



MEMORANDUM

To: Members of the City Council

From: Mayor Joe Peel

Date: May 19, 2015

Re: Response – Justification for Affidavit to Alcoholic Beverage Control Commission re American Legion Post 223

During the public comment period for the May 11, 2015 City Council meeting, Mr. Larry Gibson, a representative of the Linton J. Sutton Post 223 American Legion located at 611 S. Martin Luther King Drive, spoke concerning actions I took as Mayor of Elizabeth City. Prior to Mr. Gibson's comments, the Council agenda was amended to add a discussion of the matter. As a result of the Council's discussion, a motion was made that directed me to provide justification for the affidavit I provided to the ABC Commission in connection with the ALE investigation of the American Legion. Most of the following information was provided to you by memorandum on May 12, 2015, the day following the meeting. However, additional information has been included in this memo.

Once again, some members of the City Council assumed certain facts without knowing the circumstances surrounding the issue. If the City Council believed Mr. Gibson's comments had merit, the matter should have been forwarded to the next City Council meeting's agenda for debate. At that time, all relative facts and documents could have been presented to aid in the discussion. Some members of the City Council attempted to pass a motion directing me to send a letter of apology to the American Legion, which the City Attorney advised Mayor Pro Tem Hummer (who chaired this meeting) was out of order due to the Council not fully understanding my role as Mayor and the authority that the City Council had previously given to the Office of the Mayor. A memorandum from City Attorney Bill Morgan is included as a separate item on the agenda to address the legality of that motion.

As requested, I am providing herein a justification for my actions regarding this matter.

Please find attached a resolution that the City Council adopted on February 27, 2006 giving authority to the Office of the Mayor to be the designated official to notify the North Carolina Alcoholic Beverage Control Commission of the

suitability of persons and locations for ABC permits within the City of Elizabeth City. This resolution gives me, as Mayor of Elizabeth City, the authority to sign all ABC Local Government Opinion Forms for permit applications and to make recommendations on behalf of the City Council pursuant to NCGS §18B-904(f), which states as follows:

(f) Local Government Objections. - The governing body of a city or county may designate an official of the city or county, by name or by position, to make recommendations concerning the suitability of a person or of a location for an ABC permit. The governing body of a city or county shall notify the Commission of an official designated under this subsection. An official designated under this subsection shall be allowed to testify at a contested case hearing in which the suitability of a person or of a location for an ABC permit is an issue without further qualification or authorization.

As required by this statute, attached you will find the letter dated December 19, 2011 to the North Carolina ABC Commission advising that I would replace former Mayor Roger McLean in matters related to the City of Elizabeth City with the ABC Commission.

I have received numerous complaints concerning activities at the American Legion since becoming Mayor. I and members of City staff have met on several occasions with the residents near the American Legion at their request. Most of these meetings included members of the Elizabeth City Police Department and Alcohol Law Enforcement (ALE). Some of the community members who participated in these discussions and shared their concerns about activities at "the Hut" included Katherine Kelley, Donald Graham, Glover Shannon, Reubin Houston, Juanita Spence and Jacquelyn Morris. As a matter of fact, these individuals all presented affidavits to ALE, as well.

The following are the facts:

- There have been 798 calls for service dispatched to the American Legion facility from July 2005 through March 17, 2014. *The actual police reports are available in the City Manager's office for inspection.*
- These calls included such things as drug offenses, disturbances, disorderly conduct, fights, reports of gunshots fired, robberies, simple assaults, aggravated assaults, assaults on government officials, resisting arrest, larcenies, vandalism, drunk and disruptive, trespass, failure to disperse and suspicious conditions.
- The American Legion received numerous warnings over the years by law enforcement and ALE and was given instructions regarding steps required to take in order not to lose their ABC license.
- The residents living in the general area of the American Legion have informed me that they are afraid for their safety.
- Those in charge of security for the American Legion do very little to insure that this facility and its perimeter are safe.
- The affidavit copy that you received during the City Council meeting of May 11, 2015 was a part of the packet of information presented to the

Mayor's Office

P. O. Box 347 • 306 E. Colonial Avenue • Elizabeth City, NC 27907
Phone: 252-337-6955 • Facsimile: 252-337-6956

ABC Commission by the ALE. A very similar affidavit was provided by Chief Eddie Buffaloe. Both affidavits are attached for your reference.

- All facts contained in my affidavit are true and correct to the best of my knowledge and belief and were based on my personal observations and experiences.

The ABC Commission suspended all of the American Legion's permits by an Order issued on April 11, 2014 after a Finding that the public health, safety and/or welfare required emergency action. This order was issued based on an incident, which occurred on April 6, 2014. Members of the Elizabeth City Police Department, including Chief Buffaloe, provided testimony. However, Administrative Law Judge Ward returned and restored their ABC Permit on December 23, 2014 after a subsequent Court hearing requested by the American Legion. The reinstatement of their permit was previously reported to you in the City Manager's weekly FYI dated January 2, 2015.

It should be noted that the American Legion facility was not closed during this period – they only lost their permit to serve alcoholic beverages. All philanthropic activities could have continued without interruption - absent the serving of alcohol.

I have had discussions with some of the neighbors of this property and they have thanked me for the actions we have taken. I will continue to work with the Elizabeth City Police Department, ALE and the neighborhood to insure that their concerns are addressed.

As an elected public official, I believe my primary duty, and the duty of all elected officials, is to ensure that every citizen feels safe in our city and especially in their neighborhoods and homes. I will continue to take any action necessary to make this a reality. It is concerning to me that some members of Council would find my support for these citizens to be suspect. It is even more concerning to me that some members of Council would choose to support the very source of their problems over the safety and well-being of these residents.

I am deeply disturbed that two members of the Council continue to define every issue possible along racial lines. I have spent 48 years of my career working for all children in every community I have served and I don't appreciate my character being attacked and defamed. As public officials, all of us need to be engaged in activities that pull our community together rather than tearing it apart.

In conclusion, it is always easy to play armchair quarterback in situations; however, when rushing to conclusions based on assumptions and not fact, the result is often the creation of needless controversy for the Council and the citizens we serve.

JWP/vdw

STATE OF NORTH CAROLINA)
)
COUNTY OF PASQUOTANK)

COPY

AFFIDAVIT

Chief of Police Eddie M. Buffaloe, Jr., appearing before the undersigned notary and being duly sworn (or affirmed), says that:

1. I currently, and for the past 15 months, have been employed with the Elizabeth City Police Department and hold the position of Chief of Police for the City of Elizabeth City.
2. Prior to my employment as Chief of Police with the Elizabeth City Police Department, I was employed with the Northampton County Sheriff's Office, Halifax County Sheriff's Office, North Carolina Forensic Tests for Alcohol and Enfield Police Department with a cumulative total of twenty-three years in the profession of law enforcement.
3. I am aware of the property of Linton J. Sutton Post 223-1 and 2, located at 611 South Martin Luther King Drive, Elizabeth City, North Carolina (hereinafter referred to as the "Property").
4. Having been a resident of Elizabeth City for the past 15 months and having the Police Chief during that same period of time, I have general knowledge of the reputation of the Property and of the persons who frequent the Property.
5. The Property currently maintains, and has maintained for the past several years, a general reputation as a place where persons become intoxicated; engage in fights; discharge firearms; and use loud, abusive and profane language. In addition, the Property has had documented instances of gang members congregating there.
6. The people who frequent the Property have general reputations for engaging in activities as described in paragraph 5 above.
7. There have been a total of 798 calls for police service dispatched to Property since July 2005, including calls for drug offenses, disturbances, disorderly conduct, fights, gunshots reported, robberies, simple assaults, aggravated assaults, assault on government officials, resisting arrest, larcenies, vandalisms, drunk and disruptive, trespass, failure to disperse and suspicious conditions.

8. Based upon reports from officers who have responded to calls at the Property, my police training and experience, and reports from neighbors who have voiced complaints to the Elizabeth City Police Department; I feel it is not safe for the public and any law enforcement officer to respond to calls for service at the Property without exposure to inordinate and undue danger.
9. Further your affiant saith not.

Suzanne M. Boyfield

Affiant

Sworn to (or affirmed) and subscribed before me this

17th Day of March, 2014

(Official Seal)

Notary Public Dawn B. Hudson

My Commission Expires 01/27/2018

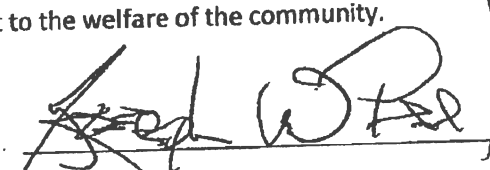
STATE OF NORTH CAROLINA

AFFIDAVIT

COUNTY OF PASQUOTANK

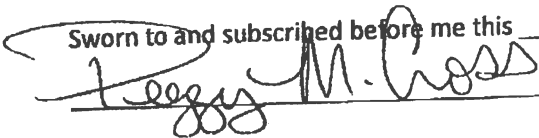
Joseph W. Peel, Mayor of the City of Elizabeth City, appearing before the undersigned notary and being duly sworn says that:

1. I am a resident of Pasquotank County, North Carolina;
2. For the past 22 years, I have resided in a home on Rivershore Road, approximately 1 1/2 miles from the facility known as the Linton J. Sutton Post 223 American Legion, 611 S. Martin Luther King Drive, Elizabeth City, NC, hereinafter known as the "Property";
3. The property currently maintains, and has maintained for a considerable period of time, a general reputation as a place where persons become intoxicated; engage in fights, discharge firearms ; and use loud abusive and profane language;
4. The people who frequent the Property have general reputations for engaging in activities as described in paragraph 3 above.
5. The owner and operator of Linton J. Sutton Post 223 American Legion has a general reputation in the community as a businessman having no concern about the disruptive activities caused by his patrons and for only being concerned about making money.
6. I have seen alcohol containers and trash littering South Martin Luther King Drive, and private properties on the mornings after Linton J. Sutton Post 223 American Legion was open the night before;
7. The loud and disruptive activities do not occur when the property is not open for business.
8. Because of the disruptive nature of the property and the people attracted to the community when Linton J. Sutton Post 223 American Legion is open for business, I do not feel the community, the residents on South Martin Luther King Drive and the people passing through our town are safe.
9. I have personally had conversations with residents living in the area of the Property who are very concerned regarding the negative impact on their property values as well as for their own personal safety;
10. The property and more particularly the business known as Linton J. Sutton Post 223 that operates on the property is clearly a detriment to the welfare of the community.



 Affiant

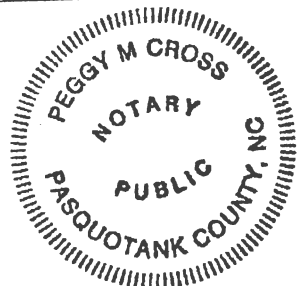
Sworn to and subscribed before me this 18th day of March 2014.



Notary

SEAL

My commission expires: Sept. 19, 2017



MAYOR
CHARLES L. FOSTER
MAYOR PRO TEM
L. ANITA HUMMER
CITY MANAGER
RICHARD C. OLSON
CITY CLERK
DIANNE PIERCE-TAMPLIN, MMC



CITY COUNCIL MEMBERS
JEAN M. BAKER
MICHAEL BROOKS
BETTY SUGG MEGGS
E. KIRK RIVERS
TONY STIMATZ
DARRYL K. STALLINGS, SR.
JOHNNIE B. WALTON

CITY OF ELIZABETH CITY

**RESOLUTION #2066
DESIGNATION OF AN OFFICIAL TO MAKE RECOMMENDATIONS
TO THE NORTH CAROLINA ABC COMMISSION
ON ABC PERMIT APPLICATIONS**

WHEREAS, G. S. 18B-904(f) authorizes a governing body to designate an official by name or by position, to make recommendations concerning the suitability of persons or locations for ABC permits; and

WHEREAS, the City of Elizabeth City, County of Pasquotank wishes to notify the NC ABC Commission of its designation as required by G.S. 1bB-904 (f);

BE IT THEREFORE RESOLVED, that the Mayor of the City of Elizabeth City is hereby designated by position to notify the North Carolina Alcoholic Beverage Control Commission of the recommendations of the City of Elizabeth City, County of Pasquotank County, regarding the suitability of persons and locations for ABC permits within its jurisdiction;

BE IT FURTHER RESOLVED, that notices to the City of Elizabeth City, County of Pasquotank should be mailed or delivered to the official designated above at the following address:

Mail address: P. O. Box 347
Office Location: 306 E. Colonial Avenue
City: Elizabeth City
ZIP: 27907-0347
Telephone: 252-337-6955

ADOPTED, by the City Council of the City of Elizabeth City on the 27th day of February 2006.

Charles L. Foster
Mayor

Dianne S. Pierce-Tamplen, MMC
City Clerk

December 19, 2011

North Carolina ABC Commission
4307 Mail Service Center
Raleigh, NC 27699-4307

REF: Change in Authorized Signer

By Facsimile 919-662-3583 and US Mail

Gentlemen:

Pursuant to the Resolution adopted by the City Council of the City of Elizabeth City on February 27, 2006 which authorizes the Mayor of the City of Elizabeth City by position to execute Local Government Opinion for Alcoholic Beverage Permits, Form 001, please be advised that the term of Mayor Roger A. McLean ended on December 12, 2011. In that regard, the City's new Mayor, Joseph W. Peel, will execute Form 001 for the City of Elizabeth City. In Mayor Peel's absence, the City's Mayor Pro Tem will be the authorized signer.

Should further information be required, please feel free to contact me.

Sincerely,

Richard C. Olson
City Manager

RCO/vdw