per quarter and had met in February. Councilors King and Brooks mentioned the upcoming campaign to keep clutter out of the gutter to help with storm water drainage.

- k) Tourism Development Authority: Councilwoman Baker

Councilwoman Baker stated that the Authority was provided a presentation during the last meeting from one of the two marketing firms that had been chosen to represent tourism.

- d. Discussion – Masters Touch Church (*added to agenda by Councilman Brooks*).

Mayor Peel recognized Councilman Brooks for his comments.

Councilman Brooks stated that during the last meeting Councilman Horton had asked if the Masters Touch Church could be exempted from the noise ordinance. He said that the City Attorney had responded that it could not. He reported that he had reviewed the ordinance and found that it contained exemptions, which he read for the Council.

**Motion was made by Councilman Brooks, seconded by Councilman Horton to exempt all churches from the noise ordinance.**

Mayor Peel recognized City Attorney Morgan for his comments. Mr. Morgan stated that it was his understanding that City staff is still awaiting guidance from the School of Government as to the issues that were raised during the last meeting. He stated that it was his advice to the Council not to adopt this resolution because he thought it was unconstitutional.

Mayor Peel requested to ask a question. He said that he was of the understanding that there really wasn't a problem with noise ordinance violations for the Masters Touch Church. He stated that it appeared from the speakers during Public Comments that Police Officers are waiting at the church when they arrive. He asked if that was the case.

Councilman Brooks stated that he had a problem with Mr. Morgan's statement. He said if church bells can be exempt, he didn't care what the School of Government said about the matter. He said that he had read in the Constitution about the freedom of religion. He said "you have the freedom of worship and they can't go contrary to that." He stated that it did not make any sense to him that it could not be done. He said: "if someone like the ACLU would get their hands on this – you got all this stuff exempt, but you're not going to give people the right to worship because you say they're worshipping too loud? That doesn't make any sense." He suggested that the Masters Touch Church get in touch with the ACLU and let them fight it.

Councilman Horton stated that he wanted to speak on this issue as he had in the past. He said that since church bells are exempt from the noise ordinance he supported Councilman Brooks' motion from the stand that the Council is the legislative body of the City and it should be able to make decisions that the Council felt were best for the City.

Councilman Stimatz asked if the motion would eliminate any upper limit for noise by churches. He asked Councilman Brooks to clarify his motion.

Councilman Brooks stated that he did not know how to answer the question because he was still "stuck" on freedom of worship.

Councilman Stimatz stated that it was interesting to note that no one had stopped the church from worshipping - only that the noise ordinance should be observed. He said he had spoken with the representatives of the Masters Touch Church after the last meeting and discussed the fact that they had been in compliance for the last three and one half months. He noted that police officers should not be taking readings unless there was a complaint. He stated that the church had solved its own problem and were enjoying the level of their worship and the police should not show up unless they get a complaint. Councilman Stimatz advised that the Supreme Court had held that you cannot legislate against beliefs or opinion; but you can legislate against actions – such as too much noise. He noted that it is not denying the right to worship or the right to play music; but neighbors have the right to quiet enjoyment of their property. He suggested that the church work with the Police Department to determine an acceptable level of sound outside the church at the property line.

City Manager Olson stated that the motion made was technically an improper motion because the noise ordinance is a part of the City Code and to change it required adoption of an ordinance. He stated that the proper motion would be to instruct City staff to bring back an ordinance during the next meeting that would exempt churches.

Councilman Brooks stated that in this instance the City Manager did exactly what he should have done when he suggested how the motion should have been worded. He noted that the complaints could begin again at any time, and the church would be in the same position. He said that he could not believe that anyone would try to hold someone



down from worshipping the way they believe. He said he was glad the City Manager put it in the right motion so the Council could vote on it.

Councilman Donnelly stated that he thought Councilman Stimatz had 'hit the nail on the head.' He said it seemed to him things were working out well and he thought the Council should 'let it be.' He stated that it was almost humorous that the residents who are complaining are the Millbrooke residents – with the assumption that it is only one person. He asked the Councilors to keep an open mind. He said that he thought personally that the Council may want to consider changing the time frame of the noise issue after an opinion is received from the School of Government.

**Mayor Peel stated that the motion is to instruct City staff to come back with a recommended change in the noise ordinance to exempt churches.**

**Those voting in favor of the motion were: Hummer, Brooks, King, Horton and Walton. Against: Baker, Donnelly and Stimatz. Motion carried.**

Mr. Olson stated that staff would have a draft ordinance ready for the next Council meeting to call for a public hearing during the last meeting in April.

#### **8. Comments and Inquiries on Non-Agenda Items:**

Councilman Donnelly had no further comments.

Councilman Brooks stated that when he was raised as a child, his parents taught him to respect his elders, go to church and get a good education. He said that he had done all those things. He stated that if he reported how he was able to accomplish those things because of his worldview, it would make people cringe. He stated that one thing about this Council is that "it has kept me on my knees." He said his faith in God and a denial of what those before him went through to help him get to this point would not be shaken. He said: "I guarantee you, I promise you, the promises of God are yes and Amen. And I believe when I said I cursed the land those apartments will be built on, watch. I release it in faith. You can take it for what it's worth. And the only way it will be released is if you apologize to the people in Millbrooke. If you don't do that, it won't be released. I guarantee – I promise you that. My faith is in that way with God. And when you go for days without food or water fasting and praying and seeking God, you can't tell me – and all those that make fun when I get this mode like that – I love it, because I believe that no weapon formed against me shall prosper and every tongue that rises against me in judgement shall be condemned. You laugh – I love it. Because this I know."

Councilman Walton asked Mr. Olson to bring back the entry sign completion for discussion during the next meeting.

Councilman Stimatz reminded everyone about the elderly and disabled property tax homestead exclusion that the state provides. He encouraged those eligible to contact the Pasquotank County Tax Department for more information before June 1, 2016.

Councilwoman Baker reminded everyone that the Council does not respond during public comments. She advised, in response to one of the earlier speakers, that traffic studies are not performed for projects that have not been approved. She requested that the City Manager bring something back to the Council regarding Ms. Cain's flooding complaint on Dawson Street. Mr. Olson stated that he would prepare information for distribution to the Council.

Councilman Horton had no further comments.

Councilman King had no further comments.

Mayor Pro Tem Hummer stated that she thought it was time that the Councilors stop accusing each other of not believing in God. She said "Just remember, the Bible also says judge ye not."

**9. Adjournment:**

There being no further business to be discussed, Mayor Peel adjourned the meeting at 10:45 p.m.

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Joseph W. Peel  
Mayor

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Vivian D. White, CMC/NCCMC  
City Clerk