

**CITY OF ELIZABETH CITY  
PLANNING COMMISSION  
SPECIAL CALLED MEETING  
TUESDAY, FEBRUARY 1, 2022  
4:00 PM**

**MEMBERS PRESENT**

Ernest Sutton - Chairman  
Johnson Biggs - Vice Chairman  
Gary White  
Kevin Johnson  
Alyn Goodson

Also present were Kellen Long, Director of Community Development; Brian Hall, Secretary to the Commission.

Chairman Sutton called the meeting to order at approximately 4:00 PM and stated a quorum.

Chairman Sutton called for a motion to approve the Tuesday, January 11, 2022 Planning Commission minutes. Commissioner White made a motion to **APPROVE** the minutes. Commissioner Johnson properly seconded the motion. **ALL IN FAVOR: BIGGS, WHITE, GOODSON, AND JOHNSON. NONE OPPOSED. MOTION CARRIED.**

Chairman Sutton called for a motion to approve the agenda. Commissioner White made a motion to **APPROVE** the agenda as presented. Commissioner Goodson seconded the motion. **ALL IN FAVOR: BIGGS, WHITE, GOODSON, AND JOHNSON. NONE OPPOSED. MOTION CARRIED.**

Mr. Hall, secretary to the Commission read the **STATEMENT OF DISCLOSURE** as follows:

Elizabeth City Code of Ethics provides that public officials and employees be independent, impartial, and responsible to the public; that government decisions and policy be made in proper channels of the governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government. In recognition of these goals and in keeping with the ethical standards of conduct for city public officials and its employees, disclosure of interest in legislative action must be stated for public record, as per City of Elizabeth City Code of Ordinances Section 32.04. Any official act or action before the Planning Commission shall be publicly disclose on the record of the Commission the nature and extent of such interest and the Commissioner shall withdraw from any consideration of the matter if excused by the Commission pursuant to G. S. 160A-75.

Chairman Sutton described the only item of new business as follows:

- **CASE No: TA 01-22** filed by the City of Elizabeth City to clarify the City's signage ordinance in Article 11 of the Unified Development Ordinance for temporary signage in the public right-of-way.

Director Long began her presentation.

Director Long expressed that this is a continuance from the January 11<sup>th</sup> Planning Commission special called meeting where this text amendment was first heard. There have been no major changes since said meeting, as staff wanted to discuss this with the City Manager, City Attorney, and NCDOT prior to send this forward as a recommendation.

Director Long gave a brief review of the information provided at the last meeting for this text amendment, and why it was brought forth before the Commission.

Since the last meeting, staff has received some confirmation back from NCDOT. Staff has been working with their local resident engineer, Mr. David Otts, whom is their first point of contact for anything city related for Elizabeth City. He is ecstatic that staff wants to take this task on and provides his full support on the matter.

This ordinance is currently in the Edenton office, which is the NCDOT headquarters for division one and covers all of the Northeast North Carolina area. They are currently reviewing the information to make sure all is up to par.

Director Long began to go through the "Staff Concept Analysis."

The placement and regulation of political signage and frankly any signage in public-right-of ways has always been a confusing topic with many different situations to consider. Staff has combined the guidance provided in General Statute 136-32, that sets forth the rules allowing for "political signage" in NC DOT right-of-ways during a specified period of time, General Statute 160A-296, provides Municipalities broad authority and control over all public streets, sidewalks, alleys, bridges, and other ways of public passage within its corporate limits, and guidance from Coates' Canons NC Local Government Law.

Three attachments have been provided with this staff analysis that have guided staff's purposed text amendment. Those attachments include G.S. 136-32, G.S. 160A-296, and a blog written by Adam Lovelady from UNC School of Government titled "Temporary Signs in the Right-Of-Way".

The blog referenced above breaks down the ruling from the U.S. Supreme Court in Reed v. Town of Gilbert. During this ruling the U.S Supreme Court made clear that categorizing

noncommercial signs by the content of the message is content-based regulation subject to strict scrutiny. In that case the town's sign ordinance distinguished between campaign signs, ideological signs, and event-based signs, among other categories. The following example was given during the case "If a sign informs its reader of the time and place a book club will discuss John Locke's Two Treatises of Government, that sign will be treated differently from a sign expressing an ideological view rooted in Locke's theory of government".

This blog goes on to describe that the General Statute 136-32 specifically allowing political signage in NC DOT right-of-ways is subject to constitutional challenge under the Reed decision, because it advocates for political signs, but not other noncommercial signage. To address this issue in our sign ordinance, staff has further defined noncommercial signs. This proposed text amendment treats NC DOT right-of-ways and City maintained public-right-of-ways in the same manner, however, staff identifies the signage based on commercial and noncommercial signage and where they are each prohibited. The proposed text amendment prohibits commercial signs (temporary or permanent) in any NC DOT or City maintained right-of-way within the City's municipal limits. Non-commercial signs are excluded from this ordinance. The definition of non-commercial signs includes signs expressing political views, religion views, or signs of for-profit organizations related to their tax-exempt purposes. Staff took this approach specifically so that political signage was not the only type of noncommercial signage identified.

The only changes to the proposed text amendment from the last planning commission meeting is the following ordinance below:

- *~~"Commercial Temporary signs on private property, including commercial banners shall not be placed on the property more than 30 days prior to the event or election and must be removed within 10 days following the event or election. Such signs are limited to 32 square feet in area and 6 feet maximum height."~~*

In the previous proposal provided in January staff was recommending that commercial temporary signs not be placed more than 30 days prior to an event, and be removed 10 days following the event. Understanding that not all commercial temporary signs are related to a specific event, with the recommendation from the Interim City Manager, staff has edited this ordinance to read that commercial temporary signs on private property, including commercial banners shall not be placed on the property more than 30 days.

This concluded Director Long's presentation.

There were no further comments.

Chairman Sutton asked the Commission if they were ready to entertain a motion.

Commissioner White made a motion to delay action on **CASE NO.: TA 01-22**  
Commissioner Johnson properly seconded the motion. **ALL IN FAVOR: BIGGS,  
WHITE, AND JOHNSON. NONE OPPOSED. MOTION CARRIED.**

This concluded the new business items on the agenda.

### **Old Business**

No old business was reported.

### **Staff Report**

### **Chairman's Report**

That concluded the Chairman's report.

There were no Member Concerns.

Chairman Sutton asked the Commission if they were ready to entertain a motion to adjourn.

Commissioner White made a motion to **ADJOURN**. Commissioner Johnson properly seconded the motion. **ALL IN FAVOR: BIGGS, JOHNSON, AND WHITE. NONE OPPOSED. MOTION CARRIED.**

The meeting concluded at approximately 4:41 PM.

Submitted Respectfully,

Brian Hall-Secretary of the Commission