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The Washington City Council met in a continued session on Monday, April 23, 2012 at 5:30pm in the City Council Chambers at the Municipal Building. Present were: Archie Jennings, Mayor; Doug Mercer, Councilman; Ed Moultrie, Councilman; William Pitt, Councilman; Richard Brooks, Councilman; Bobby Roberson, Mayor Pro tem; Josh Kay, City Manager; Cynthia Bennett, City Clerk and Franz Holscher, City Attorney.

Also present were: Matt Rauschenbach, Chief Financial Officer; Robbie Rose, Fire Chief; Allen Lewis, Public Works Director; Gloria Moore, Library Director; John Rodman, Planning Director; Keith Hardt, Electric Director; Interim Fire and Police Services Director, Stacy Drakeford; Susan Hodges, Human Resources Director and Mike Voss, Washington Daily News.

Mayor Jennings called the meeting to order and Councilman Pitt delivered the invocation.

#### **APPROVAL/AMENDMENTS TO AGENDA**

Mayor Jennings added a closed session discussion under NCGS 143-318.11(a)(6) Personnel and 143-318.11(a)(3) Attorney/Client Privilege.

By motion of Councilman Brooks, seconded by Councilman Moultrie, Council approved the agenda as amended.

#### **APPROVE - BEAUFORT COUNTY WATER DISTRICTS I – VI REQUEST FOR THREE ADDITIONAL EASEMENTS TO ACCOMMODATE WATER TRANSMISSION LINE INSTALLATION IN THE VICINITY OF THE INTERSECTION OF THIRD AND PLYMOUTH STREET**

Josh Kay, City Manager introduced Mr. Van Lewis, McDavid Associates, Inc. Mr. Lewis asked Council to also authorize the City Manager and City Attorney to finalize the documents and to authorize the Mayor to execute the documents. Mr. Lewis explained that based upon prior Council authorization the Districts have identified a 0.42 +/- acre parcel of land owned by the City of Washington. The property is located at the intersection of Second Street and Plymouth Street and adjacent to the abandoned water treatment plant site which the Districts propose to purchase for the construction of a booster pump station. Due to the close proximity of the proposed site to the City's operation center, the Districts agree not to use gas chlorine for disinfection at the proposed site. In addition, if for any reason, the Districts fail to construct the proposed Booster Pump Station within a specified time frame (suggest 48 to 60 months), the Districts will deed the proposed site back to the City in exchange for value paid. A copy of the survey of the site is enclosed marked as Exhibit "A". The site selection was mutually selected and agreed upon by county/city representatives. Appraiser Eddie Dozier has been authorized to proceed with an appraisal, said appraisal being expected on or before April 20, 2012. Mr. Lewis thought it would be appropriate to have an appraisal for a basis of final price determination/negotiation. In addition for clarification, the City of Washington owns three underlying parcels of land south of the river on which the existing Washington Electrical Transmission line and associated easement crosses between pole 49 and pole 79. To eliminate all legal questions regarding the legal right to place the water transmission line in the location previously described, a legal description of the proposed water transmission line as it crosses Washington owned property is included in the easement package and is in accordance with the prior Council approval.

In routing the proposed water transmission line in the vicinity of Plymouth Street, a large number of existing utilities were discovered in the street right of way. He stated that it is his firm's opinion that the placement of the proposed water transmission line outside of the existing pavement but inside the street right of way in this area cannot be accomplished without conflict with existing utilities. We are therefore requesting three additional easements, said easements being shown on the enclosed map marked as Exhibit "B" and being more generally described as follows:

- a. 15' wide easement along west side of Plymouth Street (SR 1401) south of the intersection of Third Street identified on Exhibit "B" as Easement "A".
- b. 20' wide easement along north side of Municipal Street (Third Street) west of Plymouth Street identified on Exhibit "B" as Easement "B".
- c. 25' wide easement along west side of Plant Street (closed or never opened) between Municipal Street and West Martin Luther King, Jr. Drive (Fourth St) identified on Exhibit "B" as Easement "C".

Placement of the proposed water transmission line in the proposed easements in lieu of placement in the existing street right of way will greatly reduce the potential of utility conflicts.

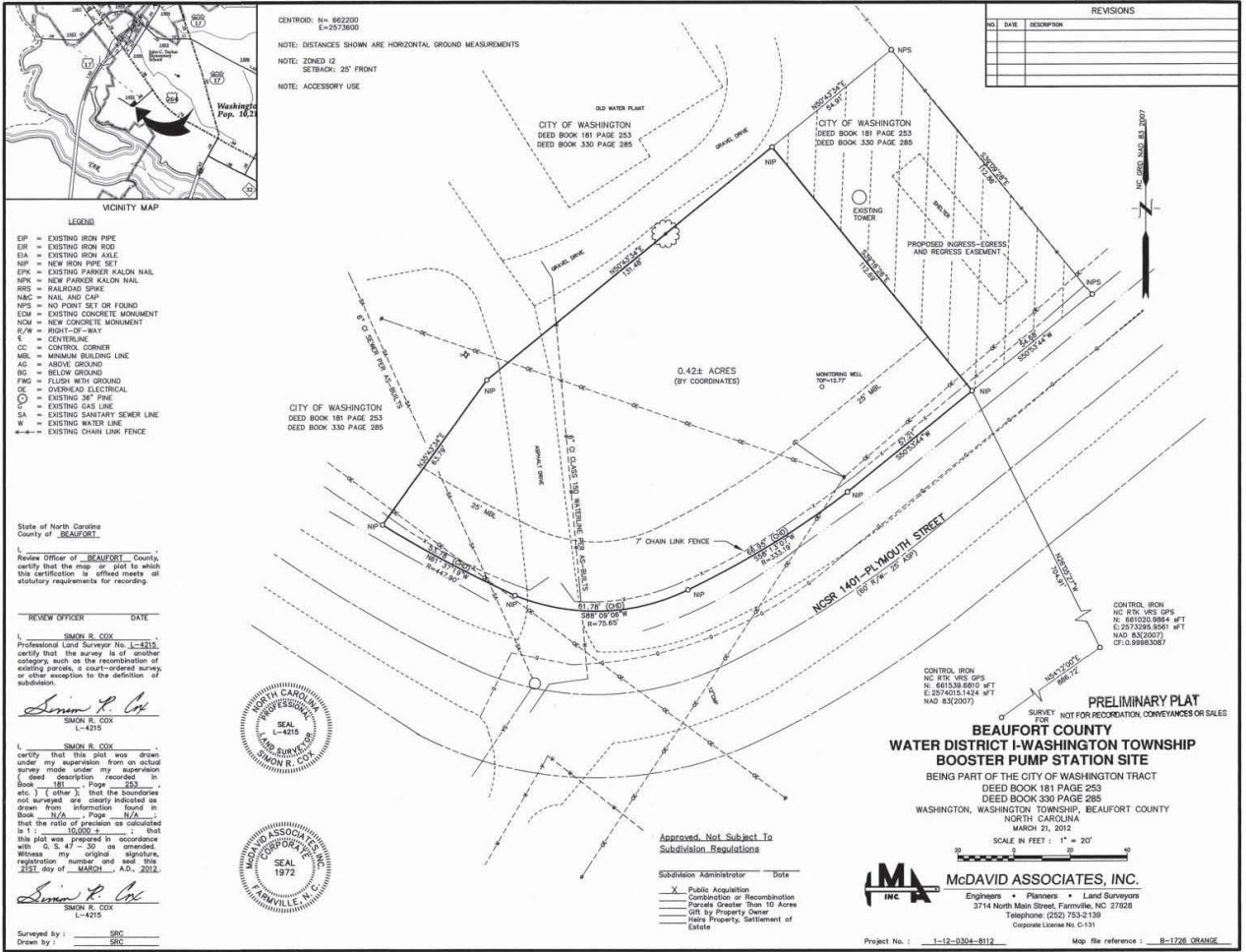


EXHIBIT A

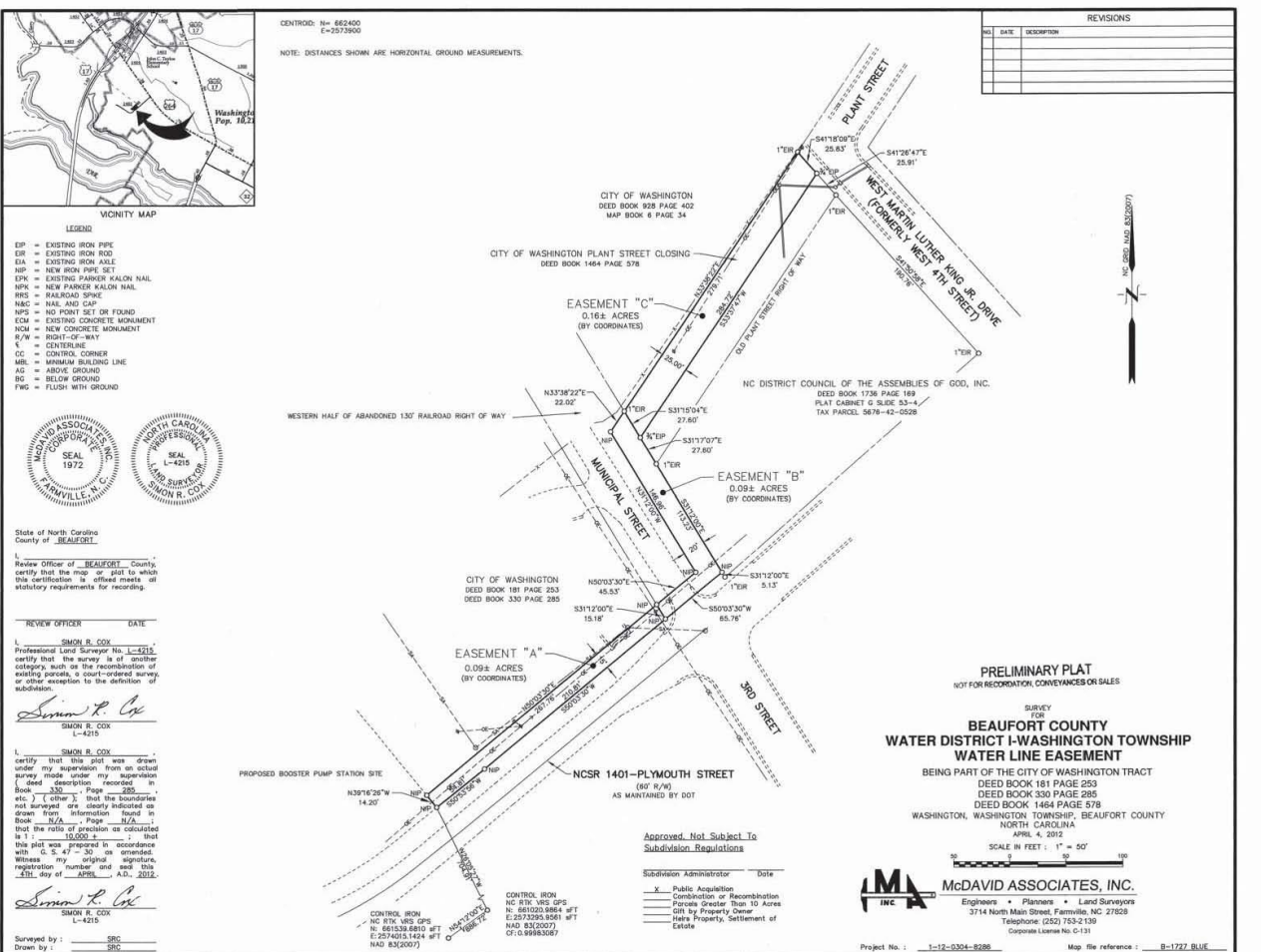


EXHIBIT B

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Mayor Pro tem Roberson inquired about potential issues with the easements. Mr. Lewis stated the roads in that area only leave about 5 or 6 feet from the back of the curb to the right of way and there are a lot of pipes in the existing right of ways. These three easements will allow for a safer installation and allow for the avoidance of many of the existing utilities. Councilman Mercer expressed concerns with the different size easements and why wouldn't the same easement width be satisfactory on all streets? Mr. Lewis explained there is a power pole located in that area on Plymouth Street and this is the typical easement (15 feet) you would get when you have a waterline utility. The 20 foot easement on Municipal Street is typically what they ask for and they try to put the water line close to the center. The 25 foot easement represents a street closing plus there are other utilities in that easement as well. Councilman Mercer expressed concern with easement issues with the 25 foot easement. Mr. Van Lewis suggested including in the easement that the City of Washington retains property rights. Mayor Jennings clarified that the City would not be giving up its right to use its own easement. Mr. Holscher stated the City would continue to have the right to the underlying fee of that property; it just couldn't infringe upon the right that you have granted to the Districts. This could be clarified for the purpose of memorializing the agreement.

Mayor Jennings requested clarification from staff regarding the recommendation and Mr. Kay stated they were comfortable with the continued partnership with Beaufort County and supports Mr. Lewis' request.

By motion of Mayor Pro tem Roberson, seconded by Councilman Moultrie, Council approved the request for the conveyance of three easements for Beaufort County Water Districts I – VI to accommodate water transmission line installation in the vicinity of the intersection of Third and Plymouth Street as well as the property on Plymouth Street for a booster pump station as presented and depicted and authorized the City Attorney and City Manager to finalize, and the Mayor to execute, the documents necessary to effectuate the conveyances.

Mr. Lewis thanked staff for their cooperation.

#### **DISCUSSION - EXTRA-TERRITORIAL JURISDICTION REDUCTION**

Mr. Kay noted that Council had requested staff to evaluate the Extra-Territorial Jurisdiction (ETJ) and the size of the ETJ and services that was offered within it. Planning and Development Director, John Rodman explained the purpose and intent of an ETJ (which is to protect activities on the edge of a community from being encroached by incompatible adjacent activities). The City's authority to set up an ETJ is under Article 19 of Chapter 106A-360 under the North Carolina General Statutes. Mr. Rodman stated the City of Washington received special legislative authority to extend ETJ 1/12 miles beyond city limits.

- **Extraterritorial Jurisdiction (ETJ)** is the legal ability of a government to exercise authority beyond its normal boundaries.
- **Extraterritorial Jurisdiction (ETJ)** is a zoning "overlay" that allows a town to zone areas outside its limits in order to plan for future growth.
- A city may not extend its regulatory or police powers beyond the city limits without specific legislative authority.
- In North Carolina, the state gives municipalities broad powers to control planning and growth for up to three miles beyond their borders (up to one mile for smaller towns).
- The NC Supreme Court ruled in 1894 that the Town of Washington did not have the authority to regulate the throwing of dead fish from a pier into the Pamlico River. The city limits extended only to the low water mark of the river, so the portion of the pier over the river itself was not within the city's regulatory jurisdiction. Because no expanded jurisdiction had been granted by the legislature, the city could not enforce its ordinance.
- Smaller towns are less likely to have ETJs than larger cities, but most North Carolina towns have taken advantage of the statutory authority to exercise extraterritorial jurisdiction, according to the School of Government at UNC.

- As zoning and other land use regulations first came into widespread use in North Carolina, this activity was almost exclusively a municipal concern. While most cities of any size were adopting zoning, only a few counties were doing so.
- N.C. authorized city “perimeter zoning,” which is now known as municipal extraterritorial jurisdiction.
- When a city adopts an ETJ ordinance, the city acquires jurisdiction for all of its ordinances adopted under Article 19 of Chapter 160A of the General Statutes inclusive of zoning & subdivision regulations, housing & building codes, historic district regulations, floodplain management
- The purpose of an ETJ is to help cities and towns plan for developing areas that may require municipal services in the future by applying consistent guidelines for development. This helps avoid a mix of development standards.
- NC General Statute 160A-360(b) provides that the area chosen must be based on “existing or projected urban development and areas of critical concern to the city,”
- “ETJ extensions should only be granted for areas anticipated to be substantially developed and annexed within ten (10) years.”

Staff suggested the following schedule to be considered by Council:

- 1.) Present report to City Council
- 2.) Planning Board Public Hearing
- 3.) City Council Public Hearing/Adopt Resolution
- 4.) Establish effective Date for Offer to Relinquish

Mr. Rodman stated 72% of cities/towns exercise ETJs and we are not allowed to regulate – nuisance ordinance in the ETJ:

- 1923 – Zoning act
- 1949 – Zoning outside city
- 1959 – General Assembly Statewide ETJ

Mr. Rodman reviewed the steps involved:

- Will notify all property owners affected
- 60 day period zoning in effect
- Man hours

Suggested reduction areas:

Area #1 – Whichards Beach  
2,385 acres, 377 properties (175 vacant)  
Population: 470

Area #2 – Cherry Road  
1,215 acres, 162 properties (67 vacant)  
Population: 216

Area #3 – Hwy 17 N  
698 acres, 49 properties (20 vacant)  
Population: 67

Mr. Rodman shared the reduction in flood insurance rating by 15% due to CRS participation by the City.

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The North Carolina General Statute essentially provides for a sixty-day period during which the City would maintain zoning jurisdiction over the area or until the regulation of the area is adopted by the County, not to exceed 60 days.

Mr. Rodman said they looked at what it would cost the City to do this not in actual man hours of inspectors and planning and zoning staff but what it would cost to do a reduction.

**Cost:**

First Class Mailings	\$250.00
Verify the Description	\$500.00
Map Preparation	<u>\$500.00</u>
Total (approximate)	\$1,250.00 - \$1,500.00

Mayor pro tem Roberson requested at the next presentation on area # 1 we take a look at the railroad line off of Whichard's Beach Road as it is not reflected on the map. Mr. Rodman shared staff had actually looked at the railroad and explained their findings and that activity for those areas is not very high.

Mayor Jennings stated the city provided services for area # 1 – Whichard's Beach and part of the agreement had to do with some voluntary annexation agreements inside the provision of service. Would this create a problem if we essentially pull back our zoning from an area we may request to voluntarily annex? Mr. Rodman said it could be a problem but if we pulled back it would be quite a bit further. Mayor Pro tem Roberson suggested if we want to control the growth it is all about water and sewer (policy).

Councilman Mercer felt the City has an enforcement issue where people are doing things illegally and that is the City problem which needs to be corrected - Mayor Pro tem Roberson stated he understood and suggested you can't do it with one person doing zoning enforcement for the jurisdiction we have inside the City limits. The City does not have enough code enforcement officers to monitor just the minimum housing inside the corporate limits of the City. We do not have the staff capabilities to enforce the zoning and subdivision regulations beyond the corporate limits of the City of Washington; further, we have enough code violations that would take our inspectors the rest of this year to go over on the western part of our boundaries.

Mr. Rodman stated the County does not participate in the Community Rating System (CRS) program, the County is flood rating is at a 10 while the City is flood rating is at a 7 because of its participation in the CRS. This means the County pays full premium. The citizens of Washington and the ETJ citizens are entitled to a 15% reduction because the City participates in the CRS program.

Councilman Mercer voiced concern that reducing the size of the ETJ could remove some protections that residents in the ETJ now have. Councilman Mercer posed as hypothetical situation:

Councilman Mercer "I'm living in — I don't care which one of the zones you're talking about, one, two or three — I have come in and I have complied with all the city regulations and built according to whatever the regulations are," Councilman Mercer said. "Now, you come along and you say, 'Well, I'm going to take you out of my ETJ and this will eliminate any of the restrictions that the city has imposed in that area for 25-plus years.'" Now, I can come and buy the lot right next door and I can put up a tin shack, and it's subject to no regulations whatsoever. I'm sitting here right next door in a \$250,000 house. Next door is a \$500 tin shack, simply because we have eliminated our control authority over that piece of property. When I built my house, I built it under the assumption that I was in an area that the city was going to adequately protect for me, and now you tell me I'm not going to protect you. Councilman Mercer felt we are doing the people who have complied with our regulations for the last 25 years a disservice if we all of sudden kick them out (of the ETJ)."

Councilman Mercer noted what would further compound the situation of removing property owners now in the city's ETJ and leaving them without zoning and land-use protections they have now is that Beaufort County has no zoning regulations. Property owners removed from the city's ETJ would "fall out of any kind of protection they've been enjoying for 25-plus years."

Mayor Pro tem Roberson also voiced concern similar to Councilman Mercer's. Mayor Pro tem Roberson noted that most counties in North Carolina have some form of zoning and land-use regulations.

Mr. Rodman stated reducing the City's ETJ could save the City money because it would not have to enforce the City's zoning and land-use regulations in the areas removed from the City's ETJ. Mr. Rodman presented some scenarios: "Let me give you some figures. What we are trying to do is balance some areas that we may not think have a higher potential for development," Rodman said. "Can we better use those man-hours that our inspectors are doing or our planning staff is doing? Can we use those man-hours to concentrate more on what we think are high-development areas? So, we're looking at it that way."

Mayor Pro tem Roberson inquired if Beaufort County has stepped up to the plate and adopted a zoning ordinance. Councilman Mercer suggested his advice to the County Commissioners is that if we move that area out (of the ETJ), maybe the County should entertain getting in land-use controls like the rest of the 80 or 90 counties that we have in the state of North Carolina to protect those Beaufort County citizens which elect them into office. We've been saying that to the County Commissioners for the last 10 years. It hasn't gone anywhere, and it will not go anywhere for a number of years to come. I just hate to see us put citizens that we have protected for this long period of time cast out with the bath water.

Mayor Pro tem Roberson stated he didn't mind protecting them as long as the ultimate goal is to annex the property. "If you're urban in character ... it should be inside the corporate limits of the city. What I'm seeing for the future is that we are doing away with those kinds of regulations, and the burden is going to be on the City if we don't step up and do something in terms of annexation and the ETJ."

Mayor Archie Jennings weighed in, saying, "As we know, that one's (annexation) being bandied about in the court system, so we'll have to wait and see."

There was some question about whether if property owners in the ETJ would pay more for flood insurance if they were removed from the ETJ. The city participates in the community rating system, which is part of the National Flood Insurance Program, but Beaufort County does not.

Mr. Rodman stated those county residents who do not live in a municipality are paying full rates for flood insurance. Washington residents and those who live in the city's ETJ are entitled to a 15-percent reduction in their flood-insurance premiums. Residents removed from the city's ETJ could face paying higher premiums. Mr. Rodman stated this has not been verified.

Councilman Pitt asked the number of actual County employees who actually go out and take care of the problem that the City is now doing. Mr. Rodman stated the County and City has two building inspectors. The County does not have a zoning enforcement officer but they have an emergency manager coordinator. Councilman Pitt "does the County have an interest in taking this land back?" Mr. Rodman stated he has not mentioned this to the County Planning Board. He did not want to go anywhere else until he received direction from City Council. Mayor Jennings stated the County doesn't have any planning codes so it would just mean the City would be pulling back from their own boundary.

Mayor Jennings directed staff to supply the fee revenue dollars lost (permits, inspections etc.) by not doing inspections in those areas. Mr. Rodman will gather this cost for Council. Mayor Jennings stated Council will provide guidance on this matter at the May 14<sup>th</sup>, 2012 meeting.

**CLOSED SESSION – UNDER § NCGS 143-318.11(A)(6) PERSONNEL AND  
NCGS §143-318.11(A)(3) ATTORNEY/CLIENT PRIVILEGE**

By motion of Councilman Pitt, seconded by Councilman Brooks, Council entered into closed session under § NCGS 143-318.11(A)(6) and NCGS § 143-318.11(A)(3) Attorney/Client Privilege at 6:30 pm.

By motion of Mayor Pro tem Roberson, seconded by Councilman Brooks, Council agreed to come out of closed session at 6:48pm.

**ADJOURN**

By motion of Councilman Pitt, seconded by Councilman Brooks, Council adjourned the meeting at 6:50pm until May 14, 2012 at 5:30pm in the Council Chambers at the Municipal Building.

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**Cynthia S. Bennett, CMC  
City Clerk**