

The City Council of the City of Elizabeth City met in regular session on Monday, February 8, 2016 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 Rickey King  
Councilman Darius Horton  
Councilman Johnnie Walton

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 Superintendent Karl Clow  
Assistant to the Manager Angela Cole  
Human Resources Director Katherine Felton  
Public Utilities Director Paul Fredette  
Fire Deputy Chief Chris Carver  
ECDI Director Wade Nichols  
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 Pastor Rick Lowry to give the invocation, after which Boy Scouts from Pack 125 Webelos and Arrows of Light led the Pledge of Allegiance.

**1. Agenda Adjustments and Approval:**

Mayor Peel requested the Council's pleasure regarding approval of the prepared agenda.

Councilman Brooks requested to add "Petition concerning Millbrooke."

Councilman Walton requested to reverse the order of discussion of Items B and C on the Regular Agenda. City Manager Olson responded that the order of discussion could be reversed, but the actual vote would have to be taken on Item B first, then Item C. Councilman Walton asked the City Attorney to explain the City Manager's statement. Mr. Morgan stated that the City would need to take the vote to annex the property into the City before the vote to rezone the property can take place. Councilman Walton disagreed and stated "we don't have to do that." City Attorney Morgan pointed out that the rezoning petition was contingent upon annexation of the property. Mr. Morgan stated that the suggested procedure was a well-established way to handle this matter according to past practice of the City. Councilman Walton stated "it could be done the other way. Don't say it can't be done." City Attorney Morgan stated that in view of the way the petition was put forth to the City, he did not believe it could be done - since it was a voluntary annexation petition and not one that the City initiated on its own. Councilman Walton stated that both items work hand in hand. Councilman Walton stated: "to me the rezoning is more important than the annexation." City Attorney Morgan stated "I don't dispute that, but certainly the discussion can take place in the

order that you've requested, but again, the vote needs to be in the order in which it's listed on the agenda, please." Councilman Walton stated "that's the way I want it done."

Mayor Peel stated that the discussion would be reversed when that point in the agenda was reached.

**Motion was made by Mayor Pro Tem Anita Hummer, seconded by Councilman Rickey King, to approve the agenda with any necessary adjustments. Those voting in favor of the motion were: Baker, Donnelly, Hummer, Stimatz, Brooks, King, Horton, and Walton. Against: None. The motion carried.**

## **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. Presentation/Consideration:**

### a. Dr. Thomas Conway, Jr., Chancellor of Elizabeth City State University

Mayor Peel welcomed Dr. Thomas Conway to the podium. He stated that Dr. Conway came to the Council meeting to talk about an important issue that will be before the voters in the spring.

Dr. Conway thanked the Council for the honor of being able to speak. He stated that he was trying to get around to as many Councils Chambers of Commerce and economic development organizations as he could to let them know that Elizabeth City State University (ECSU) intends to be a good partner in the region. He said that he believed the founders' mission of supporting economic development activity still stands today as primary to what ECSU should do. He stated that the voters would decide a bond issue on March 15, 2016 entitled NC Connect. He said that ECSU is asking voters to support the bipartisan bond issue that will assist a number of local projects, including some at ECSU. He noted that the \$2 billion bond issue would have a major impact across the State of North Carolina; and represented the first bond offered since about the year 2000 for higher education. He noted that the funds would provide for critical needs on institutional campuses as well as for other public projects and the community college system. Dr. Conway provided specifics regarding the proposed projects for ECSU and stated that the university stands to receive \$13 million for construction and renovation if the bond issuance is approved. He asked for the Council's support of the Connect NC Bond issue.

### b. Consideration – Adoption of Resolution # 2016-02-01 in Support of the Connect NC Bond Referendum Act:

Mayor Peel stated that before the Council was the consideration to adopt a resolution in support of the Connect NC Bond Referendum Act. He said that it was important to also note that while the proposed bond is \$2 billion, it requires no tax increase. He noted that it would benefit higher education across the State of North Carolina as well as locally. Mayor Peel read the resolution into the record.

**Motion was made by Councilman Darius Horton, seconded by Councilman Ray Donnelly, that the Council adopt Resolution #2016-02-01 in support of the Connect NC Bond Referendum Act and direct staff to forward a copy to Pasquotank County, as well as other municipalities and counties in Northeastern North Carolina for their consideration. Those voting in favor of the motion were: Baker, Donnelly, Hummer, Stimatz, Brooks, King, Horton and Walton. Against: None. Motion carried.**

**City of Elizabeth City  
Resolution # 2016-02-01  
In Support for Connect NC Bond Referendum Act**

**WHEREAS**, the North Carolina General Assembly and Governor McCrory approved the Connect NC Bond Act during the 2015 Legislative Session; and

**WHEREAS**, if approved by the voters of North Carolina in the Primary Election March 15, 2016, the Act would generate \$2 billion through the sale of bonds; and

**WHEREAS**, the \$2 billion bond package would be allocated for new construction and repairs to existing facilities on the 17 campuses of the University of North Carolina System as well as the 58 campuses of the North Carolina Community College System; for infrastructure improvements to state and local parks and the North Carolina Zoo; on various water improvements and agricultural projects; and on repairs and improvements to National Guard and public safety facilities within North Carolina; and

**WHEREAS**, the \$2 billion bond package would provide construction-related jobs for local communities across the state; and

**WHEREAS**, the North Carolina Community College System would receive \$350 million in bond funding to upgrade and construct facilities to offer state-of-the-art learning experiences for the citizens of North Carolina, while enabling the North Carolina Community College System to continue to excel as a national leader in higher education and workforce development; and

**WHEREAS**, the College of the Albemarle contributes immeasurably to Pasquotank County and the entire region by producing a skilled workforce to attract new business and industry; and provides educational opportunities for citizens to advance their earning potential and to enrich and enhance their quality of life; and

**WHEREAS**, College of the Albemarle would receive \$6,590,687 of bond funding, which would contribute significantly toward much needed improvements to existing facilities, while providing substantial value and savings to the people of Pasquotank County and the region; and

**WHEREAS**, for 125 years, Elizabeth City State University has provided educational opportunities to a populace that might otherwise not be able to attain a higher education and the better life afforded by that education; and the University has been and continues to be a major economic engine for an economically distressed Northeastern North Carolina by creating, as the region's third-largest employer, \$118 million in output sales, \$83 million in gross regional product and \$59 million in labor income; and

**WHEREAS**, Elizabeth City State University would receive \$13 million of bond funding, which would help the University modernize and enhance two critical existing facilities, Moore Hall and the G. R. Little Library; and

**WHEREAS**, Merchants Millpond State Park and the Dismal Swamp State Park are two of the most visited state parks in North Carolina; and because of their historical significance and unique public amenities, are also targeted to receive Connect NC Bond Act funding in the amount of \$870,750 and \$990,750 respectively; and

**WHEREAS**, the City of Elizabeth City recognizes that the Connect NC Bond will not jeopardize the state's strong credit ratings; and acknowledges that interest rates are presently at historically low levels; and

**WHEREAS**, the City of Elizabeth City is convinced that there will be no new state taxes or any increase in state taxes caused by the Connect NC Bond.

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the City of Elizabeth City strongly supports the Connect NC Bond Act as it will enable North Carolina's University and College Systems to educate a highly qualified workforce for the 21<sup>st</sup> Century and provide needed financial support to other beneficial infrastructure projects across the state; and

**BE IT FURTHER RESOLVED**, that the City Council of the City of Elizabeth City

encourages its citizens and voters to approve all provisions of the Connect NC Bond Act; and

**BE IT FURTHER RESOLVED**, that the City Council of the City of Elizabeth City urges the Pasquotank County Board of Commissioners and the local governing boards of the municipalities and counties in Northeastern North Carolina to join with the City Council of the City of Elizabeth City to promote, educate and inform residents of the importance of the bipartisan effort to **“VOTE YES TO INVEST”**.

**ADOPTED**, this the 8<sup>th</sup> day of February, 2016.

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Joseph W. Peel  
Mayor

*Attest:*

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Vivian D. White, CMC/NCCMC  
City Clerk

Mayor Peel thanked Chancellor Conway for attending the Council meeting and conveyed appreciation for all he is doing at ECSU.

**4. Comments from the Public:**

Kacey DiGiacinto, 1704 Weeksville Road, Elizabeth City, NC stated that she is a professor at ECSU and was representing the Education, Psychology and Health Department. She extended an invitation to the Councilors and community members to attend the Wilkins-Basnight Endowed Chair Series. She noted that the Bunny Sanders, daughter of E. V. Wilkins, would be the guest speaker on February 16, 2016.

H. V. Cole, 1603 N. Road Street, Elizabeth City, NC stated that he represented Five C's Inc. trading as Forbes Homes. He advised that his company owned a mobile home project on Peartree Road containing 203 units. He said that the drainage ditch that bordered his development was causing flooding and had been for about 10 years. He said that he had read that the Council was considering funding a study to review stormwater issues on Halstead Boulevard; and requested that the Council consider taking some of that funding to look into his flooding issues.

Jim Pickler, 609 Millbrooke Circle, Elizabeth City, NC stated that he had sent an email to all members of Council regarding the rezoning request being considered on the agenda. He asked if he was correct that the Council could not deny a rezoning request without having a legal reason. Mayor Peel stated that was correct; and noted that the matter had passed the Planning Commission, who found no objective reason to deny the request. Mr. Pickler invited all those present at the meeting who opposed the rezoning to raise their hands.

Pastor Timothy Stallings, Jr. 99 Seagull Drive, Elizabeth City, NC stated that he represented Master's Touch Church. He said that the church had been running into problems with the City's Noise Ordinance. He said the Police Department citations were beginning to be a nuisance to his church and his ministry. He asked that the Council consider the matter to make sure the church is protected.

Mark Gregory, P. O. Box 374, Camden, NC stated that he is the developer for the project proposed on Halstead Boulevard. He stated that during the last Council meeting, he was asked to meet with members of the Millbrooke neighborhood and he had done that. He said that he came to this meeting in order to answer any questions the Council may have for him.

**5. Consent Agenda:**

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

**Beginning of Consent Agenda:**

*(Clerk Notation: Items “a” and “b” recommended for approval by the Finance Committee during their meeting of February 3, 2016.)*

- a. Consideration – Adoption of budget amendment required for accounting purposes to record electric improvements for Morgan’s Point, as follows;

**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, 2016:

**SECTION I.** That the Electric Retained Earnings Appropriated (303990.0000) be increased by \$40,000, Development Fees Revenue (303490.4501) be increased by \$60,000, and Morgan’s Point Capital Improvements Project (308300.7343) be increased by \$100,000.

**(To record electric improvements for Morgan’s Point.)**

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**Joseph W. Peel**  
Mayor

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

- b. Consideration – Authorization for the City to piggyback on the Mid-Atlantic Waste System’s competitive bid for an automated leaf truck in the amount of \$176,182.13;
- c. Consideration – Call for a Public Hearing to be held in Monday, February 22, 2016 at 7:30 p.m. in Council Chambers to gather citizen input on a proposed application to the CDBG Downtown Redevelopment Fund Grant Program.

**Motion was made by Councilwoman Jean Baker, seconded by Mayor Pro Tem Anita Hummer, to approve the Consent Agenda as presented. Those voting in favor of the motion were: Baker, Donnelly, Hummer, Stimatz, Brooks, King, Horton and Walton. Against: None. Motion carried.**

**6. Regular Agenda:**

- a. Consideration – Appointment of Heather F. Griffin to complete the unexpired term of Ms. Peggy Watts on the Urban Forestry Commission expiring December 31, 2017.

**Motion was made by Councilman Tony Stimatz, seconded by Councilman Rickey King to appoint Heather F. Griffin to complete the unexpired term of Ms. Peggy Watts on the Urban Forestry Commission expiring December 31, 2017.**

**Mayor Peel stated that the motion required a roll call vote. Those voting in favor of the motion by roll call were: Baker, Donnelly, Hummer, Stimatz, Brooks, King, Horton and Walton. Against: None.**

*Mayor Peel announced that the next item on the agenda would be a discussion of Item “c” Consideration of Adoption of an Ordinance approving RZ-02-15 to rezone approximately 21.265 acres located on the southwest side Halstead Boulevard at Body Road.*

Mayor Peel recognized Mr. Olson for his comments. Mr. Olson stated that this rezoning matter was tabled during the last Council meeting with a request that staff facilitate a meeting between the developer and residents of the Millbrooke community. He stated the meeting was held on February 2, 2016 in City Council Chambers. Mr. Olson stated that staff had already provided a synopsis of that meeting and the major issues discussed during the meeting, including traffic circulation, taking all the traffic out to Body Road, placing an emergency gate on Millbrooke Circle, and the storm water drainage to be addressed by a three-acre pond under a 25 year pre- and post- rather than the normal 10 year pre- and post-. He stated that during the Public Hearing held on this matter, none of the citizens were able to provide any analytical evidence to prove that any of the four elements required by state law would come into play.

Mr. Olson recognized Planning Director Brooks for her comments. Councilman King inquired as to the types of uses that would be allowed in the current R-15 zoning district. Ms. Brooks reviewed the uses for R-15 zoning as contained in the UDO table of uses.

Councilman Walton stated that the reason he put this discussion in this order is because "it must be a complex system to have simple things done." He asked the City Attorney to explain to him the difference between annexation and rezoning. City Attorney Morgan stated that annexation is the process whereby property that is not located within a municipality is brought in to the municipality. He said that the benefit for the property owner is police protection, sewer services and other services that would be required to be provided by a city. Mr. Morgan stated that the benefit to the City would be an increase in population and the increased tax revenue that would result.

Councilman Walton inquired if that was the process the City Attorney would use. Mr. Morgan responded that North Carolina law allows two ways for property to be annexed, with one being a voluntary annexation where the owner of the property requests that the property be annexed; and the second way being involuntary annexation when a city chooses to enlarge its land mass by taking in areas that were not in its limits previously.

Councilman Walton stated "the reason I ask is because we still leave out certain things." He said the process is that - if you try to annex - wouldn't you still have to send that petition to the General Assembly? Mr. Morgan responded "no sir, not for a voluntary annexation that is a contiguous parcel to a City."

Councilman Walton asked how long the City had had the application. Mr. Morgan responded that there was a petition for voluntary annexation filed with the City Clerk. He noted that the General Statutes require that the City Clerk investigate the sufficiency of the petition, which means that the City Attorney or someone under his direction completes a title search on the property to make sure that all of the owners have joined in the petition. Mr. Morgan advised that in this particular case, through no fault of the potential buyer, a couple of owners of the property had not signed the petition. He reported that securing those signatures took 30 to 45 days. He noted that the deceased former owners of the property had titled the property as a one-half interest each. He stated that one will devised ownership interest to one group of individuals and the other owner's will devised that share to another group of individuals, making this transaction a little more involved than what the City typically sees. Mr. Morgan stated that once the petition was completed, the matter came before the City Council for consideration. Mr. Morgan noted that at that point the Council called for a Public Hearing, which had occurred during the last Council meeting.

Councilman Walton stated that he needed to know when the application was first submitted to the City. The City Attorney responded that the initial petition was dated October 26, 2015. He said that the corrected petition was signed by all the necessary parties on different dates, with the last date being in mid-November.

Councilman Walton stated that in the past, protest petitions required a two thirds vote by the Council. Mr. Morgan advised that a protest petition would involve a rezoning request and not an annexation. Councilman Walton suggested that the Council should have seen the information earlier about the protest petition. Mr. Morgan responded that

there is no more protest petition because of the change in state law. Councilman Walton stated: “there is one, you just have to vote on it differently.” Mr. Morgan stated that the process for a protest petition is no longer there. He stated that a rezoning vote now only requires a simple majority vote; there is no more protest petition which would give rise to the requirement of a two-thirds vote. He stated that he thought the upshot was that the Legislature intended to make the rezoning process easier. Councilman Walton stated that he did not understand it that way, and felt the Millbrooke property owners did not understand it that way either. Councilman Walton indicated that the Millbrooke residents were not given the opportunity to file a protest petition. Mr. Morgan responded that protest petitions are no longer possible in North Carolina.

Mayor Pro Tem Hummer stated that since Agenda Items “b” and “c” are related, she wanted to mention that she had not yet seen the site plan for the development. She asked if it would be an option to delay this matter and have the site plan brought to Council for review. She said that she had some questions, such as the proposed buffer type; and would like to see it on paper.

Mr. Olson stated that no site plan had been officially presented to City staff. He said that City staff had spent a considerable amount of time with the developer in an effort to make sure the important items will be addressed during the development process, such as downstream drainage impact. He noted that a number of staff members including police, fire, planning and inspections discussed the potential development with the developer. Mr. Olson stated that the City cannot officially receive a site plan until the underlying zoning is established. Mr. Olson said that the issue before the Council is whether the Apartment District zoning is appropriate for that site. He advised that once the zoning is established, City staff would go through its site plan review process with the City Council having the right to have the plan come to the Council for review and approval.

Mayor Pro Tem Hummer asked if the site plan could be brought back before everything is finalized. Mr. Olson responded that it could not because the property would have to be rezoned. He said that the Council was getting into an area where the land use is being judged based on the site plan. He noted that situation causes a number of legal issues. He reiterated that the question to be considered is simply whether the Apartment District zoning classification is appropriate for the site.

Councilman Stimatz stated that he was concerned that the City had not followed this process in the past of requesting site plans with other rezoning requests. He stated that he thought the Council would set itself up with the liability of being sued for lack of due process. He said the Council had an obligation to follow the processes that were followed in the past. He said that the Council had annexed and rezoned multiple properties in the last ten years and never worried about what was going to be built – just that the general concept of what could go there was appropriate. He said to now say that the Council would not consider the rezoning request unless there is a development plan was problematic. He noted that there are all kinds of uses allowed in the Apartment District zoning classification. He requested Ms. Brooks to provide the uses allowed in the Apartment District zoning, which she reviewed for the Council.

Councilman Stimatz pointed out that the Council should consider all allowed uses in making the zoning decision because this situation is not a conditional zoning request. He stated that as he understands the matter, there are only four reasons to turn it down and the Council has to have objective, factual proof that one of those four reasons has been met. He stated “we don’t have that.” He said that staff and the Planning Commission had reviewed the issue and it appeared as if the Council did not trust them to do their jobs. He suggested that if a member of Council had other facts to support denial, he would like to see them.

Councilman Donnelly questioned the City Attorney regarding his understanding that the Millbrooke residents have no legal recourse unless they have an issue with one of the four required findings of fact. Mr. Morgan stated that the residents, as property owners within a certain distance of the area to be rezoned, are required by state law to be given notice of the petition for the rezoning, but the ability to file a protest petition that would

give rise to the super majority vote on Council had been done away with under state law.

Councilman Donnelly asked if the Millbrooke residents chose to obtain legal counsel and identified some issues contrary to what the Planning Commission and City staff had come up with, would that be enough recourse. City Attorney Morgan responded that only the City Council could determine whether those facts, if presented, would be sufficient.

**Motion was made by Councilman Ray Donnelly, that the Council table both regular agenda items “b” and “c” to give the Millbrooke residents an opportunity pursue whatever options they may have available to them.**

**Mayor Peel inquired if there was a second to the motion. Hearing none, he announced that the motion died for the lack of a second.**

Councilman Brooks stated that it appeared to him that the people of the Millbrooke Subdivision were getting the “short end of the stick.” Councilman Brooks read aloud the summary of R-15 zoning and AD zoning that was contained in the minutes of the Planning Commission meeting during which this matter was discussed. He stated that his research indicated that R-15 zoning deals mostly with low density uses and AD zoning deals mostly with high density uses. He asked the City Attorney if that was a conflict. Mr. Morgan stated that he did not think conflict was the correct word and said that certainly there was a difference. He noted that AD zoning would allow a higher density use than an R-15 zone would. Councilman Brooks reiterated that his question to the City Attorney was whether there is a conflict. Mr. Morgan stated again that there is a certainly a difference, but he would not characterize it as a conflict. He noted that the high density use would allow more residents per acre than a low density zoning district.

Councilman Brooks asked the distance of the buffer between the residents of Millbrooke and the proposed apartments. Mr. Olson explained that the properties abut each other in the sense that the property line of Millbrooke will abut the area that is proposed to be rezoned for apartments. Mr. Olson stated that if Councilman Brooks’ question is with regard to the appropriate setback, he advised that the rear yard setback on the Millbrooke homes and the side yard setback for the proposed apartments is 45 feet from the property line or approximately 75 to 100 feet from the homes. He noted that there would be a 15 foot landscape buffer required as well.

Councilman Brooks stated that one of the four criteria in rezoning decisions concerned safety. He noted that the City had previously written a grant for \$1 million for the Roanoke Avenue area, because it is a high crime area. He said that the grant failed because those in the Third Ward “fought it adamantly.” He said the reason they fought it was because everyone thought “they was trying to pimp the neighborhood.” He stated from the “south end of Roanoke to where the apartments are to be built is a stone’s throw away from Roanoke Avenue.” He said “that’s a safety issue.” He reported that he had the crime statistics pulled for Roanoke Avenue by the Police Department and they contained several shootings in that area. He said “it is impossible to contain that without crossing the intersection.” He said that he was aware of the crime situation because he lived there. He advised that if he had \$1,300 to pay per month in rent, he would not rent an apartment that close to a crime element, because “it doesn’t make any sense.” He stated that he had no problem with building apartments, but not at that location. He said that the residents were the ones that voted him in and he understood their concerns.

Councilman Brooks stated that he attended the meeting held with the developer and the residents and learned that one of the concerns discussed was flooding. He stated that he had ridden through the Summerfield Subdivision after a rain and saw flooding there and he did not want that to happen to Millbrooke. He questioned the stormwater plan that had been developed for the apartment site. He noted if the traffic from the complex was routed to Body Road, it would make the Halstead Boulevard intersection traffic even heavier, which was another component in the safety issue for him. He stated that

he could not vote against the residents because he was hurt by the situation they were in.

Councilman Brooks stated that his questions had been answered regarding the petition matter. He advised Mayor Peel that he could remove that discussion from the agenda.

Councilman Stimatz stated: “conjecture, information and inference are not facts.” He said that the Council had no facts to support any of the four criteria required for denial.

Councilman Stimatz asked the City Clerk if a motion was needed to remove this item from the table. The Clerk responded in the affirmative.

**Motion was made by Councilman Tony Stimatz, seconded by Councilwoman Jean Baker to take this matter from the table.**

Mr. Olson asked if the motion covered both the rezoning and annexation matters. Councilman Stimatz stated: “yes both items.”

Councilman Brooks stated that he was appalled when Councilman Stimatz said he had no facts. He referred to the Police Department report on crimes in the area as his facts. He reiterated that he was not voting against the developer because he thought apartments were needed, but he could not vote against the residents that elected him.

Councilman Walton stated that he thought it would be unfair to the residents of Millbrooke if the matters were taken from the table. He said “you only take things off so you can get a better leverage.” He said “we could vote it down but they would probably sue us.” He asked if another tract of land located nearby the proposed site could be used for the apartments. Mr. Olson stated that to be frank with the City Council, the issue that staff has is that the area is a mixed use land use category. He noted that there was Highway Business, General Business, R-10 and R-15.

Councilman Walton stated “but if we vote in favor of that tract, the other tract is almost in - I would say.” He said “even the planning community had some questions that were not answered.” He stated “I think it should go back to planning because we never answered the questions they had.” Mr. Olson responded that the Council received a favorable recommendation from the Planning Commission for the project.

Councilman Walton stated “but I’m still saying that that next property would also have the same advantage and in that report it says that if they put apartments there that they would be maybe some people that would like to go to locations on foot.” He said “Mike did have a good point – that’s a fact, Tony.” He continued: “that young man got killed yesterday crossing from Woodstock to the other location. That’s a fact.” He continued: “And the safety is not good. I mean, I’m thinking about prevention rather than, you know, do it now and then and see what happens later.”

**Mayor Peel stated that there was a motion to pull these items from the table. He requested a vote on the motion.**

**Those voting in favor of the motion were Baker, Hummer, Stimatz and King. Against: Donnelly, Brooks, Horton and Walton. Mayor Peel voted in favor of the motion. Motion carried.**

b. Consideration – Adoption of an Ordinance to Annex Two Parcels located on the southwest side Halstead Boulevard at Body Road.

**Motion was made by Councilman Tony Stimatz, seconded by Councilwoman Jean Baker to adopt the Resolution for annexation as provided by staff.**

City Attorney Morgan reminded the Council that the annexation vote should be contingent on the rezoning. The City Clerk stated that that provision was provided in the annexation ordinance.

Councilman Horton noted that this issue had been discussed at great length. He said that at first he was in favor of it, but he now felt that the Council had a great obligation to fulfill to the residents of the community. He noted that residents have come in an

overwhelming number to share their concerns. He stated that even through quality apartments are needed, the Council needs to make sure that the morale of the City is maintained at a high level. He stated that regardless of everything presented about the project, if the Council votes for the project, they would be voting against the residents.

Councilwoman Baker stated that she thought the Council had an obligation to the citizens, but had a larger obligation to the general public of Elizabeth City as well as to rules, laws and the UDO - all things that Councilors promised to uphold when elected. She said that she thought the matter was "a no brainer."

Mayor Pro Tem Hummer stated that when she has a question or voices a concern, it is not because she does not trust staff's expertise. She asked if the same four criteria apply to the question of annexation as they do to rezoning requests. City Attorney Morgan responded "no, mam - only on the rezoning issue." She said that the annexation vote would lead to the rezoning matter. She stated that many times her questions were for the citizens in the room. She said "if we can't show according to these four legal criteria that harm will be caused, we will be liable and can be individually liable." She noted the matter is very serious.

Councilman Brooks stated that he had seen the law and City policy abused so many times, he did not have time to talk about it all. He said that when Councilman Baker referred to an obligation to the entire City, it sounded like eminent domain. He said that he would continue to talk about the crime on Roanoke Avenue filtering over to the proposed apartment complex. He stated that it was a matter of loyalty, because the residents of Millbrooke were loyal to him to represent them when there were some on Council saying that he, Councilman Walton and Councilman Horton shouldn't be elected. He reiterated that he would not vote for the project at the expense of the residents.

Councilman King asked if the Police Chief had been involved in the discussion of the proposed site plan. Mr. Olson stated that he wanted to make certain everyone understood that the discussion was not about the site plan. He stated that representatives of the Police Department were on the committee that met with the developer. He said that the Police Department was not involved in a discussion regarding the rezoning related issues. Councilman King stated that he wanted to know what the crime statistics in the area were. Councilman Stimatz responded that the report showed 46 in a six month timeframe.

Mayor Peel stated that he had been listening to what Councilman Brooks said. He said it was his understanding that the criteria is not about if there is crime in the area. He stated that it had to do with whether the development is going to bring crime to the area. City Attorney Morgan responded that was the correct legal requirement. Mayor Peel stated that there would be no way to say that an apartment complex of this nature is going to do that. City Attorney Morgan agreed and said it would require statistics from prior, similar apartment developments.

Councilman Horton stated that when talking about facts and safety, he wanted to point out that a resident who spoke during the public hearing during the last meeting vocalized his concern that if persons in the apartments tried to hurt his family, he would do whatever it took to protect them. He said that it goes back to the morale of the community.

Councilman Brooks stated that the word used is "safety." He pointed out that no one could forecast what kind of element would be moving in to the apartments. He said he did what anyone would do in his research when he got the crime statistics from the Police Department. He noted that drug dealers were doing business just down the street on Roanoke Avenue and he didn't know how the apartment complex could keep them off the property.

Mark Gregory asked to respond and Mayor Peel allowed his comments. Mr. Gregory said that statements were being made about the proposed apartment complex and asked what would stop the same situation from happening in Millbrooke. He stated that the apartment complex would at least have some controls in place such as criminal background checks and applications for the tenants. He said that if tenants are found to

be dealing drugs, he would evict them. He said that if a resident in Millbrooke is arrested for drug dealing, the neighbors would not be able to do anything about it.

Councilman Brooks stated that the difference is ownership, and pointed out that when people own their own home it is different than when you are a renter. He said that it would not matter how strict the rules were in the apartment complex.

Councilman Walton asked the City Attorney if safety was one of the criteria that must be considered in a rezoning application. Mr. Morgan responded that the Council would need to have objective facts that show that allowing the rezoning would create a safety issue. Councilman Walton responded "okay, we can't predict anything, but Chief you can answer from back there - what happened at 6:30 yesterday afternoon?" Chief Buffaloe responded that a gentleman was hit on Halstead Boulevard as he was walking in the middle of the road. Councilman Walton said "that was where? He was going to an apartment - where did he live - he lived in those apartments, right?" He said "that's a fact, now; ya'll can dismiss all that other stuff and say what you want to say." He said: "during some of our discussions it was said that the Coast Guards need a place to stay." He continued "we can do things for all different reasons - and we said we didn't have any high end apartments. Yes we do - the one out there by the hospital is just as nice as it can be." He stated "people must stop trying to manipulate the masses just to see it their way - that's right, Councilmembers - they pushing for certain groups of people. We're not looking out for everybody." Councilman Walton continued "and there are people who will fall right in line, just like they're in the military - and do it every time."

**Mayor Peel stated that there was a motion and a second on the floor to approve the annexation of two parcels. He asked for all in favor of the motion to raise their hand. Those voting in favor of the motion were: Baker and Stimatz. Against: Donnelly, Hummer, Brooks, King, Horton and Walton. Motion failed.**

c. Consideration - Adoption of an Ordinance approving RZ-02-15 to rezone approximately 21.265 acres located on the southwest side Halstead Boulevard at Body Road.

Mayor Peel asked if there was a reason to deal with the rezoning consideration. The City Attorney advised that inasmuch as the property is located in the City's extraterritorial jurisdiction, the Council had the right to rezone the property. He noted that it would create issues for the City to have properties seeking City services that cannot be annexed into the City.

Mayor Peel stated that since the annexation was not approved, it was his assumption that the rezoning would not be approved. He asked if there was a motion.

The City Attorney stated that the Council must vote on the rezoning. He advised that if the rezoning is denied, the Council would have to provide findings of fact as to why. He said the findings have to be included in the record.

Mayor Peel asked who would be responsible for the findings. Mr. Morgan responded that it would be the Council. Mayor Peel commented that the Council had already indicated that there are no findings of fact. Mr. Morgan stated that apparently a majority of the board feels that there are criteria for denying the rezoning, assuming how the annexation vote went.

Councilman Stimatz stated "I hope you are ready to write them." Councilman Brooks stated that he had no problem and could write them down and make them clear.

Councilman Brooks stated that he had heard that without annexation there could be no zoning. He asked the City Attorney for clarification. The City Attorney stated "inasmuch as this property is part of the City's ETJ, you have the right to control the zoning of the property." He continued "However, inasmuch as at least a part of it has not been annexed into the City, we are in the quandary of not being able to provide the utilities and other services that we are required to provide when property is annexed." He said "So, inasmuch as a petition for rezoning has been put forth to the City, I think that you need to take a vote on the rezoning request and assuming the rezoning fails, you need to come up with findings of fact that justify the decision."

Mr. Morgan stated that he and the City Manager chose not to cloud the issue more by talking about the City's ETJ powers to zone property that is not technically within the City limits. He asked Mayor Peel if he would declare a recess to allow for a brief discussion between the City Manager, Mayor and the City Attorney.

**Mayor Peel declared a recess at 8:39 p.m.**

**Mayor Peel declared the meeting back in session at 8:49 p.m.**

Mayor Peel requested that the City Attorney explain the circumstances discussed during the recess.

Mr. Morgan stated that the reason he wanted to speak with the Mayor and City Manager was to determine exactly who had signed the petition for the rezoning. He said that as the Councilors were aware, they have been dealing with two companion, but not identical, issues: one being the annexation and the second being the rezoning of the property.

Mr. Morgan stated that Mr. Gregory had been appointed as agent for the property owners to file the petition for rezoning, which gave him the right to speak on behalf of the property owners. Mr. Morgan stated that it was his understanding that Mr. Gregory no longer wants to move forward with the rezoning request because he can't improve the property for sewer and other City benefits if it is not annexed into the City. The City Attorney indicated that he did not wish to speak for Mr. Gregory and asked him to come forward and go on the record.

Mark Gregory stated that based on the City Council's vote on the annexation to not annex the parcel, the property could not be rezoned to AD District because he could not get the utilities. He said based on that, he withdrew the rezoning application. He said that he wanted it put on the record that for anything on the property that is developed for one acre or more, the Council had restricted the property for the property owners to be able to sell their property.

Mayor Pro Tem Hummer stated that the Council was not advised of what the repercussions were for voting against the annexation. She said that she felt that was unacceptable.

Councilman Walton stated that he agreed with Mayor Pro Tem Hummer. He said "when you huddle up in little small groups, something is not being done right."

d. Consideration – Amendment of Council Rules of Procedure to Incorporate Rules for the Council Finance Committee.

Mayor Peel recognized Mr. Olson for his comments. Mr. Olson stated that staff was charged with developing rules for the City's Finance Committee for the Council's consideration. He reviewed the proposed addition to Rule 31 of the Rules for the City Council.

**Motion was made by Councilman Tony Stimatz, seconded by Mayor Pro Tem Anita Hummer to approve the suggested amendment to Rule 31 of the Council's Rules of Procedure to incorporate Item "C" City Council Finance Committee to be effective immediately. Those voting in favor of the motion were: Baker, Donnelly, Hummer, Stimatz, Brooks, King, Horton and Walton. Against: None. Motion carried.**

### **Rule 31(c) Amendment to Council Rules of Procedure**

#### **c. City Council Finance Committee**

1. The City Council Finance Committee shall be a standing committee of the governing body, charged with the following duties:
  - a. To review the current operating budget on an ongoing basis;
  - b. To review and report to the Council needed information relative to required budget changes and amendments;

- c. To provide recommendations or information presented by City staff to the City Council, which supports new and un-budgeted initiatives;
  - d. To assist City staff in preparing the annual fiscal budget and help to present same to the City Council;
  - e. To work with staff to establish a five-year strategic budget and operational plan for presentation to the City Council;
  - f. To investigate and report back its findings/recommendations on other items or matters that the Council shall authorize them to study.
2. The City Council Finance Committee shall consist of five members of the governing body with four members serving as the primary members and one member serving as an alternate member. The alternate member shall only participate in Finance Committee meetings when a primary member is unable to attend. (If an absent primary member arrives late and the committee meeting has already been called to order with the alternate member serving, the tardy primary member shall not participate in that meeting.) The committee shall choose from its primary members a member to serve as Chairman.
3. During the first City Council meeting after an Organizational Meeting of the Council, the Mayor shall propose to the governing body those members of the body that he/she recommends serve as members of the Finance Committee. The City Council shall act on the Mayor's recommendations by approving or modifying the appointments. Should matters that would normally require Finance Committee recommendation arise during the interim between the Council's Organizational Meeting and its first regularly scheduled Council meeting, those items shall be presented directly to the City Council for consideration.
4. The City Council shall have the right to remove a member of the Finance Committee if, in the eyes of the City Council, the member has violated the City's Code of Ethics – Conflict of Interest Ordinance. The City Council shall also have the right to remove a member of the Finance Committee if he/she has three unexcused absences within a period of one year.
5. The Finance Committee shall vote on all matters presented with specific direction to forward recommendations to the Council with no opinion, forward with disapproval or forward with approval. Recommendations made by the committee should include any specific directions for change or further research by staff.
6. Minutes of Finance Committee meetings shall be kept in an action-only format. All recommendations as defined in the preceding Section 5 shall also be reported to the City Council either by the staff memos included in City Council agendas or by separate memo from the City Manager.
7. In the event an issue comes before the committee and a member of the committee has a financial-, personal-, or employment-related interest in the outcome of the issue, that member shall notify his or her fellow members that he or she has a potential conflict of interest and will request that he or she be excused from voting.
8. The Finance Committee Chairman shall call meetings as required when matters requiring the committee's review arise. All provisions of Article 33C of the North Carolina General Statutes (NCGS) "Meetings of Public Bodies" shall be observed when scheduling and advertising committee meetings. Pursuant to NCGS Article 33C, City Council members who are non-members of the Finance Committee shall not participate in Finance Committee meetings.
9. Action by the Committee: The committee shall proceed by motion and any member including the chair may make a motion. All motions require a second. A member may only make one motion at a time. Motions shall be adopted by a majority of the votes cast, a quorum being defined as three members. A majority vote is more than half. A motion may be withdrawn at any time by the introducer before the matter is put to a vote by the chair. Every member must vote, unless excused by the remaining members of the committee. A member who wishes to be excused from voting shall so inform the chair who shall take a vote of the remaining members. No member shall be excused from voting except in the case of Conflict of Interest as described in Section 7. The Committee may hold Closed Sessions as provided by law. The committee shall commence a closed session only after a motion to go into closed session has been made and adopted during the meeting. Motions to go into closed session shall state the

reason for the closed session as provided by NCGS 143-318.11(a). At the conclusion of the meeting, the chair may declare the meeting adjourned without a motion and second by the members to adjourn.

e. Consideration – Approval/Adoption of 2016-2017 Council Goals and Objectives

Mayor Peel recognized Mr. Olson for his comments. Mr. Olson stated that on January 21-22, 2016, the City Council held its biennial Council retreat. He noted that the retreat was facilitated by Madeleine Henley of Walking Stick Associates. He pointed out that previously the Council had eight goals, which had been narrowed during the retreat to seven, as follows:

1. Ensure Sound Fiscal Responsibility
2. Improve City's Infrastructure
3. Strengthen Inter-governmental Relationships including Institutions of Higher Education
4. Provide Youth and Senior Activities
5. Deliver Cost Effective, Quality Services
6. Improve the Quality and Safety of All Neighborhoods
7. Increase Community-wide Business Development Opportunities to Increase the Quantity and Quality of Jobs

Mr. Olson stated that the Council had identified related objectives for each of the seven goals. He noted that staff had taken the liberty of placing timelines on the objectives, since the Council had not done so during the retreat.

Councilman Stimatz asked that staff number and letter the document for easy referral. He asked that the City-wide street lighting survey to improve safety and reduce crime be given a due date of October 1, 2016.

Councilman Walton stated that he knew goals and objectives provide a roadmap for the Council. He said that in the past, there had been times when things changed without the direction of Council. He said that anytime another goal is "put on the table" it should come to Council first.

Councilman Donnelly requested that the goals and objectives be posted on the City's website.

Councilman Stimatz requested that the objective of having "community information sessions" be defined.

**Mayor Peel requested the Council's vote to approve and adopt the 2016-2017 Council Goals and Objectives. Those voting in favor were: Baker, Donnelly, Hummer, Stimatz, Brooks, King, Horton and Walton. Against: None.**

f. Discussion – Petition Concerning Millbrooke *(added to agenda by Councilman Brooks)*

Councilman Brooks asked for this item to be pulled during the discussion of the rezoning and annexation matter.

**7. Comments and Inquiries on Non-Agenda Items:**

Councilman Brooks noted that NCDOT had promised to mill and overlay South Road Street. He said that he had an issue with the noise ordinance as it related to the Master's Touch Church. He stated that there were other events in the City with noise louder than the church. He said: "it is not good to arrest the Pastor because they are worshipping God too loud."

Councilman Stimatz had no further comments.

Councilman Horton thanked all the residents for taking time out of their schedules to participate in the Council meeting. He requested City staff to provide a copy of the City's noise ordinance to him and requested that the Council explore exemptions for churches. He asked that a proclamation be issued in honor of Black History Month during the next Council meeting.

Mayor Pro Tem Hummer stated that she still had concerns about the annexation and rezoning issue. She said that she felt the Council did not have all the information needed to make a decision. She pointed out that her attempt to delay action had failed.

Councilman King said that the City needed to have a unified look. He stated that Southern Avenue and some other areas still had the white posts for street signs. He noted that the signs are not being maintained. He requested that staff look at how to get the City unified with regard to street signs.

Councilwoman Baker said that she had received a concern regarding truck traffic using River Road and Southern Avenue to get to Ehringhaus Street. She asked for an update from the City Manager regarding what NCDOT is doing with regard to this issue. Mr. Olson stated that the matter is being studied by NCDOT. He said that he hoped to have something to the Council by the next Council meeting.

Councilman Walton stated that when utility bill cycles are longer than 30 days it presents a hardship for those on fixed incomes. Mr. Olson stated that he would check into the policy that had been adopted and report back to the Council on this matter. Councilman Walton complimented ECSU Chancellor Dr. Thomas Conway and stated that he seemed to be doing a good job for the university.

Councilman Donnelly publicly acknowledged City resident Wanda McLean for her work on the Underground Railroad.

Mayor Peel stated that the Arbor Day Foundation had named the City of Elizabeth City a Tree City USA for 2016 and he thanked City staff and the Urban Forestry Commission for their work in this area. He announced that the City had received a nice note from a citizen thanking the Council and City staff for the weatherization program.

#### **8. Adjournment:**

There being no further business to be discussed, Mayor Peel adjourned the meeting at 9:15 p.m.

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Joseph W. Peel  
Mayor

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Vivian D. White, CMC/NCCMC  
City Clerk