

**City Council Regular Session  
November 10, 2014**

The City Council of the City of Elizabeth City met in regular session on Monday, November 10, 2014 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 Kem Spence  
Councilman Darius Horton  
Councilman Montravias King

MEMBERS ABSENT: None

OTHERS PRESENT: City Manager Rich Olson  
City Attorney Bill Morgan  
Finance Director Sarah Blanchard  
Planning Director June Brooks  
Chief of Police Eddie Buffaloe  
Electric Department Superintendent Karl Clow  
Assistant to the City Manager Angela Cole  
ECDI Director Rebecca Cross  
Human Resources Director Katherine Felton  
Public Utilities Director Paul Fredette  
Fire Chief Larry Mackey  
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 7:00 p.m. Mayor Peel welcomed everyone to the meeting and recognized Rick Lowery to give the invocation, after which the Pledge of Allegiance was led by two members of Boy Scout Troop 162.

**1. Agenda Adjustments and Approval:**

Mayor Peel called for any adjustments to and approval of the agenda.

- a. Mayor Pro Tem Anita Hummer requested to add a closed session as allowed by NCGS 143-318.11(a)3 – Consultation with Attorney in regards to Pasquotank County Lawsuit and NCGS 143-318.10(e) Approval of Closed Session Minutes;

- b. Councilman Montravias King requested that the consideration to call for a Special City Council Meeting on the Regular Agenda be removed from the agenda;
- c. Councilman Ray Donnelly requested that the consideration of the Regular Session minutes of October 27, 2014 be removed from the agenda, as the minutes could not be accessed through the online agenda.

**Motion was made by Councilman Tony Stimatz, seconded by Councilman Darius Horton, to approve the agenda as amended. Those voting in favor were: Baker, Donnelly, Hummer, Stimatz, Brooks, Spence, Horton and King. Against: None. The motion carried unanimously.**

**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.

**3. Proclamation:**

- a. Proclamation – Small Business Saturday in Elizabeth City – November 29, 2014

Mayor Peel read and presented a Proclamation declaring November 29, 2014, as Small Business Saturday in Elizabeth City. The proclamation urged the residents of our community, and communities across the country, to support small businesses and merchants on Small Business Saturday and throughout the year.

Local small business owners, Tim and Cindy Williams, accepted the proclamation and thanked the City Council for their support of local small businesses.

**4. Comments from the Public:**

No one in attendance requested to be heard.

**5. Approval of Minutes:**

- a. City Council Work Session October 27, 2014

**Motion was made by Councilman Kem Spence, seconded by Councilman Ray Donnelly, to approve the minutes of the City Council Work Session of October 27, 2014. Those voting in favor were: Baker, Donnelly, Hummer, Stimatz, Brooks, Spence, Horton and King. Against: None. The motion carried unanimously.**

**6. Consent Agenda:**

Mayor Peel recognized City Manager Rich Olson to read the items listed on the Consent Agenda for the record. Mr. Olson recommended approval of all items, as follows:

**Beginning of Consent Agenda:**

- a. Consideration – Adoption of the following various Budget Amendments as presented for accounting purposes;

**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, 2015:

**SECTION I.** That the General Fund Insurance Proceeds (103350.8300) be increased by \$20,595.75, the Police Department Repairs to Computers Expenditures (105100.1701) be increased by \$6,040, the Police Departmental Expenses (105100.3300) be increased by \$10,791.75, and the Fire Department Maintenance and Repairs to Equipment Expenses (105300.1600) be increased by \$3,764.

That the Electric Fund Insurance Proceeds (303350.8300) and Energy Management Departmental Expenditures (308400.3300) be increased by \$386.

(To record insurance proceeds for lightning damage.)

**SECTION II.** That the General Fund Employee Reimbursement (103220.0023) and Police Department Bullet Proof Vest Expenditures (105100.3601) be increased by \$590.

(To record former police officer's reimbursement of cost of bullet proof vest.)

**SECTION III.** That the Tourism Development Authority Revenue (103180.0000) and Elizabeth City Downtown Inc. Contribution (106610.4587) be increased by \$4,485.

(To record City's contribution for new trash cans and benches for downtown.)

**ADOPTED**, this 10<sup>th</sup> day of November 2014.

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Joseph W. Peel  
Mayor

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Vivian D. White, CMC/NCCMC  
City Clerk

- b. Consideration – Approval of \$3,000 Community Support Grant for Visions of Hope Emergency Shelter and Outreach Center to be used to defray the cost of utility bills at the 709 Herrington Road facility and adoption of the following budget amendment. as required;

**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, 2015:

**SECTION I.** That the Vision of Hope Emergency Shelter and Outreach Center (106620.5887) be increased by \$3,000 and the Community Support Grants (106620.6000) be decreased by \$3,000.

(To record City's contribution for Vision of Hope Emergency Shelter.)

**ADOPTED**, this 10<sup>th</sup> day of November 2014.

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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 the Triple S Internet Café #4 LLC Settlement Agreement in the amount of \$16,500;

**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, 2015:

**SECTION I.** That the General Fund Balance Appropriated (103990.0000) be increased by \$6,254.63, the Parks and Recreation Capital Improvements Enfield Park (106200.7308) be decreased by \$10,245.37 and Triple S Internet Café Expenditure (106600.4910) be increased by \$16,500.

(To record Triple S Internet Café Settlement.)

**ADOPTED**, this 10<sup>th</sup> day of November, 2014.

Joseph W. Peel  
Mayor

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Vivian D. White, CMC/NCCMC  
City Clerk

**End of Consent Agenda.**

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

*(Clerk Notation: Mayor Peel declared a 12-minute recess until the start of the 7:30 p.m. Public Hearings)*

**7. Public Hearings:**

- a. Consideration – Public Hearing to receive comment regarding execution of a Sub-recipient Agreement with Visions of Hope Emergency Shelter and Outreach Center; (with additional consideration of execution of Lease Agreement for 709 Herrington Road and adoption of budget amendments);

Mayor Peel declared the meeting into Public Hearing at 7:30 p.m. and inquired of the City Clerk if persons were present who wished to be heard. Upon reply that no one wished to speak, Mayor Peel declared the Public Hearing Closed.

Mayor Peel recognized City Manager Olson for a review of this request. Mr. Olson stated that during the City Council meeting of October 27, 2014, the City Council accepted a proposal from the Visions of Hope Emergency Shelter and Outreach Center to operate the homeless shelter located at 709 Herrington Road. He said that the shelter was purchased with CDBG funds, which requires the operator of the facility to execute a Sub-recipient Agreement. He advised that in order to execute the Sub-recipient Agreement, a public hearing is required. He reviewed the agreement and its requirements, as provided in the agenda packet. Mr. Olson reported that an additional requirement for the shelter to operate is a Conditional Use Permit and pointed out that in order to secure the permit, both the Sub-recipient Agreement and the Lease Agreement, as presented, would be required.

**Motion was made by Councilwoman Jean Baker, seconded by Councilman Darius Horton to authorize execution of the Sub-recipient Agreement and Lease Agreement with Visions of Hope Emergency Shelter and Outreach Center as presented; and further to authorize City staff to reprogram the money in the fiscal year 2014-2015 budget for Enfield Tennis Courts to be used to make improvements at 709 Herrington Road and the Hugh Cale**

**Center; and further, to adopt the following budget amendments as required for accounting purposes.**

**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, 2015:

**SECTION I.** That Public Buildings Capital Improvement (105000.7300) be increased by \$34,754.63, and Parks & Recreation Capital Improvements (Enfield Park) (106200.7300) be decreased by \$34,754.63.

**(To make improvements to 709 Herrington Road [\$12,524.63] and the Huge Cale Center [\$22,230.00])**

**ADOPTED**, this the 10<sup>th</sup> day of November, 2014.

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**Joseph W. Peel**  
Mayor

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

- b. Consideration – Public Hearing to receive comment regarding RZ-01-14 a request by Winfred Simpson to rezone property located at 1002 S. Road Street from Residential (R-6) to Neighborhood Business (NB).

Mayor Peel declared the meeting into Public Hearing and inquired of the City Clerk if persons were present who wished to be heard. The City Clerk announced that Ms. Geraldine Hutchings wished to address the Council. Mayor Peel recognized Ms. Hutchings and invited her to the podium.

Ms. Geraldine Hutchings, 1004 S. Road Street, Elizabeth City, NC stated that she opposed the rezoning of the property at 1002 S. Road Street. She stated that her first concern was one of danger and safety. She explained that there was only about six feet between her property and the property proposed for the rezoning. She proposed that convenience stores have a bad reputation as far as crime is concerned. She distributed a handout to the Council that provided crime statistics for the Sonoco Park and Shop on Ehringhaus Street to support her concerns. She pointed out that the area in which the proposed rezoning is located is very dark. She stated that her concern regarding safety was for herself as well as the community at large. Ms. Hutchings communicated an additional apprehension of hers was with regard to the additional uses allowed within the Neighborhood Business zoning classification, specifically bars, nightclubs and taverns. She advised that at any time the owner decided, he could change the use from the proposed convenience store to a bar. She stated that the City

did not need to have another bar because it would impact the family oriented, “artsy” image of the community. She distributed a copy of the draft minutes from the Planning Commission meeting of October 7, 2014 during which this matter was discussed. She pointed out the applicant’s statement in the minutes that if he did not receive a favorable recommendation “he would put a big ditch there with the drainage going toward Ms. Hutchings’ house”. She said this statement concerned her greatly. She asked the Council to consider her concerns regarding this matter when making their decision.

There being no one else to speak, Mayor Peel declared the Public Hearing closed and requested that Planning Director June Brooks provide an overview of this rezoning application.

Ms. Brooks stated that Mr. Winfred Simpson is requesting to rezone his property at 1002 S. Road Street from R-6 to NB. She reported that the applicant currently has a non-conforming automobile repair shop located on the site. She advised that Mr. Simpson has indicated that he wants to turn the building into a convenience store. Ms. Brooks clarified that convenience stores are permitted in R-6 zoning classifications with a Special Use Permit; however, the the size of the building must be limited to 1,000 square feet. She reviewed for the Council the parameters surrounding the Neighborhood Business zoning classification. Ms. Brooks stated that there are four sites within a quarter mile of the site zoned Neighborhood Business including a church, food and delivery service, thrift store and the now vacant Pick-N-Pay shop.

Ms. Brooks reported that Planning Department staff met with the applicant and discussed the option of Conditional Zoning for the site; however, the applicant did not want to limit his uses for the property. She reported that this application is in compliance with the development standards of the Unified Development Ordinance and is consistent with the Joint Elizabeth City and Pasquotank County Land Use Plan.

Ms. Brooks stated that Ms. Hutchings attended the Planning Commission meeting during which the application was reviewed and voiced her concerns. She said that after much consideration, the Planning Commission recommended approval of the rezoning request.

Ms. Brooks reported that Ms. Hutchings presented a Protest Petition to the City Clerk on November 5, 2014. She said that the petition had been found to be valid. She advised the Council that a supermajority vote of the Council would be required in order to approve RZ-01-14 because of the Protest Petition.

Councilman Stimatz inquired as to the conditions placed for approval pursuant to the staff write-up. Ms. Brooks responded that the Planning Commission recommended approval without conditions and advised that the staff write-up was in error in that regard.

Councilman Stimatz stated that he understood Ms. Hutchings concerns and pointed out that once the zoning is changed, then all allowed uses come into play. He inquired if there are set-back requirements or other restrictions on how close a business can be to a residential structure. Ms. Brooks responded that there were no restrictions; however,

should the rezoning occur, landscaping and site improvement requirements would have to be met.

Upon Councilman Donnelly's request, Ms. Brooks provided an overview of the surrounding properties to the site, which include residential properties, a cemetery and City-owned parcels.

Councilman Donnelly stated that he thought Ms. Hutchings had very good points in her concerns.

Councilman Brooks stated that he is very familiar with the area. He said that he understood the safety concern, but looked at the rezoning as being more of a service to the community. He pointed out that with the number of businesses leaving Elizabeth City, he felt the Council should give local business people a chance. He stated that he thought it would be a travesty to deny the application. He advised that the use of crime statistics from another location were not pertinent to this location. He pointed out that somewhere down the line, you must rely on owner-responsibility.

**Motion was made by Councilman Michael Brooks, seconded by Councilman Darius Horton, to approve RZ-01-14 to rezone the property located at 1002 S. Road Street to Neighborhood Business (NB).**

Councilman Horton pointed out that according to the staff memo, this property has been a property that has been used for some type of business since the 1930's. He said that a concern he has, when working on a daily basis at the corner of Ehringhaus and Road Streets, is the number of people from that neighborhood walking across the busy Ehringhaus Street to go to the Sunoco convenience store. He stated that it is a very dangerous intersection. He said he would support someone providing a closer neighborhood convenience store for those persons. He advised that he supported the application.

Mayor Pro Tem Hummer stated that rezoning issues almost always involve hard choices. She said that there is already an element of fear in that particular neighborhood and she had always worked hard to make neighborhoods safer. She concluded that she could not vote to increase an element of fear in the neighborhood.

Councilwoman Baker expressed her concern regarding the current condition of the property with regard to overgrown brush and trees. She questioned if during the site plan review process the requirement of a fence or some other type of buffer between the properties could be made. Councilwoman Baker stated her concern regarding the applicant's statement reported in the draft Planning Commission minutes as pointed out by Ms. Hutchings and characterized it as a "threat".

Ms. Brooks responded that typically when a commercial zoning is adjacent to a residential zoning, a landscaping buffer is required. She advised that with the close proximity of the house and business in this case, a fence requirement along with vegetation is an option that could be imposed.



Councilman Spence stated that he had been involved in security for a long time. He pointed out that the atmosphere is set by the owner; and if the owner doesn't allow people to "hang around" and cause problems, you would not have those issues on the premises. He pointed out that if the owner spends the money required to get the property in correct condition, a fence would not be an issue. He stated that the property had been used for a business purpose for a long time and there had not been issues in the past. He said that as long as the applicant meets all the requirements of the City, he did not see the problem. He stated that the applicant is trying to start a business and he thought the Council should move forward.

Councilman Stimatz reiterated that the R-6 zoning classification already allows for the operation of a convenience store. Ms. Brooks stated that the building is limited to 1,000 square feet in an R-6 classification and the applicant's property is larger than that. She also advised that a Special Use Permit could not be granted by the Board of Zoning Adjustments because the application involved a change in use. Mayor Peel pointed out that if the building was smaller, there would be no need for this consideration.

Councilman Brooks stated that he walks the neighborhood every day; and in response to the concerns about the fear of crime, he said he feels very safe. He pointed out that the Council could not assume "that it's going to be bad". Councilman Brooks responded to Councilwoman Baker's concern about overgrown brush and trees by stating that the Council should give the owner a chance to make the improvements. He stated his agreement with Councilman Horton with regard to the safety of the neighborhood residents no longer having to cross a busy street to get to a convenience store if this rezoning is approved. He said that he could not understand the Councilors' opposition.

Councilwoman Baker stated that her concern was not of potential crime, because crime would occur anywhere. She said her concern was about property upkeep and stated that she would like the property to look much better than it does at present. She also reiterated her concern about requiring a fence to be installed to shield the residential property that is in such close proximity.

Ms. Brooks stated that she would like to make one thing clear - that this consideration is for a rezoning from R-6 to NB and not specifically about a convenience store. She reminded the Council that any of the uses shown in the table for the classification NB would be permitted if the application is approved. She requested that the Council consider the "whole picture".

Councilman Spence asked if a fence would have to be installed anyway, to which Ms. Brooks responded in the affirmative.

Councilman Horton stated that the Planning Commission's recommendation indicated that Mr. Simpson has met the requirements to operate the neighborhood business and that was the reality of this consideration. He said, in his opinion, that was what matters.

City Attorney Morgan reminded the Council that since the Protest Petition filed had been verified by staff, the vote to approve the rezoning would require six affirmative votes.

Councilman Spence called for the question.

Mayor Peel asked for the vote on the motion by a show of hands. A roll call vote was requested by Councilman Spence, with the votes recorded as follows:

**Councilman Brooks – yes**  
**Councilman Stimatz – yes**  
**Councilman Horton – yes**  
**Mayor Pro Tem Hummer – no**  
**Councilman King – yes**  
**Councilwoman Baker – no**  
**Councilman Spence – yes**  
**Councilman Donnelly – no**

**Mayor Peel announced that the motion failed for lack of a super majority vote.**

Councilman Horton asked staff the method used to verify the Protest Petition. Ms. Brooks responded that staff determined the property owners from the County tax records and matched the signatures from that record. She noted that Ms. Hutchings obtained the signature of four adjacent property owners. City Manager Olson stated that Ms. Hutchings only needed two signatures for a valid petition.

Mr. Winfred Simpson spoke up from the audience to inquire as to why he was not allowed to speak, since Planning Department staff had informed him he could speak for three minutes. Mayor Peel responded that he had not registered to speak. Mr. Simpson said that he did not know he had to sign up. Mayor Peel apologized to Mr. Simpson that he was not aware of the requirement. Mr. Simpson continued to speak from the audience. Mayor Peel informed him that he was out of order.

#### **8. Regular Agenda:**

- a. Consideration – Call for a Special City Council Meeting to be held on Monday, November 17, 2014 at 5:30 p.m. in City Council Chambers of the Municipal Administration Building, 306 E. Colonial Avenue for the purpose of adopting a Resolution declaring the Fourth Ward seat of Councilman Montravias D. King vacant and calling for a Special Election.

*Clerk Notation: This item was removed from the agenda.*

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

Councilman Donnelly stated that he had the pleasure of attending the Voices of Corner Stone Missionary Baptist Church in concert, performed in conjunction with Christ Episcopal Church. He said the program was a great program and he thanked and congratulated all involved with organizing and coordinating the event.

Councilman Spence had no comments.

Councilwoman Baker stated that she attended the Veterans Day celebration held at Waterfront Park. She commended Dan Serik for the fabulous job he did in organizing

the event. She said she attended the dinner held at Christ Church for Splash Week and praised the performance by the ECSU Choir. She also applauded the Rhythm and Brews event sponsored by AoA and stated that for a first-time event, it was very well done.

Councilman King had no comments.

Mayor Pro Tem Hummer had no comments.

Councilman Horton had no comments.

Councilman Stimatz stated that everyone owes a great debt of gratitude to Carolyn Peel for organizing Splash Week. He said it was a great time that afforded a lot of great artists a venue to display their work. He reminded everyone of the upcoming Veterans Day observance being held at ECSU.

Councilman Brooks had no comments.

Mayor Peel stated that artists visiting Elizabeth City for the Splash event came from as far away as Oklahoma and Maine. He said that a lot of the art students from ECSU were also heavily engaged in the event. He stated that the highlight of the week for him was the performance by the ECSU Choir, conducted by Dr. Walter Swan; and he encouraged everyone to attend their upcoming Christmas Concert on December 5. He said that the choir was an amazing, talented group of young people and they were a tribute to the University.

**10. Closed Session as allowed by NCGS 143-318.11(a)3 – Consultation with Attorney in re Pasquotank County Lawsuit and NCGS 143-318.10(e) Approval of Closed Session Minutes:**

**Motion was made by Mayor Pro Tem Anita Hummer, seconded by Councilman Darius Horton, to go into Closed Session as allowed by NCGS 143-318.11(a)3 – Consultation with Attorney in re Pasquotank County Lawsuit and NCGS 143-318.10(e) Approval of Closed Session Minutes. Those voting in favor were: Baker, Donnelly, Hummer, Stimatz, Brooks, Spence, Horton and King. Against: None. The motion carried unanimously.**

Mayor Peel declared a five minute recess at 8:16 p.m. after which the Council entered Closed Session.

**Motion was made by Councilman Tony Stimatz, seconded by Councilman Kem Spence, to come out of Closed Session and return to Open Session. Those voting in favor were: Baker, Donnelly, Hummer, Stimatz, Brooks, Spence, Horton and King. Against: None. The motion carried unanimously.**

**Motion was made by Councilman Tony Stimatz, seconded Mayor Pro Tem Anita Hummer, to approve the Closed Session minutes of October 6, 2014 as presented. Those voting in favor were: Baker, Donnelly, Hummer,**

**Stimatz, Brooks, Spence, Horton and King. Against: None. The motion carried unanimously.**

**11. Adjournment:**

There being no further business to be discussed, Mayor Peel adjourned the meeting at 8:33 p.m.

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Joseph W. Peel  
Mayor

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Vivian D. White, CMC/NCCMC  
City Clerk