



MEMORANDUM

To: Mayor and City Councilors

From: Rich Olson, City Manager

Date: January 7, 2015

Re: Consideration – HOLD a Public Hearing to Adopt a Resolution
Authorizing the Filing of an Application with the Local Government
Commission

BACKGROUND:

In conjunction with the City's auditor presentation during the Work Session held on November 24, 2014, the City Council called for a Public Hearing to be held on December 8, 2014 to adopt a resolution authorizing the filing of an application with the Local Government Commission. The public notice advertisement was sent to The Daily Advance by staff to be published on November 28, 2014 pursuant to statutory provisions. Unfortunately, however, a processing error in the newspaper's advertising system caused the ad to be omitted. Due to this error, the Council called for the Public Hearing again during the December 8, 2014 Council meeting to be held on January 12, 2015.

ANALYSIS:

Each year, prior to the auditor's presentation to the Council, a copy of the audit is sent to the Local Government Commission (LGC) for their review. On November 20, 2014, we received an email from the LGC indicating that it appeared likely that the land purchase made last year required LGC approval.

The City purchased two parcels and executed five promissory notes in the following amounts: \$229,440, \$114,720, \$114,720, \$82,560 and \$82,560. As you will recall, these two parcels were purchased because of potential issues with the property owners if the Options to Purchase the City had negotiated expired. City staff provided a detailed memo to the City Council regarding cash flow projections within the Aviation Park Fund since the purchase of the property will be paid for out of future revenue in the Aviation Park account.

After reviewing the City's CAFR, the LGC Debt Division has taken the position that prior approval was necessary and they cited NCGS §159-148(4) which reads "several contracts that are all related to the same undertaking shall be deemed a

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single contract for the purpose of this article.” Although the City executed five promissory notes totaling \$624,000, all the notes were related to the development of Phase II of the Aviation Park and as such, required prior LGC approval. The City must now correct this error by submitting an application to the LGC after the fact.

It is also a legal requirement that before entering into an installment purchase contract involving real estate, a public hearing must be held. The notice of the public hearing has been published at least 10 days before the date fixed for the hearing, as required. The Publisher’s Affidavit and a certified copy of the minutes of the hearing shall be provided by the City Clerk to the LGC.

STAFF RECOMMENDATION:

AT THE CONCLUSION OF THE PUBLIC HEARING:

By motion, adopt the attached resolution authorizing the filing of an application for approval of a financing agreement authorized by North Carolina General Statute 160-20.

RCO/vdw

RESOLUTION # 2015-01-01

RESOLUTION AUTHORIZING THE FILING OF AN APPLICATION
FOR APPROVAL OF A FINANCING AGREEMENT AUTHORIZED
BY NORTH CAROLINA GENERAL STATUTE 160A-20

WHEREAS, the City of Elizabeth City, North Carolina desires to purchase property for future aviation projects; and

WHEREAS, the City of Elizabeth City desires to finance the Project by the use of an installment contract authorized under North Carolina General Statute 160A, Article 3, Section 20; and

WHEREAS, findings of fact by this governing body must be presented to enable the North Carolina Local Government Commission to make its findings of fact set forth in North Carolina General Statute 159, Article 8, Section 151 prior to approval of the proposed contract;

NOW, THEREFORE, BE IT RESOLVED that the City of Elizabeth City, North Carolina, meeting in regular session on the 12th day of January, 2015, make the following findings of fact:

1. The proposed contract is necessary or expedient because of future development.
2. The proposed contract is preferable to a bond issue for the same purpose because the City is able to finance the land acquisition from cash on hand.
3. The sums to fall due under the contract are adequate and not excessive for the proposed purpose because the City of Elizabeth City is able to finance the land acquisition from cash on hand.
4. The City of Elizabeth City's debt management procedures and policies are good because the City is able to finance the land acquisition from cash on hand.
5. The increase in taxes necessary to meet the sums to fall due under the proposed contract will be 0 cents per \$100 valuation and is not deemed to be excessive.
6. The City of Elizabeth City is not in default in any of its debt service obligations.
7. The attorney for the City of Elizabeth City has rendered an opinion that the proposed Project is authorized by law and is a purpose for which public funds may be expended pursuant to the Constitution and laws of North Carolina.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the City Manager is hereby authorized to act on behalf of the City of Elizabeth City in filing an application with the North Carolina Local Government Commission for approval of the Project and the proposed financing contract and other actions not inconsistent with this resolution.

This resolution is effective upon its adoption this 12th day of January, 2015.

Joseph W. Peel, Mayor

ATTEST:

Vivian D. White, CMC/ NCCMC, City Clerk

The motion to adopt this resolution was made by Council Member _____, seconded by Council Member _____ and passed by a vote of _____ to _____.

This is to certify that this is a true and accurate copy of Resolution No. 2015-01-01 Adopted by the City of Elizabeth City on the 12th day of January, 2015.

Vivian D. White, CMC/NCCMC, City Clerk

Date