



FAYETTEVILLE CITY COUNCIL
AGENDA
MARCH 28, 2011
7:00 P.M.
CITY HALL COUNCIL CHAMBER

1.0 CALL TO ORDER

2.0 INVOCATION

3.0 PLEDGE OF ALLEGIANCE

4.0 APPROVAL OF AGENDA

5.0 ANNOUNCEMENTS AND RECOGNITIONS

6.0 CONSENT

6.1 Approve Minutes:

- August 9, 2010 - Dinner and Discussion Meeting
- November 1, 2010 - Work Session
- November 8, 2010 - Dinner and Discussion Meeting
- November 8, 2010 - Regular Meeting
- November 18, 2010 - Special Joint Meeting
- November 22, 2010 - Dinner and Discussion Meeting
- November 22, 2010 - Regular Meeting
- December 6, 2010 - Work Session
- December 8, 2010 - Agenda Briefing Meeting
- January 3, 2011 - Work Session
- January 19, 2011 - Agenda Briefing

6.2 Capital Project Ordinance Amendment 2011-15 (North Carolina State Veterans Park Grant #2)

6.3 Special Revenue Fund Project Ordinance Amendment 2011-3
(Wayfinding Signage Project)

6.4 Special Revenue Fund Project Ordinance Amendment 2011-4 (Energy Efficiency and Conservation Block Grant)

6.5 Special Revenue Fund Project Ordinance 2011-11 (Washington Drive School Site Project)

- 6.6 Consideration of Assigning 18 Recent Annexation Areas to Election Districts
- 6.7 Special Sign Permit Request for temporary event signs for the Fayetteville Farmers Market
- 6.8 Bid Recommendation for Purchase of 9,000 Feet of 500 MCM Copper Conductor
- 6.9 Bid Recommendation - Purchase of Ten 230kV Metering Class Combined Potential and Current Transformers
- 6.10 Confirmation of Assessment Roll for LaGrange and Summerhill
- 6.11 Consider Resolution of Award for South Reilly Road - Jeffrey Drive to Morganton Road Concrete Sidewalk Project.
- 6.12 Consideration of an Economic Development Incentive Agreement for MBM Hospitality, LLC. relating to the development of an Embassy Suites project on Lake Valley Drive
- 6.13 Consideration of the Economic Development Incentive Agreement for Strategic Solutions Unlimited

7.0 PUBLIC HEARINGS

For certain issues, the Fayetteville City Council may sit as a quasi-judicial body that has powers resembling those of a court of law or judge. The Council will hold hearings, investigate facts, weigh evidence and draw conclusions which serve as a basis for its decisions. All persons wishing to appear before the Council should be prepared to give sworn testimony on relevant facts.

- 7.1 Formation of a Municipal Service District to provide drainage improvements necessary for the Embassy Suites project on Lake Valley Drive and Budget Ordinance Amendment 2011-10 funding the drainage project.
Presenter(s): Kristoff Bauer, Assistant City Manager

8.0 OTHER ITEMS OF BUSINESS

- 8.1 Settlement Agreement for Festival Park Plaza building and Budget Ordinance Amendment 2011-9

Presenter(s): Karen M. McDonald, City Attorney
- 8.2 Policy No. 115.11, Replacing a Vacancy on the City Council

Presenter(s): Karen M. McDonald, City Attorney

9.0 ADJOURNMENT

CLOSING REMARKS

POLICY REGARDING NON-PUBLIC HEARING AGENDA ITEMS

Anyone desiring to address the Council on an item that is not a public hearing must present a written request to the City Manager by 10:00 a.m. on the Wednesday preceding the Monday meeting date.

POLICY REGARDING PUBLIC HEARING AGENDA ITEMS

Individuals wishing to speak at a public hearing must register in advance with the City Clerk. The Clerk's Office is located in the Executive Offices, Second Floor, City Hall, 433 Hay Street, and is open during normal business hours. Citizens may also register to speak immediately before the public hearing by signing in with the City Clerk in the Council Chamber between 6:30 p.m. and 7:00 p.m.

POLICY REGARDING CITY COUNCIL MEETING PROCEDURES SPEAKING ON A PUBLIC AND NON-PUBLIC HEARING ITEM

Individuals who have not made a written request to speak on a non-public hearing item may submit written materials to the City Council on the subject matter by providing twenty (20) copies of the written materials to the Office of the City Manager before 5:00 p.m. on the day of the Council meeting at which the item is scheduled to be discussed.

COUNCIL MEETING WILL BE AIRED

**March 28, 2011 - 7:00 PM
COMMUNITY CHANNEL 7**

COUNCIL MEETING WILL BE RE-AIRED

**March 30, 2011 - 10:00 PM
COMMUNITY CHANNEL 7**

Notice Under the Americans with Disabilities Act (ADA): The City of Fayetteville will not discriminate against qualified individuals with disabilities on the basis of disability in the City's services, programs, or activities. The City will generally, upon request, provide appropriate aids and services leading to effective communication for qualified persons with disabilities so they can participate equally in the City's programs, services, and activities. The City will make all reasonable modifications to policies and programs to ensure that people with disabilities have an equal opportunity to enjoy all City programs, services, and activities. Any person who requires an auxiliary aid or service for effective communications, or a modification of policies or procedures to participate in any City program, service, or activity, should contact the office of Ron McElrath, ADA Coordinator, at rmcelrath@ci.fay.nc.us, 910-433-1696, or the Office of the City Clerk at cityclerk@ci.fay.nc.us, 910-433-1989, as soon as possible but no later than 72 hours before the scheduled event.

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: City Clerk's Office
DATE: March 28, 2011
RE: **Approve Minutes:**

- August 9, 2010 - Dinner and Discussion Meeting
- November 1, 2010 - Work Session
- November 8, 2010 - Dinner and Discussion Meeting
- November 8, 2010 - Regular Meeting
- November 18, 2010 - Special Joint Meeting
- November 22, 2010 - Dinner and Discussion Meeting
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- January 19, 2011 - Agenda Briefing

THE QUESTION:

Should City Council approve the draft minutes as the official record of the proceedings and actions of the associated meetings?

RELATIONSHIP TO STRATEGIC PLAN:

Greater Community Unity - Pride in Fayetteville; Objective 2: Goal 5: Better informed citizenry about the City and City government.

BACKGROUND:

The Fayetteville City Council conducted meeting (s) on the referenced date (s) during which they considered items of business as presented in the draft minutes.

ISSUES:

N/A

BUDGET IMPACT:

N/A

OPTIONS:

1. Approve the draft minutes as presented.
2. Revise the draft minutes and approve the draft minutes as revised.
3. Do not approve the draft minutes and provide direction to Staff.

RECOMMENDED ACTION:

Approve the draft minutes as presented.

ATTACHMENTS:

August 9, 2010Dinner & Discussion Meeting Minutes
November 1, 2010Work Session Minutes
November_8_2010Dinner & Discussion_Meeting_Minutes
November 8, 2010Regular Meeting Minutes
November 18, 2010Special Joint Meeting Minutes

November 22, 2010Dinner & Discussion Meeting Minutes

November 22, 2010Regular Meeting Minutes

December 6, 2010Work Session Minutes

December 8, 2010Agenda Briefing Minutes

January 3, 2011Work Session Meeting Minutes

January 19, 2011Agenda Briefing Minutes

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FAYETTEVILLE CITY COUNCIL
DINNER AND DISCUSSION MEETING MINUTES
EXECUTIVE CONFERENCE ROOM
AUGUST 9, 2010
6:00 P.M.

Present: Mayor Anthony G. Chavonne

Council Members Keith Bates, Sr. (District 1); Kady-Ann Davy (District 2) (arrived at 6:15 p.m.); Darrell J. Haire (District 4) (arrived at 6:15 p.m.); Bobby Hurst (District 5); William J. L. Crisp (District 6); Theodore W. Mohn (District 8); Wesley A. Meredith (District 9)

Absent: Council Members Robert A. Massey, Jr. (District 3); Valencia A. Applewhite (District 7)

Others Present: Dale E. Iman, City Manager
Kristoff Bauer, Assistant City Manager
Karen M. McDonald, City Attorney
Patricia Bradley, Assistant City Attorney
Sherrod Banks, The Banks Law Firm
Adam Shestak, The Banks Law Firm

Mayor Chavonne called the meeting to order.

Closed session for consultation with the attorney regarding attorney-client privileged matter and litigation.

MOTION: Council Member Hurst moved to go into closed session for consultation with the attorney regarding attorney-client privileged matter and litigation involving City of Fayetteville v. Mitchell Brewer Richardson Adams Burge & Boughman, et al.

SECOND: Council Member Bates

VOTE: UNANIMOUS (8-0)

The regular session recessed at 6:05 p.m. The regular session reconvened at 6:50 p.m.

MOTION: Council Member Meredith moved to go into open session.

SECOND: Council Member Hurst

VOTE: UNANIMOUS (8-0)

There being no further business, the meeting adjourned at 6:50 p.m.

Respectfully submitted,

KAREN M. MCDONALD
City Attorney

ANTHONY G. CHAVONNE
Mayor

080910

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FAYETTEVILLE CITY COUNCIL
WORK SESSION MINUTES
LAFAYETTE ROOM
NOVEMBER 1, 2010
5:00 P.M.

Present: Mayor Anthony G. Chavonne

Council Members Keith Bates, Sr. (District 1); Kady-Ann Davy (District 2); Robert A. Massey, Jr. (District 3); Bobby Hurst (District 5); Valencia A. Applewhite (District 7); William J. L. Crisp (District 6) (departed at 9:25 p.m.); Theodore W. Mohn (District 8) (departed at 8:09 p.m.); Wesley A. Meredith (District 9) (departed at 7:25 p.m.)

Absent: Council Member Darrell J. Haire (District 4)

Others Present: Dale E. Iman, City Manager
Doug Hewett, Assistant City Manager
Kristoff Bauer, Assistant City Manager
Karen M. McDonald, City Attorney
Patricia Bradley, Police Attorney
Jeffery Brown, Engineering & Infrastructure Director
Lisa Smith, Chief Financial Officer
Terrie Hutaff, Human Resource Development Director
Renny W. Deese, Ethics Commission
Stephon A. Ferguson, Ethics Commission
Robert C. Cogswell, Jr, Attorney to the Ethics Commission
Tom Bergamine, Chief of Police
Rob Anderson, Chief Development Officer
Rita Perry, City Clerk
Members of the Press

1.0 CALL TO ORDER

Mayor Chavonne called the meeting to order.

2.0 INVOCATION

The invocation was offered by Council Member Meredith.

3.0 APPROVAL OF AGENDA

MOTION: Council Member Massey moved to approve the agenda.
SECOND: Council Member Meredith
VOTE: UNANIMOUS (9-0)

4.0 OTHER ITEMS OF BUSINESS

4.1 Storm Water Projects Overview and Financing Update

Mr. Jeffery Brown, Engineering & Infrastructure Director, presented this item and presented the revenue generated from storm water. Mr. Brown presented a power point which identified the improvement areas, explained the project determination process, and ranked the projects.

Ms. Lisa Smith, Chief Financial Officer, then continued the presentation by outlining the financing as follows:

Short-Term Financing

- Issue bonds through private placement
- Counsel develops bond documents - Includes establishing City commitments such as storm water rates and future bond issuance

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- Circulate RFP to banks to purchase an estimated \$3 million storm water revenue bond with a 15-year term to finance the short-term project list (actual amount based on projects)
- Submit revenue bond application to Local Government Commission to approve the financing
- Local Government Commission requires permits in hand and bids on approximately 70 percent of the projects
- For planning purposes, assumed 5 percent rate with semi-annual level payments - annual debt service estimated at \$286,666.00
- Approximately four months to complete

Long-Term Financing

- Issue bonds through a public offering
- Select an underwriter and obtain a feasibility study
- Obtain a bond rating for the system
- Submit revenue bond application to Local Government Commission to approve the financing
- Local Government Commission requires permits in hand and bids on approximately 70 percent of the projects
- Timeline to be determined

A question and answer period ensued regarding revenue generated by fees, Local Government Commission requirements, storm water, and small contractors without large bonding rates concerns.

Consensus of Council was to move forward.

4.2 Workforce Options to Balance FY 2011 Budget

Mr. Dale Iman, City Manager, presented this item and explained early retirement incentive plans would require careful and strategic planning. Mr. Iman reviewed actions taken to close the budget gap for FY 2011 to include sustainable actions and one-time fixes. He stated the City ended fiscal year 2010 with 2 percent or \$642,000.00 more in sales tax distributions and 1.4 percent or \$139,000.00 more in utility tax distributions than projected, which could be an indicator of an earlier or healthier economic rebound than projected by the North Carolina League of Municipalities. Mr. Iman identified the following ongoing challenges:

- Pending termination of public safety hiring grants
- Rising pension fund costs
- Little or no room for further operating expense budget reductions due to reductions in recent budgets
- Healthcare inflation
- Maintaining competitive wages

Ms. Terrie Hutaff, Human Resource Development Director, then reviewed the personnel cost. Ms. Hutaff stated personnel cost equaled 61 percent (\$85.4 million) of the general fund budget and personnel

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cost for Police, Fire, and Transit equaled 42 percent (\$58.4 million) of the total general fund budget. She stated should Council decide not to reduce personnel in Police, Fire, and Transit, the total general fund personnel cost for all other functions would be 19 percent (\$27 million) of the general fund budget. She explained that given the reductions taken in operating cost over the last several years and due to the large percentage (61 percent) of the budget devoted to personnel cost, it was necessary to consider personnel cost reductions to balance the budget. Ms. Hutaff identified the following personnel options to balance the budget:

Reduce the Workforce

- Eliminate vacant positions - last year
- Retirement incentives - once around 1990s
- Reduction in force - last year

Healthcare Initiatives

- Dependent audit - currently underway
- Pre-tax benefits - ongoing for years
- Increase the eligibility for future retirees - 2/1/2008
- Plan design and increasing employee cost sharing - last several years

Longevity

- Stopped this benefit for new employees hired after 7/1/2009

Employee Pay

- Suspend pay increases - 2009/2010
- Maintain pay ranges at current level

Furloughs

- Not recommended

Ms. Hutaff informed Council that without making changes to the personnel cost portion of the budget, Council and management were limited in their choices to make sustainable changes to balance the budget not only this year, but in future years. She explained that Human Resource Development offered retirement incentives in the past but the City had not saved money in the long term because positions were not eliminated. She further stated there should be a 6 to 9 month lead time to offer a retirement incentive plan to meet the legal requirements and to determine whether the budget could be balanced with the voluntary retirements. Ms. Hutaff recommended a targeted workforce based on the service areas which Council would be willing to cut or reduce should it be Council's direction to implement a retirement incentive plan as a method of reducing the workforce.

A question and answer period ensued regarding employee and City healthcare costs, property tax projections, positions eligible for early retirement, possibility of outsourcing, and vacancies.

This presentation was presented for information purposes only.

4.3 Proposed Revisions to the Code of Ethics

Mr. Renny W. Deese, Ethics Commission Chair, presented this item and provided an overview of the proposed revisions to the Code of Ethics. Mr. Deese briefed Council regarding the request for advisory opinions or complaints process. He stated generic synopses regarding advisory opinion results would be posted on the website.

Ms. Karen McDonald, City Attorney, explained the scenarios posted on the website would be generic questions. Mr. Iman stated they would be used as references.

Following discussion regarding the submittal process, complaint and inquiry requirement under oath, and potential employee or citizens

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concerns of ramifications, the consensus of Council was to add the "City Clerk" as an intake option and to bring this item back to Council at the November 8, 2010, meeting for action.

4.4 Youth Protection Ordinance (Curfew)

Mr. Tom Bergamine, Chief of Police, presented this item and provided an overview of statistical data. Chief Bergamine reviewed nighttime and daytime ordinances from various counties and states. He stated public support was strong for juvenile curfew laws; however, the laws were often ineffective for reducing juvenile crime and successful attempts to reduce juvenile crime involved early intervention using a multi-pronged approach that emphasized close partnerships between parents, law enforcement personnel, and school officials. He expressed staff's recommendation to explore the development and utilization of the following comprehensive tools to combat juvenile crime within the community:

- Fayetteville Police Department Juvenile Repeat Offenders Program - Community/Curfew Monitoring Project
- Safe Street Task Force
- S.M.A.R.T (Summer Mobile Analysis Response Team)

Following discussion regarding stakeholder involvement, youth curfew, ensuring equality, available resources, and parent responsibility, the consensus of Council was for staff to engage citizens' input at community meetings for a future Council update.

4.5 Update on the Unified Development Ordinance draft

Mr. Rob Anderson, Chief Development Officer, presented this item and provided a briefing on the following topics:

- Planning Commission recommendations
- Parkland dedication
- Sign code changes
- Big box and "Outparcels"
- Administrative adjustments
- Administrative manual
- Mapping
- Schedule going forward

Following discussion regarding sidewalk requirements, sign regulations, zoning district revisions, and administrative approval of temporary sign permits, the consensus of Council was for staff to re-examine the following:

- Vehicles adjacent to rights-of-way (relating to advertisement purpose)
- Profit/non-profit temporary signs (proposed administrative approval was questioned and this issue was compared to the proposed weekend signs permitted by realtors)
- Connectivity

4.6 Memorandum of Understanding Establishing the Sustainable Communities Foundation to Manage the Development of the Campus for Advanced Sustainability

Mr. Dale Iman, City Manager, presented this item and provided a brief overview of the objectives and key elements.

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Following discussion regarding entity ownership and development, the consensus of Council was for Council members to forward questions to staff to be addressed at the November 8, 2010, discussion meeting.

5.0 ADJOURNMENT

There being no further business, the meeting adjourned at 9:35 p.m.

Respectfully submitted,

JENNIFER PENFIELD
Deputy City Clerk

ANTHONY G. CHAVONNE
Mayor

110110

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FAYETTEVILLE CITY COUNCIL
DINNER AND DISCUSSION MEETING MINUTES
EXECUTIVE CONFERENCE ROOM
NOVEMBER 8, 2010
6:00 P.M.

Present: Mayor Anthony G. Chavonne

Council Members Keith Bates, Sr. (District 1); Kady-Ann Davy (District 2); Robert A. Massey, Jr. (District 3); Darrell J. Haire (District 4); Bobby Hurst (District 5); William J. L. Crisp (District 6); Valencia A. Applewhite (District 7); Theodore W. Mohn (District 8); Wesley A. Meredith (District 9)

Others Present: Dale E. Iman, City Manager
Kristoff Bauer, Assistant City Manager
Karen M. McDonald, City Attorney
Steven K. Blanchard, PWC CEO/General Manager
James Rose, PWC Chief Administrative Officer

Mayor Chavonne called the meeting to order.

Mr. Steven Blanchard, PWC CEO/General Manager, explained the Memorandum of Understanding and that it was not a legal document. He explained the equity provision and that they had consulted with an attorney. He explained that a 501(c)(3) must have provisions as to what happens to any assets, hence provisions regarding money. He explained they were just trying to get things started without the impetus being on one organization. He stated at this point they could not move forward without some type of Memorandum of Understanding.

Ms. Karen McDonald, City Attorney, clarified the provision related to the development of 39 acres and explained the property would have to be disposed of by statute.

Discussion ensued and consensus was to review the Memorandum of Understanding for consideration.

Mayor Chavonne clarified the retreat dates would be February 4 and 5, 2011, at the Airport Conference Room. He also clarified March 31, 2011, would be the final report.

Mayor Chavonne reviewed the proposed plan for Council Member Meredith's replacement. He advised the only requirement was that the candidate live in the district for at least 30 days. He suggested any potential candidates should come to the November 22, 2010, meeting because of the Strategic Plan update and Unified Development Ordinance on the agenda.

Consensus was to hold discussion during the first 15 minutes of the Council meeting. Also, information would be available on website. Consensus was to have application by December 1, 2010, to be considered for vacancy, then hold a special meeting to interview candidates during second week of December.

There being no further business, the meeting adjourned at 6:45 p.m.

Respectfully submitted,

KAREN M. MCDONALD
City Attorney

ANTHONY G. CHAVONNE
Mayor

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FAYETTEVILLE CITY COUNCIL
REGULAR MEETING MINUTES
CITY HALL COUNCIL CHAMBER
NOVEMBER 8, 2010
7:00 P.M.

Present: Mayor Anthony G. Chavonne

Council Members Keith Bates, Sr. (District 1); Kady-Ann Davy (District 2); Robert A. Massey, Jr. (District 3); Darrell J. Haire (District 4); Bobby Hurst (District 5); William J.L. Crisp (District 6); Valencia A. Applewhite (District 7); Theodore W. Mohn (District 8); Wesley A. Meredith (District 9)

Others Present: Dale E. Iman, City Manager
Doug Hewett, Assistant City Manager
Kristoff Bauer, Assistant City Manager
Karen M. McDonald, City Attorney
Doug Peters, Executive Director, Fayetteville-Cumberland County Chamber of Commerce
Rebecca Rogers-Carter, Management Services Manager
Members of the Press

1.0 CALL TO ORDER

Mayor Chavonne called the meeting to order.

2.0 INVOCATION

The invocation was offered by Mayor Pro Tem Haire.

3.0 PLEDGE OF ALLEGIANCE

Following the invocation, the Pledge of Allegiance to the American Flag was led by the audience.

4.0 APPROVAL OF AGENDA

MOTION: Council Member Mohn moved to approve the agenda with the deferral of Items 8.2(a) and 8.2(b) to the November 22, 2010, meeting.
SECOND: Council Member Bates
VOTE: UNANIMOUS (10-0)

5.0 ANNOUNCEMENTS AND RECOGNITIONS

Mayor Chavonne recognized and welcomed the Fayetteville State University Section of the National Council of Negro Women.

A proclamation and award was presented to Ms. Rachel Santillan in recognition of her courage and bravery by assisting her neighbors in evacuating a burning house on Oakridge Avenue on October 11, 2010.

A proclamation was presented proclaiming November 7-13, 2010, as Employ A Vet Week.

Council Member Meredith was recognized for his election to the North Carolina Senate and an announcement was made of plans to fill the District 9 vacancy.

6.0 PUBLIC FORUM

Mr. Anthony Castillo, 106 Scott Avenue, Fayetteville, NC 28301, spoke regarding the benefits of the community watch program.

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7.0 CONSENT

MOTION: Council Member Meredith moved to approve the consent agenda.
SECOND: Council Member Hurst
VOTE: UNANIMOUS (10-0)

7.1 Approve minutes:

- June 14, 2010 - Regular Meeting
- August 9, 2010 - Regular Meeting
- August 23, 2010 - Regular Meeting
- September 7, 2010 - Work Session Meeting
- September 13, 2010 - Dinner and Discussion Meeting
- September 27, 2010 - Dinner and Discussion Meeting

7.2 Approval of amendment to Military Business Park Participation agreement.

7.3 Approval of the acquisition of 811 Bedrock Drive.

7.4 Approval of the acquisition of 522 Moore Street.

7.5 Economic Development Initiative Grant Application for the Military Business Park.

RESOLUTION AUTHORIZING THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, NORTH CAROLINA, TO APPLY FOR ECONOMIC DEVELOPMENT INITIATIVE FUNDS FROM THE U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FOR THE MILITARY BUSINESS PARK. RESOLUTION NO. R2010-079.

7.6 Proposed revisions to the Code of Ethics.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE AMENDING ARTICLE IV, CODE OF ETHICS, OF CHAPTER 2 OF THE CODE OF ORDINANCES OF THE CITY OF FAYETTEVILLE. ORDINANCE NO. S2010-011.

7.7 Adopt a resolution declaring jointly-owned real property surplus and authorizing a quitclaim of the City's interest in order to expedite Cumberland County's sale of property.

RESOLUTION DECLARING PROPERTY EXCESS TO CITY'S NEEDS AND QUITCLAIMING CITY TITLE IN THE PROPERTY TO CUMBERLAND COUNTY. RESOLUTION NO. R2010-080.

7.8 Special Sign Permit request for temporary event signs for the 2010 Arts Council, A Dickens Holiday.

7.9 Special Sign Permit request for temporary event signs for the 2010 Heart of Christmas Show.

7.10 Resolution setting a public hearing on the Unified Development Ordinance.

A RESOLUTION SETTING A PUBLIC HEARING DATE REGARDING THE UNIFIED DEVELOPMENT ORDINANCE (PURSUANT TO N.C.G.S. 160A-58.2). RESOLUTION NO. R2010-081.

7.11 Consider adoption of resolution authorizing condemnation for the acquisition of right-of-way for the Ramsey Street Project.

A RESOLUTION AUTHORIZING CONDEMNATION TO ACQUIRE CERTAIN PROPERTY (RIGHT OF WAY FOR ROAD IMPROVEMENTS, COMMONLY KNOWN AS THE RAMSEY STREET PROJECT). RESOLUTION NO. R2010-082.

7.12 Special Revenue Fund Project Ordinance 2011-6 (COPS Technology Grant).

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7.13 Approve purchase of one surveillance and reconnaissance robotic vehicle for use by the City of Fayetteville Fire Department Hazardous Materials Regional Response Team.

7.14 Bid Recommendation - Purchase of various dump trucks.

The Public Works Commission approved the bid award for purchase of various dump trucks, with the option to purchase additional units within a three-year period. Bids were received September 22, 2010, as follows:

1. Piedmont Truck Center, Greensboro, NC, lowest bidder meeting bid requirements in the total amount of \$152,800.00 for the purchase of two 33,000 lb. GVWR cab and chassis with 5 cubic yard dump body. This was a budgeted item (\$95,000.00 each) for a total of \$190,000.00 to replace Units #318 and #326. Bids were solicited from 16 vendors with 8 responding as follows:

<u>Bidders</u>	<u>Unit Price</u>	<u>Total Cost</u>
Piedmont Truck Center (Greensboro, NC)	\$76,400.00	\$152,800.00
Tri-Point Truck Center (Raleigh, NC)	\$77,434.00	\$154,868.00
Smith International (Fayetteville, NC)	\$77,900.00	\$155,800.00
LaFayette Ford (Fayetteville, NC)	\$79,113.50	\$158,227.00
Charlotte Truck Center (Charlotte, NC)	\$79,673.00	\$159,346.00
Cooper Kenworth (Raleigh, NC)	\$84,485.00	\$168,970.00
Peterbilt of Dunn (Dunn, NC)	\$89,997.00	\$179,994.00

Note: The apparent low bid was submitted by Advantage Truck Center, Charlotte, NC; however, their bid did not meet specifications. The bid specifications required that bids be submitted for the latest design and current production model. Advantage Truck Center submitted a bid on a 2009 unit.

2. Smith International, Fayetteville, NC, lowest bidder meeting bid requirements in the total amount of \$89,400.00 for the purchase of one 54,000 lb. GVWR cab and chassis with 12 cubic yard dump body. This was a budgeted item (\$105,000.00) to replace Unit #347. Bids were solicited from 16 vendors with 5 responding as follows:

<u>Bidders</u>	<u>Total Cost</u>
Smith International (Fayetteville, NC)	\$89,400.00
Charlotte Truck Center (Charlotte, NC)	\$91,225.00
Cooper Kenworth (Raleigh, NC)	\$94,034.00
Peterbilt of Dunn (Dunn, NC)	\$107,778.00

Note: The apparent low bid was submitted by Tri-Point Truck Center, Raleigh, NC; however, Tri-Point failed to submit all requested information, therefore their bid was determined to be non-responsive.

7.15 Bid Recommendation - Purchase of one 35,000 lb. rubber tire loader.

The Public Works Commission approved the bid award for purchase of one 35,000 lb. rubber tire loader, with the option to purchase additional units within a three-year period, to Rob's Hydraulics, Inc., Grimesland, NC, low bidder in the total amount of \$130,135.00. This was a budgeted item to replace Unit #761. Bids were received September 15, 2010, as follows:

Rob's Hydraulics, Inc. (Grimesland, NC)	\$130,135.00
Interstate Equipment Co. (Cary, NC)	\$134,897.00
R.W. Moore Equipment Co. (Garner, NC)	\$139,000.00
Linder Industrial Machinery Co. (Raleigh, NC)	\$148,400.00
Gregory Poole Equipment, Co. (Hope Mills, NC)	\$161,314.00

Bids were solicited from five vendors with five responding. Rob's Hydraulics, Inc., is a woman-owned business enterprise.

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7.16 Bid Recommendation - Water and wastewater chemicals.

The Public Works Commission approved the bid award for purchase of various dump trucks, with the option to purchase additional units within a three-year period. Bids were received September 22, 2010, as follows:

The Public Works Commission approved the bid awards for one-year contracts, with option to extend contract for additional periods, for the purchase of water and wastewater chemicals. Bids were received September 30, 2010, as follows:

1. Southern Ionics, West Point, MS, low bidder in the amount of \$90,900.00 for the purchase of approximately 900,000 lbs. of sodium bisulfite. Bids were solicited from 20 bidders with 3 responding as follows:

Southern Ionics, Inc. (West Point, MS)\$90,900.00
JCI Jones Chemicals (Charlotte, NC)\$104,490.00
PVS Chemical Solutions (Detroit, MI)\$125,100.00

2. Colonial Chemical Solutions, Savannah, GA, low bidder in the amount of \$363,114.00 for the purchase of approximately 1800 tons of 50 percent caustic soda. Bids were solicited from 20 bidders with 4 responding as follows:

Colonial Chemical Solutions (Savannah, GA)\$363,114.00
JCI Jones Chemicals (Charlotte, NC)\$403,452.00
Basic Chemical Solutions (Morrisville, PA)\$432,630.00
Key Chemical (Waxhaw, NC)\$504,000.00

7.17 Calling Series 2001 Revenue Bonds.

RESOLUTION OF THE CITY OF FAYETTEVILLE, NORTH CAROLINA TO CALL \$7,680,000 PUBLIC WORKS COMMISSION REVENUE REFUNDING BONDS SERIES 2001 FOR OPTIONAL REDEMPTION ON THE FIRST OPTIONAL REDEMPTION DATE. RESOLUTION NO. R2010-083.

7.18 Resale of foreclosed property at 5333 Williamsburg Drive to the previous owner in accordance with N.C.G.S. § 105-376(c).

8.0 OTHER ITEMS OF BUSINESS

8.1 Presentation of Appointment Committee recommendations for boards and commissions appointments.

BOARDS/COMMISSIONS	RECOMMENDATION	TERM
Fayetteville Advisory Committee on Transit (FACT)		
1 ADA Representation	Lillie Henderson	1st (2-year term)
1 Transportation Industry Representation	David Wendelken	1st (2-year term)
Taxicab		
2 fill-in Appointments	Joseph Robinson George Butterfly	Fill-in for term expiring Sept. 2011
Alternate Fill-in	Vanessa Trollinger	Alternate fill-in for term expiring Sept. 2011
Fayetteville Planning Commission		
1 fill-in Appointment	Jimmy Holland	Fill-in for term expiring Sept 2011

MOTION: Council Member Hurst moved to approve Appointment Committee recommendations for appointments to various boards and commissions.

SECOND: Council Member Crisp

VOTE: UNANIMOUS (10-0)

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- 8.2(a) FY 2011 Strategic Plan Policy and Management Action Agenda 1st Quarter Update
- 8.2(b) Fayetteville Cumberland County Chamber of Commerce Quarterly Economic Development Report

This item was deferred to the November 22, 2010, City Council meeting.

9.0 ADMINISTRATIVE REPORTS

9.1 Monthly statement of taxes for September 2010.

2010 Taxes	\$2,256,509.35
2010 Vehicle	318,818.83
2010 Revit	6,446.24
2010 Vehicle Revit	390.39
2010 FVT	41,354.81
2010 Transit	41,354.80
2010 Storm Water	91,750.46
2010 Fay Storm Water	183,500.43
2010 Fay Recycle Fee	116,004.85
2010 Annex	0.00
2009 Taxes	35,629.10
2009 Vehicle	71,895.07
2009 Revit	163.83
2009 Vehicle Revit	15.01
2009 FVT	10,431.97
2009 Transit	10,431.99
2009 Storm Water	787.78
2009 Fay Storm Water	1,575.47
2009 Fay Recycle Fee	2,184.74
2009 Annex	17.92
2008 Taxes	3,928.01
2008 Vehicle	4,317.26
2008 Revit	0.00
2008 Vehicle Revit	0.00
2008 FVT	879.56
2008 Transit	672.44
2008 Storm Water	144.56
2008 Fay Storm Water	156.47
2008 Fay Recycle Fee	273.82
2008 Annex	0.00
2007 Taxes	1,401.11
2007 Vehicle	1,555.29
2007 Revit	0.00
2007 Vehicle Revit	0.00
2007 FVT	378.08
2007 Storm Water	36.88
2007 Fay Storm Water	50.76
2007 Annex	0.00
2006 and Prior Taxes	1,069.64
2006 and Prior Vehicle	3,310.44
2006 and Prior Revit	0.00
2006 and Prior Vehicle Revit	0.00
2006 and Prior FVT	664.08
2006 and Prior Storm Water	17.63
2006 Annex	31.37

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Interest	15,829.61
Revit Interest	4.80
Storm Water Interest	108.75
Fay Storm Water Interest	178.53
Annex Interest	10.94
Fay Recycle Interest	210.11
 Total Tax and Interest	 \$3,224,493.18

9.2 Revenue and Expenditure Report for annually budgeted funds for the two-month period ended August 31, 2010 and 2009.

10.0 ADJOURNMENT

There being no further business, the meeting adjourned at 7:22 p.m.

Respectfully submitted,

JENNIFER PENFIELD
Deputy City Clerk

ANTHONY G. CHAVONNE
Mayor

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FAYETTEVILLE CITY COUNCIL/CUMBERLAND COUNTY BOARD OF COMMISSIONERS
SPECIAL JOINT MEETING
DEPARTMENT OF SOCIAL SERVICES, MEETING ROOM B
1225 RAMSEY STREET, FAYETTEVILLE, NC
NOVEMBER 18, 2010
8:00 A.M.

Present: Mayor Anthony G. Chavonne

Council Members Keith Bates, Sr. (District 1) (departed at 8:30 a.m.); Kady-Ann Davy (District 2); Robert A. Massey, Jr. (District 3); Darrell J. Haire (District 4); Bobby Hurst (District 5); William J. L. Crisp (District 6); Valencia A. Applewhite (District 7); Theodore W. Mohn (District 8); Wesley A. Meredith (District 9)

Commissioners Billy R. King, Chairman; Kenneth S. Edge, Vice Chairman; Dr. Jeannette Council; Marshall Faircloth; Phillip Gilfus; Jimmy Keefe; Ed Melvin

Commissioner Elect Charles E. Evans

Others Present: Dale E. Iman, City Manager
Doug Hewitt, Assistant City Manager
Kristoff Bauer, Assistant City Manager
Karen M. McDonald, City Attorney
Michael Gibson, Parks and Recreation Director
James Martin, County Manager
Juanita Pilgrim, Deputy County Manager
Amy H. Cannon, Assistant County Manager
Rick Moorefield, County Attorney
Phyllis Jones, Assistant County Attorney
Sally Shutt, County Communications and Strategic Initiative Manager
Dr. John Lauby, County Animal Services Director
Kenny Currie, County Emergency Services Director
Thomas Lloyd, County Planning and Inspections Director
Torn Cooney, County Public Utilities Director
Marie Colgan, County Clerk
Candice H. White, Deputy County Clerk
Rita Perry, City Clerk
Members of the Press

1. CALL TO ORDER

Mr. Billy R. King, Chairman of the Cumberland County Board of Commissioners, and City of Fayetteville Mayor Anthony G. Chavonne called the meeting to order.

2. CONSOLIDATION OF E-911 FACILITY

Mr. Kenny Currie, County Emergency Services Director, presented this item and provided an overview of the consolidation information of the two primary Public Safety Answering Points (PSAPs), Cumberland County and City of Fayetteville. Mr. Currie summarized the history of the phased consolidation process and provided an update on the timeline of future mergers, equipment, training, and human resources. He clarified that personnel and building construction costs were the two funding issues.

Mr. Currie explained that before grant applications could be submitted for brick and mortar to build the consolidated dispatch facility, a commitment would be needed from both the City and the County through either a letter of understanding or agreement that would state the two agencies were willing to combine into one E-911 center.

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Mr. Currie responded to questions and discussion ensued regarding personnel costs, salary discrepancies, employee shifts, and equipment costs. Mr. Currie stated the County's 50/50 funds would have to be spent by July 1, 2012, and would have to be committed to public safety. He further stated grant applications could be submitted the first of 2011 and because consolidated E-911 centers were one of the top priorities, there would likely not be any limitations on the amount of funds that could be applied for. He also stated if the two centers were merged, the County could possibly get more funds than the centers could get separately.

Mr. Dale Iman, City Manager, stated the City needed to develop data because it had nothing to support potential personnel costs or savings.

Mr. Currie stated the consolidation was not about saving dollars but was about saving seconds and lives, and providing citizens in the City and the County the same level of service. He explained why ultimate efficiencies would not be realized until combined services were centralized. Mr. Currie responded to additional questions and discussion continued.

Mayor Chavonne stated the City would have their decision by January 31, 2011.

3. REGIONAL TRANSIT STUDY RESULTS AND RECOMMENDATIONS

Mayor Chavonne referenced the Phase 2 or final report on the Consolidated Transportation Development Plan that had been presented to the City and the County by the consultant, RLS Associates, Inc., and stated the next phase would be the development of an interlocal agreement and an implementation plan to accomplish the overall objective of mobility management that would focus on ADA and para-transit. Mayor Chavonne asked whether the County had interest in pursuing efficiencies as identified by the consultant.

Mr. Thomas Lloyd, County Planning and Inspections Director, reviewed discrepancies contained in the final report; to include door-to-door transportation for the elderly and disabled; the fact that County ridership had increased rather than decreased; a decrease in the County's per unit cost; and other transportation provided to rural residents through the addition of a partnership with Workforce Development. Mr. Lloyd requested the report depict accurate data if it was the decisive factor in the assessment process.

Mr. Lloyd responded to questions and discussion followed. Mr. James Martin, County Manager, stated it was the County's belief that the recommendation of the report was that the County would agree to consolidate all current County transportation services through the Fayetteville Area System of Transit (FAST). Mr. Martin further stated based on the cost of units for travel with FAST, the bottom line was that the consolidation would result in the County paying a higher cost per unit of travel and therefore reduce the units of service provided to County residents who qualify for County transportation services.

County and City staff responded to additional questions and discussion continued, Commissioner Council inquired whether correct data could be incorporated into the report so that neither party moved forward with incorrect information. Commissioner King suggested that the Board of Commissioners reassemble in order to revisit the question. Mr. Martin stated in February, the County indicated to the consultants that it would be willing to support a recommendation to move forward together if there was a provision that the transportation service could be provided at the lowest unit cost. Mr. Martin further stated his understanding was that this never got included as a recommendation within the report either.

Mayor Chavonne suggested that the consultant meet with the County and the City simultaneously to resolve the issues to ensure agreement

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on the facts contained within the report. Mr. Martin requested that the City coordinate the meeting with the consultant.

4. PARTICIPATION OF PWC IN COUNTY WATER PROJECTS WATER SERVICE AGREEMENT BETWEEN PWC AND GRAYS CREEK WATER AND SEWER DISTRICT MIA SEWER SERVICE AREA AGREEMENTS

Chairman King stated the County was seeking clarification on two existing agreements related to the Public Works Commission (PWC) that were affecting the Gray's Creek Water and Sewer District. Chairman King called on Rick Moorefield, County Attorney, who stated the County was seeking clarification of the City's interpretation of the term "at the PWC standard wholesale rate". Mr. Moorefield further stated under the terms of the tri-party agreement, the County was led to believe that PWC would have a standard wholesale rate which would be offered to the County, but later learned from Mr. Steve Blanchard, PWC CEO/General Manager, that there was no published standard wholesale rate. Mr. Moorefield also stated as of November 15, 2010, he was informed that 65 psi was needed at the connection point and PWC had 74 psi; however, PWC would not commit to a figure.

Mr. Moorefield advised the County was running out of time because it had to have a contract in place by December 7, 2010, for bond consideration by the Local Government Commission. Mr. Moorefield advised that this had become such a critical issue that he was prepared to recommend the Board of Commissioners to notice the City that the County considered this lack of commitment from PWC as a breach of the tri-party agreement. Mayor Chavonne advised that PWC had in fact confirmed its wholesale rate was the same rate as bulk water sold to the Town of Stedman, Hoke County, and Aqua NC. Mayor Chavonne stated this had been submitted to the County in a written memorandum the day prior. Mr. Moorefield stated that he had been out of the office all of yesterday and was not aware of the memo. Mr. Moorefield stated that this would be an acceptable way to determine the wholesale rate and that understanding would resolve the rate issue. He stated that the County still needed confirmation on the delivery pressure issue. Mayor Chavonne asked Mr. Moorefield to write down the specific questions that were remaining so that he could obtain the answers by the end of the day.

5. DETENTION CENTER CAPACITY

Chairman King stated the Board of Commissioners had agreed to move forward with expansion of the Detention Center. Mr. Iman confirmed City Council members had been invited to attend the Detention Center Expansion Kick-Off meeting on Tuesday, November 23, 2010.

6. MURCHISON ROAD REVITALIZATION

Chairman King stated the understanding was that the Murchison Road Corridor Development, including the implementation of a redevelopment plan and the securing of HUD Section 108 loan funding, was one of the City Council's strategic targets for actions. Chairman King inquired regarding the plans for revitalization and whether there was anything the County could do to help move the plan forward.

Mr. Iman provided a brief overview of the Murchison Road Revitalization Study to include project description, background, and funding status. Mr. Iman stated redevelopment of the Washington Drive School, which was owned by the MLK Memorial Park Committee, was included in the targeted southern Murchison Road area and the property needed to be dealt with in order to advance efforts to redevelop the area into a productive use. Discussion followed regarding the County's gifting of the property to the MLK Memorial Park Committee, the Committee's subsequent inability to sell the property, the vandalism and degradation that ensued, and efforts by the City to resolve the issues.

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Chairman King stated the Board of Commissioners would support positive action to remediate the school property.

7. ANIMAL CONTROL SERVICES (TO INCLUDE ENFORCEMENT OF THE TETHERING ORDINANCE)

Dr. John Lauby, County Animal Services Director, provided information regarding the number of calls responded to, citations written against the tethering ordinance, and limitations under the current tethering ordinance that would impact how enforcement was enacted. Dr. Lauby responded to questions and discussion followed.

Mr. Moorefield stated although the City adopted the County's ordinance, problems had arisen because of differences in codification which required the use of different citation books. Mr. Moorefield further stated some of the enforcement aspects had not been well thought out. Mr. Moorefield stated the solution was for the City to apply the same ordinance within its jurisdiction so County Animal Services could do a better job with enforcement. Mr. Moorefield further stated that he hoped to work with Chief Judge Keever to develop a procedure to take all code enforcement actions through Environmental Court rather than the regular court dockets so the process would be more streamlined. Mayor Chavonne stated the City had interest in having the same ordinance as the County.

Mayor Chavonne inquired regarding service levels on weekends and evenings. Dr. Lauby stated three to four officers were available on Saturday and Sunday, two of which were on standby for emergencies, and two officers were on duty after 6:00 p.m. Mayor Chavonne then inquired regarding the telephone messaging system. Dr. Lauby explained a new phone system had been installed so calls would have a 45-second response time and would be received by a live person; voicemails would be retrieved every two minutes.

County Manager Martin asked Mr. Moorefield to explain the ordinance regulations for barking dogs. Mr. Moorefield advised that barking dogs were not encompassed in the City's animal services ordinance but the City's noise ordinance. He explained this was what citizens generally preferred, and that it was only enforceable by City police.

Dr. Lauby responded to additional questions regarding officer response time, protection for officers, and financial resources to include dog license fees. Mayor Chavonne asked that the County explore the collection of fees from veterinarians for remittance to the County and stated this had created a lot more money for animal services in some counties.

8. PARKS AND RECREATION MASTER PLAN

Mayor Chavonne stated the 2006 Parks and Recreation Master Plan did not have an accompanying funding plan and the City Council would like to explore funding in the amount of \$86 million to locate facilities throughout the County through a bond referendum within the next 12 to 24 months. Mayor Chavonne asked if the Board of Commissioners would support a bond referendum.

Mr. Michael Gibson, Parks and Recreation Director, responded to questions and stated a potential funding package that would incorporate just about everything in terms of facilities would come back to both bodies within the next 6 months with the hope that there would be an opportunity to place this item on a ballot within the next 18 months.

9. GATEWAY BEAUTIFICATION

Ms. Juanita Pilgrim, Assistant County Manager, stated she had been in contact with Mr. Richie Hines, N.C. Department of Transportation, regarding the use of Department of Corrections' state

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prisoners to help clean up the main roads in Cumberland County at six sites. Ms. Pilgrim stated she received a response that the sites would be reviewed and Mr. Hines would then contact the Department of Corrections to get the County on the schedule for clean up. Mayor Chavonne asked that the sites be forwarded to the City. Mr. Iman stated the City's interest was somewhat broader in that the City would like to see signage, landscape improvements, and improved property maintenance.

Commissioner Council stated both she and Council Member Davy would meet with the joint committee.

A brief discussion ensued regarding the availability of funds and budget requests for the next year.

There being no further business, the meeting adjourned at 9:40 a.m.

Respectfully submitted,

JENNIFER PENFIELD
Deputy City Clerk

ANTHONY G. CHAVONNE
Mayor

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**FAYETTEVILLE CITY COUNCIL
DINNER AND DISCUSSION MEETING MINUTES
EXECUTIVE CONFERENCE ROOM
NOVEMBER 22, 2010
6:00 P.M.**

Present: Mayor Anthony G. Chavonne

Council Members Keith Bates, Sr. (District 1); Kady-Ann Davy (District 2) (arrived at 6:30 p.m.); Robert A. Massey, Jr. (District 3); Darrell J. Haire (District 4); Bobby Hurst (District 5); Valencia A. Applewhite (District 7); Theodore W. Mohn (District 8); Wesley A. Meredith (District 9)

Absent: Council Member William J. L. Crisp (District 6)

Others Present: Dale E. Iman, City Manager
Kristoff Bauer, Assistant City Manager
Doug Hewett, Assistant City Manager
Karen M. McDonald, City Attorney

Mayor Chavonne called the meeting to order and provided an update on the replacement for District 9. He stated the application was available online and would be due December 1, 2010. He advised Council Member Meredith's last meeting would be December 13, 2010, and thanked him for his service.

Closed session for consultation with the attorney.

MOTION: Council Member Bates moved to go into closed session for consultation with the attorney to discuss attorney-client privileged matter.
SECOND: Council Member Hurst
VOTE: UNANIMOUS (9-0)

The regular session recessed at 6:10 p.m. The regular session reconvened at 6:27 p.m.

MOTION: Council Member Bates moved to go into open session.
SECOND: Council Member Hurst
VOTE: UNANIMOUS (9-0)

Mayor Chavonne then began review of the agenda items. There were no questions on the consent items.

Mayor Chavonne then began review of the public hearing items which included the special use permits. He then explained there was no time limits for special use permits and that the hearing was quasi-judicial.

Mayor Chavonne then reviewed the rules for the Unified Development Ordinance public hearing which would be three minutes per speaker and the public hearing would last up to one hour. He stated it was anticipated that adoption would be December 13, 2010.

Thereafter, Mayor Chavonne reviewed the regular items. Council Member Bates explained an administrative error occurred with the notice regarding Item 8.3, uninhabitable structures, and staff was recommencing removal until December 13, 2010.

Discussion concluded regarding the agenda items.

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There being no further business, the meeting adjourned at
6:40 p.m.

Respectfully submitted,

KAREN M. MCDONALD
City Attorney

ANTHONY G. CHAVONNE
Mayor

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FAYETTEVILLE CITY COUNCIL
REGULAR MEETING MINUTES
CITY HALL COUNCIL CHAMBER
NOVEMBER 22, 2010
7:00 P.M.

Present: Mayor Anthony G. Chavonne

Council Members Keith Bates, Sr. (District 1); Kady-Ann Davy (District 2); Robert A. Massey, Jr. (District 3); Darrell J. Haire (District 4); Bobby Hurst (District 5); Valencia A. Applewhite (District 7); Theodore W. Mohn (District 8); Wesley A. Meredith (District 9)

Absent: Council Member William J. L. Crisp (District 6)

Others Present: Dale E. Iman, City Manager
Doug Hewett, Assistant City Manager
Kristoff Bauer, Assistant City Manager
Karen M. McDonald, City Attorney
Rob Anderson, Chief Development Officer
Michelle Thompson, Cherry, Bekaert & Holland, L.L.P.
Lisa Smith, Chief Financial Officer
Doug Peters, Executive Director, Fayetteville-
Cumberland County Chamber of Commerce
Rebecca Rogers Carter, Management Services Manager
Rita Perry, City Clerk
Members of the Press

1.0 CALL TO ORDER

Mayor Chavonne called the meeting to order.

2.0 INVOCATION

The invocation was offered by Ms. Baylor Hicks who is pursuing her ordination in the Triratna Buddhist Order.

3.0 PLEDGE OF ALLEGIANCE

Following the invocation, the Pledge of Allegiance to the American Flag was led by the audience.

4.0 APPROVAL OF AGENDA

MOTION: Council Member Hurst moved to approve the agenda with the deferral of Item 8.3 to the December 13, 2010, meeting.

SECOND: Council Member Meredith

VOTE: UNANIMOUS (9-0)

5.0 ANNOUNCEMENTS AND RECOGNITIONS

Colonel Stephen J. Sicinski, US Army, Garrison Commander was presented the 100 Best Communities for Young People Award.

Ms. Cheryl Underwood, Zeta Phi Beta Sorority International President, informed Council that the sorority shared Thanksgiving with the military and adopted a local family for a year.

Mayor Chavonne reviewed the District 9 vacancy selection process and informed the audience that the candidates would be addressing Council at the December 13, 2010, meeting.

6.0 CONSENT

MOTION: Council Member Meredith moved to approve the consent agenda.

SECOND: Council Member Bates

VOTE: UNANIMOUS (9-0)

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- 6.1 Adopt a resolution pursuant to N.C.G.S. § 160A-58.2 setting December 13, 2010, as the date for a public hearing for a petition-initiated noncontiguous annexation area (Fullblock, Inc. - Located at 135 Airport Road).

A RESOLUTION FIXING A DATE FOR A PUBLIC HEARING FOR A PETITION-INITIATED NONCONTIGUOUS ANNEXATION AREA PURSUANT TO N.C.G.S. 160A-58.2 (FULLBLOCK, INC. - LOCATED AT 135 AIRPORT ROAD). RESOLUTION NO. R2010-084.

- 6.2 Adopt a resolution pursuant to N.C.G.S. 160A-58.2 setting December 13, 2010, as the date for a public hearing for a petition-initiated noncontiguous annexation area (Atlantic Multifamily, LLC, Astoria Apartments - Located on Black and Decker Road).

A RESOLUTION FIXING A DATE FOR A PUBLIC HEARING FOR A PETITION-INITIATED NONCONTIGUOUS ANNEXATION AREA PURSUANT TO N.C.G.S. 160A-58.2 (ATLANTIC MULTIFAMILY, LLC - LOCATED ON BLACK AND DECKER ROAD, EAST OF LEGION ROAD). RESOLUTION NO. R2010-085.

- 6.3 Capital Project Ordinance Closeouts 2011-1 through 2011-6 (Transportation Museum, Drainage Improvement and Infrastructure Projects) and Special Revenue Fund Project Ordinance Closeouts 2011-1 through 2011-2 (Assistance to Firefighters Grants).

- 6.4 Capital Project Ordinance 2011-8 (Military Business Park Grant for Infrastructure).

- 6.5 Capital Project Ordinance Amendment 2011-13 and Budget Ordinance Amendment 2011-5 (Public Safety Computer-Aided Dispatch and Records Management Systems Project).

- 6.6 Consider approval of Capital Project Ordinance Amendment 2011-12, contracts and agreements necessary to fund the construction of Fire Station #19.

- 6.7 Approve purchase of equipment, software, and professional services to upgrade the Police Department's E-911 communications system.

CenturyLink, Rocky Mount, NC, is the only authorized reseller of the Positron LifeLine Power 911 System for the City of Fayetteville area. CenturyLink was authorized by the manufacturer to upgrade, install, and maintain the system. The cost of the upgrade including all hardware, software, shipping costs, labor, and project management was \$272,331.60. The source of funding for the upgrade was E-911 funds and was included in the Police Department's FY 2011 CIP budget.

- 6.8 Bid award recommendation - one (1) 70,000 GVWR cab and chassis with dump body.

Formal bids were received November 3, 2010, as follows:

Tri-Point Truck Center (Raleigh, NC)	\$142,260.00
Cooper Kenworth (Raleigh, NC)	\$159,788.00
*Peterbilt Truck Center (Dunn, NC)	\$133,334.00

*The bid received from Peterbilt Truck Center, Dunn, NC, contained several exceptions to the specifications which were not acceptable.

This unit replaced Unit #97/327 and was included in the FY 2011 budget. The budgeted amount was \$165,000.00.

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6.9 Bid recommendation - ferric sulfate liquid.

The Public Works Commission approved the bid award for purchase of approximately 6,000 tons of ferric sulfate liquid to Kemira Water Solutions, Lawrence, KS, low bidder in the amount of \$1,298,580.00, over a one-year period, with option to extend contract for additional periods. Bids were solicited from 20 bidders with 1 bidder responding. Bids were received September 30, 2010, as follows:

Kemira Water Solutions (Lawrence, KS)\$1,298,580.00

7.0 PUBLIC HEARING

7.1 Case No. P10-35F. Special Use Permit to allow a nursing home in an R6 Residential District on property located at 400 Pelt Drive containing 5.43 acres. Emraq Investments, owner.

All speakers and staff were administered the oath.

Mr. Craig Harmon, Planner II, presented this item. Mr. Harmon showed a vicinity map and gave an overview of the current land use, current zoning, surrounding land use and zoning, 2010 Land Use Plan, 2030 Growth Plan and site plan. He stated the request was for the expansion of an existing nursing home to create more private rooms and the bed count and number of clients and staff would remain the same. He stated the Zoning Commission and staff recommended approval of the requested Special Use Permit based on the submitted site plan and that the use fit in with the character of the area in which such use will be located and that the use will not be detrimental the surrounding neighborhood.

This was the advertised public hearing set for this date and time. The public hearing opened at 7:25 p.m.

Mr. Bill Daniels, 1160 S.E. Maynard Road, Cary, NC, appeared in favor and provided a summary of the request.

There were no speakers in opposition.

There being no one further to speak, the public hearing closed at 7:26 p.m.

MOTION: Mayor Pro Tem Haire moved to approve the Special Use Permit to allow a nursing home in an R6 Residential District on property located at 400 Pelt Drive containing 5.43 acres with conditions.

SECOND: Council Member Meredith

VOTE: UNANIMOUS (9-0)

7.2 Case No. P10-38F. Special Use Permit to allow the location of a wireless telecommunications tower on property located at 1769 Bingham Drive containing 0.23 acres. Calvary Freewill Baptist Church, owner.

Mr. Craig Harmon, Planner II, presented this item. Mr. Harmon showed a vicinity map and gave an overview of the current land use, current zoning, surrounding land use and zoning, and 2010 Land Use Plan. Mr. Harmon stated the Zoning Commission and staff recommended approval with the following conditions:

- (1) Comply with the site plan;
- (2) Written agreement confirmation of one or more providers to use the tower once built (prior to the issuance of a building permit);
- (3) Special Use Permit becomes null and void if a building permit was not issued after two years from the date of the request approval; and

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- (4) Comply with all communication tower requirements as stated in the City Code [30-107(17)].

Mr. Harmon stated the Zoning Commission and staff recommended approval with additional conditions noted above, based upon the finding that the request fits with the character of the area in which it would be located and that it would not be detrimental to the surrounding neighborhood based upon the submitted site plan and documentation and recommended conditions.

This is the advertised public hearing set for this date and time. The public hearing opened at 7:30 p.m.

Mr. Tom Johnson, 4141 Parklake Avenue, Suite 200, Raleigh, NC 27612, appeared in favor and stated the tower was a necessity to accommodate growth. He reviewed the site plan and type of pole to be used.

Mr. Johnny Pike, 1775 Bingham Drive, Fayetteville, NC, appeared in favor and stated the congregation's concerns relating to the future of the church were addressed.

Mr. Samar Qubain, 7357 Circle Bank Drive, Raleigh, NC 27615, appeared in favor and explained the maps and radio frequencies.

Mr. Graham Herring, 8052 Grey Oak Drive, Raleigh, NC, appeared in favor and presented the financial impact study results which showed no adverse affect on surrounding properties.

Mr. William Garrett, 400 Regency Forest, Suite 300, Cary, NC 27518, appeared in favor and provided a structural overview of the proposed tower.

There were no speakers in opposition.

There being no one further to speak, the public hearing closed at 7:50 p.m.

A question and answer period ensued regarding the affect on other carriers, tower structure, and range. Mr. Qubain clarified that the request would not affect other carriers. Mr. Garrett explained the request was for the use of a 150-foot monopole and stated the higher the pole the better to allow for multi-users without interference.

MOTION: Council Member Applewhite moved to approve the Special Use Permit to allow the location of a wireless telecommunications tower on property located at 1769 Bingham Drive containing 0.23 acres with conditions.

SECOND: Council Member Hurst

VOTE: UNANIMOUS (9-0)

7.3 Case No. P10-39F. Special Use Permit to allow the location of a wireless telecommunications tower on property located at 733 Bargain Street containing 0.278 acres. Richard Angel, owner.

Mr. Craig Harmon, Planner II, presented this item. Mr. Harmon showed a vicinity map and gave an overview of the current land use, current zoning, surrounding land use and zoning, and 2010 Land Use Plan. Mr. Harmon presented the following conditions for approval:

- (1) Comply with the site plan;
- (2) Written agreement confirmation of one or more providers to use the tower once built (prior to the issuance of a building permit);
- (3) Special Use Permit becomes null and void if a building permit was not issued after two years from the date of the request approval; and

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- (4) Comply with all communication tower requirements as stated in the City Code [30-107(17)].

Mr. Harmon stated the Zoning Commission and staff recommended approval based upon the finding that the request fit with the character of the area in which it would be located and that it would not be detrimental to the surrounding neighborhood based upon the submitted site plan and documentation and recommended conditions.

This is the advertised public hearing set for this date and time. The public hearing opened at 8:02 p.m.

Mr. Tom Johnson, 4141 Parklake Avenue, Suite 200, Raleigh, NC 27612, appeared in favor and reviewed the request and site plan.

Mr. Samar Qubain, 7357 Circle Bank Drive, Raleigh, NC 27615, appeared in favor and reviewed the coverage maps.

Mr. Graham Herring, 8052 Grey Oak Drive, Raleigh, NC, appeared in favor and presented the financial impact study results which showed no adverse affect on surrounding properties.

Mr. William Garrett, 400 Regency Forest, Suite 300, Cary, NC 27518, appeared in favor and reviewed the setback differences.

There were no speakers in opposition.

There being no one further to speak, the public hearing closed at 8:07 p.m.

A question and answer period ensued regarding the impact statement, communication with adjacent property owners, and requiring the use of internal antennas. Mr. Herring stated adjacent property owners were provided written notification.

MOTION: Council Member Meredith moved to approve the Special Use Permit to allow the location of a wireless telecommunications tower on property located at 733 Bargain Street containing 0.278 acres with conditions and an additional requirement for a 150-foot (slick) unipole.

SECOND: Council Member Bates

VOTE: PASSED by a vote of 7 in favor to 2 in opposition (Council Members Hurst and Mohn)

7.4 Case No. P10-37F. Rezoning 0.29 acres at 6021 Fisher Road from R10 Residential District to P2 Professional District or a more restrictive district. Milo Investments LLC, owner.

Mr. Craig Harmon, Planner II, presented this item. Mr. Harmon showed a vicinity map and gave an overview of the current land use, current zoning, surrounding land use and zoning, and 2010 Land Use Plan. Mr. Harmon stated the purpose for the rezoning request was to create a professional district at the entrance of several new subdivisions. He stated that while there were two properties to the east zoned professional, they do not fit the character of the rest of the neighborhood. He stated these were zoned professional while still in the County's jurisdiction. Mr. Harmon stated the Zoning Commission recommended approval by a vote of 3 to 2 based on the findings that the use: (1) would fit in with the character of the area in which such use was to be located, (2) would not be detrimental to the surrounding neighborhood, and (3) would be in keeping with the approved long-range plans of the City. He stated staff recommended denial of the rezoning to P2 Professional District based on: (1) the 2010 Land Use Plan called for low-density residential, (2) the property currently having R10 Residential zoning on three sides, and (3) the 2030 Growth Vision Plan cautioned against rezoning residential properties solely because they adjoin a major street.

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This is the advertised public hearing set for this date and time. The public hearing opened at 8:31 p.m.

Mr. Tim Evans, 2256 Cypress Lakes, Fayetteville, NC, appeared in favor and reviewed the rezoning history of the property and surrounding properties. He explained that the property would be used as a model home and the developer wished to use the property as an office.

Ms. Annie Famulari, 2238 Baywater Drive, Fayetteville, NC, appeared in opposition and questioned the necessity for commercial zoning for a model home.

There being no one further to speak, the public hearing closed at 8:50 p.m.

Mr. Harmon responded to questions posed by Council regarding permitted uses.

MOTION: Council Member Applewhite moved to deny rezoning of 0.29 acres at 6021 Fisher Road from R10 Residential District to P2 Professional District or a more restrictive district.

SECOND: Council Member Bates

VOTE: UNANIMOUS (9-0)

7.5 Consideration of the Unified Development Ordinance November 2010 Council Draft, which would amend the City Code by replacing Chapters 25, Subdivision, and 30, Zoning, with a new Chapter 30, Unified Development Ordinance (UDO).

Mr. Rob Anderson, Chief Development Officer, presented this item and provided the history of the UDO. Mr. Anderson provided an overview of the meetings schedule and reviewed additional revisions to the UDO.

Mayor Chavonne questioned the procedure for future revisions and whether a public hearing was required. Mr. Anderson stated future amendments to the ordinance would be processed administratively. Ms. Karen McDonald, City Attorney, responded in the affirmative regarding the public hearing requirement.

A discussion period ensued regarding certification of occupancy as it related to sidewalk bond requirements. Mr. Anderson stated homes would not be deemed as certified as completed until the sidewalks were installed and the bond money would be utilized to complete unfinished sidewalks should they not be completed within a two-year period. Mr. Kristoff Bauer, Assistant City Manager, further stated the sidewalks were part of the infrastructure and the bond would protect that infrastructure.

This is the advertised public hearing set for this date and time. The public hearing opened at 9:31 p.m. The following speakers appeared:

NAME/ADDRESS	COMMENT SUMMARY
Gore Rose 104 Gillespie Street Fayetteville, NC	Stated the Chamber agreed with the need for the UDO, that the UDO must not unreasonably inhibit the growth of development and that the UDO would increase the cost of developing.
Malcolm McFayden 1007 Canopy Lane Fayetteville, NC	Commented on the administrative manual, connectivity, lighting, and parks and recreation fees.
Robert J. Avriett, Jr. 6605 Surrey Road Fayetteville, NC	Commented on fees in lieu of parkland dedication, credit for recreation assistance and developers providing amenities.

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NAME/ADDRESS	COMMENT SUMMARY
Ralph Huff 1127 Offshore Drive Fayetteville, NC	Commented on garages and bond cost.
Chuck Gore 3174 Bittersweet Drive Fayetteville, NC	Commented on garages and provided pictures of existing homes which would be in compliance with the UDO.
Floyd Jenkins 3000 Ruthburn Court Fayetteville, NC	Commented on garages requirements.
Maurine Wren 326 Southampton Court Fayetteville, NC	Commented on sidewalk requirements and maintenance.
Jimmy Kizer 214 Woodcrest Road Fayetteville, NC	Suggested a review and compromise to implementing the UDO.
Jon Parsons 7265 NC Hwy 87 South Fayetteville, NC	Stated the degree of compromise had been tremendous.
Wendy Michener 223 Hillside Avenue Fayetteville, NC	Thanked the City for sidewalks and stated Haymount Hills had no crosswalks.
John Pate 962 McKimmon Road Fayetteville, NC	Commented regarding the RV storage requirements.
Karl Legatski 122 Magnolia Avenue Fayetteville, NC	Spoke in favor of the UDO.
Mindy Love-Stanley Lakewell	Spoke in favor of the UDO.

There being no one further to speak, the public hearing closed at 10:12 p.m.

Mayor Chavonne clarified that this item would be discussed at the December 6, 2010, City Council work session; thereafter, action would be taken at the December 13, 2010, City Council regular meeting.

8.0 OTHER ITEMS OF BUSINESS

8.1 Presentation of the Audited FY 2009-2010 Comprehensive Annual Financial Report.

Ms. Michelle Thompson, Cherry, Bekaert & Holland, L.L.P., provided an overview of the FY 2009-2010 financial audit's operating results, revenues and other financing sources, expenditures and other financing uses and fund balance.

A brief discussion ensued regarding the fund balance.

MOTION: Council Member Meredith moved to accept the Audited FY 2009-2010 Comprehensive Annual Financial Report.

SECOND: Council Member Bates

VOTE: UNANIMOUS (9-0)

8.2(a) FY 2011 Strategic Plan Policy and Management Action Agenda 1st Quarter Update.

Ms. Rebecca Rogers-Carter, Management Services Manager, outlined the three main areas of the City's Strategic Plan and reviewed the Strategic Plan third quarter report to include the status of Top and High Policy Agenda targets for action and the status of Top and High Management Agenda targets for action.

MOTION: Mayor Pro Tem Haire moved to accept the update of the FY 2011 Strategic Plan Policy and Management Action Agenda 1st Quarter Update.

SECOND: Council Member Meredith

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VOTE: UNANIMOUS (9-0)

8.2(b) Fayetteville-Cumberland County Chamber of Commerce Quarterly Economic Development Report.

Mr. Doug Peters, Executive Director of the Fayetteville-Cumberland County Chamber of Commerce, reviewed the First Quarter Dashboard Report, Fiscal Year 2010-2011, which provided information regarding investments, job creations, retention visits, contacts, national marketing placements, employee compensation impacts, business tax (tax revenue), and properties market statistic reports.

Council Member Applewhite requested the wages for the upcoming jobs referenced in the report. Mr. Peters stated he would provide a complete breakdown of the wages.

MOTION: Council Member Meredith moved to accept the update of the Fayetteville-Cumberland County Chamber of Commerce Quarterly Economic Development Report.

SECOND: Mayor Pro Tem Haire

VOTE: UNANIMOUS (9-0)

8.3 Uninhabitable structures demolition recommendations for 1031 Bunce Road, 725 Bunce Road, 6768 Bailey Lake Road.

This item was deferred to the December 13, 2010, City Council meeting.

9.0 ADMINISTRATIVE REPORTS

9.1 Monthly statement of taxes for October 2010 from the Cumberland County Tax Administrator.

2010 Taxes	\$1,755,755.00
2010 Vehicle Taxes	310,078.46
2010 Revit	4,380.16
2010 Vehicle Revit	258.38
2010 FVT	39,927.43
2010 Transit Tax	39,927.43
2010 Storm Water	136,602.85
2010 Fay Storm Water	273,205.84
2010 Recycle Fee	84,719.88
2010 Annex	0.00
2009 Taxes	\$23,372.87
2009 Vehicle Taxes	59,834.57
2009 Revit	0.42
2009 Vehicle Revit	24.66
2009 FVT	9,173.72
2009 Transit Tax	9,173.71
2009 Storm Water	533.56
2009 Fay Storm Water	1,067.10
2009 Recycle Fee	1,233.58
2009 Annex	11.21
2008 Taxes	1,269.31
2008 Vehicle	3,155.54
2008 Revit	3.33
2008 Vehicle Revit	0.00
2008 FVT	649.63
2008 Transit Tax	514.62
2008 Storm Water	214.39
2009 Fay Storm Water	48.35
2008 Recycle	84.61
2008 Annex	7.20
2007 Taxes	451.95
2007 Vehicle	1,441.10
2007 Revit	0.00

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2007 Vehicle Revit	0.00
2007 FVT	333.87
2007 Storm Water	33.51
2007 Fay Storm Water	33.92
2007 Annex	0.00
2006 and Prior Taxes	679.77
2006 and Prior Vehicle	2,780.31
2006 and Prior Revit	0.00
2006 and Prior Vehicle Revit	0.00
2006 and Prior FVT	624.35
2006 and Prior Storm Water	50.28
2006 Annex	13.50
Interest	13,839.09
Revit Interest	3.60
Storm Water Interest	120.20
Fay Storm Water Interest	108.12
Annex Interest	7.04
Fay Recycle Interest	121.33
Total Tax and Interest	\$2,775,874.75

10.0 ADJOURNMENT

There being no further business, the meeting adjourned.

Respectfully submitted,

JENNIFER PENFIELD
Deputy City Clerk

ANTHONY G. CHAVONNE
Mayor

112210

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FAYETTEVILLE CITY COUNCIL
WORK SESSION MINUTES
LAFAYETTE ROOM
DECEMBER 6, 2010
5:00 P.M.

Present: Mayor Anthony G. Chavonne

Council Members Keith Bates, Sr. (District 1); Kady-Ann Davy (District 2) (arrived at 5:23 p.m.); Robert A. Massey, Jr. (District 3) (arrived at 5:09 p.m. and departed at 7:17 p.m.); Darrell J. Haire (District 4); Bobby Hurst (District 5); William J. L. Crisp (District 6); Valencia A. Applewhite (District 7) (arrived at 5:27 p.m.); Theodore W. Mohn (District 8); Wesley A. Meredith (District 9)

Others Present: Dale E. Iman, City Manager
Doug Hewett, Assistant City Manager
Kristoff Bauer, Assistant City Manager
Karen M. McDonald, City Attorney
Patricia Bradley, Police Attorney
Leslie Mozingo, The Ferguson Group
Victor Sharpe, Community Development Director
Rusty Thompson, City Traffic Engineer
Ron McElrath, Human Relations Director/ADA Coordinator
Charles Kimble, Assistant Police Chief
Rob Anderson, Chief Development Officer
Benjamin Nichols, Fire Chief
Ron Lewis, Battalion Commander/Fire Marshal
Rita Perry, City Clerk
Members of the Press

1.0 CALL TO ORDER

Mayor Chavonne called the meeting to order at 5:04 p.m.

2.0 INVOCATION

The invocation was offered by Mayor Pro Tem Haire.

3.0 APPROVAL OF AGENDA

MOTION: Mayor Chavonne moved to approve the agenda with the addition of Item 5.0, discussion of District 9 appointment, and Item 6.0, closed session for consultation with the City Attorney.

SECOND: Mayor Pro Tem Haire

VOTE: UNANIMOUS (7-0)

4.0 OTHER ITEMS OF BUSINESS

4.1 FY 2012 Federal Legislative Agenda Update

Ms. Leslie Mozingo, Lobbyist, The Ferguson Group, presented this item and outlined the appropriations/grant and authorizations funding along with additional priorities and legislative policy items of the City of Fayetteville/Cumberland County/Fayetteville-Cumberland Chamber of Commerce FY 2012 Federal Agenda. Ms. Mozingo reviewed the December 6, 2010, Federal Success Status Report.

Council Member Bates requested the I-295 Loop be moved up on the funding priority list. Ms. Mozingo stated the I-295 Loop was a NCDOT driven project.

Council Member Crisp inquired whether it would be advantageous for Council to contact legislators to reaffirm the City's interest. Ms. Mozingo requested Council to defer any action until the final/modified draft was provided to Council.

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Mr. Dale Iman, City Manager, introduced Ms. Lucia Ross, the City's new Communications Officer, to Council.

4.2 Memorandum of Understanding (MOU) with Fayetteville State University (FSU) for the Historically Black Colleges and Universities (HBCU) Grant and Update of City's Murchison Road Corridor Projects

Mr. Victor Sharpe, Community Development Director, presented this item and reviewed the MOU. Mr. Sharpe stated the MLK Committee donated the Washington Drive School property to FSU and the City would unite with FSU to assist in the preparation of the site for redevelopment.

Council Member Crisp questioned the responsibility of the demolition process. Mr. Sharpe stated the funds for assisting with the demolition were from a \$30,000 grant.00. Mr. Dale Iman, City Manager, further stated the City would provide \$30,000.00 along with the County's \$25,000.00 to assist with the demolition and asbestos removal. Mr. Iman informed Council that grant agencies encourage joint collaboration.

Council Member Applewhite inquired whether FSU anticipated City funds next year. Mr. Sharpe stated FSU could apply for nonprofit funding. Council Member Applewhite requested clarification as to whether the \$800,000.00 designated to the Murchison Road area, block grant funding, could be utilized elsewhere. Mr. Sharpe replied in the affirmative.

Consensus of Council was to bring this item back for action at the December 13, 2010, City Council meeting.

4.3 Presentation of a Site for the Proposed HOPE VI Business Park

Mr. Victor Sharpe, Community Development Director, presented this item and provided an update of the project. Mr. Sharpe stated the first set of apartments would be completed in December 2010. He reviewed the City's \$1 million commitment and the Gillespie Street site. Mr. Sharpe stated residents may need to be relocated and recommended that the City assist accordingly, to include renters.

Mr. Sharpe responded to questions posed by Council regarding the contacting of residents and developer interest. He stated residents would be contacted contingent upon the direction provided by Council and that the market would dictate developer interest. Mr. Iman added the City was responsible for soliciting developers.

Council Member Crisp requested staff to confirm whether the five residents were renters or owners.

Mayor Chavonne requested staff to present the process by which locations were selected.

Consensus of Council was to move forward with the project.

4.4 Parking Deck Bid Review and Update

Mr. Rusty Thompson, City Traffic Engineer, presented this item and reviewed the bid process, site plan, exterior and interior fly throughs, Franklin and Donaldson Streets views, and pedestrian bridge. Mr. Thompson stated six bids were received with the lowest responsible bid being from LeChase for \$6,132,000.00. He stated the contract must be awarded prior to December 31, 2010.

Mr. Thompson responded to questions posed by Council regarding LeChase's experience in constructing parking decks and the monitoring of cameras. He stated LeChase had prior experience in the construction of parking decks. Mr. Thompson informed Council that

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Parks and Recreation would monitor the cameras, which would provide continuous recording and that panic and call buttons would be installed on each stairway.

Consensus of Council was to move forward with the project.

4.5 City's Americans with Disabilities Act Self Evaluation and Transition Plan

Mr. Ron McElrath, Human Relations Director/ADA Coordinator, presented this item and stated Self Evaluation and Transition Plan (SETT) members received extensive training and a formal self-evaluation was conducted of City facilities, services, signage, curb cuts, access, communications, and accommodations for persons with all types of disabilities (whether visible or not) over the last 28 months. Mr. McElrath stated the final self-evaluation and transition plan would include the following basic elements, which have been implemented since 2008 and were part of an ongoing process:

- Designation of a responsible employee to manage ADA compliance;
- Posting/publishing of a notice of nondiscrimination on the basis of disability;
- Grievance procedure;
- Self evaluation; and
- Transition plan.

Mr. McElrath confirmed that in completing the self-evaluation and transition plan report, SETT members also interacted with the County-Wide Disabilities Committee chaired by Mr. Charles Yates. He stated the update was to share staff's progress and to identify ongoing responsibilities.

4.6 Noise Ordinance Update Regarding Nightclub Behavior

Mr. Charles Kimble, Assistant Police Chief, presented this item and stated they reviewed the current noise ordinance and established that it worked well dealing with individual violators, such as residential and radio noises, but wanted more for repeat violators that affected the quality of life such as large establishments. He stated they researched the issue and looked at the option of environmental court. He stated Judge Tucker indicated she would be more than happy to bring repeat violators of the noise ordinance to environmental court.

Ms. Patricia Bradley, Police Attorney, explained they would seek a criminal summons from the magistrate's office which would then be taken to environmental court.

Council Member Haire inquired if environmental court would only be for business violators or for residential violators also. Mr. Kimble responded they would have options wherein if the violation could be resolved they would try that. He stated with environmental court they would have the subpoena power to go to surrounding property owners to obtain testimony that could be used in court and tougher sanctions could be issued.

Council Member Bates inquired what would be considered repeat offenders. Ms. Bradley explained they would be considered offenders with the first notice and if a second notice was issued they could be taken to environmental court. Mr. Kimble further explained their objective would be to work with the violators first to try to resolve the noise issue.

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Ms. Karen McDonald, City Attorney, stated this would be no different than what they already do with noise violations. She stated the response to a noise violation would be no different than what they do now. She stated what would be different would be the enforcement of the issuance of the citation.

Consensus of Council was to move forward with the noise ordinance.

4.7 Taxi Regulations Operational Changes and Results Presentation

Mr. Kristoff Bauer, Assistant City Manager, presented this item and reviewed problems, revisions in code enforcement, and the inspection process. Mr. Bauer explained visual changes were larger stickers. He stated stickers on meters had double seals and taxicab companies were required to have distinctive identifying color schemes.

Council Member Massey inquired whether shuttle services were required to comply with the regulations. Mr. Rob Anderson, Chief Development Officer, responded only those which were registered in Fayetteville. Staff explained these were operational changes not code changes and the goals were communication and teamwork. It was further clarified that approximately 20 cab companies had dropped off the list since the inclusion of K-9 units at taxicab inspections.

A brief question and answer period ensued.

4.8 Unified Development Ordinance (UDO) Discussion Post Public Hearing

Mr. Rob Anderson, Chief Development Officer, presented this item and reviewed the following aspects of the UDO: lighting, garages, landscape/buffers, transitional, and connectivity.

A discussion period ensued regarding lighting exemptions, a PWC exemption, garage size limitations, and connectivity requirements. Mr. Anderson explained that the three lighting exemptions were for athletic fields, street lights within a street right-of-way, and Historic District approved lighting. Mr. Dale Iman, City Manager, further stated the PWC exemption was for the older subdivisions which had fixtures that would not be in compliance.

Consensus of Council was to direct staff to amend the UDO to include Council's directives and to present this item for action at the December 13, 2010, City Council meeting.

4.9 Review of Proposed 2011 City Council Meeting Dates Calendar

Consensus of Council was to bring this item back for action at the December 13, 2010, City Council meeting.

5.0 Discussion of District 9 Appointment

Consensus of Council was for each District 9 candidate to address Council at the December 13, 2010, City Council meeting; thereafter, voting would be in alphabetical order by last names, each Council member having one vote. The City Clerk would record the votes and the candidate receiving the most votes would be the District 9 designate.

6.0 Closed Session for Consultation with the City Attorney

MOTION: Mayor Pro Tem Haire moved to go into closed session.
SECOND: Council Member Hurst
VOTE: UNANIMOUS (9-0)

The regular session recessed for the closed session and the regular session reconvened after the closed session.

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7.0 ADJOURNMENT

There being no further business, the meeting adjourned.

Respectfully submitted,

JENNIFER PENFIELD
Deputy City Clerk

ANTHONY G. CHAVONNE
Mayor

120610

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FAYETTEVILLE CITY COUNCIL
AGENDA BRIEFING MINUTES
LAFAYETTE ROOM
DECEMBER 8, 2010
4:00 P.M.

Present: Mayor Anthony G. Chavonne

Council Members Keith A. Bates, Sr. (District 1); Kady-Ann Davy (District 2) (arrived at 4:25 p.m.); Robert A. Massey, Jr. (District 3); Darrell J. Haire (District 4); Bobby Hurst (District 5) (departed at 5:15 p.m.)

Absent: Council Members William J. L. Crisp (District 6); Valencia A. Applewhite (District 7); Theodore W. Mohn (District 8); Wesley A. Meredith (District 9)

Others Present: Dale Iman, City Manager
Kristoff Bauer, Assistant City Manager
Karen McDonald, City Attorney
Rob Anderson, Chief Development Officer
Karen Hilton, Planning & Zoning Division Manager
David Nash, Planner II
Rita Perry, City Clerk
Press

City staff presented the following items scheduled for the Fayetteville City Council's October 11, 2010, agenda:

PUBLIC HEARINGS:

Public hearing to consider a voluntary annexation petition - Fullblock, Inc. - 135 Airport Road.

Ms. Karen Hilton, Planning & Zoning Division Manager, presented this item.

Council Member Bates questioned if this would be considered spot zoning. Mr. Dale Iman, City Manager, stated the property would be zoned in accordance with the zoning which would be closest to what it was presently zoned in the County.

Public hearing to consider a voluntary annexation petition requested by Atlantic Multifamily, LLC, for 17.56+ acres on Black and Decker Road.

Ms. Karen Hilton, Planning & Zoning Division Manager, presented this item.

Staff responded to questions posed by Council regarding the process by which developers were going to the County for requests. Mr. Kristoff Bauer, City Assistant Manager, stated developers were receiving County approval prior to requesting annexation and the County standards were lower.

Council Member Crisp inquired whether the City could require compliance with our standards. Ms. Karen McDonald, City Attorney, explained that the MIA would not allow such provisions.

Consideration of the Hospital Area Plan for the Owen Drive/Village Drive area.

Mr. David Nash, Planner II, presented this item and reviewed the public meetings schedule, eleven principles, existing conditions and existing land use. Mr. Nash outlined the options and consultant recommendations.

A discussion period ensued.

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Consideration of the Hospital Area Overlay Ordinance for the Owen Drive/Village Drive area.

Ms. Karen Hilton, Planning & Zoning Division Manager, reviewed the recent steps in the process, the relationship between plan and overlay, applicability and process, and land use and development standards.

There being no further business, the meeting adjourned at 5:10 p.m.

Respectfully submitted,

JENNIFER PENFIELD
Deputy City Clerk

ANTHONY G. CHAVONNE
Mayor

120810

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FAYETTEVILLE CITY COUNCIL
WORK SESSION MINUTES
CITY HALL COUNCIL CHAMBER
JANUARY 3, 2011
5:00 P.M.

Present: Mayor Anthony G. Chavonne

Council Members Keith Bates, Sr. (District 1); Kady-Ann Davy (District 2); Robert A. Massey, Jr. (District 3) (arrived at 5:07 p.m.); Darrell J. Haire (District 4); Bobby Hurst (District 5); William J. L. Crisp (District 6); Valencia A. Applewhite (District 7); Theodore W. Mohn (District 8); Designate James W. Arp, Jr. (District 9)

Others Present: Dale E. Iman, City Manager
Kristoff Bauer, Assistant City Manager
Doug Hewett, Assistant City Manager
Karen M. McDonald, City Attorney
Jerry Dietzen, Environmental Services Director
Tom Bergamine, Chief of Police
Deborah Mintz, Arts Council
Rita Perry, City Clerk
Member of the Press

1.0 CALL TO ORDER

Mayor Chavonne called the meeting to order.

2.0 INVOCATION

The invocation was offered by Mayor Pro Tem Haire.

3.0 APPROVAL OF AGENDA

MOTION: Council Member Bates moved to approve the agenda and to go into closed session for consultation with the attorney.
SECOND: Council Member Hurst
VOTE: UNANIMOUS (9-0)

Closed session for consultation with the attorney.

The regular session recessed at 5:03 p.m. The regular session reconvened at 5:33 p.m.

MOTION: Council Member Mohn moved to go into open session.
SECOND: Council Member Bates
VOTE: UNANIMOUS (10-0)

4.0 OTHER ITEMS OF BUSINESS

A. Introduction of Human Resource Development Director and Transit Director

Mr. Dale Iman, City Manager, introduced Mr. John Kuhls, Human Resource Development Director, to Council.

4.1 Multifamily and Commercial Recycling Update

Mr. Jerry Dietzen, Environmental Services Director, presented this item and stated the purpose of the ordinance was to ensure that all residents of multifamily communities in Fayetteville had access to convenient recycling. Mr. Dietzen reviewed the following elements:

- Multifamily management would provide a sufficient number of carts or dumpsters for weekly recycling collection.
- The carts/dumpsters would be in convenient, safe, and well-lit areas, and screened as required with trash dumpsters.

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- Draft ordinance.
- Developments would provide recycling information to their residents and post the recycling storage sites with information.
- Managers would contract with a reputable firm or collect and transport their own on a weekly basis.
- Storage sites must comply with ADA and be accessible to collection vehicles.
- Collection would take place after 7:00 a.m. and before 10:00 p.m.

A discussion period ensued regarding timeline, fees, process to address multiple fines, and holiday pickup.

Ms. Karen McDonald, City Attorney, stated the interest was to include Council direction and hold more community meetings prior to having a public hearing.

Mr. Doug Hewett, Assistant City Manager, added stakeholder input would be solicited prior to the public hearing.

Consensus of Council was to hold a public hearing at the February 28, 2011, meeting.

4.2 Consolidated E911 Center Update

Mr. Dale Iman, City Manager, presented this item and provided background information on the current E911 center operations. Mr. Iman stated he attended a seminar regarding consolidation of E911 centers that was presented by a center operator for Charleston County, South Carolina. He stated the City of Charleston and County of Charleston were going through a consolidation of the 911 centers and the process had taken a year and a half. He reviewed the following steps that were followed to accomplish the consolidation:

Step 1: Agreement to Explore

Step 2: Assessment

- Contract for an Assessment with an option for a Consolidation Plan
- Current Conditions Operations
- Current Conditions Technology
- Current Conditions Facility
- Current Conditions Budget/Funding

Step 3: Evaluate the Assessment

Step 4: Develop a Plan

Step 5: Implement the Plan

Mr. Iman responded to questions posed by Council regarding consultant needs, facilities, and employee status. Mr. Iman stated Charleston County recommended a full-time consultant. He explained that an existing facility would still be needed as a backup and the employees would be under the County.

For Informational/Update Purposes Only

4.3 Revision to the Proposed Purchasing Policy for Local Business Support

Ms. Karen McDonald, City Attorney, presented this item and stated this was as a result of Council's direction to establish a policy to help the City's local small business owners to receive a greater

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percentage of City contracts. Ms. McDonald informed Council that the Cumberland County Board of Commissioners revised their purchasing policy. She reviewed the revisions as follows and provided a copy of the revised policy adopted by the Cumberland County Board of Commissioners:

- County's policy was intended "to encourage the award of more contracts of less than \$30,000.00 to local vendors".
- County's policy provided a definition for "local vendor or supplier".

In response to questions posed by Council regarding the bidding and service contract processes, Ms. McDonald explained that bidding laws had to comply with specific requirements and contracts under \$30,000.00 would not fall under that purview and there were no requirements for service contracts.

Consensus of Council was to bring this item back to a future work session along with a purchasing agency representative for further discussion.

4.4 Probationary Rental Occupancy Permit (PROP) Update

Mr. Doug Hewett, Assistant City Manager, presented this item and summarized the history. Mr. Hewett stated the proposed PROP would operate under the following conditions:

- No current ability to track criminal activity (code violations only). Criminal citations not factored in.
- No resources from a rental registration program to fund the program.

Mr. Hewett responded in the negative to questions posed by Council as to whether the program would regulate repeat offenders who operated houses of prostitution and drug houses.

Discussion ensued regarding the need to address the criminal aspects. Mr. Hewett explained that tracking criminal elements would require additional resources.

Mr. Hewett reviewed the cost and revenue of the proposed PROP as follows:

Costs

- \$360,534.00 over a 4-year period
- Costs include:
 - o \$52,600.00 in one-time costs or \$13,000.00 a year amortized over four years (could use fund balance appropriation). Includes vehicle, office set up, and initial educational and marketing costs.
 - o \$77 K average annual reoccurring operating costs
- Assumptions:
 - o Minimal education and marketing costs are included
 - o No additional software is included
 - o No indirect costs are associated
 - o No legal or collection support costs included

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Revenue (Fines from PROP)

- Revenue estimates include:
 - o \$500.00 annual fine
 - o Estimated 5 properties first year, average of 13 thereafter
 - o Total reoccurring revenue for 13 properties = \$6,500.00
 - o Total reoccurring expenditures \$77,000.00
 - o Difference \$70,500.00
- Assumptions:
 - o The \$500.00 fee is collected in full
 - o Owners enrolled in PROP are kept to a minimum

Mr. Hewett stated the goal was to have no owners on PROP. He further explained that to be placed on PROP would require three convictions within a 24-month period.

Further discussion ensued regarding the criminal element.

Mayor Pro Tem Haire questioned the nuisance abatement process and how many calls had to be received. Ms. McDonald explained that the process was not dependent upon the number of calls but the type of calls.

Consensus of Council was for staff to revise the PROP with the inclusion of the criminal element aspect and to bring back to a future meeting.

4.5 2010 Redistricting and the 2011 Elections

Mr. Kristoff Bauer, Assistant City Manager, presented this item and reviewed the following aspects:

- The Issue (What has to be done)
- Timing Challenge
- Outcome Alternatives
- Process Options

Following a brief question and answer period, it was the consensus of Council to identify and procure an external service which would be ready to move forward when the new census data became available.

Ms. McDonald requested direction from Council regarding their preference regarding the process to identify consultants. Mayor Chavonne stated this would be discussed at the next dinner and discussion meeting.

4.6 Review of City Council Nonprofit Funding Policy No. 135.1

Mr. Dale Iman, City Manager, presented this item. Mr. Iman stated at the present time the City had not been soliciting requests for nonprofit funding and reviewed the following list of nonprofit funding:

- ASOM partnership
- Arts Council funded up to \$800,000.00 which has been met

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- Child Advocacy center was funded without a line item service agreement for training (hosting 2011 conference)
- Friends of the Park
- Women's Center

Ms. Deborah Mintz, Arts Council, outlined the process by which the Council disbursed funds.

A discussion period ensued regarding the availability of funds for new nonprofit organizations. Mr. Iman stated funds could be requested through the Community Development Department.

Consensus of Council was to ensure the current policy was followed by accepting nonprofit funding requests and to bring the item back to a future work session.

5.0 ADJOURNMENT

There being no further business, the meeting adjourned at 8:30 p.m.

Respectfully submitted,

JENNIFER PENFIELD
Deputy City Clerk

ANTHONY G. CHAVONNE
Mayor

010311

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FAYETTEVILLE CITY COUNCIL
AGENDA BRIEFING MINUTES
LAFAYETTE ROOM
JANUARY 19, 2011
4:00 P.M.

Present: Mayor Anthony G. Chavonne

Council Members Keith Bates, Sr. (District 1); Kady-Ann Davy (District 2); Robert A. Massey, Jr. (District 3); Darrell J. Haire (District 4); Bobby Hurst (District 5); William J. L. Crisp (District 6); Valencia A. Applewhite (District 7); Theodore W. Mohn (District 8); Designate James W. Arp, Jr. (District 9)

Others Present: Dale E. Iman, City Manager
Doug Hewett, Assistant City Manager
Kristoff Bauer, Assistant City Manager
Karen McDonald, City Attorney
Karen Hilton, Planning & Zoning Manager
Craig Harmon, Planner II
Rita Perry, City Clerk
Members of the Press

City staff presented the following items scheduled for the Fayetteville City Council's January 24, 2011, agenda:

CONSENT ITEMS:

Mr. Craig Harmon, Planner II, stated the following cases would be on the consent agenda:

Case No. P10-41F. The rezoning of 0.37 acres at 597 Oliver Street from P1 Professional District to P2 Professional District. Ginny Queen, owner.

Case No. P10-43F. The initial zoning of 2.14 acres of recently annexed property at 135 Airport Road to M2 Industrial Zoning District. Fullblock, Inc., owners.

Case No. P10-44F. The initial zoning of 20.43 acres of recently annexed property at Black and Decker Road, East of Legion Road to R5 Residential Zoning District. Atlantic Multifamily LLC, owners.

Council Member Bates inquired whether a revision of the annexation policy would be forthcoming. Mr. Dale Iman, City Manager, replied in the affirmative and stated there was a meeting with Mr. Rose this morning and Mr. Bauer would be addressing this matter.

PUBLIC HEARINGS:

Case No. P10-40F. The rezoning of 0.941 acres at 874 Strickland Bridge Road from C1P Commercial District to C3 Commercial Conditional Zoning District. Wildemar and Kyung Guzman, owners.

Mr. Craig Harmon, Planner II, presented this item and provided a brief history of the rezoning of the property.

Council Member Bates inquired whether this was a conditional use request. Mr. Harmon replied in the affirmative.

OTHER ITEMS OF BUSINESS:

Request for sidewalk waiver for development within the City's MIA, for Vander Community Center at Rock Hill Road and Sunnyside School Road.

Ms. Karen Hilton, Planning & Zoning Manager, presented this information. Ms. Hilton stated the required sidewalk would be approximately 1,000 feet in length along Rock Hill and Sunnyside

DRAFT

School Roads. She stated that currently there were no other sidewalks in the area but there was existing development and footpaths had been established where sidewalks would normally be constructed. She explained staff from Development Services and Engineering and Infrastructure recommended the sidewalks be installed along Rock Hill Road due to the anticipation that the park would create more pedestrian traffic and the sidewalks would be necessary. She stated along Sunnyside School Road staff believed the walking trail was close enough to the street right-of-way to serve as a sidewalk, therefore, staff recommended that the applicant provide connecting segments at the corners to the existing walking trail and dedicate easements for portions outside the right-of-way.

Paperless Agenda Presentation

Mr. Kristoff Bauer, Assistant City Manager, reviewed a prototype of the agenda in PDF format, which included bookmarks and links.

District 9 Designate Arp inquired whether Council had the capability to input notes directly onto the PDF document. Mr. Bauer replied in the negative and stated that the cost of Adobe Pro licenses was an issue.

Council Member Bates inquired who would be responsible for maintenance on Item 8.8, Landscape Maintenance Agreement I-95 Exit 49. Mr. Bauer replied the City would be responsible.

Mr. Iman provided the quarterly review information. He informed Council of the resignation of the Community Officer and stated the second candidate for consideration would be contacted.

Council Member Bates inquired on the status of the Chief Development Officer replacement. Mr. Iman replied the job description had been prepared and an interim fill-in was being considered.

Ms. Karen McDonald, City Attorney, informed Council of the appeals decision to deny the Gates V appeal and stated the next step would be the Supreme Court, and there was no timeframe for the decision.

There being no further business, the meeting adjourned at 4:55 p.m.

Respectfully submitted,

JENNIFER PENFIELD
Deputy City Clerk

ANTHONY G. CHAVONNE
Mayor

011911

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Lisa Smith, Chief Financial Officer
DATE: March 28, 2011
RE: **Capital Project Ordinance Amendment 2011-15 (North Carolina State Veterans Park Grant #2)**

THE QUESTION:

The proposed project amendment will reduce the overall budget for the North Carolina Veterans Park project by \$723,275.

RELATIONSHIP TO STRATEGIC PLAN:

GOAL 6: Revitalized Downtown – A Community Focal Point

Objective 3: Develop World Class North Carolina Veterans Park

BACKGROUND:

- The City originally expected to receive \$14,700,000 from the State of North Carolina for this phase of the project; however, due to previous budget cuts, \$13,650,000 was ultimately received from the state.
- This amendment will reduce the overall project budget by \$723,275 and adjusts the funding sources for the project as follows:
 - Reduces funding from the State of North Carolina by \$1,050,000.
 - Appropriates investment income of \$326,725 earned on the grant proceeds to date.
- If approved, the revised project budget will be \$13,976,725.
- These funds will be used for the design and construction of phase 1 of the North Carolina State Veterans Park.

ISSUES:

None.

BUDGET IMPACT:

See background information above.

OPTIONS:

- 1) Adopt Capital Project Ordinance Amendment 2011-15.
- 2) Do not adopt Capital Project Ordinance Amendment 2011-15.

RECOMMENDED ACTION:

Adopt Capital Project Ordinance Amendment 2011-15.

ATTACHMENTS:

Capital Project Ordinance Amendment 2011-15

CAPITAL PROJECT ORDINANCE AMENDMENT
CHANGE 2011-15 (CPO 2009-18)

BE IT ORDAINED by the City Council of the City of Fayetteville, North Carolina, that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following capital project ordinance is hereby amended:

Section 1. The project change authorized is to Capital Project Ordinance 2009-18, adopted October 27, 2008, as amended, for the design and construction of phase 1 of the North Carolina State Veterans Park.

Section 2. The project director is hereby directed to proceed with the project within the terms of the various agreements executed and within the funds appropriated herein.

Section 3. The following revenues are anticipated to be available to the City to complete the project:

	<u>Listed As</u>	<u>Amendment</u>	<u>Revised</u>
State of North Carolina	\$ 14,700,000	\$ (1,050,000)	\$ 13,650,000
Investment Income	-	326,725	326,725
	<u>\$ 14,700,000</u>	<u>\$ (723,275)</u>	<u>\$ 13,976,725</u>

Section 4. The following amounts are appropriated for the project:

Project Expenditures	<u>\$ 14,700,000</u>	<u>\$ (723,275)</u>	<u>\$ 13,976,725</u>
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Section 5. Copies of this capital project ordinance amendment shall be made available to the budget officer and the finance officer for direction in carrying out this project.

Adopted this 28th day of March, 2011.

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Lisa Smith, Chief Financial Officer
DATE: March 28, 2011
RE: **Special Revenue Fund Project Ordinance Amendment 2011-3 (Wayfinding Signage Project)**

THE QUESTION:

This amendment will increase the Wayfinding Signage project budget by \$50,000.

RELATIONSHIP TO STRATEGIC PLAN:

Goal 4: More Attractive City – Clean and Beautiful

BACKGROUND:

- The source of funds for this amendment is a \$50,000 General Fund Transfer. These funds were included in the original FY2011 annual budget.
- If approved, the revised project budget will be \$450,586.
- These funds will be used to plan, design, and implement a complete wayfinding signage system throughout Fayetteville/ Cumberland County, with an emphasis on historic and cultural resources.

ISSUES:

None

BUDGET IMPACT:

See background information above.

OPTIONS:

- 1) Adopt Special Revenue Fund Project Ordinance Amendment 2011-3.
- 2) Do not adopt Special Revenue Fund Project Ordinance Amendment 2011-3.

RECOMMENDED ACTION:

Adopt Special Revenue Fund Project Ordinance Amendment 2011-3.

ATTACHMENTS:

Special Revenue Fund Project Ordinance Amendment 2011-3

SPECIAL REVENUE FUND PROJECT ORDINANCE AMENDMENT
CHANGE 2011-3 (ORD 2008-14)

BE IT ORDAINED by the City Council of the City of Fayetteville, North Carolina, that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following special revenue project ordinance is hereby amended:

Section 1. The project change authorized is to the Special Revenue Project Ordinance 2008-14, adopted May 27, 2008, as amended, for the funding of the Wayfinding Signage Project.

Section 2. The project director is hereby directed to proceed with the project within the terms of the various grant agreements executed with the Federal and State governments and within the funds appropriated herein.

Section 3. The following revenues are anticipated to be available to the City to complete the project:

	<u>Listed As</u>	<u>Amendment</u>	<u>Revised</u>
Federal Grant- U.S. Dept. of Interior- NPS	\$ 150,000	\$ -	\$ 150,000
Local Cash Match- Convention & Visitor's Bureau	100,000	-	100,000
Local In-Kind Match- Convention & Visitor's Bureau	45,846	-	45,846
Local In-Kind Match- City of Fayetteville	4,740	-	4,740
Non-Grant Contribution- Convention & Visitor's Bureau	100,000	-	100,000
Non-Grant Contribution- General Fund Transfer	-	50,000	50,000
	<u>\$ 400,586</u>	<u>\$ 50,000</u>	<u>\$ 450,586</u>

Section 4. The following amounts are appropriated for the project:

Grant Expenditures	\$ 300,586	\$ -	\$ 300,586
Non-Grant Expenditures	100,000	50,000	150,000
	<u>\$ 400,586</u>	<u>\$ 50,000</u>	<u>\$ 450,586</u>

Section 5. Copies of this special revenue project ordinance amendment shall be made available to the budget officer and the finance officer for direction in carrying out this project.

Adopted this 28th day of March, 2011.

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Lisa Smith, Chief Financial Officer
DATE: March 28, 2011
RE: **Special Revenue Fund Project Ordinance Amendment 2011-4 (Energy Efficiency and Conservation Block Grant)**

THE QUESTION:

This ordinance amendment will appropriate an additional \$166,900 for the Energy Efficiency and Conservation Program.

RELATIONSHIP TO STRATEGIC PLAN:

Goal 3: More Efficient City Government – Cost-Effective Service Delivery

Objective 3: Investing in City's future infrastructure, facilities and equipment

BACKGROUND:

- The source of funds for this amendment is \$166,900 from the U.S. Department of Energy.
- If approved, the revised project budget will be \$1,652,900.
- These funds will be used for the Energy Efficiency and Conservation Strategy Program that includes reduction of greenhouse gas emissions and improvement of energy efficiency.

ISSUES:

None.

BUDGET IMPACT:

None. A local match is not required for this grant.

OPTIONS:

- 1) Adopt Special Revenue Fund Project Ordinance Amendment 2011-4.
- 2) Do not adopt Special Revenue Fund Project Ordinance Amendment 2011-4.

RECOMMENDED ACTION:

Adopt Special Revenue Fund Project Ordinance Amendment 2011-4.

ATTACHMENTS:

Special Revenue Fund Project Ordinance Amendment 2011-4

SPECIAL REVENUE FUND PROJECT ORDINANCE AMENDMENT
CHANGE 2011-4 (ORD 2010-13)

BE IT ORDAINED by the City Council of the City of Fayetteville, North Carolina, that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following special revenue project ordinance is hereby amended:

Section 1. The project change authorized is to the Special Revenue Project Ordinance 2010-13, adopted November 23, 2009, as amended, for the American Recovery and Reinvestment Act of 2009 (ARRA) Energy Efficiency and Conservation Block Grant awarded by the U. S. Department of Energy.

Section 2. The project director is hereby directed to proceed with the project within the terms of the various grant agreements executed with the Federal and State governments and within the funds appropriated herein.

Section 3. The following revenues are anticipated to be available to the City to complete the project:

	<u>Listed As</u>	<u>Amendment</u>	<u>Revised</u>
U.S. Department of Energy, National Energy Technology Laboratory	<u>\$ 1,486,000</u>	<u>\$ 166,900</u>	<u>\$ 1,652,900</u>

Section 4. The following amounts are appropriated for the project:

Project Expenditures	<u>\$ 1,486,000</u>	<u>\$ 166,900</u>	<u>\$ 1,652,900</u>
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Section 5. Copies of this special revenue project ordinance shall be made available to the budget officer and the finance officer for direction in carrying out this project.

Adopted this 28th day of March, 2011.

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Lisa T. Smith, Chief Financial Officer
DATE: March 28, 2011
RE: **Special Revenue Fund Project Ordinance 2011-11 (Washington Drive School Site Project)**

THE QUESTION:

This project ordinance will establish a \$235,000 project budget for a gateway feature and a portion of the demolition work at the Washington Drive school site.

RELATIONSHIP TO STRATEGIC PLAN:

Principal D: Beauty by Design

BACKGROUND:

- On January 24, 2011, City Council approved a Memorandum of Understanding with FSU for the acceptance and demolition of the Washington Drive Jr. High School property.
- This project ordinance will establish a \$235,000 budget for the gateway feature and a portion of the demolition work at the Washington Drive school site.
- An additional \$30,000 is already included in the City's Community Development Block Grant project ordinance for demolition.
- The \$235,000 project ordinance consists of \$175,000 for clearing and demolition work and \$60,000 for a gateway feature.
- The funding sources for this project ordinance are \$25,000 from Cumberland County (County's HUD funds) and \$210,000 from Fayetteville State University (FSU's HUD funds).

ISSUES:

None.

BUDGET IMPACT:

See background information.

OPTIONS:

- 1) Adopt the project ordinance.
- 2) Do not adopt the project ordinance.

RECOMMENDED ACTION:

Adopt Special Revenue Fund Project Ordinance 2011-11.

ATTACHMENTS:

SRO 2011-11

SPECIAL REVENUE FUND PROJECT ORDINANCE
ORD 2011-11

BE IT ORDAINED by the City Council of the City of Fayetteville, North Carolina, that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following special revenue project ordinance is hereby adopted:

Section 1. The project authorized is for the funding of the Washington Drive School site project, to include, but not limited to, asbestos abatement, demolition and the development of a gateway feature.

Section 2. The project director is hereby directed to proceed with the project within the terms of the various agreements executed and within the funds appropriated herein.

Section 3. The following revenues are anticipated to be available to the City to complete the project:

Cumberland County	\$ 25,000
Fayetteville State University	<u>210,000</u>
	<u><u>\$ 235,000</u></u>

Section 4. The following amounts are appropriated for the project:

Project Expenditures	<u><u>\$ 235,000</u></u>
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Section 5. Copies of this special revenue project ordinance shall be made available to the budget officer and the finance officer for direction in carrying out this project.

Adopted this 28th day of March, 2011.

CITY COUNCIL ACTION MEMO

TO: Karen Hilton, Manager, Planning and Zoning Division, Development Services Department
FROM: David Nash, Planner II
DATE: March 28, 2011
RE: **Consideration of Assigning 18 Recent Annexation Areas to Election Districts**

THE QUESTION:

Should the City Council assign 18 recent annexation areas to election districts?

RELATIONSHIP TO STRATEGIC PLAN:

Partnership of Citizens

BACKGROUND:

When the City Council annexes an area, the area must be assigned to a City election district. The assignment of an annexation area to a district is a "change affecting voting" which must be submitted to the U.S. Justice Department for preclearance. An annexation area must be precleared by the Justice Department before any current residents or future residents of the area may vote in City elections. Since the last assignment of annex areas to districts, 18 new areas have been annexed. Eleven of these areas were City-owned properties near the Fayetteville Regional Airport, and seven were voluntary petition annexations. At the time of annexation, five housing units were located on three of the City-owned properties, and zero housing units were on the seven petition areas. As of mid-March 2011, there has been no change in the number of housing units in the City-owned properties. However, 234 new housing units have been built in one of the petition areas (Longhill Pointe), and 171 of these new housing units are now occupied.

The first step in the process is to ensure that current residents and future residents within the 18 annexation areas may participate in future City elections by assigning each annexation area to a particular City election district. The assignment to an election district is based on criteria. A contiguous area is assigned to the adjacent district. A non-contiguous area is generally assigned to the closest district, where possible, but natural barriers and road access are considered. A map showing the assignment of each annexation area to an election district is attached. Once the City Council adopts the attached resolution, a submission will be prepared and sent to the Justice Department for approval.

The attached map shows the City's current districts. The current districts include the part of Fort Bragg that has been annexed into Fayetteville.

ISSUES:

Failure to adopt the attached resolution assigning the annexation areas would mean that residents of the areas would not be able to participate in any city election.

BUDGET IMPACT:

It is not anticipated that there would be any budget impact of assigning the annexation areas to districts.

OPTIONS:

1. Adopt the resolution assigning each annexation area to a specific city election district.
2. Do not take any action at this time.

RECOMMENDED ACTION:

Staff recommend that Council move to adopt the attached resolution assigning each annexation

area to a specific election district.

ATTACHMENTS:

Resolution Assigning 18 Annex Areas to Current City Council Election Districts

Map Showing Assignment of 18 Annex Areas to Current City Council Election Districts (Exhibit A of Resolution)

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE
ACCOUNTING FOR EIGHTEEN ANNEXATIONS OF TERRITORY
TO THE CITY OF FAYETTEVILLE

THAT WHEREAS, on March 6, 2000, the City Council of the City of Fayetteville by Ordinance No. S2000-002, amended Chapter III, Section 3.1, "Governing Body", and Chapter IV, Section 4.2, "Elections", of the Charter of the City of Fayetteville creating nine (9) single-member electoral districts for the election of the members of the City Council, and an at-large mayor who votes on all matters, both changes being subject to a referendum of voters, which were approved by voters on May 2, 2000;

AND THAT WHEREAS, on May 21, 2001, by Resolution No. R2001-032 (as amended by Resolution No. R2001-033), the Fayetteville City Council adopted revisions to the electoral district boundaries of the City of Fayetteville to account for new population data from the 2000 Census and to account for territory annexed in fourteen annexations (Annexation Ordinance Nos. 00-04-443 through 2001-05-456);

AND THAT WHEREAS, on March 10, 2003, by Resolution No. R2003-042, the Fayetteville City Council adopted revisions to the electoral district boundaries of the City of Fayetteville to account for territory annexed in five annexations (Annexation Ordinance Nos. 2001-09-457 through 2002-05-461);

AND THAT WHEREAS, on June 28, 2004, while considering Agenda Item 6, the Fayetteville City Council adopted a new redistricting plan that was designed to accommodate the nine areas of the City's Phase 5 annexation program (these nine areas were included in Annexation Ordinance No. 2003-11-463);

AND THAT WHEREAS, on March 28, 2005, by Resolution No. R2005-022, the Fayetteville City Council adopted revisions to the current (2003) electoral district boundaries of the City of Fayetteville to account for territory annexed in seventeen annexations (Annexation Ordinance Nos. 2003-08-462 and 2004-04-464 through 2005-02-479);

AND THAT WHEREAS, on July 24, 2006, by Resolution No. R2006-046, the Fayetteville City Council adopted revisions to the current electoral district boundaries of the City of Fayetteville to account for territory annexed in sixteen annexations (Annexation Ordinance Nos. 2005-05-480 through 2006-06-495);

AND THAT WHEREAS, on November 27, 2006, by Resolution No. R2006-077, the Fayetteville City Council adopted revisions to the current electoral district boundaries of the City of Fayetteville to account for territory annexed in three annexations (Annexation Ordinance Nos. 2006-06-496 through 2006-10-498);

AND THAT WHEREAS, on May 14, 2007, by Resolution No. R2007-021, the Fayetteville City Council adopted revisions to the current electoral district boundaries of the City of Fayetteville to account for territory annexed in four annexations (Annexation Ordinance Nos. 2006-12-499 through 2007-02-502);

AND THAT WHEREAS, on January 26, 2009, by Resolution No. R2009-010, the Fayetteville City Council adopted revisions to the current electoral district boundaries of the City of Fayetteville to account for territory annexed in eight annexations (Annexation Ordinance Nos. 2007-12-503 through 2008-06-510);

AND THAT WHEREAS, on March 25, 2009, the U.S. Justice Department precleared three changes affecting voting: (1) eight recently-submitted annexations (Annexation Ordinance Nos. 2007-12-503 through 2008-06-510) and their designation to districts; (2) Session Law 2008-74 (HB 2414) (2008), which annexed a portion of Fort Bragg; and (3) the 2008 city council redistricting plan (which was designed to accommodate the Fort Bragg annexation);

AND THAT WHEREAS, N.C.G.S.160A-23 authorizes the City Council to revise electoral district boundaries from time to time by resolution to account for the federal census and territory annexed to the city;

AND THAT WHEREAS, eighteen annexations (Annexation Ordinance Nos. 2009-05-512 through 2010-12-529) need to be assigned to electoral districts, and that as of the date of this resolution, Annexation Ordinance Nos. 2009-05-512 through 2010-12-529 have not been submitted to the U.S. Department of Justice for preclearance pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. Section 1973c;

AND THAT WHEREAS, all prior ordinances, charter revisions, and resolutions changing the election plan and/or revising the electoral district boundaries of the City of Fayetteville, prior to the adoption of Annexation Ordinance No. 2009-05-512, have been precleared by the United States Department of Justice, pursuant to Section 5 of the Voting Rights Act;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Fayetteville, North Carolina, that:

Section 1. Pursuant to N.C.G.S. 160A-23, the electoral district boundaries of the City of Fayetteville are hereby revised for the purpose of accounting for eighteen annexation ordinances (Annexation Ordinance Nos. 2009-05-512 through 2010-12-529), as follows:

(a) That those areas annexed into the City of Fayetteville by Annexation Ordinance Nos. 2009-05-512 through 2010-12-529 shall be assigned to the electoral districts as follows:

(1) Annexation No. 2009-12-512 (Longhille Pointe-Located on the Northwest Corner of McCloskey Road & Ramsey Street) to District No.1;

(2) Annexation No. 2010-01-513 (River Landing Center LLC Property-Located on the Southern Side of Andrews Road, across from Rosebank Drive) to District No. 1;

(3) Annexation No. 2010-04-514 (Avis Budget Car Wash-Located at 3216 Doc Bennett Road) to District No. 2;

- (4) Annexation No. 2010-04-515 (Watkins Property-Located at 1645 McArthur Road) to District No. 1;**
- (5) Annexation No. 2010-05-516 (Eureka Chapel Missionary Baptist Church-Located on the Northeast Corner of Jossie Street & McArthur Road) to District No. 1;**
- (6) Annexation No. 2010-05-517 (Airport Property-Area 1-Located on the Eastern & Western Sides of Pine Haven Drive) to District No. 2;**
- (7) Annexation No. 2010-05-518 (Airport Property-Area 2-Located South of the Eastern End of Wolfberry Drive) to District No. 2;**
- (8) Annexation No. 2010-05-519 (Airport Property-Area 3-Located South of East Mountain Drive & North of Mt. Haven Lake Road) to District No. 2;**
- (9) Annexation No. 2010-05-520 (Airport Property-Area 4-Located on the Western Side of NC Hwy 87) to District No. 2;**
- (10) Annexation No. 2010-05-521 (Airport Property-Area 5-Located on the Northern Side of Doc Bennett Road) to District No. 2;**
- (11) Annexation No. 2010-05-522 (Airport Property-Area 6-Located on the Southern Side of Doc Bennett Road, East of Claude Lee Road) to District No. 2;**
- (12) Annexation No. 2010-05-523 (Airport Property-Area 7-Located on the Eastern Side of Claude Lee Road, Northeast of Lazy Acres Street) to District No. 2;**
- (13) Annexation No. 2010-05-524 (Airport Property-Area 8-Located on the Eastern Side of Claude Lee Road, Northeast of Lazy Acres Street) to District No. 2;**
- (14) Annexation No. 2010-05-525 (Airport Property-Area 9-Located on the Eastern Side of Claude Lee Road, North of Lazy Acres Street) to District No. 2;**
- (15) Annexation No. 2010-05-526 (Airport Property-Area 10-Located on the Eastern Side of Claude Lee Road) to District No. 2;**
- (16) Annexation No. 2010-05-527 (Airport Property-Area 11-Located on the Northern Side of Doc Bennett Road) to District No. 2;**

(17) Annexation No. 2010-12-528 (Cape Fear Multifamily, LLC-Astoria Apartments-Located on the Northern Side of Black and Decker Road) to District No. 2;

(18) Annexation No. 2010-12-529 (Fullblock, Inc.-Located at 135 Airport Road) to District No. 2;

(b) That the nine electoral districts as required by Section 4.2 of the City Charter of the City of Fayetteville (Ordinance S2000-002) as amended herein, shall be those as shown on the attached map (Exhibit A hereto) and designated as electoral districts 1 through 9, and the delineation and configuration by streets or common boundaries shall be as if fully set forth herein;

(c) That the revisions to the nine electoral districts are based upon the 2008 district boundaries (precleared on March 25, 2009) and account for all territory annexed by Ordinance Nos. 2009-12-512 through 2010-12-529 ;

(d) That the revisions to the nine electoral district boundaries were accomplished using the following criteria:

- (1) Annexation areas that were contiguous to an existing electoral district boundary were assigned to the adjacent district;
- (2) Annexation areas that were not contiguous to an existing electoral district boundary (i.e., satellite areas) were generally assigned to the closest district, where possible, but natural barriers and road access were considered in making the assignments;

Section 2. That pursuant to N.C.G.S. 160A-22 and 23, the electoral districts approved herein shall be so designated by the City Clerk on the map of the City of Fayetteville on file in the office of the City Clerk, 433 Hay Street, Fayetteville, North Carolina.

Section 3. That the above revisions to the electoral district boundaries of the City of Fayetteville will not be effective until the City of Fayetteville receives preclearance from the U.S. Department of Justice, pursuant to Section 5 of the Voting Rights Act, 42 U.S.C.S. 1973(c) of the following:

(a) Annexation Ordinance Nos. 2009-12-512 through 2010-12-529;

and

(b) This resolution amending the nine single-member districts to account for territory annexed to the electoral districts due to Annexation Ordinance Nos. 2009-12-512 through 2010-12-529 .

ADOPTED this _____ day of _____, 2011.

CITY OF FAYETTEVILLE

BY: _____
Anthony G. Chavonne, Mayor

ATTEST:

Jennifer Penfield, Deputy City Clerk

Exhibit A
Map Showing 18 Annexation Areas
That Need To
Be Assigned To
Current City Council Election Districts
of the City of Fayetteville, NC

Legend

Railroads (Based on Census Bureau's LUCA "AllLines" File)

Streets (Based on Census Bureau's LUCA "AllLines" File)

Fayetteville City Limits (Thru Annex 529)

18 Annex Areas To Be Assigned to Current Districts (#512-#529)

Cape Fear River

Current City Council Districts (Plan 13D, Precleared on 3/25/09)

1

2

3

4

5

6

7

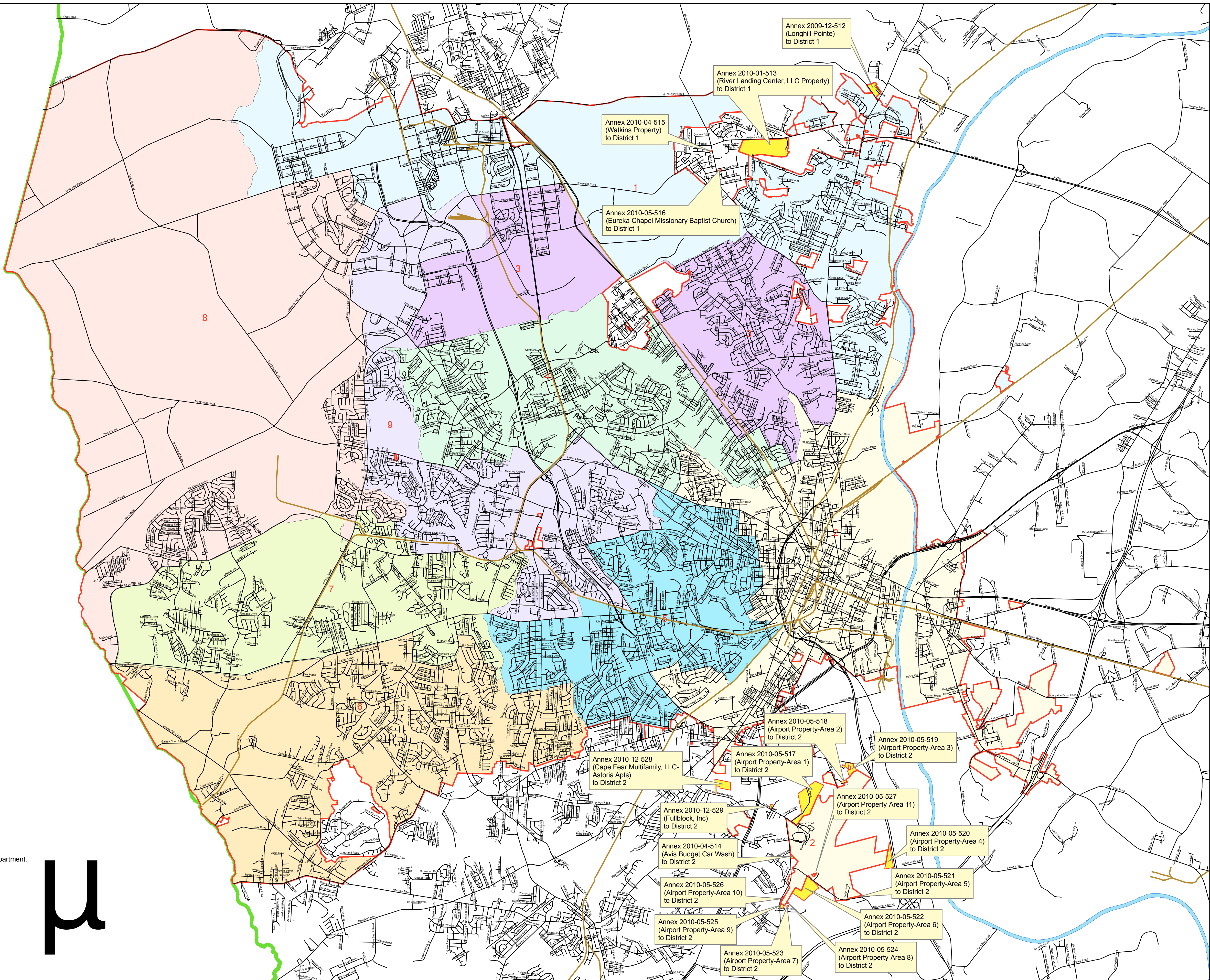
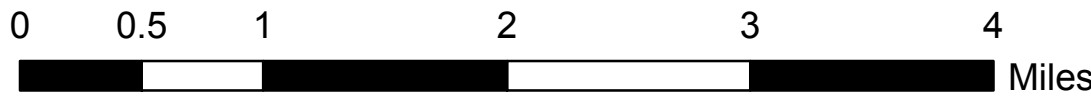
8

9

Cumberland County Boundary

Notes:
(1) Boundaries of the part of Fort Bragg annexed into Fayetteville are based on the description in Section 1 of HB 2414. Digitized on 9/5/08 by staff of Fayetteville Planning Department. Revised as of 9/22/08.
(2) Annex 510 and the Fort Bragg annexation were the last annexations precleared by the U.S. Justice Department. They were precleared on March 25, 2009.

Map prepared on 3/18/11 by Planning and Zoning Division, Development Services Department



CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Karen Hilton, Planning & Zoning Division Manager
DATE: March 28, 2011
RE: **Special Sign Permit Request for temporary event signs for the Fayetteville Farmers Market**

THE QUESTION:

Whether or not to approve the special request for temporary event signs for the Fayetteville Farmers Market.

RELATIONSHIP TO STRATEGIC PLAN:

Partnership of Citizens.

BACKGROUND:

The Sign Ordinance contains a provision, Section 30-259, allowing special permits for temporary on and off premises signs for festivals and major events for the purposes of giving directions and information. The request is subject to the approval of City Council who may limit the number and location.

ISSUES:

The City Council has routinely approved similar requests for similar events for several years. The request is for four signs (two are 18"by 24" flat signs and two are 30"by 40", sandwich board style). Their event will be Wednesday 3 p.m. to 7 p.m. and Saturdays 9 a.m. to 1 p.m., from April 16, 2011 through October 29, 2011. The Fayetteville Transportation Museum will host the event. The signs will be placed at the corners of Robeson and Russell, Robeson and Franklin, Hay and Maxwell, and Gillespie and Franklin and placed 1 hour before and removed 1 hour after the event. The two signs within the Historic District have received the required Certificates of Appropriateness and will need to maintain 6 feet of unobstructed pedestrian clearance. This request is much more limited in number and duration than past practice for special permit signs (to allow up to 25 signs for a period of two weeks prior to the event).

BUDGET IMPACT:

None if the signs are placed as specified.

OPTIONS:

1. Grant the special sign permit for up 4 signs to be placed 1 hour before and removed 1 hour after the event on Wednesdays and Saturdays, April 16-October 29, 2011.
2. Grant the special sign permit limiting the size and or location and or dates.
3. Deny the special sign permit.

RECOMMENDED ACTION:

Staff recommends that Council move to grant the special sign permit for up 4 signs to be placed 1 hour before and removed 1 hour after the event on Wednesdays and Saturdays, April 16-October 29, 2011.

ATTACHMENTS:

Farmers market request

The Fayetteville Farmers Market Association
Fayetteville, N.C.
Contact: (910) 964-8559

David E. Steinmetz
Sr. Code Enforcement Administrator
433 Hay Street
Fayetteville, N.C. 28301-5537

Dear Mr. Steinmetz,

The Fayetteville Farmers Market requests permission and approval to place directional signage for our event. The farmers market is a seasonal event that runs from April through October. We offer a venue for local farmers to connect with the Fayetteville, Fort Bragg, and Cumberland County communities as well as provide educational information on local foods and healthy eating.

We are submitting a special sign permit request for temporary event signs for The Fayetteville Farmers Market from April 16 through October 29, 2011. During this time frame our event will be held two days a week, Wednesdays 3 p.m. to 7 p.m. and Saturdays 9 a.m. to 1:00 p.m. The Fayetteville Transportation Museum will be hosting this year's event.

All signage is temporary and will be placed no sooner than one hour prior to the event and be removed no later than one hour after the event each market day. Each sign will display the words "Farmers Market" with a directional arrow underneath.

We are requesting permission for placement and approval of the following sign sizes and locations:

Quantity	Size	Description	Location
1	18 inches by 24 inches	Corrugated, push-in, lawn sign (Similar to campaign signs)	Corner of Robeson Street and Russel Street.
1	18 inches by 24 inches	Corrugated, push-in, lawn sign (Similar to campaign signs)	Corner of Robeson Street and Franklin Street.
1	30 inches by 40 inches	Pavement sign/Sidewalk Sign (Similar to Sandwich Board signs)	Sidewalk corner of Hay Street and Maxwell Street.
1	30 inches by 40 inches	Pavement sign/Sidewalk Sign (Similar to Sandwich Board signs)	Sidewalk corner of Gillespie Street and Franklin Street.

Sincerely,

Melissa Rodriguez
President
The Fayetteville Farmers Market Assoc.
Contact: (910) 964-8559

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Steven K. Blanchard, PWC CEO/General Manager
DATE: March 28, 2011
RE: **Bid Recommendation for Purchase of 9,000 Feet of 500 MCM Copper Conductor**

THE QUESTION:

The Public Works Commission of the City of Fayetteville requests Council approve purchase of 9,000 feet of 500 MCM Copper Conductor, PWC Stock No. 1-065-400, with the option to purchase additional quantities within a one-year period upon the agreement of both parties.

RELATIONSHIP TO STRATEGIC PLAN:

Quality Utility Services.

BACKGROUND:

The Public Works Commission, during their meeting of March 9, 2011, approved bid recommendation to award bid for purchase of 9,000 feet of 500 MCM Copper Conductor, PWC Stock No. 1-065-400 (with the option to purchase additional quantities within a one-year period upon the agreement of both parties) to Stuart C. Irby, Rocky Mount, NC, lowest bidder in the total amount of \$117,126.00 and forward to City Council for approval. This inventory item was last purchased in September 2010 at a cost of \$8.51 per foot. Bids were received March 2, 2011 as follows: .

<u>Bidders</u>	<u>Cost Per Ft.</u>	<u>Total Cost</u>
Stuart C. Irby, Rocky Mount, NC	\$13.014	\$117,126.00
WESCO, Raleigh, NC	\$13.485	\$121,365.00

ISSUES:

- Bids solicited from four (4) vendors with two (2) vendors responding.
- Stuart C. Irby is not a SDBE, minority or woman-owned business.

BUDGET IMPACT:

PWC Budget - Inventory Item.

OPTIONS:

N/A

RECOMMENDED ACTION:

Award bid to Stuart C. Irby, lowest bidder in the total amount of \$117,126.00.

ATTACHMENTS:

Bid Recommendation

Bid History

**PUBLIC WORKS COMMISSION
ACTION REQUEST FORM**

TO: Steve Blanchard, CEO/General Manager **DATE:** March 2, 2011

FROM: Gloria Wrench, Purchasing Manager

ACTION REQUESTED: Award contract for the purchase of 9,000 feet of 500 MCM Copper Conductor, PWC Stock No. 1-065-400 (with the option to purchase additional quantities within a one-year period upon the agreement of both parties).

BID/PROJECT NAME: 500 MCM Copper Conductor

BID DATE: March 2, 2011 **DEPARTMENT:** Electric Inventory

LAST PURCHASE/PRICE: This inventory item was last purchased in September of 2010 at a cost of \$8.51 per foot.

BIDDERS	COST PER FT.	TOTAL COST
<u>Stuart C. Irby, Rocky Mount, NC</u>	<u>\$13.014</u>	<u>\$117,126.00</u>
<u>WESCO, Raleigh, NC</u>	<u>\$13.485</u>	<u>\$121,365.00</u>

AWARD RECOMMENDED TO: Stuart C. Irby, Rocky Mount, NC

BASIS OF AWARD: Lowest bidder

AWARD RECOMMENDED BY: Gloria Wrench

COMMENTS: Bids were solicited from four (4) vendors with two (2) vendors responding. The low bid is recommended.

ACTION BY COMMISSION

APPROVED _____ **REJECTED** _____
DATE _____

ACTION BY COUNCIL

APPROVED _____ **REJECTED** _____
DATE _____

BID HISTORY
500 MCM COPPER CONDUCTOR

Advertisement

- | | | |
|----|---------------------------------|-----------------------------------|
| 1. | Public Works Commission Website | February 15, 2011 - March 2, 2011 |
|----|---------------------------------|-----------------------------------|

List of Organizations Notified of Bid

1. NAACP Fayetteville Branch, Fayetteville, NC
2. NAWIC, Fayetteville, NC
3. N.C. Institute of Minority Economic Development, Durham, NC
4. CRIC, Fayetteville, NC
5. Fayetteville Business & Professional League, Fayetteville, NC
6. SBTDC, Fayetteville, NC
7. FTCC Small Business Center, Fayetteville, NC
8. The Raleigh Black Chamber of Commerce, Raleigh, NC
9. Fayetteville Area Chamber of Commerce, Fayetteville, NC

List of Prospective Bidders

1. WESCO Distribution, Inc., Raleigh, NC
2. Stuart C. Irby Company, Rocky Mount, NC
3. HD Supply Utilities, Wake Forest, NC
4. Shealy Electrical Wholesalers, Inc., Greenville, SC

SDBE/MWBE Participation

Stuart C. Irby is not a SDBE, minority, or woman-owned business.

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Steven K. Blanchard, PWC CEO/General Manager
DATE: March 28, 2011
RE: **Bid Recommendation - Purchase of Ten 230kV Metering Class Combined Potential and Current Transformers**

THE QUESTION:

The Public Works Commission of the City of Fayetteville requests Council approve purchase of ten (10) 230kV Metering Class Combined Potential and Current Transformers, with the option to purchase additional units within a one-year period upon the agreement of both parties.

RELATIONSHIP TO STRATEGIC PLAN:

Quality Utility Services.

BACKGROUND:

The Public Works Commission, during their meeting of March 9, 2011, approved bid recommendation to award bid for purchase of ten (10) 230kV Metering Class Combined Potential and Current Transformers (with the option to purchase additional units within a one-year period upon the agreement of both parties) to Alstom Grid, Inc., Waynesboro, Georgia, lowest bidder in the total amount of \$277,400.00 and forward to City Council for approval. This is a budgeted item (budgeted amount of \$300,000 in FY2011 CIP EL 12). Bids were received February 22, 2011 as follows:

<u>Bidders</u>	<u>Unit Cost</u>	<u>Total Cost</u>
Alstom Grid, Inc., Waynesboro, GA	\$27,740.00	\$277,400.00
Trench Limited, Scarborough, Ontario, Canada	\$27,900.00	\$279,000.00
ABB, Lexington, KY	\$28,385.00	\$283,850.00

ISSUES:

Alstom Grid, Inc., is not a SDBE, minority or woman-owned business.

BUDGET IMPACT:

PWC Budgeted Item

OPTIONS:

N/A

RECOMMENDED ACTION:

Award bid to Alstom Grid, Inc., lowest bidder in the total amount of \$277,400.00.

ATTACHMENTS:

Bid Recommendation

Bid History

**PUBLIC WORKS COMMISSION
ACTION REQUEST FORM**

TO: Steve Blanchard, CEO/General Manager **DATE:** March 2, 2011

FROM: Gloria Wrench, Purchasing Manager

ACTION REQUESTED: Award contract for the purchase of ten (10) 230kV Metering Class Combined Potential and Current Transformers (with the option to purchase additional units within a one-year period upon the agreement of both parties).

BID/PROJECT NAME: 230kV Metering Class Combined Potential and Current Transformers

BID DATE: February 22, 2011 **DEPARTMENT:** Electric Engineering

BUDGET INFORMATION: FY2011 CIP EL 12 - \$300,000

BIDDERS	UNIT COST	TOTAL COST
<u>Alstom Grid, Inc., Waynesboro, GA</u>	<u>\$27,740.00</u>	<u>\$277,400.00</u>
<u>Trench Limited, Scarborough, Ontario, Canada</u>	<u>\$27,900.00</u>	<u>\$279,000.00</u>
<u>ABB, Lexington, KY</u>	<u>\$28,385.00</u>	<u>\$283,850.00</u>

AWARD RECOMMENDED TO: Alstom Grid, Inc., Waynesboro, GA

BASIS OF AWARD: Lowest bidder

AWARD RECOMMENDED BY: John Sidebotham, Rick Anderson and Gloria Wrench

COMMENTS: Bids were solicited from three (3) vendors with three (3) vendors responding. The low bidder is recommended. Installation of this equipment at three (3) PWC/Progress Energy interconnection sites will enable PWC to verify the correctness of power billing statements from Progress Energy.

ACTION BY COMMISSION

APPROVED _____ **REJECTED** _____
DATE _____

ACTION BY COUNCIL

APPROVED _____ **REJECTED** _____
DATE _____

BID HISTORY

230kV METERING CLASS COMBINED POTENTIAL AND CURRENT TRANSFORMERS

List of Organizations Notified of Bid

1. NAACP Fayetteville Branch, Fayetteville, NC
2. NAWIC, Fayetteville, NC
3. N.C. Institute of Minority Economic Development, Durham, NC
4. CRIC, Fayetteville, NC
5. Fayetteville Business & Professional League, Fayetteville, NC
6. SBTDC, Fayetteville, NC
7. FTCC Small Business Center, Fayetteville, NC
8. The Raleigh Black Chamber of Commerce, Raleigh, NC
9. Fayetteville Area Chamber of Commerce, Fayetteville, NC

List of Prospective Bidders

1. Trench Limited, Scarborough, Ontario, Canada
2. Alstom Grid, Waynesboro, GA
3. ABB, Lexington, KY

SDBE/MWBE Participation

Alstom Grid, Inc. is not a SDBE, minority, or woman-owned business.

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: James Rose, PWC Chief Administrative Officer
DATE: March 28, 2011
RE: **Confirmation of Assessment Roll for LaGrange and Summerhill**

THE QUESTION:

Providing sanitary sewer service to Areas 6 and 7 of the Phase 5 Annexation.

RELATIONSHIP TO STRATEGIC PLAN:

Goal 3: More Efficient City Government – Cost-Effective Service Delivery

BACKGROUND:

I am enclosing the Resolution Confirming Assessment Roll and Levying Assessments for inclusion on the March 28, 2011 City Council agenda. The Preliminary Assessment Roll was made available at the City Clerk's office for review by property owners and the public hearing was held March 14, 2011.

As outlined in the public hearing and set forth in information previously provided property owners in the affected area, the sanitary sewer assessment rate for single family residential lots is recommended at \$5,000 which includes both the main and lateral charges. For non-single family residential properties, a per front foot rate of \$55.56 with a 90 foot minimum plus the area average lateral charge of \$783 is recommended.

ISSUES:

N/A

BUDGET IMPACT:

N/A

OPTIONS:

N/A

RECOMMENDED ACTION:

Staff recommends that Council move to adopt the attached Resolution Confirming Assessment Roll and Levying Assessments.

ATTACHMENTS:

resolutionconfirmingroll.pdf Resolution

RESOLUTION CONFIRMING ASSESSMENT ROLL AND LEVYING ASSESSMENTS

WHEREAS, the City Council of the City of Fayetteville has on March 14, 2011 held a public hearing, after due notice as required by law, on the Preliminary Assessment Roll for the extension of a sanitary sewer collection system to serve all or a portion of the LaGrange and Summerhill areas; and

WHEREAS, the City Council has heard all those present who requested to be heard, and has found the said Assessment Roll to be proper and correct.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Fayetteville, that:

1. The Assessment Roll for the extension of a sanitary sewer collection system to serve all or a portion of Audrey Court, Brewster Drive, Brewster Place, Buckhead Drive, Carrollburg Drive, Channing Drive, Cliffbourne Drive, Decatur Drive, Decatur Place, Deerwood Drive, Faraday Place, Fawn Drive, Fletcher Avenue, Greenbriar Drive, Hamburg Drive, Ingleside Drive, Jennings Lane, Overbrook Drive, Ramona Drive, and Sable Drive located within Area 6 and Avalon Drive, Bedford Road, Dandridge Drive, Dumont Place, Fairvale Drive, Freeport Road, Garfield Drive, Godfrey Drive, N. Reilly Road, Osprey Place, Paxton Drive, Quimby Court, Redfield Court, Roundtree Drive, Squire Lane, Standish Court, Wakefield Drive, Wendell Place, and Yardley Court within Area 7 is hereby declared to be correct, and is hereby confirmed in accordance with Chapter 160A, Section 228 of the General Statutes of North Carolina.
2. The City Council of the City of Fayetteville, pursuant to authority conferred by Chapter 160A, Section 216 of the General Statutes of North Carolina and following sections, does hereby levy assessments as contained in the said Assessment Roll. The basis for the utility assessment being as shown on the attached schedule labeled Exhibit "A". A copy of the said Assessment Roll is on file with PWC's Deputy Tax Collector.
3. The City Attorney is hereby directed to deliver to the PWC Deputy Tax Collector the said Assessment Roll.

4. The PWC Deputy Tax Collector is hereby charged with the collection of said assessments in accordance with the procedure established by Chapter 160A, Sections 232 and 233 of the General Statutes of North Carolina.
5. The PWC Deputy Tax Collector is hereby further directed to publish on the 18th day of April, 2011 the notice required by Chapter 160A, Section 229 of the General Statutes of North Carolina.

Adopted this _____ day of _____, 2011.

Anthony G. Chavonne, Mayor

Jennifer Penfield, Deputy City Clerk

The following City Council members voted for passage of the above Resolution:

The following City Council members voted against passage of the above Resolution:

Exhibit “A”

Assessment Rate: 8%

Typical single family residential lots computed on per lot basis of \$5,000.

For all other properties, a per front foot rate of \$55.56 with a 90' minimum plus the area average cost for service lateral of \$783 shall apply.

Term: To be repaid over a period not to exceed 10 years at an interest rate of 8%.

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Gloria B. Wrench, Purchasing Manager
DATE: March 28, 2011
RE: **Consider Resolution of Award for South Reilly Road - Jeffrey Drive to Morganton Road Concrete Sidewalk Project.**

THE QUESTION:

Staff requests that Council adopt the attached Resolution of Award for the South Reilly Road - Jeffrey Drive to Morganton Road Concrete Sidewalk project.

RELATIONSHIP TO STRATEGIC PLAN:

Goal #2 - Growing City, Livable Neighborhoods - A Great Place to Live

BACKGROUND:

The City received funding from the North Carolina Department of Transportation (NCDOT) for the construction of sidewalks from South Reilly Road - Jeffrey Drive to Morganton Road. As part of their funding agreement, NCDOT requires that Council adopt a Resolution of Award for this project.

Bids were received March 10, 2011 as follows:

J. W. Grand, Clayton, NC	\$131,168.79	
Billy Bill Grading Co., Inc., Fayetteville, NC	\$138,607.50	
Sandhills Contractors, Inc., Sanford, NC	\$139,210.00	
Lanier Construction Co., Inc., Snow Hill, NC	\$150,054.25	
Paul Howard Construction, Greensboro, NC	\$211,260.00	
Jymco Development, Inc., Smithfield, NC	\$113,958.00	*Bid determined to be non-responsive; Contractor not properly licensed.

Contract award is recommended to the lowest responsive, responsible bidder, J. W. Grand, Inc., Clayton, NC. The DBE participation goal on this project was set at 2% by NCDOT. J. W. Grand, Inc. will utilize a DBE subcontractor for 45.7% of the work on this project.

ISSUES:

None.

BUDGET IMPACT:

The total available budget for this project is \$138,833.00 through a supplemental municipal agreement with NCDOT.

OPTIONS:

- 1) Adopt Resolution of Award as recommended.
- 2) Not adopt Resolution of Award.

RECOMMENDED ACTION:

Adopt the attached Resolution of Award to J. W. Grand, Inc., Clayton, NC, the lowest responsive, responsible bidder, in the amount of \$131,168.79, for construction of the South Reilly Road - Jeffrey Drive to Morganton Road Concrete Sidewalk project.

ATTACHMENTS:

Resolution of Award

**RESOLUTION OF AWARD
OF THE CITY OF FAYETTEVILLE, NORTH CAROLINA**

**SOUTH REILLY ROAD – JEFFREY DRIVE
TO MORGANTON ROAD CONCRETE SIDEWALK PROJECT**

**North Carolina Department of Transportation
Supplemental Municipal Agreement
TIP #EL-5102, WBS #45061.3.1**

WHEREAS, The City of Fayetteville, North Carolina, hereinafter referred to as City, publicly advertised for bids to be received for the South Reilly Road – Jeffrey Drive to Morganton Road Concrete Sidewalk Project on Thursday, March 10, 2011; and,

WHEREAS, the Bids were publicly opened on the stated date; and,

WHEREAS, the City has accepted a loan from the Federal Highway Administration, through the North Carolina Department of Transportation, in the amount of \$195,000 for the South Reilly Road – Jeffrey Drive to Morganton Road Concrete Sidewalk Project.

NOW THEREFORE BE IT RESOLVED BY THE CITY that the bid be awarded in accordance with the Engineer's recommendation to the lowest responsive, responsible bidder, J. W. Grand, Inc., Clayton, North Carolina, in the amount of \$131,168.79. This Resolution authorizes the Mayor, or his designee, to execute on behalf of the City of Fayetteville, a contract and any change orders within the budgeted amount, with J. W. Grand, Inc., Clayton, NC, for the project known as South Reilly Road – Jeffrey Drive to Morganton Road Sidewalk Project.

Bids are awarded subject to approval of the North Carolina Department of Transportation.

The City Council of the City of Fayetteville, North Carolina, has read, approved and adopted this Resolution in the form presented above.

Adopted this 28th day of March, 2011, at Fayetteville, North Carolina.

**THE CITY OF FAYETTEVILLE,
NORTH CAROLINA**

Anthony G. Chavonne, Mayor

ATTEST:

Jennifer Penfield, Deputy City Clerk

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Kristoff Bauer, Assistant City Manager
DATE: March 28, 2011
RE: **Consideration of an Economic Development Incentive Agreement for MBM Hospitality, LLC. relating to the development of an Embassy Suites project on Lake Valley Drive**

THE QUESTION:

Does the City Council authorize the City Manager to execute the proposed Economic Development Incentive Agreement ("EDIA") confirming the economic development incentives approved by City Council on September 13, 2010.

RELATIONSHIP TO STRATEGIC PLAN:

Goal 1 - Greater Tax Base Diversity - Strong Local Economy

BACKGROUND:

The City Council and Cumberland County established a joint economic development incentive program in May 2010. Five Points Hospitality, Inc. applied for incentives under that program to support a project to build an Embassy Suites Hotel and Conference Center on Lake Valley Drive. The Council held a public hearing on the proposed economic development incentives on September 13, 2010, as required by state law, and approved the recommended incentive package including:

- a five year property tax grant back as follows; 60% years 1 & 2, 55% years 3 & 4, and 50% in year 5;
- a 50% reduction in City of Fayetteville permit and inspection fees;
- a low interest \$500,000 loan to support the cost of drainage improvements and to be repaid over 10 years through the formation of a special assessment or municipal service district; and,
- a new bus stop and shelter.

Five Points, constructing this project as MBM Hospitality, LLC., committed to creating jobs consistent with the economic development program while developing a hotel and convention center at an estimated cost of \$30 million with the following characteristics:

- 167 two-room suites (this has been revised down to 165);
- a full service restaurant and lounge;
- 18,000 SF of prime meeting space;
- Banquet accommodations for at least 500;
- Meeting space for up to 1,000; and
- Trade show accommodations.

MBM Hospitality, LLC., has already initiated construction of the project and the City has honored applicable incentives to date, but the Economic Development Incentive Agreement spelling out the rights and obligations of the parties has yet to be executed. Cumberland County, whose incentive package is a bit simpler, has already approved an EDIA with MBM consistent with the joint economic development program.

ISSUES:

The attached EDIA establishes the rights and obligations of the parties. The formation of a Municipal Service District ("MSD") to support the \$500,000 drainage funding commitment requires a public hearing. Consideration of the formation of that MSD and the required hearing are later on Council's agenda.

BUDGET IMPACT:

The costs and benefits of this economic development project and the approved incentive package were considered by Council during the September 13, 2010, Public Hearing. More detail regarding the budget for the MSD is provided in that agenda memorandum.

OPTIONS:

1. Authorize the City Manager to execute the attached EDIA with MBM (Recommended) this action is consistent with Council's approval of the economic development incentives
2. Disapprove the proposed EDIA

RECOMMENDED ACTION:

Staff recommends that Council move to authorize the City Manager to execute the attached EDIA with MBM Hospitality, LLC., to support the development of a hotel and convention center on Lake Valley Drive.

ATTACHMENTS:

EDIA for MBM Hospitality

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

between

MBM HOSPITALITY, LLC, a North Carolina Limited Liability Company

and

CITY OF FAYETTEVILLE, NORTH CAROLINA

THIS ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT is dated the last date executed by either party to be effective according to the terms set forth herein (as supplemented or amended, this "Agreement"), and is between **MBM HOSPITALITY, LLC**, a North Carolina Limited Liability Company, (the "Company"), and **CITY OF FAYETTEVILLE, NORTH CAROLINA**, a body politic and corporate and a political subdivision of the State of North Carolina (the "City"). The Company and the City may from time to time hereinafter be referred to individually as a "Party" or collectively as the "Parties."

RECITALS:

WHEREAS, the Local Development Act of 1925, as amended (Article 1 of Chapter 158 of the North Carolina General Statutes) grants cities the authority to make appropriations for the purposes of aiding and encouraging the location or expansion of certain business enterprises in the city or for other purposes, which the city's governing body finds in its discretion will increase the population, taxable property base and business prospects of the city; and

WHEREAS, the purpose of this Agreement is to describe certain incentives to be provided by the City to the Company in connection with the Company's development of a project consisting of the construction and operation of a hotel containing at least 165 rooms with an 18,000 sq. ft. conference facility located on the parcel with PIN # 0418-04-4058 in the City of Fayetteville, NC (the "Project"); and

WHEREAS, in connection with that purpose and in accordance with North Carolina General Statutes § 158-7.1, the City of Fayetteville City Council (the "City Council") held a public hearing on September 13, 2010, regarding the proposed incentives to be provided by the City to the Company, which incentives are set forth in this Agreement, and the City Council found such incentives to be in the public interest and to further the public health, safety and welfare; and

WHEREAS, the Company acknowledges that such incentives are an inducement for the Company to construct and operate the Project in the City and these incentives are necessary for financing the Project.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I: DEFINITIONS; RULES OF CONSTRUCTION

- 1.0.** Definitions. In addition to terms defined elsewhere within this Agreement, for all purposes of this Agreement the following defined terms shall have the following meanings:

“Annual Incentive Payments” means the five (5) annual payments to be made by the City to the Company by March 1st of each year beginning in year 2014 through 2018. Such payments are calculated pursuant to Article IV below.

“Company” means MBM Hospitality, LLC, and any parent, subsidiary or affiliate entity or any successor entity resulting from its merger with any other entity having an ownership interest in the Project.

"Direct Investment" means the cumulative total as of January 1, 2013 of the increase in taxable ad valorem value of all land, buildings, real property improvements, furniture, fixtures and equipment purchased, constructed, and/or installed by the Company or on its behalf as part of the Project, regardless of the funding source for any such items, over the ad valorem taxable value of such property as listed effective January 1, 2010.

“Property Taxes” means the City-wide ad valorem property tax levied by the City excluding any fire tax district taxes, fire service district taxes, municipal service district taxes, and recreation service district taxes.

"State" means the State of North Carolina.

- 1.1.** Rules of Construction. Unless the context otherwise indicate:

- (a) words implying the singular shall include the plural and vice versa, and words implying the masculine gender shall include the feminine and neuter genders as well;
- (b) any references to Articles, Sections or Exhibits are references to Articles, Sections and Exhibits of this Agreement;
- (c) all references to officers are references to City officers; and
- (d) the headings herein are solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect its meanings, construction or effect.

ARTICLE II: FACILITY AND SITE CONSTRUCTION AND RENOVATIONS

- 2.0.** The Company intends to construct the Project in order to enhance the local market availability of conference facilities. The Company intends to make the Direct Investment and create the numbers of jobs as provided in Article III.

- 2.1. The Company agrees that construction of the Project shall be carried on in material compliance with all applicable State and local laws and regulations. The Parties agree that the provision of water service, waste water services, roads, electric service, and telephone service to the boundaries of the Project Site are not the responsibility of the City.

**ARTICLE III: OBLIGATIONS OF THE COMPANY TO
DEVELOP AND OPERATE THE PROJECT**

- 3.0. As consideration for receiving the Annual Incentive Payments described in this agreement, the Company agrees that it will develop and operate the Project in accordance with the following conditions:
- 3.1. The Developer/Owner of the Project shall be MBM Hospitality LLC, a North Carolina limited liability company managed by Naynesh Mehta.
- 3.2. The Project shall consist of the construction and operation of a hotel containing features consistent with that of a 4-star rated hotel to include at least 165 two-room suites, a full service restaurant and lounge, banquet accommodations suitable for up to 500 people, meeting space for up to 1,000 people, trade show accommodations and an 18,000 sq. ft. conference facility located on the parcel with PIN # 0418-04-4058 in the City of Fayetteville, NC.
- 3.3. Construction of the Project commenced on October 25, 2010 and shall be completed by March 31, 2012.
- 3.4. Once completed, the Project shall provide at least 76 new, full-time equivalent jobs in the City at an average wage that is above the median wage for Cumberland County as reported by the North Carolina Department of Commerce through its EDIS data for Community Demographics for Cumberland County for the most recent year available.
- 3.5. The jobs created by the Project shall, at a minimum, provide partial employer-paid health insurance benefits, retirement benefits, profit sharing benefits, and employer-paid vacation benefits.
- 3.6. Once completed, the Project shall provide new, full-time equivalent jobs for at least 101 existing Cumberland County and/or City residents.
- 3.7. Once completed and during its first full year of operations, the Project shall consist of a Direct Investment in an amount of at least Twenty Five Million Dollars (\$25,000,000). The Project shall maintain this level of Direct Investment for the first five full years of operation, subject to reasonable and customary reductions for depreciation or depletion as provided in the depreciation schedules as directed or recommended from time to time by the Property Tax Division of the North Carolina Department of Revenue or the Internal Revenue Service.

ARTICLE IV: OBLIGATIONS OF THE CITY TO MAKE INCENTIVE PAYMENTS

- 4.0.** As consideration for the Company developing and operating the Project in accordance with the conditions stated above, the City shall make Annual Incentive Payments to the Company for five (5) years, on or before March 1 of each year commencing in the year following the first full year the Project has been open for business as follows:
- 4.1.** First payment shall be 60% of the amount of Property Taxes actually paid by the Project for its first full year of operations
- 4.2.** Second payment shall be 60% of the amount of Property Taxes actually paid by the Project for its second full year of operations
- 4.3.** Third payment shall be 55% of the amount of Property Taxes actually paid by the Project for its third full year of operations.
- 4.4.** Fourth payment shall be 55% of the amount of Property Taxes actually paid by the Project for its fourth full year of operations
- 4.5.** Fifth payment shall be 50% of the amount of Property Taxes actually paid by the Project for its fifth full year of operations
- 4.6** The first full year the Project shall have been open for business shall be the calendar year 2013. The first Annual Incentive Payment shall be due on or before March 1, 2014 and it shall be based on the Property Taxes actually paid for 2013.

ARTICLE V: DRAINAGE INFRASTRUCTURE CONSTRUCTION AND WETLAND MITIGATION

- 5.0** The City, contingent upon approval of the City Council at a public hearing, shall authorize a Municipal Service District for the purpose of financing the design, engineering, construction and development of a drainage infrastructure and to pay wetland mitigation fees in accordance with North Carolina General Statutes §160A-536 (a)(5) to be completed as part of the Project.
- 5.1** The City agrees to provide a loan in the amount of five hundred thousand dollars (\$500,000) to the Municipal Service District in accordance with the City's Drainage Revolving Loan Fund program to be used for the construction identified in this Article. The Municipal Service District shall pay back this loan through collection of taxes on the identified parcels. If at any time the tax is not paid, a tax lien shall be placed upon the property.

**ARTICLE VI: OBLIGATIONS TO CEASE UPON
OCCURRENCE OF ANY INCIDENT OF DEFAULT**

- 6.0.** If at any time the Project should fail to meet any of the obligations stated in Article III, or should the Project or the Company declare bankruptcy, be adjudicated bankrupt, or be determined to be insolvent in any judicial proceeding or by any judicial process, then the Company shall be deemed to be in default of its obligations under this agreement and the obligation of the City to make the Annual Incentive Payments shall terminate and the City shall have no further obligation to the Project or to the Company. Any Annual Incentive Payments made by the City to the Company prior to the occurrence of any incident of default shall be deemed to have been made in consideration of the Company's having performed its obligations for the year for which such Annual Incentive Payment was made. Company shall not be obligated to return any Annual Incentive Payment it actually received under the terms of this Agreement.

**ARTICLE VII: FACILITY AND SITE CONSTRUCTION
AND RENOVATIONS**

- 7.0.** The Company agrees that construction of the Facility shall be carried on in material compliance with all applicable State and local laws and regulations. The Parties agree that the provision of water service, waste water services, roads, electric service, and telephone service to the boundaries of the Site are not the responsibility of the City.

**ARTICLE VIII: DETERMINATION OF AMOUNT OF
DIRECT INVESTMENT**

- 8.0.** The Company shall certify to the City Tax Administrator the Direct Investment as of January of each calendar year of this Agreement, beginning with January of calendar year 2011. Commencing with the certification made during January of calendar year 2013, the City shall make an Annual Incentive Payment, if due to the Company hereunder, by issuance and delivery of its check (or other payment mechanism as agreed by the Parties) to the Company by March 1st of the next calendar year. Each Annual Incentive Payment shall be subject to and contingent upon the Company having paid all Property Taxes applicable to all its taxable property.
- 8.1.** The Company shall certify its Direct Investment as required above by providing accurate documentation as a supplement to its annual tax listing forms submitted to the City Tax Administrator, which supplemental information shall be reasonably satisfactory to the Tax Administrator, showing the initial ad valorem taxable value of the Direct Investment (including operating leases even if listed in the name of a party other than Company) as of the tax listing date applicable to such property. With respect to the Direct Investment, the City will use the depreciation schedules as directed or recommended from time to time by the Property Tax Division of the North Carolina Department of Revenue.

**ARTICLE IX: DETERMINATION OF JOBS CREATED,
WAGES AND BENEFITS**

- 9.0.** The Company shall certify the number of jobs created, the wages paid, and the benefits offered to employees to the City's Internal Auditor each year at the same time as the certification of Direct Investment is made to the City Tax Administrator. The Company shall supplement this certification with documentation in the form of reports required to be filed for state or federal labor, employment, income tax purposes or with any other documentation satisfactory to the City's Internal Auditor.

ARTICLE X: DISCLAIMER OF WARRANTIES

- 10.0.** The Company acknowledges that the City has not designed the Project, or supplied any plans or specifications with respect thereto and that the City:
- (a) is not a manufacturer of, nor dealer in, any of the component parts of the Project,
 - (b) has not made any recommendation, given any advice nor taken any other action with respect to the choice of any supplier, vendor or designer of, or any other contractor with respect to, the Project or any component part thereof or any property or rights relating thereto, or to any action taken or to be taken with respect to the Project or any component part thereof or any property or rights relating thereto at any stage of the construction thereof,
 - (c) has not at any time had physical possession of the Project or any component part thereof or made any inspection thereof (other than in its normal course of inspections, if any, as such relate to construction of any facility in the City) or any property or rights relating thereto, and
 - (d) has not made any warranty or other representation, express or implied, that the Project or any component part thereof or any property or rights relating thereto (i) will not result in or cause injury or damage to persons or property, (ii) has been or will be properly designed, or will accomplish the results which the Company intends therefore, or (iii) is safe in any manner or respect.
- 10.1.** The City makes no express or implied warranty or representation of any kind whatsoever with respect to the Project or any component part thereof, including but not limited to any warranty or representation with respect to the merchantability or the fitness or suitability thereof for any purpose, and further including the design or condition thereof; the safety, workmanship, quality or capacity thereof; compliance thereof with the requirements of any law, rule, specification or contract pertaining thereto; any latent defect; the Project's ability to perform any function; or any other characteristic of the Project; it being agreed that the Company is to bear all risks relating to the Project, the completion thereof or the transactions contemplated hereby and the Company hereby waives the benefits of any and all implied warranties and representations of the City.

- 10.2. The provisions of this Article shall survive this Agreement's expiration.

ARTICLE XI: EXPIRATION OF AGREEMENT

- 11.0. This Agreement shall expire, without further action on the part of either the Company or the City, upon payment in full of any amounts due from the City to the Company pursuant to, and in accordance with, the terms hereof.

ARTICLE XII: TEMPORARY DELAY IN DIRECT INVESTMENT

- 12.0. Notwithstanding anything herein to the contrary, if the Company shall be prevented or delayed from making the Direct Investment, by reason of a:

- (a) Government moratorium;
- (b) Delay in obtaining any governmental or quasi-governmental approvals, permits or certificates, despite reasonable efforts by the Company to obtain same;
- (c) Act of God, including but not limited to hurricane, tornado, snowstorm, windstorm, earthquake or flood, fire or other extreme weather conditions or other casualty;
- (d) Strike, lockout or a labor dispute involving entities other than the Company which causes the Company an inability to obtain labor or materials;
- (e) Delay in funding any incentive to or for the benefit of the Company, other than the Annual Incentive Payments; or
- (f) Any other event, other than normal business exigencies, which is beyond the reasonable control of the Company; then the time within which the Company shall be required hereunder to make the Direct Investment hereunder shall be equitably adjusted to reflect the effect of such event. The Parties shall negotiate in good faith to make an equitable adjustment in such period, however, if the Parties cannot in good faith reach an agreement as to such adjustment and at the option of either party, the Parties agree to submit this issue to binding arbitration on an expedited basis.

ARTICLE XIII: JOBS & INVESTMENT TAX CREDITS

- 13.0. The Parties acknowledge that under current North Carolina law the Company or the Project may be eligible for credits for creating jobs and credits for investing in business property in North Carolina against its North Carolina corporate income tax or franchise tax pursuant to North Carolina General Statutes Section 105-129.80, *et seq.*, provided that the Company meets the requirements of the statutes. The Company understands that the City is not responsible for providing these credits.

ARTICLE XIV: ASSIGNMENT

- 14.0.** Neither party shall transfer or assign any interest in or obligation under this Agreement without the prior express written consent of the other; provided, this Agreement may be assigned by the Company to any parent, subsidiary or affiliate of the Company, or to any person or entity to which the operations of the Project are transferred so long as such operations are continued substantially as contemplated herein for the term hereof, without the City's consent.

ARTICLE XV: STATUTORY AUTHORITY; OBLIGATION OF CITY

- 15.0.** Both the Company and the City acknowledge and agree that any and all monies appropriated and expended by the City for local economic development incentives, as provided in this Agreement, are for a bona fide public purpose and are expended in good faith reliance on North Carolina General Statutes § 158-7.1. Both Parties further acknowledge and agree that this Agreement, to the extent allowed by law, shall be considered a continuing contract and shall be subject to, and controlled by, the provisions of North Carolina General Statutes §160A-17. If for any reason it is found by a court of competent jurisdiction by final judgment that North Carolina General Statutes §160A-17 does not legally apply to this Agreement, then in such event there shall be no liability on behalf of the City for the failure of this contract to be continuing in nature.

ARTICLE XVI: MISCELLANEOUS

- 16.0.** Governing Law; Venue. The Parties intend that this Agreement shall be governed by the law of the State of North Carolina without regard to the conflict of laws provisions thereof and that exclusive venue as to any dispute arising hereunder shall be in the State of North Carolina.

- 16.1.** Notices.

(a) Any communication required or permitted by this Agreement must be in writing except as expressly provided otherwise in this Agreement; and

(b) All communications required or permitted hereunder may be delivered personally, or sent by certified mail, return receipt requested, or by a nationally recognized overnight courier to the following addresses, unless the parties are subsequently notified of any change of address:

If to the Company, to: Managing Member
Five Points Hospitality, Inc.
1706 Skibo Rd.
Fayetteville, NC 28303

If to the City, to: City Manager
 City Hall
 433 Hay St.
 Fayetteville, N.C. 28301

- 16.2.** Severability. If any provision of this Agreement shall be determined to be unenforceable, that shall not affect any other provision of this Agreement.
- 16.3.** Entire Agreement; Amendments. This Agreement, including any exhibits which may be attached, which are incorporated herein and made a part hereof, constitutes the entire contract between the Parties. This Agreement shall not be changed except in writing signed by both Parties.
- 16.4.** Binding Effect. Subject to the specific provisions of this Agreement, this Agreement shall be binding upon and inure to the benefit of and be enforceable by the Parties and their respective successors and assigns.
- 16.5.** Liability of Officers and Agents. No officer, agent or employee of the City or the Company shall be subject to any personal liability or accountability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents, or employees shall be deemed to execute such documents in their official capacities only, and not in their individual capacities. This Section shall not relieve any such officer, agent or employee from the performance of any official duty provided by law.
- 16.6.** Counterparts. This Agreement shall be executed in several counterparts, including separate counterparts. Each shall be an original, but all of them together constitute the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in their corporate and governmental names, respectively by their duly authorized officers, all as of the dates indicated with the signature for each.

MBM HOSPITALITY, LLC

by:

Its Managing Member

Date Signed: _____

CITY OF FAYETTEVILLE, NORTH CAROLINA

by:

Dale Iman, City Manager

Date Signed: _____

Attest:

Jennifer Penfield, Deputy City Clerk

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act .

Lisa Smith, Chief Financial Officer for the City of Fayetteville, North Carolina

Approved for legal sufficiency.

Karen McDonald, City Attorney

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Kristoff Bauer, City Manager
DATE: March 28, 2011
RE: **Consideration of the Economic Development Incentive Agreement for Strategic Solutions Unlimited**

THE QUESTION:

Does the City Council authorize the City Manager to execute the proposed Economic Development Incentive Agreement ("EDIA") confirming the economic development incentives approved by City Council on October 11, 2010.

RELATIONSHIP TO STRATEGIC PLAN:

Goal 1 - Greater Tax Base Diversity - Strong Local Economy

BACKGROUND:

The City Council and Cumberland County established a joint economic development incentive program in May 2010. The Council has also identified a Revitalization Zone to be used by that program as an area of emphasis.

Strategic Solutions Unlimited, Inc. ("SSU") is a growing company currently located in a building on Maxwell St. in downtown Fayetteville that was seeking to acquire and renovate a building in the Revitalization Zone to add to its existing office space in the City. The project, located at 225 Gray St., will include expending and estimated \$450,000 to renovate the building increasing the estimated taxable value of the property by 117% to an estimated \$1.3 million. Since the public hearing in October, 2010, SSU has moved forward with this project as promised.

Cumberland County has already approved an EDIA with SSU consistent with that proposed here.

ISSUES:

The EDIA memorializes the terms under which the City will provide the incentive approved by the Council on October 11, 2010. In this case, the only incentive that this project is eligible for is a grantback of 50% of the increased tax revenue over a 5 year period. Project elements that support this incentive include:

- creating 21-50 new jobs above the median wage;
- providing employer paid health insurance, vacation, and retirement benefits;
- employing 10-20 existing Cumberland County residents'
- locating within the City's Revitalization Zone;
- investing \$450,000 into an existing building; and
- being a defense industry business.

BUDGET IMPACT:

It is estimated that the investment being made by SSU will increase their City property tax liability over the next five years by \$25,000. Under this program, the City will grant back 50% of that revenue, or an estimated \$12,500 over five years.

OPTIONS:

- Approve the proposed EDIA (**Recommended**)
- Disapprove the proposed EDIA

RECOMMENDED ACTION:

Staff recommends that Council move to authorize the City Manager to execute the attached EDIA with SSU for their project on Gray St..

ATTACHMENTS:

EDIA for Strategic Solutions Unlimited

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

between

STRATEGIC SOLUTIONS UNLIMITED, INC., a North Carolina Corporation

and

CITY OF FAYETTEVILLE, NORTH CAROLINA

THIS ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT is dated the last date executed by either party to be effective according to the terms set forth herein (as supplemented or amended, this "Agreement"), and is between **STRATEGIC SOLUTIONS UNLIMITED, INC.**, a North Carolina corporation (the "Company"), and **CITY OF FAYETTEVILLE, NORTH CAROLINA**, a body politic and corporate and a political subdivision of the State of North Carolina (the "City"). The Company and the City may from time to time hereinafter be referred to individually as a "Party" or collectively as the "Parties."

RECITALS:

WHEREAS, the Local Development Act of 1925, as amended (Article 1 of Chapter 158 of the North Carolina General Statutes) grants cities the authority to make appropriations for the purposes of aiding and encouraging the location or expansion of certain business enterprises in the city or for other purposes, which the city's governing body finds in its discretion will increase the population, taxable property base and business prospects of the city; and

WHEREAS, the purpose of this Agreement is to describe certain incentives to be provided by the City to the Company in connection with the Company's development of a project consisting of the interior demolition, design, construction, and change of occupancy and utilization of 8567 sq. ft. of an existing structure located at 225 Gray Street, PIN # 0437-87-1651 in the City of Fayetteville, NC, (the "Project") for the purpose of expanding an existing business; and

WHEREAS, in connection with that purpose and in accordance with North Carolina General Statutes § 158-7.1, the City of Fayetteville City Council (the "City Council") held a public hearing on October 11, 2010, regarding the proposed incentives to be provided by the City to the Company, which incentives are set forth in this Agreement; and the City Council found such incentives and this Agreement to be in the public interest and to further the public health, safety and welfare; and

WHEREAS, the Company acknowledges that such incentives are an inducement for the Company to construct and operate the Project in the City and these incentives are necessary for financing the Project.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I: DEFINITIONS; RULES OF CONSTRUCTION

- 1.0.** Definitions. In addition to terms defined elsewhere within this Agreement, for all purposes of this Agreement the following defined terms shall have the following meanings:

“Annual Incentive Payments” means the five (5) annual payments to be made by the City to the Company by March 1st of each year beginning in year 2013 through 2017. Such payments are calculated pursuant to Article IV below.

“Company” means STRATEGIC SOLUTIONS UNLIMITED, INC., and any parent, subsidiary or affiliate entity or any successor entity resulting from its merger with any other entity having an ownership interest in the Project.

"Direct Investment" means the cumulative total as of January 1, 2012 of the increase in taxable ad valorem value of all land, buildings, real property improvements, furniture, fixtures and equipment purchased, constructed, and/or installed by the Company or on its behalf as part of the Project, regardless of the funding source for any such items, over the ad valorem taxable value of such property as listed effective January 1, 2010.

“Property Taxes” means the city-wide ad valorem property tax levied by the City, but not any fire tax district taxes, fire service district taxes, and recreation service district taxes.

"State" means the State of North Carolina.

- 1.1.** Rules of Construction. Unless the context otherwise indicate:

(a) words implying the singular shall include the plural and vice versa, and words implying the masculine gender shall include the feminine and neuter genders as well;

(b) any references to Articles, Sections or Exhibits are references to Articles, Sections and Exhibits of this Agreement;

(c) all references to officers are references to City officers; and

(d) the headings herein are solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect its meanings, construction or effect.

ARTICLE II: FACILITY AND SITE CONSTRUCTION AND RENOVATIONS

- 2.0.** The Company intends to construct the Project in order to enhance the local market availability of conference facilities. The Company intends to make the Direct Investment and create the numbers of jobs as provided in Article III.
- 2.1.** The Company agrees that construction of the Project shall be carried on in material compliance with all applicable State and local laws and regulations. The Parties agree that the provision of water service, waste water services, roads, electric service, and

telephone service to the boundaries of the Project Site are not the responsibility of the City.

ARTICLE III: OBLIGATIONS OF THE COMPANY TO DEVELOP AND OPERATE THE PROJECT

- 3.0.** As consideration for receiving the Annual Incentive Payments described in this agreement, the Company agrees that it will develop and operate the Project in accordance with the following conditions:
- 3.1.** The Developer/Owner of the Project shall be Strategic Solutions Unlimited, Inc., a North Carolina corporation.
- 3.2.** The Project shall consist of the interior demolition, design, construction, and change of occupancy and utilization of 8,567 sq. ft. of an existing structure located at 225 Gray Street, PIN # 0437-87-1651, in the City of Fayetteville, NC, for the purpose of expanding an existing business.
- 3.3.** Construction of the Project commenced on October 19, 2010 and shall be completed by February 4, 2011.
- 3.4.** Once completed, the Project shall provide at least 10 new, full-time jobs per year in the City for a total of at least 50 new full-time jobs by the 2016 certification. The jobs provided shall be at an average wage that is above the median wage for Cumberland County as reported by the North Carolina Department of Commerce through its EDIS data for Community Demographics for Cumberland County for the most recent year available.
- 3.5.** The jobs created by the Project shall, at a minimum, provide partial employer-paid health insurance benefits, retirement benefits, profit sharing benefits, and employer-paid vacation benefits.
- 3.6.** Once completed, the Project shall provide at least five full-time jobs per year for a total of at least 25 full-time jobs for existing Cumberland County residents by 2016 certification.
- 3.7.** Once up-fit is completed and during its first full year of operations, the Project shall consist of a Direct Investment in an amount of least One Million Eighty-Nine Thousand Dollars (\$1,089,000). The Project shall maintain this level of Direct Investment for the first five full years of operation, subject to reasonable and customary reductions for depreciation or depletion as provided in the depreciation schedules as directed or recommended from time to time by the Property Tax Division of the North Carolina Department of Revenue.

ARTICLE IV: OBLIGATIONS OF THE CITY TO MAKE INCENTIVE PAYMENTS

- 4.0.** As consideration for the Company developing and operating the Project in accordance with the conditions stated above, including the conditions that the Company maintains the jobs stated above; maintains the Direct Investment stated above; and timely pays all its assessed Property Taxes and sales taxes, the City shall make Annual Incentive Payments to the Company for five (5) years, on or before March 1 of each year commencing in the year following the first full year the Project has been completed as follows:
- 4.1.** First payment shall be 50% of the amount of Property Taxes actually paid by the Project for its first full year of operations.
- 4.2.** Second payment shall be 50% of the amount of Property Taxes actually paid by the Project for its second full year of operations.
- 4.3.** Third payment shall be 50% of the amount of Property Taxes actually paid by the Project for its third full year of operations.
- 4.4.** Fourth payment shall be 50% of the amount of Property Taxes actually paid by the Project for its fourth full year of operations.
- 4.5.** Fifth payment shall be 50% of the amount of Property Taxes actually paid by the Project for its fifth full year of operations.
- 4.6.** The first full year the Project shall have been completed shall be the calendar year 2012. The first Annual Incentive Payment shall be due on or before March 1, 2013 and it shall be based on the Property Taxes actually paid for 2012.

ARTICLE V: OBLIGATIONS TO CEASE UPON OCCURRENCE OF ANY INCIDENT OF DEFAULT

- 5.0.** If at any time the Project should fail to meet any of the obligations stated in Article III with respect to job creation or Direct Investment, or should the Project or the Company declare bankruptcy, be adjudicated bankrupt, or be determined to be insolvent in any judicial proceeding or by any judicial process, then the Company shall be deemed to be in default of its obligations under this agreement and the obligation of City to make the Annual Incentive Payments shall terminate and City shall have no further obligation to the Project or to the Company. Any Annual Incentive Payments made by the City to the Company prior to the occurrence of any incident of default shall be deemed to have been made in consideration of the Company's having performed its obligations for the year for which such Annual Incentive Payment was made. Company shall not be obligated to return any Annual Incentive Payment it actually received under the terms of this Agreement.

ARTICLE VI: FACILITY AND SITE CONSTRUCTION AND RENOVATIONS

- 6.0.** The Company agrees that construction of the Facility shall be carried on in material compliance with all applicable State and local laws and regulations. The Parties agree that the provision of water service, waste water services, roads, electric service, and telephone service to the boundaries of the Site are not the responsibility of the City.

ARTICLE VII: DETERMINATION OF AMOUNT OF DIRECT INVESTMENT

- 7.0.** The Company shall certify to the City Tax Administrator the Direct Investment as of January of each calendar year of this Agreement, beginning with January of calendar year 2011. Commencing with the certification made during January of calendar year 2012, the City shall make an Annual Incentive Payment, if due to the Company hereunder, by issuance and delivery of its check (or other payment mechanism as agreed by the Parties) to the Company by March 1st of the next calendar year. Each Annual Incentive Payment shall be subject to and contingent upon the Company having paid all Property Taxes applicable to all its taxable property.
- 7.1.** The Company shall certify its Direct Investment as required above by providing accurate documentation as a supplement to its annual tax listing forms submitted to the City Tax Administrator, which supplemental information shall be reasonably satisfactory to the Tax Administrator, showing the initial ad valorem taxable value of the Direct Investment (including operating leases even if listed in the name of a party other than Company) as of the tax listing date applicable to such property. With respect to the Direct Investment, the City will use the depreciation schedules as directed or recommended from time to time by the Property Tax Division of the North Carolina Department of Revenue.

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- 8.0.** The Company shall certify the number of jobs created, the wages paid, and the benefits offered to employees to the City's Internal Auditor each year at the same time as the certification of Direct Investment is made to the City Tax Administrator. The Company shall supplement this certification with documentation in the form of reports required to be filed for state or federal labor, employment, income tax purposes or with any other documentation satisfactory to the City's Internal Auditor.

ARTICLE IX: DISCLAIMER OF WARRANTIES

- 9.0.** The Company acknowledges that the City has not designed the Project, or supplied any plans or specifications with respect thereto and that the City:
- (a) is not a manufacturer of, nor dealer in, any of the component parts of the Project,
 - (b) has not made any recommendation, given any advice nor taken any other action with

respect to the choice of any supplier, vendor or designer of, or any other contractor with respect to, the Project or any component part thereof or any property or rights relating thereto, or to any action taken or to be taken with respect to the Project or any component part thereof or any property or rights relating thereto at any stage of the construction thereof,

(c) has not at any time had physical possession of the Project or any component part thereof or made any inspection thereof (other than in its normal course of inspections, if any, as such relate to construction of any facility in the City) or any property or rights relating thereto, and

(d) has not made any warranty or other representation, express or implied, that the Project or any component part thereof or any property or rights relating thereto (i) will not result in or cause injury or damage to persons or property, (ii) has been or will be properly designed, or will accomplish the results which the Company intends therefore, or (iii) is safe in any manner or respect.

- 9.1. The City makes no express or implied warranty or representation of any kind whatsoever with respect to the Project or any component part thereof, including but not limited to any warranty or representation with respect to the merchantability or the fitness or suitability thereof for any purpose, and further including the design or condition thereof; the safety, workmanship, quality or capacity thereof; compliance thereof with the requirements of any law, rule, specification or contract pertaining thereto; any latent defect; the Project's ability to perform any function; or any other characteristic of the Project; it being agreed that the Company is to bear all risks relating to the Project, the completion thereof or the transactions contemplated hereby and the Company hereby waives the benefits of any and all implied warranties and representations of the City.
- 9.2. The provisions of this Article shall survive this Agreement's expiration.

ARTICLE X: EXPIRATION OF AGREEMENT

- 10.0. This Agreement shall expire, without further action on the part of either the Company or the City, upon payment in full of any amounts due from the City to the Company pursuant to, and in accordance with, the terms hereof.

ARTICLE XI: TEMPORARY DELAY IN DIRECT INVESTMENT

- 11.0. Notwithstanding anything herein to the contrary, if the Company shall be prevented or delayed from making the Direct Investment, by reason of a:
- (a) Government moratorium;
 - (b) Delay in obtaining any governmental or quasi-governmental approvals, permits or certificates, despite reasonable efforts by the Company to obtain same;

(c) Act of God, including but not limited to hurricane, tornado, snowstorm, windstorm, earthquake or flood, fire or other extreme weather conditions or other casualty;

(d) Strike, lockout or a labor dispute involving entities other than the Company which causes the Company an inability to obtain labor or materials;

(e) Delay in funding any incentive to or for the benefit of the Company, other than the Annual Incentive Payments; or

(f) Any other event, other than normal business exigencies, which is beyond the reasonable control of the Company;

then the time within which the Company shall be required hereunder to make the Direct Investment hereunder shall be equitably adjusted to reflect the effect of such event. The Parties shall negotiate in good faith to make an equitable adjustment in such period, however, if the Parties cannot in good faith reach an agreement as to such adjustment and at the option of either party, the Parties agree to submit this issue to binding arbitration on an expedited basis.

ARTICLE XII: JOBS & INVESTMENT TAX CREDITS

- 12.0.** The Parties acknowledge that under current North Carolina law the Company or the Project may be eligible for credits for creating jobs and credits for investing in business property in North Carolina against its North Carolina corporate income tax or franchise tax pursuant to North Carolina General Statutes Section 105-129.80, *et seq.*, provided that the Company meets the requirements of the statutes. The Company understands that the City is not responsible for providing these credits.

ARTICLE XIII: ASSIGNMENT

- 13.0.** Neither party shall transfer or assign any interest in or obligation under this Agreement without the prior express written consent of the other; provided, this Agreement may be assigned by the Company to any parent, subsidiary or affiliate of the Company, or to any person or entity to which the operations of the Project are transferred so long as such operations are continued substantially as contemplated herein for the term hereof, without the City's consent.

ARTICLE XIV: STATUTORY AUTHORITY; OBLIGATION OF CITY

- 14.0.** Both the Company and the City acknowledge and agree that any and all monies appropriated and expended by the City for local economic development incentives, as provided in this Agreement, are for a bona fide public purpose and are expended in good faith reliance on North Carolina General Statutes § 158-7.1. Both Parties further acknowledge and agree that this Agreement, to the extent allowed by law, shall be considered a continuing contract and shall be subject to, and controlled by, the provisions of North Carolina General Statutes §160A-17. If for any reason it is found by a court of

competent jurisdiction by final judgment that North Carolina General Statutes § 160A-17 does not legally apply to this Agreement, then in such event there shall be no liability on behalf of the City for the failure of this contract to be continuing in nature.

ARTICLE XV: MISCELLANEOUS

15.0. Governing Law; Venue. The Parties intend that this Agreement shall be governed by the law of the State of North Carolina without regard to the conflict of laws provisions thereof and that exclusive venue as to any dispute arising hereunder shall be in the State of North Carolina.

15.1. Notices.

(a) Any communication required or permitted by this Agreement must be in writing except as expressly provided otherwise in this Agreement; and

(b) All communications required or permitted hereunder may be delivered personally, or sent by certified mail, return receipt requested, or by a nationally recognized overnight courier to the following addresses, unless the parties are subsequently notified of any change of address:

If to the Company, to: Chief Financial Officer
Strategic Solutions Unlimited, Inc.
128 Maxwell St.
Fayetteville, NC 28301

If to the City, to: City Manager
City Hall
433 Hay St.
Fayetteville, N.C. 28301

15.2. Severability. If any provision of this Agreement shall be determined to be unenforceable, that shall not affect any other provision of this Agreement.

15.3. Entire Agreement; Amendments. This Agreement, including any exhibits which may be attached, which are incorporated herein and made a part hereof, constitutes the entire contract between the Parties. This Agreement shall not be changed except in writing signed by both Parties.

15.4. Binding Effect. Subject to the specific provisions of this Agreement, this Agreement shall be binding upon and inure to the benefit of and be enforceable by the Parties and their respective successors and assigns.

15.5. Liability of Officers and Agents. No officer, agent or employee of the City or the Company shall be subject to any personal liability or accountability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents, or employees shall be deemed to execute

such documents in their official capacities only, and not in their individual capacities. This Section shall not relieve any such officer, agent or employee from the performance of any official duty provided by law.

- 15.6. Counterparts.** This Agreement shall be executed in several counterparts, including separate counterparts. Each shall be an original, but all of them together constitute the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in their corporate and governmental names, respectively by their duly authorized officers, all as of the dates indicated with the signature for each.

(affix seal)

STRATEGIC SOLUTIONS UNLIMITED, INC.
by:

(Vice)President

Date Signed: _____

Attest:

(Asst.) Secretary

CITY OF FAYETTEVILLE, NORTH CAROLINA
by:

Dale Iman, City Manager

Date Signed: _____

Attest:

Jennifer Penfield, Deputy City Clerk

This instrument has been pre-audited in the manner required
by the Local Government Budget and Fiscal Control Act .

Lisa Smith, Chief Financial Officer for the City of Fayetteville, North Carolina

Approved for legal sufficiency.

Karen McDonald, City Attorney

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Kristoff Bauer, Assistant City Manager
DATE: March 28, 2011
RE: **Formation of a Municipal Service District to provide drainage improvements necessary for the Embassy Suites project on Lake Valley Drive and Budget Ordinance Amendment 2011-10 funding the drainage project.**

THE QUESTION:

Should the Council authorize the formation of a Municipal Service District ("MSD") and fund drainage improvements necessary to support the construction of the Embassy Suites project on Lake Valley Drive consistent with the MBM Hospitality, LLC., Economic Development Incentive Agreement.

RELATIONSHIP TO STRATEGIC PLAN:

Goal 1 - Greater Tax Base Diversity - Strong Local Economy

BACKGROUND:

After a public hearing on September 13, 2010, the Council approved a package of economic development incentives to support the development of an Embassy Suites Hotel and Convention center. That incentive package included a low interest loan of up to \$500,000 to support drainage improvements through the City's "Drainage - Revolving Loan Program (Council policy 125.1)." That program relies on property tax repayment mechanisms such as special assessments or a service district.

State law grants specific authority for the formation of a Municipal Service District ("MSD") to support drainage improvements and services in excess of that provided as a basic service by the city. Forming a MSD requires:

- The development of a service plan (attached);
- Thirty day notice to impacted properties (attached);
- A public hearing; and
- The adoption of a resolution establishing the MSD (attached).

State law also allows the services supported by MSD formation and funding to be provided by the municipality directly, by the municipality contracting with a third party, or a combination thereof. In this case, the Lake Vally MSD formed by the City will contract with MBM Hospitality, LLC., to provide the required drainage services.

MBM Hospitality, LLC., has moved forward with project construction, including initiating the required drainage improvements, but the funding promised through this program is a necessary part of the final financial package for the overall program and is critically needed to continue construction.

ISSUES:

The notice area as indicated by the map include in the notice ad (attached) is much larger than the proposed MSD area as described in the map attached to the MSD formation resolution. Due to the design of the drainage system which crosses Lake Valley Drive and some unusual split parcels, the initial MSD area was unclear, so staff purposefully over noticed the MSD area. This led to communications with property owns and additional documentation related to easements and ownership. As a result, the recommended MSD area has been revised and is indicated by a three lot hatched area on the map attached to the MSD formation resolution.

The tax rate for the MSD is based upon estimated taxable valuation after the completion of the proposed Embassy Suite project and at (\$0.345) on each one hundred dollars (\$100.00) value of

property is estimated to pay back the \$500,000 in project funding over a 10 year period. This rate may need to be adjusted based upon actual taxable valuation upon project completion.

Budget Ordinance Amendment 2011-10 will appropriate \$500,000 from designated General Fund fund balance to transfer to the newly created Lake Valley Drive Municipal Service District. The proceeds from the MSD tax will be used to repay the General Fund.

BUDGET IMPACT:

The City had reserved \$1 million to fund the Drainage - Revolving Loan Program. These funds show up in the City's designated general fund balance. The proposed budget amendment would authorize the transfer of \$500,000 from that \$1 million to the MSD and the MSD would then be authorized to expend those funds to secure the drainage services identified in the MSD formation plan. This would result in the City's designated fund balance being reduced by \$500,000.

OPTIONS:

After holding the public hearing, Council has the following options:

1. Adopt the resolution forming the Lake Valley MSD, adopt budget amendment ordinance, and authorize the City Manager to execute any documents or agreements necessary to provide drainage services (Recommended)
2. Defer action to a date certain and ask any clarifying questions.

RECOMMENDED ACTION:

Staff recommends that Council move to adopt the resolution attached forming the Lake Valley Drive MSD, adopt budget ordinance amendment 2011-10, and authorize the City Manager to execute necessary agreements to provide the services funded by the MSD.

ATTACHMENTS:

Lake Valley MSD Service Plan
Drainage Plan Map
MSD Formation Notice
Lake Valley Drive MSD Formation
MSD Map
Budget Amendment Funding MSD



STATEMENT AND PLAN
FOR A LAKE VALLY DRIVE DRAINAGE
MUNICIPAL SERVICE DISTRICT

PREPARED FOR THE CITY OF FAYETTEVILLE PURSUANT TO THE REQUIREMENTS
OF THE NORTH CAROLINA MUNICIPAL SERVICE DISTRICT ACT OF 1973.



CITY OF FAYETTEVILLE MUNICIPAL SERVICE DISTRICT STATEMENT AND PLAN

I. INTRODUCTION

Article 23 of North Carolina General Statutes 160A sets forth requirements and conditions for the establishment of a Municipal Service District. The formation of a Municipal Service District to support a drainage project is specifically authorized by G.S. § 160A-536(a)(3) which provides that the City Council may by resolution establish a district where property taxes will be levied in addition to those levied throughout the community in order to finance, provide or maintain for the district certain allowable services, facilities, or functions in addition to or to a greater extent than those provided within the entire City. The purpose of this Statement and Plan for a Municipal District is to comply with the statutory requirements so that the City Council, after holding a public hearing, may consider establishing a Municipal Service District in the area of Lake Valley Drive in Fayetteville for the purpose of improving drainage conditions.

For this consideration, this report includes the following required information:

- (a) Map of proposed district showing the proposed boundaries;
- (b) Statement showing that the proposed district is in need of one or more services, facilities, or functions permitted under the purposes of a Municipal Service District; and,
- (c) Plan providing for one or more of the services allowed under the purposes of a Municipal Service District.

II. DISTRICT BOUNDARIES

The proposed district boundaries encompass an area of 10.2 acres on the east side of Lake Valley Drive, as shown in Attachment A.

III. NEED FOR SERVICES

A. CURRENT CONDITIONS

The subject property, comprising 10.2 acres, is encumbered by the outfall of an existing drainage system collecting and conveying surface water from the adjacent All American Freeway. This outfall has created an artificial wetland area and the size and location of that area now significantly restricts the development of the site. The City's current level of drainage services does not include wetland mitigation unrelated to public facilities. The City's surface water management program focuses on flooding mitigation and treating runoff from streets and other public facilities.

B. PROPOSED PROJECT

The project consists of the development a multiuse parcel, including the Embassy Suites Hotel, a future motel and a future restaurant, and is located on the east side of Lake Valley Drive; west of the All-American Expressway, and northwest of Skibo Road. Developing the project will require the diverting and conveyance of existing drainage that discharges on the site as well as new surface water drainage from planned improvements under Lake Valley Drive to a parcel on the west side of that road. Detention and treatment facilities will be developed to satisfy water



quality standards for the existing and increased surface water runoff from planned improvements.

C. DRAINAGE SERVICES

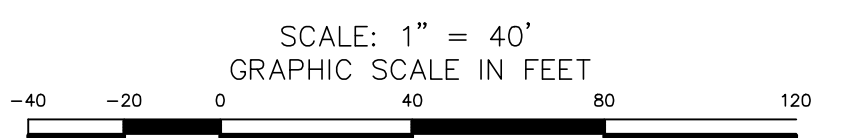
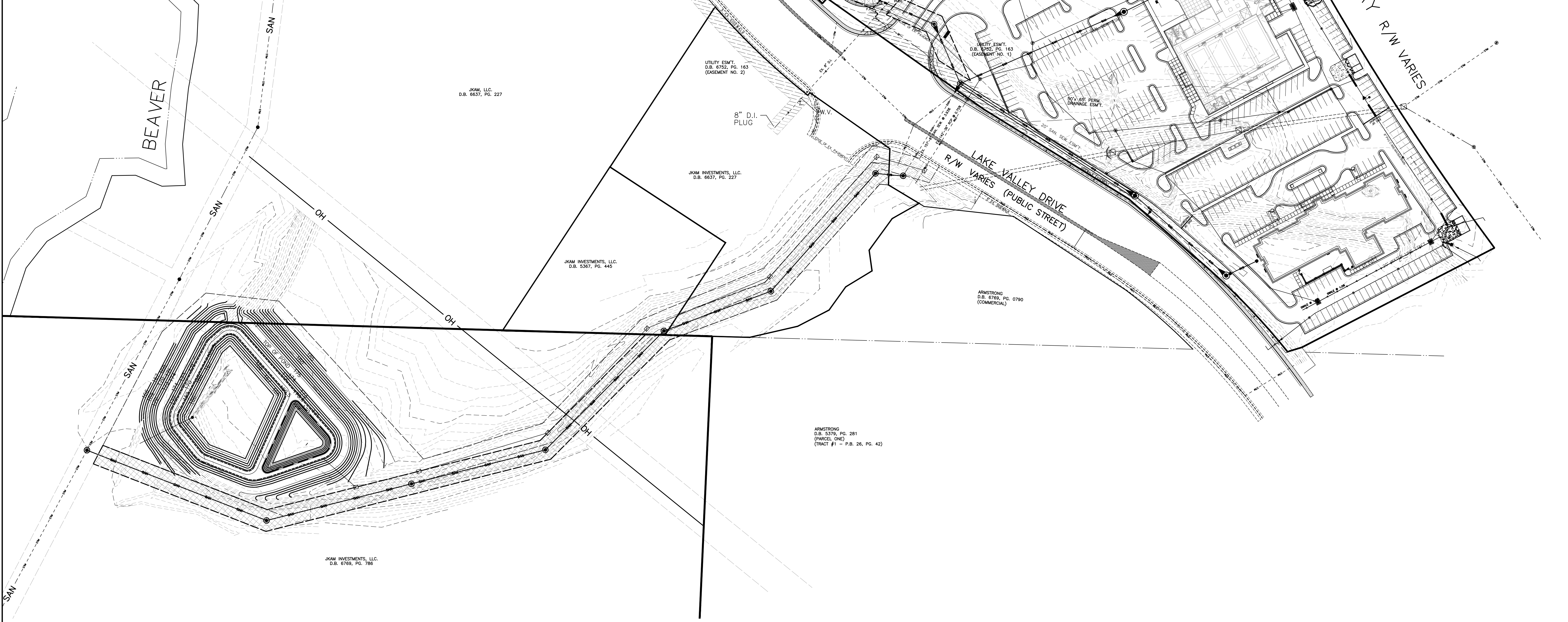
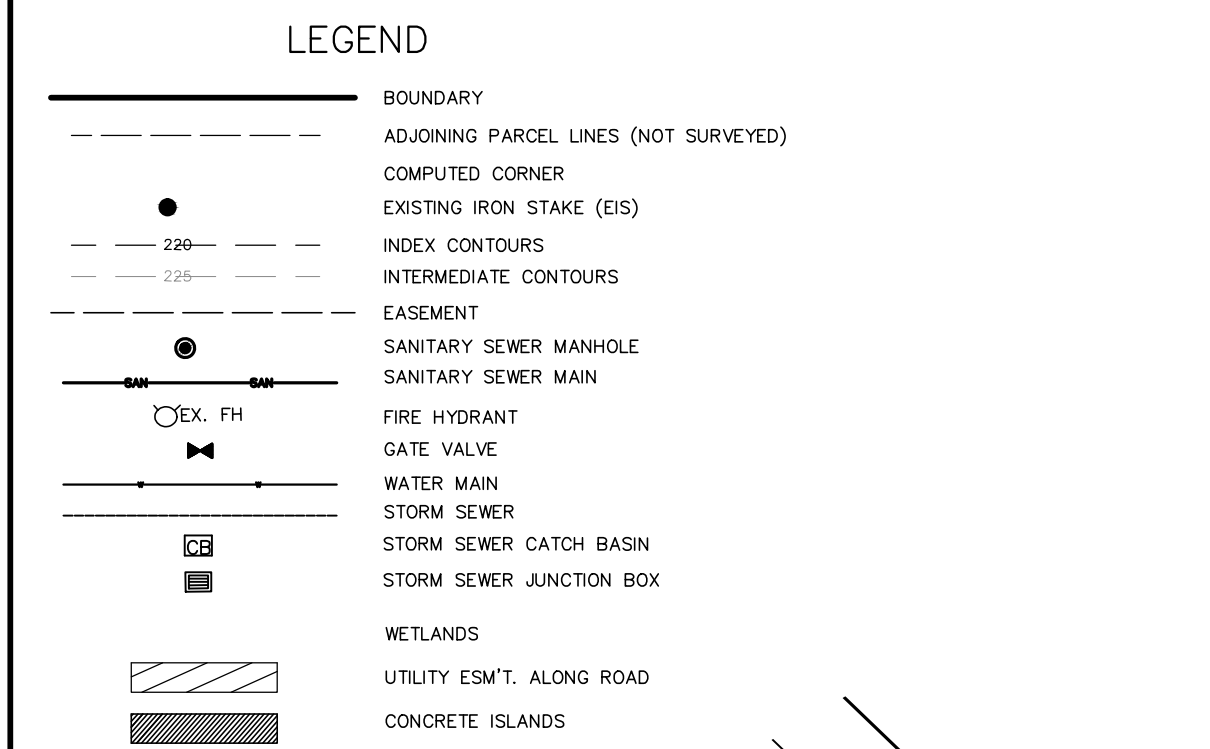
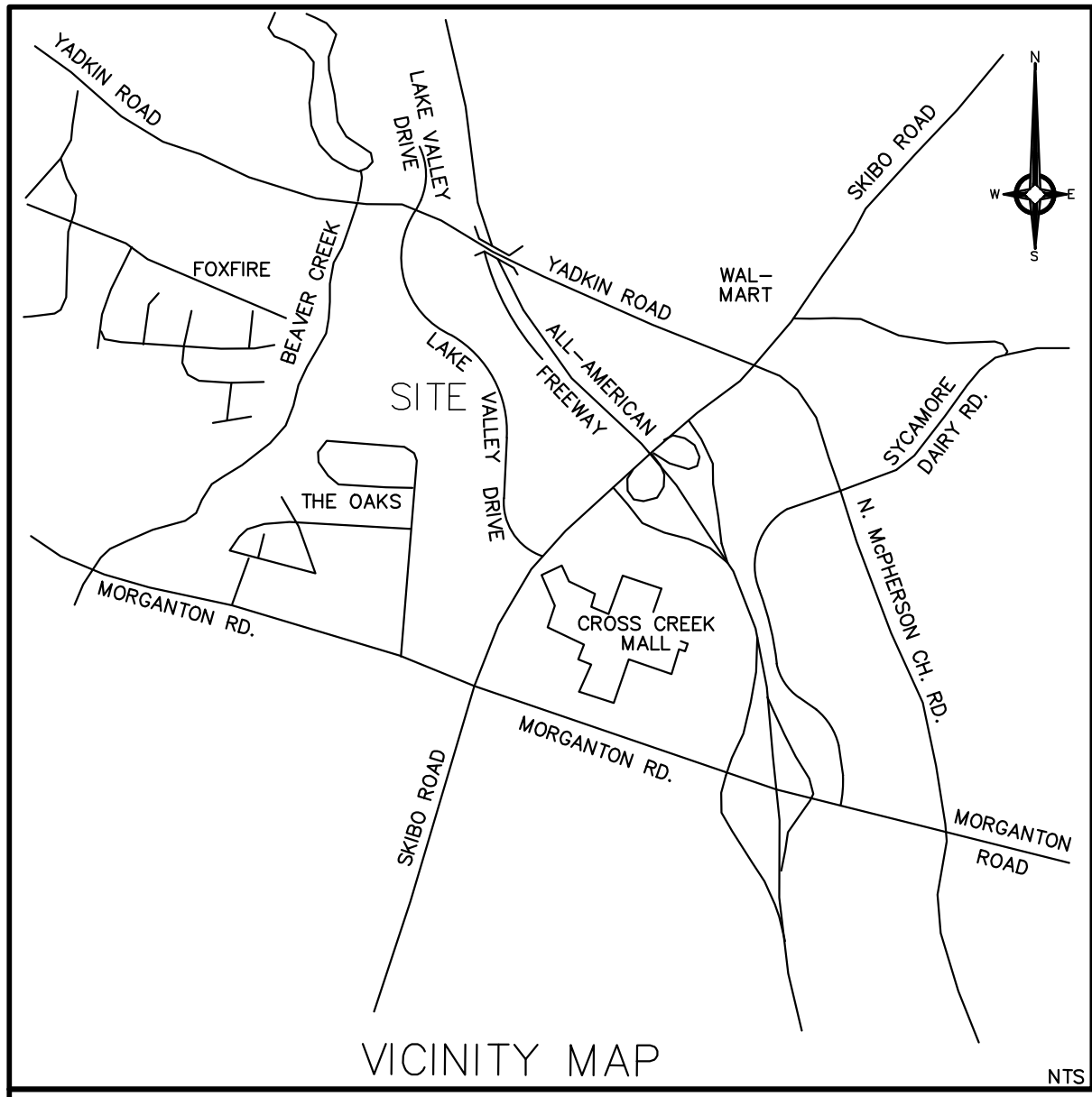
The drainage services to be supported by the proposed MSD include:

1. The relocation of the current surface water outfall to the property on the west side of Lake Valley Drive;
2. Collecting and conveying surface water generated on site under Lake Valley Drive;
3. Mitigating any wetland impacted by the project; and
4. The detention, treatment, and discharge of surface water in conformance with environmental regulations.

D. PLAN FOR PROVIDING SERVICES

Section 160 A – 536 (d) of the General Statutes provides that the services to be supported by a Municipal Service District can be provided by contracting for those facilities, functions, or development activities with a private party. In this case, MBM Hospitality, LLC., has contracted with _____ to design the facilities and has already undertaken to secure the necessary permits and undertake the construction of required improvements. The Lake Valley Drive MSD will contract with MBM Hospitality to provide the required services for the cost of \$500,000.

Consistent with state law, the expenditure of those funds will be accounted for to ensure that they are expended consistent with this plan.



ENGINEERS
PLANNERS
SURVEYORS
MOORMAN, KIZER & REITZEL, INC.
MOORMAN, KIZER & REITZEL, INC. 115 BROADFOOT AVE. FAYETTEVILLE, N.C.
PHONE (910) 484-5191 FAX (910) 484-0388 LICENSE # F-0106

REVISIONS		DATE	BY
		1/27/10	CB
		5/20/10	BGB
		6/3/10	BGB
		9/14/10	CB

PROJECT #	DATE	APPROVED BY
08014	2/	

ALL CONTRACTORS AND SUB-CONTRACTORS SUBMITTING BIDS ON THIS PROJECT SHALL BE REQUIRED TO RECEIVE THE ENTIRE SET OF PLANS AND SPECIFICATIONS ARE NOT ALLOWED FOR BIDDING PROJECTS.

QualityFi

isomham
DESIGN GROUP, P.A.

EROSION CONTROL PLAN
PHASE 1 (OFF-SITE) & PHASE 2

EMBASSY

SHEET

OF

PUBLIC HEARING BY THE FAYETTEVILLE CITY COUNCIL

A public hearing will be held to hear comments on the formation of a Lake Valley Drive Municipal Service District (MSD).

MONDAY, MARCH 28, 2011, 7 P.M.
CITY COUNCIL CHAMBER AT 433 HAY STREET

PURPOSE: The Fayetteville City Council proposes to form a Lake Valley Drive MSD to support a drainage project. The MSD would establish a tax on property owners that would fund improvements of drainage conditions in the area.

Article 23 of North Carolina General Statutes 160A sets forth requirements and conditions for the establishment of a Municipal Service District. The formation of a Municipal Service District to support a drainage project is specifically authorized by G.S. § 160A-536(a)(3) which provides that the City Council may by resolution establish a district where property taxes will be levied in addition to those levied throughout the community in order to finance, provide or maintain for the district certain allowable services, facilities, or functions in addition to or to a greater extent than those provided within the entire City.

A map of the proposed MSD is published beside this public hearing notice and has been mailed, along with a letter and meeting notice, to affected property owners. A copy of the report for the Municipal Service District is available in the City Clerk's office for inspection.

The Fayetteville City Council will hold a public hearing on this project at 7 p.m. in the Council Chamber, 1st Floor, City Hall, 433 Hay Street, Fayetteville, N.C. on Monday, March 28, 2011. The Council invites all interested parties to attend and present their views.

PUBLIC HEARING POLICY: Individuals wishing to speak at a public hearing must register in advance with the City Clerk. The Clerk's Office is located in the Executive Offices, Second Floor, City Hall, 433 Hay Street, and is open during normal business hours. Anyone desiring to speak may also sign up in advance by phone at 910-433-1989, by fax at 910-433-1980 or by e-mail at [HYPERLINK "mailto:cityclerk@ci.fay.nc.us"](mailto:cityclerk@ci.fay.nc.us) cityclerk@ci.fay.nc.us. Citizens may also register to speak immediately before the public hearing by signing in with the City Clerk in the Council Chamber between 6:30 p.m. and 7 p.m.

If you have questions, please contact Nancy Robles at [HYPERLINK "mailto:nrobles@ci.fay.nc.us"](mailto:nrobles@ci.fay.nc.us) nrobles@ci.fay.nc.us or call (910) 433-1990.



RESOLUTION NO. _____

**A RESOLUTION ESTABLISHING AND CREATING THE
LAKE VALLEY ROAD MUNICIPAL SERVICE DISTRICT
IN FAYETTEVILLE, NORTH CAROLINA**

WHEREAS, Chapter 160A, Article 23 of the North Carolina General Statutes, entitled Municipal Service Districts, authorizes cities and towns within North Carolina, and therefore the City of Fayetteville, to define service districts to finance, provide, or maintain for such districts one or more services, facilities, or functions in addition to or to a greater extent than those financed, provided, or maintained for the entire city; and

WHEREAS, said statutes further provide that a city may define a service district specifically for the purpose of providing drainage services; and

WHEREAS, the development of the Embassy Suites project requires drainage improvements that are greater than provided by the general tax base in the City; and

WHEREAS, the City has approved an Economic Development Incentive Agreement with _____ committing to providing a higher level of drainage services supported by the formation of a Municipal Service District (“MSD”); and

WHEREAS, NCGS Chapter 160A-536(a)(3) specifically authorizes the creation of a MSD to support the provision of Drainage services; and

WHEREAS, a map of the proposed district showing its proposed boundaries, a copy of which is attached hereto and incorporated by this reference herein; a statement showing that the proposed district meets the standards set out in NCGS 160A-537, and a plan for providing in the district one or more of the services listed in NCGS 160A-536 has been created; all of which has been available and plan to have been incorporated into a report which has been available for public inspection in the office of the City Clerk for four (4) weeks prior to the public hearing on the matter of the establishment of the service district; and

WHEREAS, the City Council of the City of Fayetteville has caused notice of said public hearing to be given in accordance with state law and having conducted said public hearing on the 28th day of March, 2011, and the City Clerk having certified to the City Council that the notice of the hearing has been completed in conformity with NCGS 160A-537(c);

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, NORTH CAROLINA that the City of Fayetteville has fully complied with the requirements of Chapter 160A, Article 23 and determines the same as a fact; and,

BE IT FURTHER RESOLVED that the Lake Valley Drive MSD is hereby established and created in accordance with the map attached hereto as Exhibit A.

BE IT FURTHER RESOLVED that the property tax to be levied within the Lake Valley Drive MSD shall be established at a rate of (\$0.29) on each one hundred dollars (\$100.00) value of property subject to taxation located within the service district, excluding personal property of public service corporations, which levy shall be in excess of and in addition to the rate charged for tax by the municipality in other areas of the City, including the municipal service district; and,

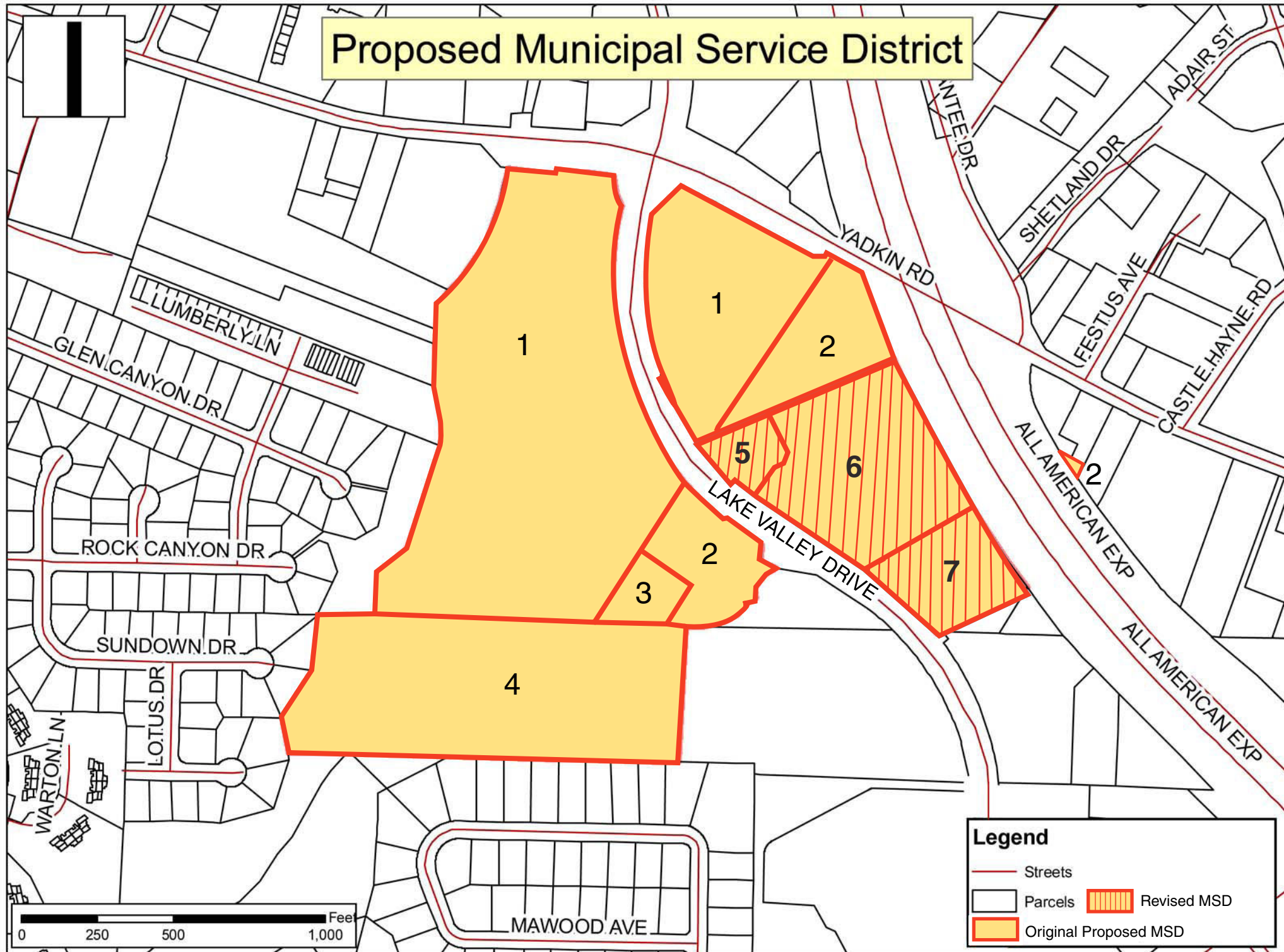
BE IT FURTHER RESOLVED that the creation of the Lake Valley Drive MSD, and the ad valorem tax levied therein, shall become effective July 1, 2011 and shall continue until June 30, 2021, at which time it shall expire, unless, the City Council acts before that time to extend the ad valorem tax within the Lake Valley Drive MSD consistent with applicable statutes, regulations and laws then in effect.

Adopted and approved this ____ day of March, 2011.

Anthony G. Chavonne
Mayor

Attest:

Proposed Municipal Service District



2010-2011 BUDGET ORDINANCE AMENDMENT
CHANGE 2011-10

BE IT ORDAINED BY THE CITY COUNCIL OF FAYETTEVILLE, NORTH CAROLINA:

That the City of Fayetteville Budget Ordinance adopted June 28, 2010 is hereby amended as follows:

Section 1. It is estimated that the following revenues and other financing sources will be available during the fiscal year beginning July 1, 2010 and ending June 30, 2011, to meet the appropriations listed in Section 2.

<u>Item</u>	<u>Listed As *</u>	<u>Revision</u>	<u>Revised Amount</u>
<u>Schedule A: General Fund</u>			
Fund Balance Appropriation	\$ 7,601,862	\$ 500,000	\$ 8,101,862
All Other General Fund Revenues and OFS	132,859,629	-	132,859,629
Total Estimated General Fund Revenues and Other Financing Sources	<u>\$ 140,461,491</u>	<u>\$ 500,000</u>	<u>\$ 140,961,491</u>

Schedule L: Lake Valley Drive Municipal Service District

Interfund Transfer	\$ -	\$ 500,000	\$ 500,000
Total Estimated Lake Valley Drive Municipal Service District Revenues and Other Financing Sources	<u>\$ -</u>	<u>\$ 500,000</u>	<u>\$ 500,000</u>

Section 2. The following amounts are hereby appropriated for the operations of the City Government and its activities for the fiscal year beginning July 1, 2010, and ending June 30, 2011, according to the following schedules:

<u>Item</u>	<u>Listed As</u>	<u>Revision</u>	<u>Revised Amount</u>
<u>Schedule A: General Fund</u>			
Other Appropriations	\$ 21,406,831	\$ 500,000	\$ 21,906,831
All Other General Fund Departments	119,054,660	-	119,054,660
Total Estimated General Fund Expenditures	<u>\$ 140,461,491</u>	<u>\$ 500,000</u>	<u>\$ 140,961,491</u>

Schedule L: Lake Valley Drive Municipal Service District

Total Estimated Lake Valley Drive Municipal Service District Expenditures	<u>\$ -</u>	<u>\$ 500,000</u>	<u>\$ 500,000</u>
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* Reflects presumed adoption of Budget Ordinance Amendment 2011-9, also presented on March 28, 2011.

Adopted this 28th day of March, 2011.

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Karen M. McDonald, City Attorney
DATE: March 28, 2011
RE: **Settlement Agreement for Festival Park Plaza building and Budget Ordinance Amendment 2011-9**

THE QUESTION:

N/A

RELATIONSHIP TO STRATEGIC PLAN:

N/A

BACKGROUND:

Fayetteville-Cumberland County Chamber of Commerce and City of Fayetteville v. James P. Baker, Jr.; Cumberland County Superior Court Case No. 10 CVS 9290

The City and the Chamber have negotiated a settlement of the above lawsuit (the "Lawsuit") with Jim Baker ("Baker"). The key terms of this settlement are as follows:

1. The City will pay Baker \$500,000 for his one-third (1/3) ownership interest in Festival Park Plaza Office, LLC ("FPPO") on or before March 31, 2011. On or before that date, Baker will convey his ownership interest in FPPO to the Chamber, the City's agent in the Festival Park Plaza transaction. This transfer will take place simultaneously with the transfer of the other remaining 1/3 interest in FPPO to the Chamber as part of a settlement of the Schoollink lawsuit. As a result of these transactions, the Chamber, as the City's agent, will own 100% of FPPO.
2. The City and the Chamber will dismiss the Lawsuit, with prejudice; the parties will release each other from any potential present and/or future claims associated with the Lawsuit, the settlement, Festival Park Plaza transaction, or related matters that arise out of events occurring up to the date that the settlement agreement is signed.
3. The City and the Chamber will indemnify Baker against any action or collection on the personal guaranty he provided to Bank of America in connection with the Festival Park Plaza loan (the "Loan"); the City and Chamber will also negotiate in good faith for Baker's release from his personal guaranty in the event the Loan is refinanced. *(Note: because the income provided by the City's Master Lease is sufficient to cover the debt service and operating expenses on this Loan, there is no reason to believe that Bank of America will seek to collect on Baker's personal guaranty.)*
4. The City and the Chamber agree that neither they nor their employees, officials, or representatives will make any disparaging, defamatory, or otherwise damaging remarks (oral or written) about Baker or any entity owned by him, including The Lundy Group. Baker agrees to the same with respect to the City and the Chamber.
5. Upon execution of the settlement agreement, Baker will resign as manager of FPPO. The manager of FPPO is responsible for virtually all activities of the company. It is therefore necessary for the City and the Chamber to identify a new manager for FPPO, preferably in the near future.

6. A condition of execution of the documents will be for Baker to work with the new manager of FPPO to account for all monies and other assets held by FPPO and otherwise do what is necessary to facilitate a smooth management transition.

City of Fayetteville v. Schoollink, Inc.; Cumberland County Superior Court Case No. 10 CVS 7173

The City has also negotiated a settlement of the above lawsuit (the "Lawsuit") with Schoollink, Inc. ("Schoollink"). In the Lawsuit, the City alleged that Schoollink defaulted on its lease for space in the Festival Park Plaza building. This required the City to make payments under the Master Lease, entitling it to monetary damages. The key terms of this settlement are outlined below.

Please note: the owners of Schoollink are also the owners of 3Aaab, LLC ("3Aaab"). 3Aaab owns a third one-third (1/3) share in Festival Park Plaza Office, LLC ("FPPO"). The other two shares are currently owned by the Fayetteville-Cumberland County Chamber of Commerce (the "Chamber") and Jim Baker ("Baker").

Key Terms

1. 3Aaab will convey its one-third (1/3) interest in FPPO to the Chamber on or before March 31, 2011. The transfer is set to occur simultaneously with the transfer of Baker's interest in the settlement of his lawsuit. When the transfers are complete, the Chamber, as the City's agent, will own 100% of FPPO.
2. The City will dismiss the Lawsuit, with prejudice; the parties will release one another from any present or future claims related to the Lawsuit, Festival Park Plaza, the settlement, or related matters that arise out of events occurring up to the date the settlement agreement is signed.
3. The City will indemnify 3Aaab and its owners against any action or collection on the personal guaranties they provided to Bank of America in connection with the Festival Park Plaza loan (the "Loan"); the City will also negotiate in good faith for the release of 3Aaab and its owner from these guaranties in the event the Loan is refinanced. *(Because the income provided by the City's Master Lease is sufficient to cover the debt service and operating expenses on this Loan, there is no reason to believe that Bank of America would seek to collect on any of these guaranties.)*
4. The City and Schoollink agree that neither they nor their employees, officials, agents, or representatives will make any disparaging, defamatory, or otherwise damaging remarks (oral or written) about one another regarding the Lawsuit, Festival Park Plaza, the settlement, or related matters.

Budget Ordinance Amendment

Budget Ordinance Amendment 2011-9 will appropriate \$500,00 from General Fund fund balance to fund the settlement agreement for Festival Park Plaza.

ISSUES:

N/A

BUDGET IMPACT:

See background information

OPTIONS:

- Accept the settlement agreements and adopt the budget ordinance amendment.
- Reject the settlement agreements and budget ordinance amendment and continue with the litigation.

RECOMMENDED ACTION:

Consider the settlement agreements and budget ordinance amendment and authorize the City Manager and Chief Financial Officer, with advice from the City Attorney, to execute on behalf of the City all the necessary documents consistent with the above terms.

ATTACHMENTS:

Budget Ordinance Amendment 2011-9

2010-2011 BUDGET ORDINANCE AMENDMENT
CHANGE 2011-9

BE IT ORDAINED BY THE CITY COUNCIL OF FAYETTEVILLE, NORTH CAROLINA:

That the City of Fayetteville Budget Ordinance adopted June 28, 2010 is hereby amended as follows:

Section 1. It is estimated that the following revenues and other financing sources will be available during the fiscal year beginning July 1, 2010 and ending June 30, 2011, to meet the appropriations listed in Section 2.

<u>Item</u>	<u>Listed As</u>	<u>Revision</u>	<u>Revised Amount</u>
<u>Schedule A: General Fund</u>			
Fund Balance Appropriation	\$ 7,101,862	\$ 500,000	\$ 7,601,862
All Other General Fund Revenues and OFS	132,859,629	-	132,859,629
Total Estimated General Fund Revenues and Other Financing Sources	<u>\$ 139,961,491</u>	<u>\$ 500,000</u>	<u>\$ 140,461,491</u>

Section 2. The following amounts are hereby appropriated for the operations of the City Government and its activities for the fiscal year beginning July 1, 2010, and ending June 30, 2011, according to the following schedules:

<u>Item</u>	<u>Listed As</u>	<u>Revision</u>	<u>Revised Amount</u>
<u>Schedule A: General Fund</u>			
Community Development	\$ 1,411,895	\$ 500,000	\$ 1,911,895
All Other General Fund Departments	138,549,596	-	138,549,596
Total Estimated General Fund Expenditures	<u>\$ 139,961,491</u>	<u>\$ 500,000</u>	<u>\$ 140,461,491</u>

Adopted this 28th day of March, 2011.

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Karen M. McDonald, City Attorney
DATE: March 28, 2011
RE: **Policy No. 115.11, Replacing a Vacancy on the City Council**

THE QUESTION:

Does the attached policy reflect Council's interest regarding vacancies on City Council.

RELATIONSHIP TO STRATEGIC PLAN:

More Efficient City Government – Cost Effective Services Delivery

BACKGROUND:

City Council is required by State Statute to fill a vacancy on the Council. On September 25, 2000, City Council adopted Policy 115.11 which specifies that the vacancy be filled within 30 days. After filling the vacancy created by former Council Member Meredith's recent election to the State Senate, Council Members expressed an interest in revising its policy. At the work session on March 7, 2011, Council Member Mohn proposed the attached revisions for consideration and incorporation into Council's policy. His revisions are attached for your consideration and incorporation into Council's existing policy.

ISSUES:

Whether the proposed revision meets Council's interest.

BUDGET IMPACT:

N/A

OPTIONS:

- Accept the revision.
- Reject the revision and do not make any changes to the policy.
- Provide staff with additional direction regarding revision to the policy.

RECOMMENDED ACTION:

Consider the proposed revision to City Council Policy 115.11.

ATTACHMENTS:

Proposed Policy No. 115.11

PROPOSED REVISION

SUBJECT – CITY COUNCIL Replacing a Vacancy on the City Council	Number 115.11	Revised	Effective Date 9-25-00	Page 1 of 1
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I. Purpose

The purpose of this policy is to provide guidance to the City Council when ~~if~~ a vacancy ~~shall~~ occurs on the City Council mandating a replacement pursuant to N.C.G.S. § 160A-63.

II. Selection Timeline

_____The City Council shall make the selection within 30 days of the event mandating the replacement. If the 30th day falls on a Saturday, Sunday, or a holiday, then the time shall be extended until the following Monday or the next regular meeting of the City Council.

II. Definitions

_____The term event as used in this policy shall mean a vacancy occurring on the City Council either by:

- (1) A death of a sitting member of the City Council;
- (2) The formal resignation of a sitting member of the City Council;
- (3) A certified medical professional declaring a sitting member of the City Council unfit/unable to perform their duties on the City Council (incapacitated); or
- (4) Any other legal disqualifications of a sitting member of the City Council allowed under North Carolina General Statutes, i.e., moving out of the district they were elected in.

_____The event mandating the replacement will be the effective date of the vacancy.

III. Voting

_____Pursuant to N.C.G.S. § 160A-75, no member of the City Council shall be excused from voting except upon matters involving the consideration of the member's own financial interest or official conduct. Therefore, a sitting

PROPOSED REVISION

SUBJECT – CITY COUNCIL Replacing a Vacancy on the City Council	Number 115.11	Revised	Effective Date 9-25-00	Page 2 of 1
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member of the City Council is required to vote on their replacement unless the sitting member of the City Council has vacated their City Council position prior to the City Council calling for a vote on the issue.

IV. Vacancy Replacement Process

The vacancy replacement process shall be as follows:

- (1) Citizens interested in filling the vacancy on the City Council must submit an application for the vacancy to the City Clerk's Office or other City office identified by the City Council.
- (2) City staff shall verify each applicant's eligibility for the vacancy.
- (3) Once each applicant's eligibility is verified by staff, qualified applicants will have the opportunity to speak before the City Council during a regularly scheduled City Council meeting or specially called City Council meeting when this item is placed on the City Council's agenda.