

MONDAY – 7:00 P.M.

MARCH 11, 2013

CITY COUNCIL

The City Council of the City of Elizabeth City held its first meeting of the month of March on the above date and time in the City Council Chambers of the Municipal Administration Building with Mayor J. W. Peel presiding. Council members in attendance were: M. E. Brooks, R. T. Donnelly, L. M. Hill-Lawrence, L. A. Hummer, K. K. Spence, J. A. Stimatz and J. B. Walton. Councilwoman J. M. Baker was absent. City Staff members attending were: City Manager R. C. Olson, City Clerk D. S. Pierce-Tamplen, City Attorney W. H. Morgan, Deputy City Clerk V. D. White, Finance Director S. E. Blanchard, Planning Director J. C. Brooks, Parks and Recreation Director B. V. White, Human Resource Director K. W. Felton, ECDI Director R. Cross, Inspections Director S. E. Ward, Electric Director K. F. Clow, Fire Chief L. M. Mackey, Public Utilities Director P. A. Fredette and Lt. M. Boone.

Mayor J. W. Peel established a quorum was present and called the meeting to order at 7:00 p.m. He called for a moment of silent reflection after which he led the Pledge of Allegiance to the Flag of the United States of America.

1} AGENDA ADJUSTMENTS AND APPROVAL:

Mayor Peel called for action regarding the prepared agenda.

Councilman M. E. Brooks asked to ***add the Byrne Grant.***

Councilwoman L. A. Hummer asked to add to the Consent Agenda ***a call for a public hearing to inform the citizens and the City's plan to apply for a Coastal Management Grant. The public hearing will be held on Monday, March 25, 2013 at 7:30 p.m. in the City Council Chambers of the Municipal Administration Building.***

A motion was made by Councilwoman L. A. Hummer, seconded by Councilman J. A. Stimatz to approve the prepared agenda to include the above noted items. Those voting in favor of the motion were: Hummer, Stimatz, Brooks, Donnelly, Hill-Lawrence, Spence and Walton. Against: None. Motion carried.

2} PROCLAMATIONS:

a} American Red Cross Month – March 2013:

Mayor Peel read a proclamation proclaiming the month of March 2013 as American Red Cross Month. He presented the proclamation to Carolyn Self and Ms. Self made brief remarks.

b} Farm Workers Awareness Week – March 24-31, 2013:

Mayor Peel proclaimed the week of March 24-31, 2013 as Farm Workers Awareness Week in Elizabeth City. He presented the proclamation to Zary Ortiz and Zulma Johnson. Ms. Ortiz made brief remarks.

3} PUBLIC COMMENTS:

There was no one present that wished to speak.

4} APPROVAL OF THE MINUTES:

a} February 25, 2013 - Work Session Minutes:

Mayor Peel called for approval of the February 25, 2013 Work Session minutes.

A motion was made by Councilwoman L. A. Hummer, seconded by Mayor Pro Tem L. M. Hill-Lawrence to approve the minutes of the February 25, 2013 Work Session meeting. Those voting in favor of the motion were: Hummer, Hill-Lawrence, Brooks, Donnelly, Spence, Stimatz and Walton. Against: None. Motion carried.

b} February 25, 2013 – Regular Session Minutes:

Mayor Peel called for approval of the February 25, 2013 Regular Meeting minutes.

A motion was made by Councilwoman L. A. Hummer, seconded by Mayor Pro Tem L. M. Hill-Lawrence to approve the minutes of the February 25, 2013 Regular Session meeting. Those voting in favor of the motion were: Hummer, Hill-Lawrence, Brooks, Donnelly, Spence, Stimatz and Walton. Against: None. Motion carried.

5} CONSENT AGENDA:

Mayor Peel called upon City Manager Olson to read the items on the Consent Agenda.

A motion was made by Mayor Pro Tem L. M. Hill-Lawrence, seconded by Councilman J. A. Stimatz to approve the following Consent Agenda. Those voting in favor of the motion were: Hill-Lawrence, Stimatz, Brooks, Donnelly, Hummer, Spence and Walton. Against: None. Motion carried.

Consent Agenda:

- a} Awarded Agreement for Professional Engineering Services to Hyman & Robey in the amount of \$38,000 for the Middle School project.
- b} Adopted the following Resolution authorizing financing with BB&T for a recycling truck with 2.19% fixed rate for a total of \$179,632.20.

**RESOLUTION #2013-07
APPROVING FINANCING TERMS
FOR
RECYCLING TRUCK**

WHEREAS, the City of Elizabeth City, North Carolina (the "City") has previously determined to undertake a project for the financing of a Recycling Truck, (the "Project"), and the Finance Officer has now presented a proposal for the financing of such Project:

BE IT THEREFORE RESOLVED, as follows:

1} The City hereby determines to finance the Project through Branch Banking and Trust Company ("BB&T"), in accordance with the proposal dated March 6, 2013. The amount financed shall not exceed \$170,000.00, the annual interest rate (in the absence of default or change in tax status) shall not exceed 2.19%, and the financing term shall not exceed five (5) years from closing.

2} All financing contracts and all related documents for the closing of the financing (the "Financing Documents") shall be consistent with the foregoing terms. All officers and employees of the City are hereby authorized and directed to execute and deliver any Financing Documents, and to take all such further action as they may consider necessary or desirable, to carry out the financing of the Project as contemplated by the proposal and this resolution. The Financing Documents shall include a Financing Agreement and a Project Fund Agreement as BB&T may request.

3} The Finance Officer is hereby authorized and directed to hold executed copies of the Financing Documents until the conditions for the delivery of the Financing Documents have been completed to such officer's satisfaction.

The Finance Officer is authorized to approve changes to any Financing Documents previously signed by City officers or employees, provided that such changes shall not substantially alter the intent of such documents or certificates from the intent expressed in the forms executed by such officers. The Financing Documents shall be in such final forms as the Finance Officer shall approve, with the Finance Officer's release of any Financing Documents for delivery constituting conclusive evidence of such officer's final approval of the Document's final form.

4} The City shall not take or omit to take any action the taking or omission of which shall cause its interest payments on this financing to be includable in the gross income for federal income tax purposes of the registered owners of the interest payment obligations. The City hereby designates its obligations to make principal and interest payments under the Financing Documents as "qualified tax-exempt obligations" for the purpose of Internal Revenue Code Section 265 (b) (3).

5} The City intends that the adoption of this resolution will be a declaration of the City's official intent to reimburse expenditures for the project that is to be financed from the proceeds of the BB&T financing described above. The City intends that funds that have been advanced, or that may be advanced, from the City's general fund, or any other City fund related to the project, for project costs may be reimbursed from the financing proceeds.

6} All prior actions of the City officers in furtherance of the purpose of this resolution are hereby ratified, approved and confirmed. All other resolutions (or parts thereof) in conflict with this resolution are hereby repealed, to the extent of the conflict. This resolution shall take effect immediately.

APPROVED, this 11th day of March 2013.

Joseph W. Peel
Mayor

Dianne S. Pierce-Tamplen, MMC
City Clerk

c} Called for a public hearing to be held Monday, March 25, 2013 at 7:30 p.m. in the City Council Chambers of the Municipal Administration Building to

inform the citizens and approve the City's plan to apply for a NC Environment and Natural Resources – Division of Coastal Management grant.

End of Consent Agenda

6} REGULAR AGENDA:

a} Award of Bid for construction of Phase I of ECPD Firing Range:

Mayor Peel called upon City Manager Olson for comments.

Mr. Olson advised we opened quotes last week for the construction of the firing range. The firing range will be located off Wellfield Road where the City's Wellfield is located. Last week we received four quotes from qualified individuals to do the work. The low quote was from Whitehurst Sand Company in the amount of \$111,305.00. Included in the bid documents were two alternatives. Alternative I dealt with access to the site and construction of a road or improvements to the road to get to the firing range and Alternative II deals with fabric to be used on the berm itself. Staff is recommending that we award the base bid and Alternative I to Whitehurst Sand Company and the total cost would be \$149,898.00. It would be within budget. It is still not known if Alternative II will be needed. If it is needed then we will go ahead and include it in next year's budget.

A motion was made by Councilwoman L. A. Hummer, seconded by Councilman R. T. Donnelly to award the base bid and Alternative I of the firing range project to Whitehurst Sand Company in the amount of \$149,898. Those voting in favor of the motion were: Hummer, Donnelly, Brooks, Hill-Lawrence, Spence, Stimatz and Walton. Against: None. Motion carried.

b} Hold Over Positions on Council:

Mayor Peel called upon City Attorney Morgan for comments.

Mr. Morgan said last Tuesday he met with the City Clerk and the City Manager and we called Robert Joyce with the School of Government to ask his ideas regarding this and he certainly doesn't think he was trying to flippant with the answer that he gave us. His memo circulated on Thursday of last week touches on the response he gave us. We explained that we were trying to come up with some mechanism whereby Council could determine which person should serve as a holdover in a situation similar to what we had in the last election where we had two otherwise qualified individuals sought to be considered. He explained to Mr. Joyce that he had been tasked by Council with trying to determine the various

scenarios that could arise where this might be an issue. His response was "good luck". He thinks what he was trying to say is we as a group or any group of people could brainstorm and try to come up with situations that could arise. He explained that we would miss something that might occur in real life. He doesn't believe that he mentioned in the memo but he indicated that in a situation where two people otherwise might qualify to be a holdover that perhaps the only resolution or alternative that might work would be some sort of game of chance or a coin flip as he said. That is certainly not something he thinks we want to look at but as you all may recall following the last election we did get an opinion from the State Attorney General to the effect that when two people who would otherwise qualify to be a holdover counselor have indicated they both wanted to be considered and only one of those individuals in this case, Mr. Brooks had stood for re-election then that scenario Mr. Brooks should be the holdover. Beyond that, we don't have any opinions or guidance upon which we can rely. It is certainly clear to him and to Ms. Pierce-Tamplen and Mr. Olson too that anything that we do that deviates from the status quo would require Justice Department approval. If it is the desire of Council that he works on trying to come up with some sort of charter change to pursue this further, he would certainly be willing to do that, but it will take some time.

Councilman Stimatz stated we have our own rules and procedures now and if we amended those to cover certain situations, not all, but certain ones, does that require the Justice Department approval?

Mr. Morgan replied in his opinion it would. Anything that would involve these individuals or their successors making the decision as to who serves would involve getting the Justice Department approval.

Mr. Stimatz said he would feel very comfortable just putting it in our own rules and procedures. Section 5 of our Charter states specifically that you have to be elected and certified before you can assume the seat and until that happens both incumbents are sitting there. The hardest one to handle would be if a person gets elected, the two incumbents ran and neither one won and they are in a runoff and it doesn't occur until after the new council gets sworn in so who do you keep. That is when it gets sticky. He would like for you to come back with something on changing our procedures and then take it to the Justice Department and they will have to say yea or nay. The other thing would be to look around the world and not just North Carolina sites to see how others deal with this type of thing.

Mr. Morgan stated that the problem in North Carolina and he doesn't know if we are the only City, but we are one of very few cities that requires counselors run not for a specific seat but run at-large and the top two vote getters are the ones that would be the winners. If we had the opposite situation then certainly and

one counselor served in Seat A or Seat B then there would be no issue because that person would be the holdover. It is only because of the somewhat unique nature of our charter and the way that we elect the council that just seems to be an occurring problem. We have had two situations. One involved voter eligibility challenge and one that involved a resident challenge.

Mr. Stimatz said he would start with changing our own procedures and going to Justice with that.

Mr. Morgan said he would be glad if it is the desire of Council to take a stab at that and coming up with something for the procedure.

Mr. Stimatz said that is what we would like regardless whether we put it in our charter or put it in our procedures. You are going to have to come up with something.

Councilman Brooks stated he thinks Councilman Stimatz was right in the ball park. We asked the Attorney General or the Department of Justice about changing the Charter. In this situation we can't cover every thing that might happen as far as election holdover, but we can address the issues that we just went through. If a third one comes up then we will address that one then. In Section 2-8 of our Charter it addresses vacancy of an elected office under General Statute 160A-13. It says, "When a vacancy occurs within 90 days before the first date of filing notice of candidacy pursuant to NCGS 163.294-2". The General Assembly of North Carolina Section 2001 and 2001-227, HB 636, and Article 3 talks about elections but not about the holdover because it is not part of the election process. This Council appoints who will be the holdover. We are the legislative body for the City and our role is to adopt laws and policies to govern the City, so when it comes to a holdover we don't have to go through the election process. He is agreeing with Tony. He asked Mr. Morgan to talk with the Attorney General and ask about this because he is almost sure that we have that authority under the Session Laws 2001-227. He could understand if we can't go against the election process but a holdover is not part of the election process. Sometimes when you asked the Attorney General a question or ask the Department of Justice it is how you ask what. It is not what you ask. He would like to have it worded to address that. He thinks that we should have something in place because it is ridiculous for us to keep going through the same thing and then we have to ask the Attorney General and they give an opinion. If we were trying to change the election process he would agree wholeheartedly that Section 5 kicks in.

Mr. Morgan stated that he agrees with most of what you said but clearly we were told last Tuesday that any thing involving the people that sit around this table is the election process. Anything including all the way through in

determining the holdover up until the time that the candidate has been elected and duly qualified and sworn in all involves the election process. He made it clear that in his opinion that all of this is included in the process. He will be glad to try to come up with something to incorporate in our policies.

Mr. Walton stated that whatever we add let it be concrete. Don't let it be something whereby one council will do it one way and then the next will change it.

Mr. Morgan stated he would agree with that except that any council has the right to change its rules and procedures so whatever we enact now might not stand the test of time.

Mayor Peel said that is true with every rule that we have. That is just the world that we live in. If we were to do this then they have to consciously change it. Right now there is no guidance at all. It is much less likely to be changed if we have something in there.

Councilman J. A. Stimatz made a motion to direct the City Manager to have staff and the attorney create a draft set of proposals for us to look at regarding the two scenarios we are aware of and at least the one where we have two incumbents in a run off for the second seat. Councilman M. E. Brooks seconded the motion. Those voting in favor of the motion were: Stimatz, Brooks, Hill-Lawrence, Hummer, Spence and Walton. Against: Donnelly. Motion carried.

c} Department of Justice Grant:

Mayor Peel called upon Councilman Brooks for comments.

Mr. Brooks stated from the City Council we had a vote as far as the Byrne Criminal Justice Invocation Grant. He voted against it. He has gotten a copy of the grant as it was submitted by the City. He is sure that he made the right choice in voting against the grant. The City's request was for \$964,800 and half of that goes into personnel and fringe benefits and travel which is \$461,000 and \$125,000. His problem with that is even if there is a problem in that area of that magnitude over half of the money is going into personnel, fringe benefits and travel and other. Other means we can use it any kind of way that we so feel. It doesn't mean it would necessary go into that area although the grant was secured on those terms. The building block grant would integrate new and existing services and strategies to improve the quality of life of citizens throughout Elizabeth City. It is not just for that area. It is throughout Elizabeth City. That means that grant money can be sent anywhere they so choose. He

doesn't think that is fair because you used that area as a reason to secure the grant. He thinks that is really a bad situation. He was going to take the information and send it behind the grant to the Department of Justice and justify this but that is not even worth his time. He just wants to make the citizens aware of what is going on. Then you had partners comprised of the cross section partnerships. Of course when you apply for a grant like this, the more people you have with degrees, educations and sort of already going for the community it is the likelihood that the grant will be approved. Some of the people that were part of the partners were the City of Elizabeth City Police Department, River City CDC, ECSU, ECPC Public Schools, Faith Base Community and Hope and Action Foundation, Missionary Baptist Church, EC Coast Guard, First Judicial District of NC, District Attorney's Office and EC Chamber of Commerce. He looks at those and finds it really amazing. First of all he deals with our City, the City of Elizabeth City. We have problems abiding by our own policies. He has issues with when we handle money of that magnitude when we have problems even abiding by our own policies. River City CDC they deal mainly with YouthBuild and mainly with the youth. He had the City to pull the arrests off of Roanoke Avenue and some of those arrests said, "DUI and police car stuck in the mud". He has a big problem with this. All he is doing now is giving the people the information and justifying my vote. When someone rides through Roanoke Avenue or Peartree and get caught driving while intoxicated it is considered an arrest and statistic for Roanoke. He believes you can take almost any street in Elizabeth City and set up some kind of license check and you probably can find you can target any main thoroughfare with the same thing. Just like you can go to some of these places that serve alcohol and you can probably sit there on Roanoke and catch a whole lot of people and then say this is a problem area. He knows it is far fetched but it makes sense what he is really trying to say. He doesn't want the people to feel like they are being used. He wants to know where these faith based organization were when Council eliminated open prayer in our Council meetings. Those are the issues that he has with this. He is trying to figure out what they are going to get out of this grant. Another problem he has is this is his Ward and why wasn't he called to the table. He does represent the Third Ward. When other people call him in other Wards he hears council people say why are you over in their wards. Don't have a different standard for him than you do for others. We don't want to just put big names out there to pimp the community. That is a term he uses when someone is trying to use someone else to gain advantage. He thinks the overall intent of the grant is good. In the statistics he read about Roanoke he didn't see nothing like murder. We have murders on ECSU campus and we had a murder two houses down from the university but they are over in the Third Ward worried about a DUI. He is just voicing his vote against the grant.

7} COMMENTS AND INQUIRIES ON NON-AGENDA ITEMS:

Councilman Donnelly said the only thing he would like to do is remind the Council that this Thursday at 12:00 p.m. to 1:00 p.m., ECDI has recently moved into the Mack Sawyer Building that we bought and they are having a ribbon cutting and it is being catered by Cypress Creek Grill and everyone is invited to attend. Please mark it on your calendar and the whole community is welcome to come down to the ribbon cutting for ECDI at noontime on Thursday.

Councilman Spence stated he had no further comments.

Councilwoman Hummer stated she had no further comments.

Mayor Pro Tem Hill-Lawrence said she would like to thank the City for their participation in ECSU Founders Day event last week. They were very grateful for our being present in that celebration.

Councilman Walton stated there is an event tomorrow in support of reducing gun violence and due to the expected inclement weather tomorrow the organizing for action walk that was scheduled to be held in front of the courthouse has been changed to an inside event. The event will now be entirely held in Courtroom A of the Pasquotank County Courthouse beginning at 6:30 p.m.

Councilman Stimatz said he had some inquiries from his constituents that live on Continental Drive about what they call the Gatehouse. He understands that it is mold infested and the question has come about on why we haven't done something about it. He stopped by and looked at it and it is posted that it is under HUD Control and Ownership which he would think would preclude us from taking any action until we get their permission.

Councilman Brooks stated he had no further comments.

Mayor Peel said he wanted to say one thing and Mr. Brooks your opinion and his about the grant are not the same. So, he would just like to thank Amy Swain who is a member of this community and Chief Buffaloe and his staff for their hard work in writing the grant. He had an opportunity to probably spend a couple of hours with Chief and Ms. Swain as they wrote the grant. A big component of the grant has to do with education. Mr. Brooks is right as it will focus on the children of that community first but because of the way the grant is written it will be able to be extended and to help a lot of kids in other places. He thinks that the reality is that somebody is going to get this money and we have as many if nor more needs than most. He would commend the staff and Ms. Swain for aggressively pursuing the grant and he hopes we get it.

8} CLOSED SESSION – AS PER NCGS §143-318.11 (A) (3):

Mayor Peel stated that we need a motion to retire into Closed Session.

A motion was made by Councilwoman L. A. Hummer to retire into Closed Session for consultation with the City Attorney as per NCGS 143-318.11 (a) (3). Mayor Pro Tem L. M. Hill-Lawrence seconded the motion. Those voting in favor of the motion were: Hummer, Hill-Lawrence, Brooks, Donnelly, Spence, Stimatz and Walton. Against: None. Motion carried.

9} RETURN TO REGULAR SESSION:

Mayor Peel called for a motion to return to regular session.

A motion was made by Councilman J. A. Stimatz, seconded by Councilwoman L. A. Hummer to return to Regular Session. Those voting in favor of the motion were: Stimatz, Hummer, Brooks, Donnelly, Hill-Lawrence, Spence and Walton. Against: None. Motion carried.

10} ADJOURNMENT:

There being no further business to come before the City Council at this time, Mayor Peel adjourned the meeting at 8:17 p.m.

Dianne S. Pierce-Tamplen, MMC
City Clerk

Joseph W. Peel
Mayor