

The Washington City Council met in a regular session on Monday, March 12, 2007 at the Municipal Building at 4:30 p.m. Present were: Judy Jennette, Mayor; Darwin Woolard, Mayor Pro tem; Ed Gibson, Councilman; Richard Brooks, Councilman; Archie Jennings, Councilman; Mickey Gahagan, Councilman; James Smith, City Manager; Franz Holscher, City Attorney; and Rita A. Thompson, City Clerk.

Also present were: Carol Williams, Finance Director; Jimmy Davis, Fire Chief; Bobby Roberson, Community Development & Planning Director; Keith Hardt, Electric Director; Gerald Galloway, Interim Police Chief; Joey Toler, Interim DWOV Director; Allen Lewis, Public Works Director; and Mike Voss, of the Washington Daily News.

Mayor Jennette called the meeting to order, and Councilman Gibson delivered the invocation.

APPROVAL/AMENDMENTS TO AGENDA

Mayor Jennette added VI.B.A.4 Recreation League Agreement and 5. Electric Rates & Usage under Old Business. Under VI.B 6., additional closed session items were added, GS 143-318.11(a) (4) Economic Development and (6) Personnel. Item VIII.F. was removed. Report from Planning Board on Evans Property was added as VII. E. Under item X. A. Change April Council Meeting and B. Chamber Banquet was added.

On motion of Councilman Gahagan, seconded by Mayor Pro tem Woolard, Council unanimously approved the agenda, as amended.

APPROVAL OF MINUTES

Franz Holscher, City Attorney, asked that the last sentence in the first paragraph under the discussion on the airport ground lease on page 19 of the agenda book be stricken and the following sentence added: " The exact terms of the lease need to be finalized."

On motion of Mayor Pro tem Woolard, seconded by Councilman Gibson, Council unanimously approved the minutes of February 1 & 2, February (as corrected), February 12, February 19 and February 26, 2007, as submitted.

SWEARING IN OF CODE ENFORCEMENT OFFICER

Mayor Jennette administered the oath to new Code Enforcement Officer Jeff Everette.

CONSENT AGENDA

On motion of Councilman Gahagan, seconded by Mayor Pro tem Woolard, Council unanimously approved the Consent Agenda, as follows:

- A. Adopt – Budget Ordinance Amendment for Outside Agency Division in the General Fund for B.A.T.S. Public Transportation Service (\$2,000)

AN ORDINANCE TO AMEND THE BUDGET ORDINANCE OF THE CITY OF WASHINGTON, N.C. FOR THE FISCAL YEAR 2006-2007

BE IT ORDAINED by the City Council of the City of Washington, North Carolina:

Section 1. That the Estimated Revenues in the General Fund be increased in the amount of \$2,000 in the account Public Transportation Fees, account number 10-40-3617-4100.

Section 2. The account number 10-40-6170-9132, B.A.T.S., Outside Agency portion of the General Fund appropriations budget be increased in the amount of \$2,000 to provide funds for public bus system operational costs.

Section 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 4. This ordinance shall become effective upon its adoption.

Adopted this the 12th day of March, 2007.

s/Judy Jennette
JUDY JENNETTE

ATTEST:

s/Rita A. Thompson
**RITA A. THOMPSON, CMC
CITY CLERK**

- B. Adopt – Budget Ordinance Amendment for Fire Station Capital Project Fund (\$2,466,658)

**AN ORDINANCE TO AMEND THE BUDGET ORDINANCE
OF THE CITY OF WASHINGTON, N.C.
FOR THE FISCAL YEAR 2006-2007**

BE IT ORDAINED by the City Council of the City of Washington, North Carolina:

Section 1. That the following line items in the Revenue budget of the Second Fire Station Capital Project Fund be increased or decreased as follows:

63-10-3434-0000	Wachovia Construction Loan	(\$467,247)
63-10-3434-0001	USDA Loan	2,867,190
63-10-3831-0000	Earned Interest	66,715
		\$2,466,658

Section 2. That the following line items in the appropriations budget of the Second Fire Station Capital Project Fund be increased or decreased as follows:

63-10-4340-4500	Construction	\$71,859
63-10-4340-7100	Land Acquisition	(21)
63-10-4340-7400	Equipment Purchases	(77,770)
63-10-4340-8300	Interest Payment Construction Loan	13,717
63-10-4340-8301	Principle Payment Construction Loan	2,399,753
63-10-4340-8302	Transfer to General Fund	280,964
63-10-4340-9900	Contingency	(221,844)
		\$2,466,658

Section 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 4. This ordinance shall become effective upon its adoption.

Adopted this the 12th day of March, 2007.

s/Judy Jennette
JUDY JENNETTE
MAYOR

ATTEST:

s/Rita A. Thompson
RITA A. THOMPSON, CMC
CITY CLERK

- C. Authorize – Repurchase of Cemetery Lot P-90 Plot 1 in Oakdale Cemetery for (\$247.50)
- D. Approve – Expansion to City Vehicle Fleet for Inspections Department
- E. Accept – Cornerstones of Science Grant **and** budget ordinance amendment (\$242)

**AN ORDINANCE TO AMEND THE BUDGET ORDINANCE
OF THE CITY OF WASHINGTON, N.C.
FOR THE FISCAL YEAR 2006-2007**

BE IT ORDAINED by the City Council of the City of Washington, North Carolina:

Section 1. That the Estimated Revenues in the General Fund be increased in the amount of \$242 in the account Library Grant-Cornerstones, account number 10-40-3611-3307.

Section 2. The account number 10-40-6110-5600, Materials, Brown Library portion of the General Fund appropriations budget be increased in the amount of \$242 to provide funds for Cornerstone Science Grant.

Section 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 4. This ordinance shall become effective upon its adoption.

Adopted this the 12th day of March, 2007.

s/Judy Jennette
JUDY JENNETTE
MAYOR

ATTEST:

s/Rita A. Thompson
RITA A. THOMPSON, CMC
CITY CLERK

- F. Accept – Friends of Brown Library Donation **and** Adopt Budget Ordinance Amendment (\$10,000)

**AN ORDINANCE TO AMEND THE BUDGET ORDINANCE
OF THE CITY OF WASHINGTON, N.C.
FOR THE FISCAL YEAR 2006-2007**

BE IT ORDAINED by the City Council of the City of Washington, North Carolina:

Section 1. That the Estimated Revenues in the General Fund be increased in the amount of \$10,000 in the account Contribution Library, account number 10-40-3611-8402.

Section 2. The account number 10-40-6110-7400, Capital Outlay, Brown Library portion of the General Fund appropriations budget be increased in the amount of \$10,000 to provide funds for computers and server replacement.

Section 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 4. This ordinance shall become effective upon its adoption.

Adopted this the 12th day of March, 2007.

s/Judy Jennette
JUDY JENNETTE
MAYOR

ATTEST:

s/Rita A. Thompson
RITA A. THOMPSON, CMC
CITY CLERK

- G. Award – Contract for Steel Poles
H. Award – Contract for Municipal Building Generator (\$100,843)
I. Adopt – Budget Schedule for FY 07-08

**FISCAL YEAR 2007-2008
BUDGET SCHEDULE**

February 1 - 2, 2007	Council Planning Session
March 15, 2007	All budgets submitted to Finance Director by noon
March 15 - 22, 2007	Finance Director prepares budget for City Manager review
March 26 - 30, 2007	City Manager and Finance Director reviews budgets with Department Heads
April 2 - 6, 2007	City Manager balances budget
April 9 - 20, 2007	Finance Department prepares budget document for Council

- April 23, 2007 **Budget Book to City Council at Committee of the Whole** 4:30 pm
- April 30, 2007 **Budget Workshop with City Council** Monday 4:30 pm to 7:30 pm
- May 7, 2007 **Budget Workshop with City Council** Monday 4:30 pm to 6:30 pm
- May 14, 2007 **Public Hearing on FY07-08 Budget** Monday 6:00 pm Council receives comments on proposed budget from public
- May 21 & 29, 2007 **Budget Workshop with City Council** 4:30 pm to 7:30 pm
- June 4, 2007 **Budget Workshop with City Council** Monday 4:30 pm to 6:30 pm
- June 11, 2007 **Regular City Council Meeting** Monday- 4:30 pm
Council adopts budget ordinance for FY 07-08 and Sets Tax Rate; approve expiring contracts; and adopts any user fees changes for FY 2007-2008
- June 25, 2007 **Continued City Council Meeting** Monday - 4:30 pm Adopt year end budget amendment for FY 06-07 and appoint new Board and Commission members

- J. Declare – Surplus **and** Authorize electronic auction of vehicles through GovDeals
- K. Adopt – Budget Ordinance Amendment for Recreation (County - \$2,500)

**AN ORDINANCE TO AMEND THE BUDGET ORDINANCE
OF THE CITY OF WASHINGTON, N.C.
FOR THE FISCAL YEAR 2006-2007**

BE IT ORDAINED by the City Council of the City of Washington, North Carolina:

Section 1. That the Estimated Revenues in the General Fund be increased in the amount of \$2,500 in the account Beaufort County Contribution-Recreation, account number 10-40-3612-8401.

Section 2. The account number 10-40-6122-4504, Beaufort County Contribution, Athletics & Programs portion of the General Fund appropriations budget be increased in the amount of \$2,500 to provide funds for FY 06/07 additional funding.

Section 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 4. This ordinance shall become effective upon its adoption.

Adopted this the 12th day of March, 2007.

s/Judy Jennette
JUDY JENNETTE
MAYOR

ATTEST:

s/Rita A. Thompson
RITA A. THOMPSON, CMC
CITY CLERK

- L. Award– Joe Stringer his service weapon
- M. Approve – Customer Service Commitment Statement

The City of Washington
CUSTOMER SERVICE COMMITMENT

The City of Washington is committed to providing courteous, prompt, and responsive, customer service.

- We will respond promptly.
When you request a city service or action described by code, we will inform you of the process involved and the normal schedule for such requests. When you have any other requests, questions or complaints, we will either respond immediately, tell you when we will be able to respond, or respond within two work days. If we cannot resolve the problem or provide the needed information within two days or the time promised, we will contact you, explain the delay, and tell you when we will have a resolution or explanation to you.
- We will listen carefully.
We will listen to your requests, comments or questions carefully and courteously. We will explain our response clearly and completely. If your call must be transferred, we will give you the name and number destination.
- We will not make you wait longer than necessary.
If you come to any city customer counter or department office, we will see you as quickly as possible, or we will explain the reason for the delay and, if appropriate, offer you an appointment in the near future. During times of extenuating circumstances we will do all we can to serve customers as fairly, efficiently and promptly as possible.
- We will provide you with consistently reliable service and information.
We will do what we say we will, or clearly explain why we can't. We will give you straight, accurate information on our operations, and work to keep you informed on matters that interest you.
- We will do all we can to meet your special needs.
If you have a disability, we will do all we can to provide information and service to you in ways convenient to you.
- We will listen to any complaint and do what we can to make things right.
If you have a complaint that we are unable to bring to an acceptable resolution; we will inform you on how to appeal. Appeals are made in the following order: 1) Department Head, 2) the City Manager, 3) the City Council. Recognize that the fastest resolution will come from the city department providing the service.

We will be friendly and professional in all our dealings with you and strive to provide you with the best quality of service.

ECONOMIC DEVELOPMENT COMMISSION

Councilman Gahagan stated that he was out of town at the last meeting and Tom Thompson will be here later to brief Council.

TOURISM DEVELOPMENT AUTHORITY

Mayor Jennette stated the contract on the Civic Center is working well.

HUMAN RELATIONS COUNCIL

Mayor Jennette stated that the Human Relations Council is working on another Pulpit Exchange, but there is not a date yet. Mike Voss is the Chairman for the upcoming "Men Who Cook" in September.

DOWNTOWN WASHINGTON ON THE WATERFRONT

Joey Toler, Interim DWOW Director, stated that bids are due in on Ayers Lane on April 5th. The ATM machine location will have to be changed because of base flood level.

PARKING COMMITTEE

Councilman Jennings stated that the Parking Committee has not met.

WARREN FIELD AIRPORT

Mr. Smith stated a Customer Service Representative is now in place. A handicapped parking space has been created at the Airport. Things are busier than ever.

APPOINTMENT - LIBRARY BOARD OF TRUSTEES

On motion of Councilman Gibson, seconded by Mayor Pro tem Woolard, Council unanimously appointed Rachel Mills to the Library Board of Trustees to fill the unexpired term of Bartow Houston, term to expire on June 30, 2009.

APPOINTMENT - FIREMEN'S RELIEF

On motion of Mayor Pro tem Woolard, seconded by Councilman Gibson, Council unanimously reappointed Fred Watkins to the Firemen's Relief, term to expire on January, 2009.

AUTHORIZE – CITY MANAGER TO EXECUTE A LEASE FOR LAND UPON WHICH TO BUILD A HANGAR AT WARREN FIELD AIRPORT

The lease was changed from \$625 per month to \$1300 per month (as was stated in last month's agenda). Mr. John Hill will build a 2500 square ft. hangar, which will revert back to the City after 20 years.

On motion of Mayor Pro tem Woolard, seconded by Councilman Gibson, Council unanimously authorized the City Manager to execute a ground lease for and upon which to build a hangar at Warren Field Airport with Mr. John Jensen Hill Jr.

NORTH CAROLINA
BEAUFORT COUNTY

HANGAR GROUND SITE LEASE AGREEMENT REQUIRING HANGAR CONSTRUCTION

THIS HANGAR GROUND SITE LEASE AGREEMENT ("**Lease**"), made, entered into, and executed in duplicate originals as of the 11th day of May, 2007, by and between THE CITY OF WASHINGTON, a body politic and corporate under Chapter 160A of the North Carolina General Statutes, ("**LESSOR**") and JOHN JENSEN HILL, JR. ("**LESSEE**").

W I T N E S S E T H:

That, pursuant to Chapter 63 of the North Carolina General Statutes, including but not limited to North Carolina General Statute § 63-53 and other relevant statutory authority, and for and in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in consideration of the mutual covenants contained herein as well as the valuable consideration paid and to be paid, LESSOR does hereby demise and lease unto LESSEE, and LESSEE does hereby accept from LESSOR, that certain tract or parcel of land ("**hangar ground site**") lying and being at Warren Field Airport ("**Airport**") in Washington Township, Beaufort County, North Carolina, and more particularly described according to the general Airport plan as follows:

Measuring 50 feet by 50 feet, containing 2,500 square feet and being the footprint upon which LESSEE will construct a hangar, exclusive of all taxiways, access ramps, parking areas or other paved surfaces or grounds, and particularly described in Exhibit A attached hereto and incorporated herein by reference.

TO HAVE AND TO HOLD said land and premises together with all privileges and appurtenances thereto belonging to it, LESSEE, upon the following terms and conditions:

SECTION ONE Use of Airport

Subject to the express conditions contained in Section 7, Part B hereof, LESSOR grants LESSEE the non-exclusive use, in common with others similarly authorized, of the Airport, together with all adequate space and facilities consisting of sufficient ground area to permit the efficient taxiing, servicing, taking off; equipment; improvements and services which have been or may hereafter be provided at or in connection with the Airport from time to time, including, but not limited to, the landing field and any extensions thereof or additions thereto, roadways, runways, aprons, taxiways, floodlights, landing lights, beacons, control tower, signals, radio aids, and any and all other conveniences for flying, landing, and takeoff.

LESSOR grants LESSEE the non-exclusive right, in common with others similarly authorized, to load and unload persons and property as is customary in said Airport so long as the normal routine of Airport operations is not interfered with or made burdensome and to install, maintain, and operate radio communications, meteorological and aerial navigations and such other equipment and facilities, in, on or about the premises herein leased, as may be

necessary and convenient for LESSEE's operation so long as all applicable city, county and governmental regulations are complied with.

LESSOR grants LESSEE, its employees, customers, passengers, guests, and other licensees or invitees, the non-exclusive use, in common with others similarly authorized, of all public space in the terminal building of the Airport as well as all additional public space that may hereafter be made available therein and any additions thereto, including, but not limited to, the lobby, passenger lounges, waiting rooms, hallways, rest rooms, rooms for flight personnel and other public and passenger conveniences.

SECTION TWO Acceptance, Maintenance and Use of Hangar Ground Site

LESSEE agrees to accept the hangar ground site, specifically including any and all grounds immediately adjacent thereto including all grounds between the hangar and the taxiway, adjacent premises leased to other Lessee, the fence located to the rear of the hangar, and amount of area to be established extending from the remaining side of the hangar, in the physical condition in which the same now is. LESSEE further agrees to maintain the same in at least a like condition during the term of this Lease, normal wear and tear excepted; provided, however, LESSOR reserves the right to install such concrete as it desires. Said maintenance shall include mowing and other customary upkeep. LESSEE further agrees to maintain the same in a clean, neat and orderly manner so as to promote the use of the Airport, and further agrees to abide by such reasonable requests as may be made by LESSOR for the proper use and maintenance of the Airport to the end that the general welfare of the public may be promoted and served thereby, and that there not be permitted any accumulation of non-aviation equipment or discarded junk or the discharge of hazardous or regulated chemicals onto the Airport. LESSEE further agrees to surrender the same back to LESSOR in as good a condition as the same now is, ordinary wear and tear excepted, upon termination of this Lease.

LESSEE agrees to construct a 50 foot by 50 foot aircraft hangar on the hangar ground site as specified in Section 7, subparagraph B, subparagraph 1 of this Lease as well as to construct any necessary foundation, aircraft parking apron, paved access to and from the hangar and taxiway, rear access (paved or graveled), and/or automobile parking lot as may be specified in Section 7, subparagraph B, subparagraph 1.

LESSOR shall make any and all necessary improvements to the ditch that is currently located parallel to the taxiway to enable LESSEE to perform the construction required hereinabove.

Except as hereinafter specifically permitted, the hangar ground site is to be used only for aircraft related operations and limited to the storage of private aircraft owned or leased by LESSEE as well as for the repair and maintenance of LESSEE'S private aircraft or aeronautical equipment only. Only licensed and airworthy private aircraft owned or leased by LESSEE may occupy the hangar that is to be hereafter constructed by LESSEE on the hangar ground site (spare aircraft parts excepted). No other use of the hangar ground site will be permitted. Specifically, LESSEE shall not offer or permit any commercial sale, repair service or other services, including the rebuilding, restoring, or maintaining of a succession of aircraft, to be offered to, rendered in, on or from any hangar or hangar ground site. Aircraft to be hangared at the hangar ground site may be inspected by a representative of LESSOR prior to signing this Lease and during the Lease period. Should an aircraft become unairworthy during the Lease period, a determination by LESSOR may terminate this Lease.

Notwithstanding the foregoing, LESSEE shall be permitted to allow LESSEE's guests to store, temporarily, their privately owned or leased aircraft in the hangar that is to be hereafter constructed by LESSEE. The length of temporary storage allowed hereby shall not exceed thirty (30) days for any one such visit and shall be limited to three (3) visits per guest in any one year. All such aircraft must be licensed, airworthy and properly insured.

**SECTION THREE
Parking Space**

LESSOR grants LESSEE, its employees, customers, passengers, suppliers, and other licensees or invitees, without charge, adequate vehicular parking space located as near as practicable to the hangar ground site. LESSOR shall designate the area to be used, which area shall be maintained and kept in good order and condition by LESSEE.

**SECTION FOUR
Right of Ingress and Egress**

LESSEE shall have at all times the full and free right of ingress to and egress from the hangar ground site and facilities referred to in this Lease for LESSEE, its employees, customers, passengers, guests, and other licensees or invitees. Such rights also extend to persons or organizations supplying materials or furnishing services to LESSEE, to include vehicles, machinery and equipment reasonably required by such persons or organizations.

**SECTION FIVE
Term**

The term of this Lease shall be for twenty (20) years, beginning on the 11th day of May, 2007 and ending on the 11th day of May, 2027, unless sooner terminated as provided for herein. Subject to good faith negotiations as hereinafter provided, this Lease shall automatically be extended for a term to be negotiated by the parties hereto. Prior to any such extension herein provided, the parties shall enter into good faith negotiations in order to consider any modification of this Lease. Said negotiations shall include but not be limited to negotiations concerning additional compensation to the City.

**SECTION SIX
Rental**

LESSEE agrees to pay LESSOR for the use of the premises, facilities, rights, services, and privileges granted in this Lease the sum of fifty-two cents (\$0.52) per square foot of hangar space that is to be hereafter constructed by LESSEE for 2,500 square feet per year (\$1300 annually), due and payable each year in one lump sum, beginning on or before _____, 2007 and on or before the same date each and every year thereafter until the termination of this Lease. The annual rental amount due hereunder (initially \$0.52 per square foot of hangar space per year) shall be reestablished following every fifth year to reflect the average adjustment in the Consumer Price Index (BLS – CPI all items, Southeastern Region) over the previous five year period. The readjusted annual amount due hereunder shall be applicable for the next five years until the next readjustment consistent herewith. The rental amount shall

also be adjusted to reflect any change in the square footage of the hangar space after initial construction of the same by LESSEE and during the period of this Lease. Any change in the rental amount attributable to a change in square footage shall be applicable beginning with the first, full year following such change in square footage and in each succeeding year thereafter. As used herein, square footage will be based upon the footprint of the hangar that is to be hereafter constructed by LESSEE.

LESSEE shall receive a credit for the actual amount of expense LESSEE incurs solely for contracting for the paving necessary to gain suitable access to the hangar from the current taxiway. LESSEE shall provide an estimate and verification of expenditure for this particular paving, for approval and acceptance from LESSOR, which approval and acceptance will not be unreasonably withheld. Said credit shall be in lieu of and applied to the rental amount due hereunder and no rent shall be due hereunder until said credit amount has been exhausted. It is expressly understood by the parties that any expenses associated with any additional paving including foundation, aircraft parking apron, other paved access, rear access (paved or gravel) and/or automobile parking lot contemplated hereunder and performed by LESSEE shall be at LESSEE's sole expense and shall not be included in said credit amount.

**SECTION SEVEN
Rights, Privileges, Obligations, and Responsibilities**

A. In its use of the Airport and related facilities, LESSEE is granted the following specific rights and privileges:

(1) LESSEE has the right to add any additional capital improvements on the hangar ground site under the exclusive control of LESSEE, including the right to install, maintain, and remove additional adequate storage facilities and appurtenances for the purpose of carrying out any of the activities provided for herein, subject to advance approval from LESSOR as well as any other conditions herein generally or particularly set forth. All improvements so added by LESSEE will be and become the property of LESSOR at the termination of this Lease without cost to LESSOR. Any improvements that involve alterations to the leased premises under the non-exclusive control of LESSEE shall be subject to approval in advance by LESSOR and all improvements so added by LESSEE will be and become the property of LESSOR at the termination of this Lease without cost to LESSOR.

B. In its use of the Airport and related facilities, LESSEE accepts the following obligations and responsibilities:

(1) LESSEE, at its own expense, shall construct a new hangar facility and make other site improvements at the hangar ground site in accordance with LESSEE's proposal as the same may be modified, supplemented, or amended and only if said modifications, supplements, or amendments are accepted by LESSOR, said proposal including sketch of which is attached hereto and made a part of this Lease. LESSEE, at its own expense, shall construct any paving, including for access, from the existing taxiway to the leased premises; any aircraft parking apron; any automobile parking lot; and any paving or graveling to gain access to the rear of the aircraft hangar from any existing pavement. All such paving or graveling shall be completed in accordance with specifications approved by LESSOR. On or before three (3) months from the effective date of this Agreement, LESSEE shall submit plans and specifications to LESSOR and shall complete construction of such improvements within six (6) months of LESSOR's approval thereof. In the event LESSEE makes any such improvements without LESSOR approval, then, upon notice to do so, LESSEE shall remove the same, or, LESSOR, at its option, may cause the same to be changed to the satisfaction of LESSOR. If LESSEE fails to comply with such

notice within thirty (30) days or to commence to comply and pursue diligently to completion, LESSOR may affect the removal or change and LESSEE shall pay the cost thereof to LESSOR.

LESSEE expressly agrees in the making of any and all improvements that, except with written consent of LESSOR, it will neither give nor grant, nor purport to give or grant any lien upon the hangar ground site or upon any improvements thereupon or which is in the process of construction or repair, nor allow any condition to exist or situation to develop whereby any party would be entitled, as a matter of law, to a lien against said hangar ground site and improvements thereon, and LESSEE will discharge any such lien within thirty days after notice of filing thereof. Notice is hereby given by LESSOR to all persons that no lien attaches to any such improvements.

Any and all improvements constructed or made by LESSEE on the hangar ground site shall be constructed and made in accordance with airport industry standard practices. LESSEE further covenants and agrees that any and all improvements constructed by LESSEE on the hangar ground site lease shall correspond in design and appearance with other facilities constructed or to be constructed on the Airport, will be in accordance with any existing Airport plan adopted by LESSOR, and shall be approved by the City of Washington Building Inspector.

(2) The use and occupancy of the hangar ground site and immediately adjacent area as defined hereinabove by LESSEE shall be without cost or expense to LESSOR. It is understood and agreed that LESSOR is not obligated to furnish any utility services such as light, water, sewer and gas to LESSEE during the period of occupancy. If LESSOR operates or maintains utility services to the hangar ground site, it will continue to furnish such utility services at the request of LESSEE provided that LESSEE shall assume and pay for necessary meters for measuring said service and the charges for providing such service.

LESSEE shall save LESSOR harmless of and from any and all costs or charges for utility services furnished to or required by LESSEE during the term hereof and shall provide, at its own cost or expense, such services as may be necessary or required in the operation and maintenance of the hangar ground site to any and all storm and sanitary sewers, water, and utility outlets at its own expense and shall pay for any and all service charges incurred or used on the hangar ground site.

(3) LESSEE shall maintain and be responsible for all repairs to the hangar following its construction by LESSEE on the hangar ground site. LESSEE agrees, at its own expense, to cause the hangar ground site and the buildings, improvements, appurtenances thereto, and immediately adjacent area as defined hereinabove, to be maintained in a presentable condition and equal in appearance and character to other similar improvements on said Airport. All tools, machines, parts and maintenance equipment shall be stored inside the hangar.

(4) LESSEE agrees, at its own expense, to cause all waste, garbage and rubbish to be removed from the hangar ground site and agrees not to deposit the same on any of the Airport premises, except LESSEE may temporarily deposit the same on the hangar ground site in connection with their collection or removal.

(5) LESSEE will not suffer or permit to be maintained upon the outside of any improvements located on the leased premises any billboards or advertising signs unless previously approved in writing by the LESSOR. A normal company identification sign will be permissible on the hangar ground site.

(6) LESSEE will make no unlawful, improper or offensive use of the premises.

(7) Any and all improvements to, use of, or activities upon the hangar ground site shall conform to and be consistent with the then current Airport plan as well as the minimum standards, rules and regulations adopted for the Airport by LESSOR, as amended. It is expressly agreed that LESSOR's approval of any plans for, inspections of, or acceptance of, any improvements, including such materials, equipment or work undergone by LESSEE shall not constitute or be construed as (a) a guarantee by LESSOR of the quality of fitness of such materials, equipment or work, (b) relieve LESSEE of the duty of supplying good and sufficient materials, equipment or work, or (c) waiver of any obligations elsewhere in this Lease imposed upon LESSEE for maintaining the demised premises in good condition and repair, or repairing, rebuilding, or replacing the same due to damage or destruction by fire or other casualty. It is covenanted and agreed that, in the approving of plans and specifications, making of inspections, or accepting any improvements, contemplated hereunder, LESSOR is acting for and on its behalf and not as an agent of LESSEE.

(8) LESSEE, in its use, improvement, or operation of the premises and facilities of the Airport including hangar ground site, shall not, on the grounds of race, color, sex, or national origin, discriminate or permit discrimination against any person or group of persons in any manner prohibited by law and shall otherwise use the premises in compliance with all other requirements imposed by or pursuant to Title VI of the Civil Rights Act of 1964 and as said regulations may be amended.

SECTION EIGHT Taxes and Assessments

LESSEE shall be responsible for and promptly pay before default any and all real and personal property taxes or special assessments, if any, that may be levied or assessed against the hangar ground site or any improvements or other property situated thereon, it being the mutual intention of the parties that LESSOR shall not be required to pay any taxes on either real or personal property by reason of permitting LESSEE to use said real property as herein described. LESSEE also agrees to indemnify LESSOR against any loss or liability resulting from any and all claims or liens in connection with such taxes and assessments.

LESSEE must verify, if requested, that the hangared aircraft, including any spare parts, is listed on the tax rolls of Beaufort County, North Carolina, for the current year.

SECTION NINE Maintenance and Utilities

Except as otherwise specified herein, during the term of this Lease, LESSOR shall maintain and keep in good repair so much of the Airport premises as are not under the exclusive control of the individual lessees, including, but not limited to the terminal building and control tower; vehicle parking areas and all roadways, runways, aprons and taxiways. Subject to the conditions expressly set forth in Section 7 Part B hereof, LESSOR shall also maintain and operate all sewage and water facilities, electrical and electronic facilities and such other appurtenances and services as are now or hereafter connected with the operation of the Airport.

**SECTION TEN
Rules and Regulations**

LESSEE agrees to comply with all laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of and agreements with all governments, departments, commissions, boards, courts, authorities, agencies, officials, officers and other parties, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the leased premises or any part thereof, or any of the adjoining property, or any use or condition of the premises or any part thereof. Further, LESSEE shall comply with any and all local, state, federal or other rules and regulations as well as all applicable environmental rules and regulations, including, but not limited to, such rules and regulations regulating hazardous or similar substances or conditions, their storage and disposal.

LESSEE agrees to observe and obey the rules and regulations with respect to the use of the Airport premises, including hangar ground site; provided, however, that such rules and regulations shall be consistent with all rules, regulations, and orders of the Federal Aviation Administration; and provided further, that such rules and regulations shall not be inconsistent with the provisions of this Lease or the procedures prescribed or approved from time to time by the Federal Aviation Administration with respect to LESSEE'S use of the Airport premises, including hangar ground site. LESSEE further agrees to indemnify and hold LESSOR harmless for any and all damage of any kind arising from LESSEE'S failure to comply with the aforementioned rules and regulations, including, but not limited to, the cost of clean-up, restoration fees, mitigation costs, and attorney's fees caused or occasioned by LESSEE, its employees, customers, passengers, guests, and other licensees or invitees.

LESSEE agrees to abide by and cooperate with LESSOR in the enforcement and implementation of applicable Airport security regulations, safety plan standards, and measures as may be adopted by LESSOR.

**SECTION ELEVEN
Subordination**

This Lease shall be subject to and subordinate to the provisions of any existing or future agreement between LESSOR and the United States, the State of North Carolina, or any agencies thereof, relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development or operation of the Airport or as a condition precedent to the acquisition of the Airport facilities by the LESSOR. It is specifically understood by LESSEE that this Lease is subject to the recapture clause and other conditions of a grant agreement by the Navy Department or Civil Aeronautics Administration, respectively. LESSOR shall, to the extent permitted by law, use its best efforts to cause any such agreements to include provisions protecting and preserving the rights of LESSEE in and to the premises, and to compensation for the taking thereof, interference therewith and damage thereto, caused by such agreement or by actions of LESSOR or the United States pursuant thereto.

**SECTION TWELVE
Indemnification**

LESSOR shall stand indemnified by LESSEE as hereinafter provided. It is expressly understood and agreed by and between the parties hereto that LESSEE herein is and shall be deemed to be an independent contractor, responsible to all parties for its respective acts or omissions as well as the acts or

omissions of its invited guests as contemplated by Section Two and LESSOR shall in no way be responsible therefore. It is further agreed that in the use of the Airport; the maintenance, erection, or construction of any improvements thereon and the exercise or enjoyment of the privileges herein granted, LESSEE agrees to indemnify and save harmless the LESSOR from any negligence of LESSEE or its invited guests as contemplated by Section Two.

LESSEE agrees to indemnify LESSOR against any and all liability for injuries to persons or damage to property caused by LESSEE's, including its invited guests as contemplated by Section Two, negligent use or occupancy of the leased premises; provided, however, that LESSEE shall not be liable for any injury, damage, or loss occasioned by the negligence of LESSOR or its agents or employees; and provided further that LESSOR shall give to LESSEE prompt and timely notice of any claim made or suit instituted which in any way directly or indirectly, contingent or otherwise, affects or might affect LESSEE, and LESSEE shall have the right to compromise and defend the suit to the extent of its own interest.

SECTION THIRTEEN Insurance

LESSEE shall procure and maintain in force necessary liability insurance coverage for the leased premises and LESSEE'S activities thereon, including those activities of its invited guests as contemplated by Section Two, in the minimum amount of \$1 million for personal injury, death and property damage, including any environmental damage as well as any damages related to or arising from any hazardous material or product, resulting from each occurrence to indemnify and hold harmless LESSOR from any and all liability of claims for loss, damage, or injury to persons or property caused or occasioned by the use of the leased premises by LESSEE or its invited guests as contemplated by Section Two during the term of this Lease. All insurance shall be carried by a responsible company and shall be in a form satisfactory to LESSOR. LESSOR shall be furnished any and all copies of all insurance policies obtained by LESSEE in compliance with this requirement on or before LESSEE begins occupancy. LESSEE agrees to maintain sufficient coverage on a current status and that all such insurance policies obtained by LESSEE in compliance with this requirement name LESSOR as insured and provide a Thirty (30) day written notice to LESSOR of termination, material change in the terms thereof or non-renewal of such policies.

The minimum amount of insurance due hereunder (initially \$1 million) shall be reestablished following every fifth year through good faith negotiations regarding the same. Said readjustment(s) shall be applicable for the next five (5) years until the next readjustment consistent herewith. Notwithstanding the foregoing, the minimum amount of insurance due hereunder shall not be less than \$1 million at any time during the period of this Lease.

SECTION FOURTEEN Termination and Default

A. This Lease shall terminate at the end of its original term, unless sooner terminated as provided for herein. No holding over by LESSEE after the expiration or earlier termination of this Lease shall operate to extend or renew this Lease for any further term whatsoever; but LESSEE will, by any such holding over, become the tenant at will of LESSOR. After any written notice

by LESSOR to vacate the hangar ground site, continued occupancy thereof
by LESSEE shall constitute LESSEE a trespasser.

B. This Lease shall be subject to termination by LESSEE in the event of any one or more of the following events:

(1) The abandonment of the Airport as an airport or airfield for any type, class, or category of aircraft.

(2) The default by LESSOR in the performance of any of the terms, covenants, or conditions of this Lease and the failure of LESSOR to remedy, or to undertake to remedy, such default for a period of thirty (30) days after receipt of notice from LESSEE to remedy the same.

(3) Damage to or destruction of all or a material part of the premises or Airport facilities necessary for the LESSEE's use of the hangar ground site.

(4) The lawful assumption by the United States, the State of North Carolina, or any authorized agencies thereof, of the operation, control or use of the Airport, or any substantial part or parts thereof, in such a manner as to restrict substantially LESSEE from using the hangar ground site for a period in excess of ninety (90) days.

C. This Lease shall be subject to termination by LESSOR in the event of any one or more of the following events:

(1) The default by LESSEE in the performance of any of the terms, covenants, or conditions of this Lease, and the failure of LESSEE to remedy or undertake to remedy such default for a period of thirty (30) days after receipt of written notice from LESSOR to remedy the same. Notwithstanding the foregoing, if LESSEE abandons the hangar ground site for any period of time, allows the hangar subsequently constructed thereon to remain vacant for a period in excess of Ninety (90) days, or fails or neglects to make any payment of rental when due, LESSOR, at its option and without any other notice, demand, or legal proceeding, may declare this Lease void, terminate this Lease, require LESSEE to vacate, enter the hangar ground site, and eject LESSEE therefrom or may pursue any other lawful right or remedy.

(2) LESSEE files a voluntary petition in bankruptcy including a reorganization plan; makes a general or other assignment for the benefit of creditors; is adjudicated as bankrupt or if a receiver is appointed for the property or affairs of LESSEE and such receivership is not vacated within thirty (30) days after the appointment of such receiver.

SECTION FIFTEEN

Surrender of Possession: Title to Improvements and Repairs

Upon termination by expiration of the original term of this Lease or upon earlier termination under any circumstances, LESSEE'S rights to use the premises, facilities, and services described in this Lease shall cease, and LESSEE shall vacate the premises without unreasonable delay. Upon termination by expiration of the original term of this Lease or upon earlier termination under any circumstances, LESSEE shall have no further right or interest in any of the leased premises or the improvements thereon. It is mutually agreed that title to any and all improvements, including hangar, currently situated, hereafter erected, or hereafter constructed upon the premises shall remain the property of LESSEE for so long as this Lease shall remain in effect, but such improvements, including hangar, shall revert to or become owned and

possessed by LESSOR upon the expiration or earlier termination of this Lease, without any additional payment or consideration to LESSEE therefor, free and clear of all claims on the part of LESSEE on account of any repair or improvement work. The vesting of title in LESSOR at the time specified is a part of the consideration for this Lease. LESSOR shall not be liable to LESSEE or LESSEE'S contractors or sub-lessees for the value of such improvements, including hangar, currently situated on, hereafter erected, or hereafter constructed upon the premises.

**SECTION SIXTEEN
Inspection by Lessor**

LESSOR may enter the premises now or hereafter leased exclusively to LESSEE at any reasonable time for any purpose necessary or incidental to the performance of its obligations under this Lease. LESSEE will provide access to the hangar ground site including the hangar subsequently constructed thereon for inspection by LESSOR. This inspection may be made at least semi-annually with a fire department official. Any discrepancies or violations must be corrected within thirty (30) days or this Lease may be terminated.

**SECTION SEVENTEEN
Assignment and Subletting**

LESSEE shall not at any time sublease, assign, or in any manner surrender personal control of any part of the property or rights herein leased without the written consent of LESSOR, which written consent shall not be withheld in bad faith. Provided, however, that the foregoing shall not prevent the assignment or subletting of such rights to any corporation with which LESSEE may merge or consolidate, or which may succeed to the business of LESSEE, or to the United States Government or any agency thereof. No such assignment or subletting contemplated hereunder shall release LESSEE from its obligations to pay any and all of the rentals and charges set forth in this Lease. It is recognized that the interest of all parties will be promoted and served by the increased use of the Airport facilities and it is not the intention of this provision to so restrict this use, but rather to insure that the same is accomplished with the view of serving the public interest vested in LESSOR.

**SECTION EIGHTEEN
Notices**

Notices provided for in this Lease shall be sufficient if sent by registered mail, postage prepaid, and addressed as follows:

TO LESSOR: Attn: City Manager
 City of Washington
 Post Office Box 1988
 Washington, NC 27889

TO LESSEE: John Jensen Hill, Jr.
 315 Thomas Place
 Washington, NC 27889

Any notice so given to either party hereunder shall be conclusively considered to have been received on the third business day following the proper mailing thereof. Each party shall give written notice to the other of any change of address at least thirty (30) days in advance of the date such change is to become effective, whereupon the address so given shall control.

**SECTION NINETEEN
Governing Law**

This Lease shall be governed by, construed, and enforced in accordance with the laws of the State of North Carolina.

SECTION TWENTY

Severability

Any covenant, condition, or provision of this Lease that is held to be invalid by any court of competent jurisdiction shall be considered deleted from this Lease, but such deletions shall in no way effect any other covenant, condition or provision of this Lease, so long as such deletion does not materially prejudice LESSOR or LESSEE in their respective rights and obligations contained in the valid covenants, conditions, or provisions of this Lease.

SECTION TWENTY ONE

Effect of Waiver

The waiver of any breach, violation or default in or with respect to the performance or observance of the covenants and conditions contained herein shall not be taken to constitute a waiver of any such subsequent breach, violation or default in or with respect to the same or any other covenant or condition hereof.

SECTION TWENTY TWO

Arbitration

In the event of any disagreement as to whether there has been a breach of contract under this Lease, the questions shall be submitted to arbitration, each party hereto selecting one arbitrator and the two so selected selecting a third arbitrator (but if no agreement can be reached as to the third arbitrator, he shall be appointed by the Clerk of Superior Court of Beaufort County), which board of arbitrators shall sit within two weeks following the date of their appointment, and after proper notice to both parties, shall hear the evidence presented by both sides and render their decision. The majority vote shall be binding on both LESSOR and LESSEE, and it shall be made and announced as soon as possible, and in no event later than two weeks after the aforementioned hearing. Each party shall pay the arbitrator appointed by it, and the third arbitrator shall be paid jointly by LESSOR and LESSEE. In this connection, attention is invited to the fact of the management of said Airport, its general appearance and the manner in which LESSEE serves and meets the general public is of paramount importance to the LESSOR, and in the event of any disagreement requiring adjustment or adjudication by arbitration, as herein provided, said arbitrator shall give particular attention to these considerations to the extent that LESSEE shall comply with all requirements of this Lease.

SECTION TWENTY THREE

Effect of Lease

All covenants, conditions, or provisions in this Lease shall extend to and bind the legal representatives, successors and assigns of the respective parties. This Lease is in lieu of any lease heretofore executed between the parties hereto and any such prior lease is hereby cancelled and no longer in effect.

**SECTION TWENTY FOUR
Attorney's Fees**

In the event any action is filed in relation to this Lease, the unsuccessful party in the action shall pay to the successful party, in addition to all sums that either party may be called on to pay under this Lease, a reasonable sum for the successful party's attorney's fees.

**SECTION TWENTY FIVE
Entire Agreement**

This Lease shall constitute the sole agreement between the parties hereto and it is understood that the provisions contained herein shall not be altered, modified or changed in any manner except by written agreement executed by LESSOR and LESSEE, and no oral contract or agreement, or informal memorandum shall have the effect of so modifying, altering or changing this agreement. Any prior understanding or representation of any kind preceding the date of this Lease shall not be binding on either party except to the extent incorporated in this Lease.

**SECTION TWENTY SIX
Modification of Lease**

Any modification of this Lease or additional obligations assumed by either party in connection with this Lease shall be binding only if in writing signed by each party or an authorized representative of each party.

IN WITNESS WHEREOF, each party to this Lease has caused it to be executed by their duly authorized officers and/or agents on the date indicated below.

PRE-AUDIT CERTIFICATE

This lease has been pre-audited pursuant to North Carolina General Statute § 159-28 in the manner required by the Local Governmental Budget and Fiscal Control Act.

s/Carol Williams
CAROL WILLIAMS
FINANCE DIRECTOR

LESSOR
s/James C. Smith
JAMES C. SMITH
CITY MANAGER

ATTEST:

s/Rita A. Thompson
RITA A. THOMPSON,CMC
CITY CLERK

s/John Jensen Hill, Jr.
JOHN JENSEN HILL, JR.
LESSEE

REVIEW - STAFF VACANCY LIST

Mr. Smith recommended three vacant positions continue to be held vacant until July 1st: (1) Stormwater Management (2) Library Director and (3) Municipal Code Enforcement Officer.

MEETING – WASHINGTON-GREENVILLE COMMITTEE (MARCH 19, 2007)

The Washington-Greenville Committee will meet at 6:00 p.m. at the Skills Center at the Industrial Park. Councilman Gahagan and Councilman Jennings are the Council representatives on this committee.

RECREATION LEAGUE AGREEMENT

On motion of Mayor Pro tem Woolard, seconded by Councilman Jennings, Council approved the Recreation League Agreement. Councilman Gibson voted no –Motion carried by majority vote.

Youth Sports Agreement City of Washington Washington Parks and Recreation Department

Purpose The League and the City of Washington share the vision and goal of providing a fun, learning, competitive and safe environment to enjoy youth recreational sport programs. This agreement will establish the criteria by which the League shall use the City's facilities and will outline the responsibility of the League and the City.

The League agrees to perform the following:

- A. Establish a volunteer Board of Directors that is the decision making body for the league. All Board meetings shall be open to the public with provision for public comment during each meeting.
- B. Establish By-laws for the League in accordance with the accepted practices of obtaining non-profit status.
- C. Organization and administration of the local program. This includes everything concerning league operations, except facility maintenance.
- D. Insure that each child who registers is provided an opportunity to play. Equal playing time rules are encouraged.
- E. Name the City of Washington on your liability insurance as an additional Insured and provide certification of insurance before the first game of the season. (\$1,000,000).
- F. Provide Accident Insurance and provide certification of insurance to the City of Washington before the first game of the season.
- G. The City of Washington strongly recommends League to obtain Directors and Officer's insurance. In the event a league does not obtain satisfactory D & O insurance, then the league shall provide the city with a full release and indemnification agreement.
- H. Pay the City \$25 (or the current annual amount approved by the Washington City Council) per participant by the first game of the season along with written documentation of the number of players per league.
- I. Obtain approval from the City for all practice, practice game, game, and make up game schedules.
- J. Obtain approval from the City for any physical improvement to facilities.
- K. Follow the "modified, League" Outdoor Special Events Policy when scheduling post season tournaments and events.
- L. Provide a coaches training program for all head coaches.
- M. Annual review and approval of League finances by a League Official

- N. Scholarships, their number, and criteria are offered at the sole discretion of the league.
- O. Perform criminal record check on all coaches and League representatives before they assume their official duties.
- P. Operate concession stand according to policies set by the City. This includes staffing workers and maintaining inventory of products sold. Perform needed maintenance and repairs to equipment purchased by the leagues.

Therefore, the City agrees to provide the following:

- A. Maintenance of all facilities, accessible restrooms and concession stand, press box, grounds, fields and operation and maintenance of all ball field lights. Baseball/Softball - Drag practice fields 1 time per week during season. Financial responsibility for utility costs for ball field lights, major improvement to the property, and maintenance of the facilities.
- B. Obtain necessary permits from Health Department and insure that any concession facility meets all applicable Health Department regulations (includes setting policies and procedures to meet these standards). *NC General Statute 130A-248 Regulation of food and lodging establishments, (a4, excerpt attached.)*
- C. Assign a staff person to the Susiegray McConnell Sports Complex or Bobby Andrews Recreation Center for oversight and facility supervision.
- D. Establish field use priorities and approval of schedules. The City will work with the League to insure enough facility space to conduct the program within the facilities limitations of space and to provide facility use priority for the youth of the community. Approve all game, practice and make up game schedules.
- E. Technical assistance in the areas of scheduling, coaches training, scheduling game officials (Umpires, referees, clock operators, scorekeepers, etc) along with other technical aspects of the program if the league desires.
- F. The City will exempt League from paying up to (5) \$25 Facility Use Fees per season for scholarships given by the League.

With these responsibilities understood, it is important to note that both the League and the City must support one another in this effort.

We understand and agree that use of City of Washington facilities is contingent upon compliance with this agreement.

If either party wishes to terminate this agreement, notice of termination must be in writing 30 days prior to termination.

Agreement Date: **March 12, 2007**

City of Washington, NC
s/Philip Mobley
PHILIP MOBLEY
DIRECOTR

LEAGUE PRESIDENT

NC General Statutes 130A-248 Regulation of food and lodging establishments, (a4)

For the protection of the public health, the Commission shall adopt rules governing the sanitation of limited food service establishments. In adopting the rules, the Commission shall not limit the number of days that limited food service establishments may operate. Limited food service establishment permits shall be

issued only to political subdivisions of the State, establishments operated by volunteers that prepare or serve food in conjunction with amateur athletic events, or for establishments operated by other charitable organizations.....

ELECTRIC RATES AND USAGES

Keith Hardt, Electric Director, gave a power point presentation on the electric rates and usages.

Electric Rate Comparison

- Compared electric rates among the major customer classes with five (5) regional utilities
 - Two (2) Investor Owned Utilities
 - Two (2) Electric Municipalities (similar or larger in size to Washington)
 - One (1) Electric Membership Cooperative
- This is not a complete rate analysis
- A comparison between utilities with one customer from each major rate class will be presented
- The comparisons are a monthly average for one year
- The charges listed do not include any load management credits or generation credits which can lower retail charges by up to 40%

Residential Rate comparison – Out of the ten compared, Washington was the cheaper, with no load management credits, etc.

Councilman Gibson inquired about what utility companies were being compared, but Mr. Hardt stated he would rather not show that. Councilman Gibson questioned why, and asked what does the Council tell our contingents? Mr. Hardt stated a rate analysis can be done if they bring their bill in.

Council discussed changing the bill print format to make the history usage graphic to include the existing bill, and also splitting the page in half to reflect the electric on one half the page and other services, such as water, trash, etc. on the other half.

Councilman Jennings asked if there is an opportunity to shift large commercial to a more competitive rate and relieve the residential usage/rate? Mr. Hardt answered yes.

Mr. Smith pointed out that a Rate Study will be presented in January, 2008.

Councilman Gibson suggested we reinstate the Utilities Committee that was dissolved a few years ago, so customers can have a forum to vent their feelings/ideas/cost savings, etc.

Mayor Jennette suggested this be discussed at the Committee of the Whole meeting.

Electric Rate Usage

Heating Degree Days

- Heating Degree Days (HDD)
 - A monthly calculated value

- It is the sum of cumulative temperatures below 65 degree for each day
- Example:
 - + If the average temperature for today was 52 degree then today's heating degree days is 13

 - +At the end of the month each day's number is totaled for a monthly HDD value
- Each month of the year has a "normal" HDD value which is the long term average
- Heating Degree Days is a comparative measure of how much energy a customer has consumed for the month
- Our wholesale energy purchases track monthly HDD very consistently
- Example: If the HDD for a given month has increased from the previous month by 15% we see an increase in energy purchased by a similar amount

Councilman Gibson asked that, in the budget procedures, council look very closely for cost savings and the 3% increase Booth has recommended for January 2008. He would like to see some of this increase offset by some cost savings in the Electric Department, as well as other departments.

Mr. Smith stated that in October 2006, there was a 3% gap; the recommendation was not to do an increase, but to study the structures. Since that time we have had a relatively warm December 2006 and part of January 2007, and now very cold. By January 2008, it will be difficult to say.

Councilman Gahagan stated that we are also having an independent audit done.

**AUTHORIZE – CONTRACT FOR PCM SKATEPARK CONSTRUCTION
MANAGEMENT TO WALLY HOLLYDAY (\$7,000)**

Mr. Holscher will review the contract before execution.

On motion of Mayor Pro tem Woolard, seconded by Councilman Gibson, Council unanimously authorized the Mayor to sign the contract with Wally Hollyday to provide seven (7) days of management construction supervision and direction for quality control of the PCM Skatepark construction in the amount of \$7,000, subject to City Attorney approval as to form.

AGREEMENT FOR CONSTRUCTION SUPERVISION SERVICES

THIS AGREEMENT, made this the 23rd day of April, 2007, by and between WALLY HOLLYDAY DESIGN, of Aliso Viejo, California, (hereinafter referred to as "Hollyday") and the CITY OF WASHINGTON, a body politic and corporate of the State of North Carolina, (hereinafter referred to as "City").

WITNESSETH:

WHEREAS, the City desires Hollyday to provide certain construction supervision services in conjunction with the construction of the Patrick Cochran Memorial Skate Park (hereinafter referred to as "Skate Park") and

WHEREAS, Hollyday desires to contract with the City to provide said construction supervision services.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and the payments to be made from City to Hollyday, the parties hereto agree as follows:

1. Purpose. The purpose of this Agreement is for Hollyday to provide necessary construction supervision services in order to insure quality control of the Skate Park construction.

2. Term. The term of this Agreement shall continue until such time as the Skate Park is completed or until such time as the City notifies Hollyday that its services are no longer required.

3. Duties. During the term of this Agreement and in connection with the performance of its work hereunder, Hollyday shall provide the following:

(a) CONSTRUCTION SUPERVISION

Unless waived by the City, Hollyday shall provide a minimum of seven (7) days of construction supervision and direction to insure quality control of the Skate Park construction. Supervision of the construction activities and the construction site will be provided as necessary to insure compliance with the project schedule and contract documents and will specifically include but not be limited to the following:

1. Verify layout and site grading,
2. Verify drain placements,
3. Verify rough excavation of sub-grade,
4. Verify rough excavation of curved and banked walls,
5. Verify fabrication of wood templates for curved and banked walls,
6. Supervise final fine grading,
7. Supervise placement of metal coping and edging,
8. Supervise form placement for ledges and shotcrete, and
9. Supervise shotcrete placement and finish.

(b) ADDITIONAL SERVICES

Hollyday shall:

1. Advise and consult with the City and issue all of the City's instructions to the construction contractor;
2. Inform and consult with the Skate Park engineer when any question, dispute, or disagreement between Hollyday and the construction contractor arises and conduct all other communication with the City through the Skate Park engineer or the City's designated representative;
3. Schedule on-site inspections required by a permit or other agency so that every phase of construction is observed at the appropriate time and be completely familiar with the plans, specifications, and scheduled progress so as to be able to preplan site visitations during the critical construction stages;
4. Reject work that does not comply with the construction drawings and documents or is otherwise unacceptable, and require corrective work, which shall be performed as soon as possible;
5. Respond in writing or orally to requests by the construction contractor for information and/or clarification regarding the contract drawings and/or specifications;

6. Check shop drawings, select and approve materials that comply with Skate Park standards and equipment, and secure the approval of the same by the City;
7. Prepare modification proposals and change orders for approval by the City;
8. Insure that a construction schedule is in use as a construction guide and report construction progress; and
9. Be responsible for organizing and preparing a final punch list of incomplete or unapproved items as well as final inspection for the City and verify the construction contractor's compliance therewith.

4. Compensation. The fee for said construction supervision services shall be in the amount of SEVEN THOUSAND AND NO/100 DOLLARS (\$7,000.00). Progress payments for said fee will be made monthly based on percentage of work completed and invoiced within that period.

5. Insurance. During the term of this Agreement, Hollyday shall maintain in force a policy of commercial general liability and property damage insurance, including business and auto liability coverage, issued to Hollyday and insuring against all claims for personal injury including death, and all claims for destruction of or damage to property, arising out of or in connection with Hollyday's performance of its obligations hereunder. Such insurance shall be written with a coverage amount of not less than \$1,000,000 for all damages arising out of bodily injury, including death at any time resulting therefrom, sustained by any one person in any one occurrence, and a limit of coverage of not less than \$1,000,000 aggregate for any such damages sustained by two or more persons in any one occurrence. The property damage insurance component of such policy shall be written with a limit of coverage of not less than \$250,000 for all property damage sustained by any one person in any one occurrence, and a limit of coverage of not less than \$250,000 aggregate for any such damage sustained by two or more persons in any one occurrence. Hollyday shall also maintain workman's compensation insurance in an amount at least equal to the minimum limits established by North Carolina law.

All insurance coverage required hereinabove shall be in a form and an amount acceptable to the City in the City's sole discretion. All insurance coverage required hereinabove shall be procured from a company that is licensed to do business in the State of North Carolina and/or is otherwise an admitted carrier in the state of North Carolina. The City shall be furnished copies of any and all insurance policies obtained by Hollyday in compliance with this requirement. Hollyday agrees to maintain sufficient coverage on a current status and that all such insurance policies obtained by Hollyday in compliance with this requirement name the City as additional insured and provide a thirty (30) day written notice to the City of termination or material change in the terms thereof or non-renewal of such policies.

6. Indemnification. Hollyday shall indemnify and hold harmless the City from and against any and all claims, damages, losses, costs or expenses (including reasonable attorney fees) incurred or allegedly incurred by the City in connection with or in any way arising from Hollyday's performance of this Agreement. Hollyday agrees to accept full responsibility for any and all such claims, liabilities and injuries against Hollyday, the City of Washington and its officers and employees that may arise as a result of Hollyday's performance of this Agreement.

7. Default and Cancellation. Either party may cancel this Agreement if the other party defaults on any material obligation or responsibility imposed on it hereunder as more specifically provided below:

a. Hollyday understands that the City may terminate this Agreement at any time in its sole discretion due to poor performance or any breach of any part of this Agreement by Hollyday;

b. In the case of any default in the payment of monies due, such default must be cured within ten (10) business days after written notice thereof; and

c. In the event any party takes advantage of any bankruptcy, insolvency or other law for the relief of debtors, this Agreement may be cancelled at the option of the other party and no cure period shall be provided.

8. Notice. All formal notices required or permitted hereunder shall be given as follows:

If to City: City of Washington
Attn: City Manager
P.O. Drawer 1988
Washington, NC 27889

If to Hollyday: Wally Hollyday Design
Attn: Wally Hollyday
50 Dawn Lane
Aliso Viejo, CA 92656

9. Non-Discrimination. Hollyday will not discriminate against any person because of race, creed, gender, age, national origin, handicap or sexual preference in connection with the performance of this Agreement. Hollyday shall take affirmative action to ensure that applicants are employed and that employees are treated during their employment without regard to race, religion, color, sex, age, or national origin. Such action shall include, but is not limited to, the following: employment upgrading, demotion or transfer, recruitment or advertising, layoff or termination, rate of pay or other forms of compensation. Hollyday further agrees to adhere to all labor and minimum wage requirements applicable to this Agreement.

10. Relationship of Parties. In carrying out the terms and conditions of this Agreement, Hollyday is an independent contractor and is not an agent or employee of the City.

11. Compliance with Laws and Ordinances. Hollyday shall comply with all Federal, State and existing local laws, ordinances and regulations that in any way pertain to the services rendered hereunder.

12. Assignment. Hollyday may not assign or subcontract this Agreement without prior written consent of the City.

13. Entire Agreement. The parties agree that the covenants and the conditions set forth herein constitute the entire and complete agreement between the parties and that all prior negotiations and conditions have been superseded by this Agreement. Any amendments to this Agreement shall be in writing and signed by each of the parties hereto.

14. Illegal Provisions, Governing Law. If any provision of this Agreement shall be declared illegal, void, or unenforceable, the other provisions shall not be affected, but shall remain in full force and effect. This Agreement shall be governed by and construed in accordance with the laws of North Carolina.

15. Waiver. The waiver of or the failure to take action with respect to any breach of any term, covenant, or condition of this Agreement shall not be a waiver of any subsequent breach of any term, covenant or condition.

IN WITNESS WHEREOF, the City has caused this instrument to be executed in its name by its City Manager, attested by its City Clerk, and its corporate seal to be hereunto affixed, all by proper corporate authority duly given and Hollyday has caused this Agreement to be executed by its legal representative, all by proper corporate or otherwise duly given authority. This Agreement has

been executed in duplicate originals, one of which is being retained by each of the parties, all as of the date first above written.

CITY OF WASHINGTON

s/James C. Smith
JAMES C. SMITH
CITY MANAGER

ATTEST:

s/Rita A. Thompson
RITA A. THOMPSON, CMC
CITY CLERK

s/Wally Hollyday
WALLY HOLLYDAY
DESIGN

This instrument has been preaudited in the manner required by The Local Government Budget and Fiscal Control Act.

s/Carol Williams
CAROL WILLIAMS
FINANCE OFFICER

**AWARD – PCM SKATEPARK CONSTRUCTION CONTRACT TO
CALIFORNIA SKATEPARKS (\$210,000)**

On motion of Mayor Pro tem Woolard, seconded by Councilman Gahagan, Council unanimously authorized the Mayor to sign the contract with California Skateparks, Inc., to perform the construction of the PCM Skateboard Park not to exceed \$210,000, subject to the approval of the City Attorney as to form.

California Landscape and Design Inc.

273 N. Benson Ave. Upland, CA 91786

This Agreement ("Contract") is made effective as of the 7th day of March 2007, between California Landscape & Design, Inc. dba California Skateparks ("Contractor") and the City of Washington, NC ("Owner").

The work described in Section 1 below shall be performed in accordance with all plans, specifications and other contract documents attached to or incorporated into the Contract for the project known as: "PCM Skate

Section 1. Scope: Contractor shall furnish all labor, materials, equipment and other facilities required to complete the following work: SKATE PARK PER PLANS AND SPECS L1.01 - L5.01 WHICH ARE INCORPORATED HEREIN BY REFERENCE AS IF FULLY SET FORTH, ACCORDING TO THE ATTACHED PROPOSAL AND PRICE BREAKDOWN, SUBJECT TO THE ATTACHED EXCLUSIONS.

Section 2. Pricing and Payment: The Owner agrees to pay Contractor for the strict performance of the work, the sum of \$210,000.00 (TWO HUNDRED TEN THOUSAND DOLLARS) subject to adjustments for changes in the work as may be agreed to by the Owner and the Contractor or as may be required under this Contract.

Payment shall be made as follows: Owner agrees to make progress payments for all work completed. Payments will be due thirty (30) days after completion and invoice. Upon receipt of the final invoice by Contractor, final payment to Contractor shall be made after completion and acceptance by Owner of the work described in this Contract. By making final payment, Owner confirms all work is completed to his or her satisfaction and in accordance with this Contract.

Notwithstanding anything herein to the contrary, at any time prior to or upon receipt of final invoice, owner may, with the assistance of Wally Hollyday Design, generate and produce a final punch list for completion of the work contemplated hereunder. Owner may, in its discretion and without penalty therefor, withhold so much of any progress payment or final payment as is proportional to the uncompleted work represented by said punch list and withhold the same until such time as said punch list has been completed to its satisfaction, including its final inspection of the work contemplated hereunder. Any withholding contemplated hereunder shall not be grounds for suspension of work under Section 7 hereof.

Section 3. Entire Agreement: The parties agree that the covenants and the conditions set forth herein constitute the entire and complete agreement between the parties, including entire agreement between Contractor and Owner regarding the work described in Section 1, and that all prior negotiations and conditions have been superseded by this Contract. Any amendments to this Contract shall be in writing and signed by each of the parties hereto.

Section 4. Time: Time is of the essence for this Contract. Contractor shall provide Owner with a progress and completion schedule and shall conform to that schedule including any changes to the schedule agreed upon by the Owner and the Contractor or required by circumstances beyond the control of the Contractor. If the work contemplated hereunder is not completed within the above completion schedule, including any changes to said schedule agreed upon by the Owner and the Contractor, the Owner will sustain damage that will be impracticable and extremely difficult to quantify. The Contractor shall pay to the Owner liquidated damages in the sum of \$500.00 for each consecutive calendar day beyond said completion schedule. Any sums that may be due the Owner as liquidated damages may be deducted from any monies due or to become due to the Contractor under this Contract.

Section 5. Delay: In the event that Contractor's work is delayed for any act of the Owner, Contractor's sole remedy shall be an extension of time equal to the period of delay.

Section 6. A. Changes In Work: The work shall be subject to changes, additions, deletions or revisions by the Owner. The Contractor will be notified of such by receipt of written additions and/or revised drawings,

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specifications, exhibits and written orders.

Whenever an adjustment in the Contract price or Contract time is required because of Owner's request for changes

in work, differing site conditions, errors in plans and specifications, or other circumstances beyond the control of the

Contractor (including lack of work site access, weather, fires, floods, strikes, acts of god, natural disasters, or act

of third parties), the Contractor shall submit to the Owner within a reasonable time a detailed estimate, with supporting calculations, pricing and adjustments in the schedule, of the change to the Contract time. Pricing of the adjustments shall be in general accordance with the pricing structure of this Contract. However, to the extent such pricing is inapplicable, cost of change or the amount of the adjustment shall be determined on the basis of the cost of the Contractor plus reasonable amounts for overhead and profit.

The Contractor shall not be obligated and shall not commence to perform changes in the work or additional work until the Owner has approved, in advance and in writing, the changes to the Contract scope of work, price and the Contract time.

Section 6. B. Differing Site Conditions: Contractor shall promptly, and before the following conditions are disturbed, notify the Owner, in writing of any

- (1) Material that the contractor believes may be material that is hazardous waste, or toxic pollutant or other substance, the handling of which may subject Contractor to legal liability;
- (2) Subsurface or latent physical conditions at the work site differing from those indicated in the Contract; or
- (3) Unknown physical conditions at the work site of any unusual nature, materially different from those ordinarily encountered and generally recognized as inherent to work of the character provided for in the Contract.

The Owner shall promptly investigate any of the above upon such notice. If the Owner finds that the work site conditions do materially differ, or involve hazardous waste or toxic pollutants, the Owner shall either: a) remedy the same at its expense, b) terminate this Contract without further liability therefor, or c) cause a decrease or increase in the Contractor's cost of, or the time required for, performance of the affected part of the work by issuing a change order under the procedures described in the Contract.

Section 7. Suspension of Work: If any payment is not made to the Contractor as required under this Contract, Contractor may suspend work until such payment is made. Contractor may also suspend work under this Contract if a dispute over payment for extra work, different site conditions, changes requested by Owner or other circumstances beyond Contractor's control will cause the Contractor to suffer substantial financial hardship if Contractor is required to continue the work. Contractor may request that Owner provide written proof of Owner's ability to pay Contractor for the work remaining to be performed by Contractor at any time prior to or during performance of this Contract. Failure of Owner to provide such proof shall be justification for Contractor's suspensions of work under this Contract.

Any suspension of work under this Contract will also suspend the progress and completions dates set forth in Section 4.

Section 8. Inspection And Protection Of Work: Contractor shall make the work accessible at all reasonable times for inspection by the Owner. The Contractor shall, at the first opportunity, inspect all material and equipment delivered to the job site by others to be used or incorporated in the work and

give prompt notice of any defect therein. Contractor assumes full responsibility to protect the work done hereunder until final acceptance by the Owner.

Section 9. Site Access and Rights of Way: The Owner shall provide, no later than the date when needed by the Contractor, all necessary access to the lands upon which the work is to be performed, including convenient access to the lands and any other lands designated in the Contract Documents for the use by the Contractor. Owner shall continue to provide such access until completion of the Contract. Any failure to provide such access shall entitle the Contractor to an equitable adjustment in the Contract price and the Contract time.

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Section 10. Reports and Surveys: Owner shall furnish to Contractor, prior to the commencement of any work required hereunder, all maps, surveys and reports, in the possession of Owner, describing the physical characteristics, soil, geological and subsurface conditions, legal limitations, utility locations, and legal descriptions that might assist the Contractor in properly evaluating the extent and character of the work required. The Owner shall provide all land surveys and baselines necessary for the Contractor to locate the principal parts of the work and perform the work.

Section 11. Permits, Licenses and Regulations: Permits and licenses of a temporary nature necessary for the prosecution of the work shall be obtained and paid for by the Contractor. The Owner shall assist the Contractor in obtaining such permits and licenses. Permits, licenses and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the Owner.

The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the performance of the work. If the Contractor observes that drawings, specifications, or other Contract documents are at variance with such laws, ordinance, rules and regulations, the Owner shall promptly be notified and, if necessary, an adjustment made to the Contract time and Contract price.

Section 12. Termination: Owner reserves the right, at any time and for any reason, to terminate Contractor's service, for its convenience upon notice in writing to the Contractor. In the event of termination for convenience, Contractor shall recover the actual costs of work completed to the date of termination, in approved units of work or percentage of completion, plus twenty-five percent (25%) of the actual cost of the work for overhead and profit.

Section 13. Indemnification: To the fullest extent permitted by law, Contractor shall indemnify and hold harmless Owner against claims, demands, causes of actions and liabilities of every kind and nature whatsoever arising out of or in connection with Contractor's operations performed under this Contract. This indemnification shall extend to claims occurring after this Contract is terminated as well as while it is force.

Section 14. Insurance: The Contractor shall, at its expense, procure and maintain insurance on all of its operations as required by this Contract, including the following coverage:

- a. Workers' Compensation and Employer's Liability insurance;
- b. Comprehensive General Liability or Commercial General Liability insurance covering all operations and;
- c. Automobile Liability Insurance, including coverage for all Contractor owned, hired and nonowned automobiles.

Property Insurance: Contractor shall effectively secure and protect the work done hereunder and assume all responsibility for the condition thereof until final acceptance by Architect and /or Owner. Contractor further agrees to provide such protection as is necessary to protect the work and the workmen of Contractor, Owner and other sub-contractors from its operations.

Waiver of Subrogation: Owner and Contractor waive all rights against each other and against all sub-contractors and Owner for loss or damages to the extent reimbursed by any property or equipment insurance applicable to the work, except such rights as they may have to the proceeds of such insurance. If any applicable policies of insurance require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed or obtain such consent.

All insurance coverage required hereinabove shall be in a form and an amount acceptable to Owner in Owner's sole discretion. All insurance coverage required hereinabove shall be procured from a company that is licensed to do business in the state of North Carolina and/or is otherwise an admitted carrier in the state of North Carolina. Owner shall be furnished copies of any and all insurance policies obtained by Contractor in compliance with this requirement. Contractor agrees to maintain sufficient coverage on a current status and that all such insurance policies obtained by Contractor in compliance with this requirement name the Owner as additional insured and provide a thirty (30) day written notice to the Owner of termination or material change in the terms thereof or non-renewal of such policies.

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Builder's Risk: "All risk" builder's risk insurance (excluding the hazard of earthquake and flood) shall be purchased by Contractor and provide property insurance coverage for Owner, Contractor and subcontractor including loss or damage to Contractor's work. Such insurance shall apply to any of Owner's property in the care, custody or control of Contractor. Owner waives all rights of recovery against the Contractor for loss of use of the Owner's property due to fire or other hazards.

Section 15. Arbitration: Any controversy or claim arising out of or relating to this Contract or its alleged breach, which cannot be resolved by mutual agreement, shall be settled by arbitration in accordance with Construction Industry Rules of the American Arbitration Association in effect on the date of the Contract, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. Owner and Contractor agree that, should Contractor be potentially or actually a party to a lawsuit or arbitration arising out of or connected to this Contract, Owner shall appear in, and be bound by the decision in, that lawsuit or arbitration. The prevailing party in any action or proceeding to enforce

this Contract shall recover its reasonable attorney's fees and costs (including expert witnesses) in that action or proceeding.

Section 16. Warranty: Contractor warrants to Owner that all materials and equipment furnished shall be new unless otherwise specified and that all work under this Contract will be performed in a good workmanlike manner, shall be of good quality free from faults and defects, and in accordance with the Contract documents. All work not conforming to these requirements including substitutions not properly approved and authorized may be considered defective. The warranty provided shall be in addition to and not in limitation of any warranty or remedy required by law or by the Contract documents.

Section 17. Special Provisions: (Including unit pricing if applicable.)

JOB DURATION TO BE 90 WORKING DAYS AFTER NOTICE TO PROCEED FOLLOWING COMPLETION OF GRADING AND DRAINS. CONTRACTOR WILL PROVIDE A TENTATIVE START AND COMPLETION DATE UPON FINAL SIGNATURE OF CONTRACT. PROGRESS PAYMENTS ARE TO BE MADE AND WILL REFLECT WORK COMPLETED AT EACH INTERVAL.

Section 18. Nondiscrimination: Contractor will not discriminate against any person because of race, creed, gender, age, national origin, handicap or sexual preference in connection with the performance of this Contract. Contractor shall take affirmative action to insure that applicants are employed and that employees are treated during their employment without regard to race, religion, color, sex, age, or national origin. Such action shall include, but is not limited to, the following: employment upgrading, demotion or transfer, recruitment or advertising, layoff or termination, rate of pay or other forms of compensation. Contractor further agrees to adhere to all labor and minimum wage requirements applicable to this Contract.

Section 19. Relationship of Parties: In carrying out the terms and conditions of this Contract, Contractor is an independent contractor and is not an agent or employee of the Owner.

Section 20. Compliance with Laws and Ordinances: Contractor shall comply with all federal, state and existing local laws, ordinances and regulations that in any way pertain to the services rendered hereunder.

Section 21. Assignment: Contractor may not assign or subcontract this Contract without prior written consent of the Owner.

Section 22. Illegal Provisions, Governing Law: If any provision of this Contract shall be declared illegal, void, or unenforceable, the other provisions shall not be affected, but shall remain in full force and effect. This Contract shall be governed by and construed in accordance with the laws of North Carolina.

Section 23. Waiver: The waiver of or the failure to take action with respect to any breach of any term, covenant, or condition of this Contract shall not be a waiver of any subsequent breach of any term, covenant or condition.

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IN WITNESS WHEREOF, the Owner has caused this instrument to be executed in its name by its City Manager, attested by its City Clerk, and its corporate seal to be hereunto affixed, all by proper corporate authority duly given and Contractor has caused this Agreement to be executed by its legal representative, all by proper corporate or otherwise duly given authority. This Contract has been

executed in duplicate originals, one of which is being retained by each of the parties, all as of the date first above written.

s/James C. Smith

ATTEST

s/Rita A. Thompson
RITA A. THOMPSON, CMC
CITY CLERK

s/Joseph Ciaglia, President
California Landscape and Design, Inc.

s/Carol Williams
FINANCE DIRECTOR

**ADOPT – BUDGET ORDINANCE AMENDMENT FOR PATRICK
COCHRAN MEMORIAL SKATEBOARD PARK
CONSTRUCTION (\$89,962)**

On motion of Mayor Pro tem Woolard, seconded by Councilman Brooks, Council unanimously adopted a budget ordinance amendment in the amount of \$89,962 for the construction of the skateboard park.

**AN ORDINANCE TO AMEND THE BUDGET ORDINANCE
OF THE CITY OF WASHINGTON, N.C.
FOR THE FISCAL YEAR 2006-2007**

BE IT ORDAINED by the City Council of the City of Washington, North Carolina:

Section 1. That the Estimated Revenues in the General Fund be increased in the amount of \$79,661 in the account Contributions-Skateboard Park, account number 10-40-3611-8405.

Section 2. That the Estimated Revenues in the General Fund be increased in the amount of \$10,301 in the account Skateboard Park Concessions, account number 10-40-3612-4803.

Section 3. The account number 10-40-6121-4801, Concession Purchase Skateboard Park, Events & Facilities portion of the General Fund appropriations budget be increased in the amount of \$3,763 to provide funds for concession purchases.

Section 4. That account number 10-40-6130-7400, Capital Outlay, Parks & Grounds portion of the General Fund appropriations budget be increased in the amount of \$86,199 to provide funds for Construction of Skateboard Park.

Section 5. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 6. This ordinance shall become effective upon its adoption.

Adopted this the 12th day of March, 2007.

s/Judy Jennette
JUDY JENNETTE
MAYOR

ATTEST:

s/Rita A. Thompson
RITA A. THOMPSON, CMC
CITY CLERK

Council recessed for a break at 5:55 p.m. and reconvened at 6:05 p.m.

**PUBLIC HEARING - CONSIDER – CHANGING THE ZONING
CLASSIFICATION OF APPROXIMATELY 17.0 ACRES OF LAND FROM RA-
20S TO B-2 GENERAL BUSINESS DISTRICT**

Jim Nance, Chairman of the Planning Board, stated that the Planning Board recommended that Jason Briley's request for rezoning be changed to O&I instead of the requested B-2 because of the current Comprehensive Plan recommends O&I along US Highway 17 Corridor. Mr. Roberson stated that Mr. Briley just told him he wants to reconsider and have it sent back to the Planning Board. Mr. Holscher stated that Council can still rezone the property.

Mayor Jennette stated this is a public hearing.

Mr. Jason Briley, East Carolina Farms, LLC, stated that he had asked for B-2 and the Planning Board recommended O&I, however, he will settle for B-3 as there are not as many uses in the B-3. Mr. Briley felt that there is enough O&I zoning there already.

It was brought out in the discussion that there was no mention of B-3 in the Planning Board meeting.

Mayor Jennette closed the Public hearing.

Mr. Nance stated that the Comprehensive Plan would have to be amended if the anything other than O&I is approved for rezoning.

Mr. Briley then asked that it not be rezoned and keep it RA-20.

On motion of Councilman Jennings, seconded by Councilman Gahagan, Council unanimously accepted the recommendation of the Planning Board and rezoned the 17.90 acres of land from RA-20 to O&I.

**CONSIDER – CHANGING THE ZONING CLASSIFICATION OF
APPROXIMATELY 2.68 ACRES OF LAND FROM RA-20S TO B-2 GENERAL
BUSINESS DISTRICT**

Mr. Nance stated that the Planning Board recommended the 2.68 acres be rezoned to O&I instead of B-2 because of the Comprehensive Plan, as stated previously.

Mayor Jennette stated this is a public hearing.

There were no comments from the audience.

On motion of Mayor Pro tem Woolard, seconded by Councilman Gibson, Council unanimously accepted the recommendation of the Planning Board and rezoned the 2.68 acres of land from RA-20 to O&I.

**CONSIDER – CHANGING THE ZONING CLASSIFICATION OF
APPROXIMATELY 7.78 ACRES OF LAND FROM R-15S TO RA-20S**

Mr. Nance stated that the Planning Board recommended the request to rezone 7.78 acres from R-15S to RA-20S be denied because the request is inconsistent with the Current Land Use Plan and Comprehensive Plan. The current R-15S allows for single family development which is what the people in the area want it to remain.

Mayor Jennette stated this is a public hearing.

Mr. Wayne Huggins, petitioner, stated that this will not be a major campsite. It will be a fenced in area with a lot of security and a convenient store.

Mr. Roberson stated that about 20 people had signed a petition for it to remain R-15S.

Mr. Tommy Harris stated he owns the land and has spent in excess of over \$100,000. The land does not lend itself for single family housing. The base use is on a lease basis. It will have nice streets and a swimming pool. He stated he owns five houses on that road.

Mr. David Daniels, adjacent property owner, stated that he feels Whichard Beach is headed in a positive direction, and in time and weather, will eliminate mobile homes on Whichards Beach Road. The RA-20S allows for thirty odd uses, including livestock, and could open up this area for a lot of things.

Mr. Robert Henkel stated it would be detrimental if this campground is allowed. He listed several other uses the rezoning would allow. He mentioned the large development going up at the end of Whichards Beach Road. He asked Council to continue with the Planning Board's direction.

Mr. Doug Fleming stated he has been there 31 years. He stated it would be detrimental if a campsite is allowed back there. He stated it is a swamp area during the storm season.

Mrs. Sarah Fleming stated that water come downstairs in her home waist deep and she would hate to have a camper coming through her house. Animal feces will be everywhere, and this is not a good idea.

Mr. Jim Guthrie stated this has been the "Red Neck Riviera." Events has cleaned this area up and they don't want to go backwards, that this is not a commercial community.

Major Jennette closed the public hearing.

Mayor Pro tem Woolard asked Mr. Huggins if he had shown his neighbors what he is proposing? Mr. Huggins answered no.

Councilman Gahagan stated that Council has learned some tough lessons and those uses are not appropriate in this area.

Councilman Jennings stated the RA-20 will be less consistent with property in the city limits.

Councilman Gahagan moved that Council accept the recommendation of the Planning Board and denied the rezoning request to change the zoning classification of 7.78 acres from R-15S to RA-20S because the request is inconsistent with the current Land Use Plan and Comprehensive Plan.

Councilman Brooks seconded the motion. Mayor Pro tem Woolard vote no. – Motion carried by majority vote.

**PUBLIC HEARING - CONSIDER – APPROVING THE PRELIMINARY
SUBDIVISION PLAT OF QUAIL MEADOWS**

Mr. Nance stated that the Planning Board approved the preliminary plat subject to two conditions, one: Public Works Director's comments which are :

- This site will be subject to the City of Washington's Tar-Pamlico River Stormwater Program, and as such, will be required to meet the nutrient run-off requirements of the program
- All water and sewer design and construction will need to meet the City's specifications.
- As this development will be utilizing City water and sewer utilities, voluntary annexation will be required.

The second condition was a variance as set out in Article C, Section 17-61 (4), and subject to the preliminary plat approval to the zoning change from RA-20S to R-15S.

Mr. Smith stated that Council has discussed the Smart Growth concept and thought this would be an opportunity to connect neighborhoods.

Mayor Jennette stated this is a public hearing.

Mr. Zane Buckman stated that the Planning Board is asking for a variance because the property does not deny access to the adjacent property and Margie Swain has street access from the American Legion Road. He stated that he gave up two lots just to stub out for future growth that you don't know we will have.

Mayor Pro tem Woolard stated we have to put into practice what we talk about. Councilman Jennings stated it could become a nature trail.

Mayor Jennette closed the public hearing.

On motion of Councilman Jennings, seconded by Mayor Pro tem Woolard, Council unanimously accepted the recommendation of the Planning Board and approve the preliminary subdivision plat for Quail Meadows, subject to the condition stated in the 2/19/07 letter from the Director of Public Works; and, recommended a variance from Article C, Section 17-61 Subsection 4, and furthermore, subject to the preliminary plat approval to the zoning change from RA-20S to R-15S; and the condition that a pathway/bike trail over the sewer easement over the property.

**PUBLIC HEARING - CONSIDER – APPROVING THE PRELIMINARY
SUBDIVISION PLAT OF BRIDGE HARBOR**

Mr. Nance stated that the Planning Board recommended approval of the preliminary subdivision plat of Bridge Harbor subject to the conditions in letter dated February 19, 2007 from the Public Works Director and a letter dated March 7, 2007 from the Fire Marshal.

Comments contained in the letter of February 19, 2007 are:

1. This site will be subject to the City of Washington's Tar-Pamlico River Stormwater Program, and, as such will be required to meet the nutrient run-off requirements of the program.
2. Since the plans indicate that all on-site utilities will be privately owned and operated, a developer's agreement between the City and the developer will be necessary to explain the terms and conditions of responsibilities.
3. Notes on plan indicate 82 condominiums and 11 town homes. Plan itself only shows the 82 condominiums.
4. As many as three of the proposed sets of docks may extend over existing water and sewer mains crossing the river. This is an issue of concern that should be addressed before construction of the docks begins.

Comments contained in the letter of March 7, 2007 are:

- Second required Fire Department Access gate will require Knox Box
- All weather Fire Department emergency access specifications shall meet AHJ
- Unit 2 Fire Department Access Road is approximately 35 feet from building. It shall be a maximum of 30 feet from building.
- Exits Access Exit and Exit Discharge shall meet NC Fire and Building Code requirements
- Standpipe system for docks shall be designed by a design professional
- Water supply requirements for fire fighting and size of an on site water mains cannot be determined until plans submitted and type of building construction shown

Mayor Jennette opened the public hearing.

Mr. Zane Buckman stated that this is two pieces of property located on Highway 17 (former Waters Oil Company) previously owned by Tim Forrest and Julian Moore. The area contains 5.89 acres with two eight story condominium buildings with a total of 42 units. Each building contains 41 condominium units There will be 204 parking spaces, a club house and a pool.

Councilman Jennings asked about how the height is measured. Mr. Roberson answered from the top of the grade of soil to the top of the building.

Mayor Jennette closed the public hearing.

On motion of Councilman Gahagan, seconded by Mayor Pro tem Woolard, Council unanimously accepted the recommendation of the Planning Board and approved the preliminary subdivision plat for Bridge Harbor subject to a letter date February 19, 2007 from the Director of Public Works and a letter from March 7, 2007 from the Fire Marshall.

**ADOPT – ORDINANCE TO AMEND CHAPTER 27 ZONING, ARTICLE X
FLOOD OF THE CODE OF ORDINANCES OF THE CITY OF
WASHINGTON BY REMOVING THE
DIRECTOR/DEPARTMENT OF PLANNING AND ZONING AND
SUBSTITUTING THE CHIEF OF FIRE/RESCUE/EMS/INSPECTIONS**

Mayor Jennette called for the public hearing.

There was no one present to speak.

On motion of Mayor Pro tem Woolard, seconded by Councilman Brooks, Council unanimously adopted an Ordinance to amend Chapter 27, Zoning, Article X, Flood of the Code of Ordinances of the City of Washington by removing the Director/Department of Planning and Zoning and substituting the Chief of Fire/Rescue/EMS/Inspections.

**AN ORDINANCE TO AMEND CHAPTER 27, ARTICLE X FLOOD
OF THE CITY OF WASHINGTON CODE**

BE IT ORDAINED, by the City Council of the City of Washington, North Carolina:

Section 1. Amend Chapter 27, Article X, Section 27-105, Administration; by replacing Director of Planning and Development with the Chief of Fire/Rescue/EMS/Inspections.

Section 2. This Ordinance shall become effective upon adoption.

Section 3. All Ordinances or parts in conflict herewith are repealed.

Adopted this the 12th day of March, 2007.

s/Judy Jennette
JUDY JENNETTE
MAYOR

ATTEST:

s/Rita A. Thompson
RITA A. THOMPSON, CMC
CITY CLERK

REPORT ON EVANS PROPERTY

Mr. Nance gave a report on the recommendations of the Planning Board on the former Evans Seafood Property. He stated that the vote was three to two to develop the property for commercial purposes for the highest and best use, and the area outside of Evans remain as open space. The Planning Board was asked by the City Council to solicit input from various groups throughout the community and local citizens. On February 22, 2007, the Planning Board held a special meeting and invited the following groups to make presentations: DWOV, Chamber of Commerce, Downtown Merchants Association, Washington Area Historic Foundation, Economic Development, PRTF, and Tourism Development Authority. (Chamber did not make a recommendation).

Mayor Jennette asked that Mr. Nance tell the Planning Board how much Council appreciates it.

**PUBLIC HEARING – ADOPT RESOLUTIONS APPROVING FINANCING FOR
SECOND FIRE STATION (\$2,399,753)**

On motion of Councilman Gahagan, seconded by Mayor Pro tem Woolard, Council agreed to reclude Councilman Jennings.

Carol Williams, Finance Director, stated that the permanent financing of the station will be through USDA, however, The Local Government Commission has to approve the interim financing agreement after a public hearing is held.

Mayor Jennette stated this is a public hearing.

There were no comments from the audience.

On motion of Councilman Gahagan, seconded by Councilman Brooks, Council unanimously adopted a Resolution authorizing the filing of an application to The Local Government Commission for the approval of a financing agreement under N.C.G.S. 160A-20 for the construction loan on the second fire station.

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

WHEREAS, the City of Washington, North Carolina desires to construct a second fire station on the west side of the City (the "Project") as being required as part of the distribution portion on the Response Rating Survey performed by the NC State Office of Insurance and to better serve the citizens of Washington; and

WHEREAS, The City of Washington has been approved for financial assistance from the United States Department of Agriculture –Rural Development for the permanent financing of the project. The City desires to interim finance the construction portion of the project by the use of an installment contract authorized under North Carolina General Statute 160A, Article 3, Section 20; and

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

NOW, THEREFORE, BE IT RESOLVED that the City Council of Washington, North Carolina, meeting in regular session on the 12th day of March, 2007, make the following findings of fact:

1. The proposed contract is necessary to maintain appropriate fund balance resources available to the City of Washington. Other methods of funding improvements are more expensive and time consuming. The proposed contract is expedient in order to meet the mandated time frame.
2. The proposed contract is preferable to a bond issue because of the overall expense and timing of the bond issue process. The expediency and immediate requirements for this project does not allow for a lengthy delay for public referendum.
3. The debt management policies and procedures of the City of Washington are free of incident, fully documented and submitted annually for audit.
4. The increase in taxes necessary to meet the sums to fall due under the permanent financing contract with USDA will be \$0.04 per \$100 valuation and is not deemed to excessive.
5. The City of Washington is not in default in any of its debt service obligations.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the City Council of the City of Washington hereby authorize the Finance Director to act on behalf of the City of Washington, North Carolina in filing an application with the North Carolina Local Government Commission for approval of the project and the proposed financing contract and other actions not inconsistent with this resolution.

This resolution is effective upon its adoption this the 12th day of March, 2007.

The motion to adopt this resolution was made by Councilmember Gibson, seconded by Councilmember Brooks and passed by a vote of 4 to 0.

s/Judy Jennette
JUDY JENNETTE
MAYOR

ATTEST:

s/Rita A. Thompson
RITA A. THOMPSON, CMC
CITY CLERK

This is to certify that this is a true and accurate copy of a resolution adopted by the City of Washington City Council on the 12th Day of March, 2007.

s/Rita A. Thompson
RITA A. THOMPSON, CMC
CITY CLERK

On motion of Councilman Gahagan, seconded by Councilman Brooks, Council unanimously adopted a Resolution approving the financing terms of an installment note agreement in the amount of \$2,399.753 with Wachovia Bank at 3.83% interest rate and authorized the Finance Director to execute all documents on behalf of the City, contingent upon the Local Government Commission approval of the financing terms and agreements.

RESOLUTION APPROVING FINANCING TERMS

WHEREAS; The City of Washington (“the City”) has previously determined to undertake a project for the construction of a second fire station and the Finance Director has now presented a proposal for the financing of such Project (the “Project”).

BE IT THEREFORE RESOLVED, as follows:

1. The City hereby determines to finance the Project through Wachovia Bank, in accordance with the proposal dated February 26, 2007. The amount to be financed shall not exceed \$2,399,753 the annual interest rate (in the absence of default or change in tax status) shall not exceed 3.83% and the financing term shall not exceed thirteen months from closing.

2. All financing contracts and all related documents for the closing of the financing (the “Financing Documents”) shall be consistent with the foregoing terms. The Finance Director of the City is hereby authorized and directed to execute and deliver any Financing Documents, and to take all such further action as she may consider necessary or desirable, to carry out the financing of the Project as contemplated by the proposal and this resolution. The Financing Document shall include a Financing Agreement and a Project Fund Agreement as Wachovia may request.

3. The Finance Director is hereby authorized and directed to hold executed copies of the Financing Documents until the conditions for the delivery of the Financing Documents have been completed to such officer's satisfaction. The Finance Officer is authorized to approve changes to any Financing Documents previously signed by City officers or employees, provided that such changes shall not substantially alter the intent of such documents or certificates from the intent expressed in the forms executed by such officers. The Financing Documents shall be in such final forms, as the Finance Director shall approve, with the Finance Director's release of any Financing Document for delivery constituting evidence of such officer's final approval of the Document's final form.

4. The City shall not take or omit to take any action the taking or omission of which shall cause its interest payments on this financing to be includable in the gross income for federal income tax purposes of the registered owners of the interest payment obligations. The City hereby designates its obligations to make principal and interest payments under the Financing Documents as "qualified tax-exempt obligations" for the purpose of Internal Revenue Code Sections 265(b)(3).

5. All prior actions of City officers in furtherance of the purposes of this resolution are hereby ratified, approved and confirmed. All other resolutions (or parts thereof) in conflict with this resolution are hereby repealed, to the extent of the conflict. This resolution shall take effect immediately.

Adopted this the 12th day of March, 2007.

s/Judy Jennette
JUDY JENNETTE
MAYOR

ATTEST:

s/Rita A. Thompson
RITA A. THOMPSON, CMC
CITY CLERK

On motion of Councilman Gahagan, seconded by Councilman Brooks, Council unanimously adopted a Resolution approving reimbursement of expenses.

RESOLUTION APPROVING FINANCING TERMS

WHEREAS; The City of Washington ("the City") has previously determined to undertake a project for the construction of a second fire station and the Finance Director has now presented a proposal for the financing of such Project (the "Project").

BE IT THEREFORE RESOLVED, as follows:

1. The City hereby determines to finance the Project through Wachovia Bank, in accordance with the proposal dated February 26, 2007. The amount to be financed shall not exceed \$2,399,753 the annual interest rate (in the absence of default or change in tax status) shall not exceed 3.83% and the financing term shall not exceed thirteen months from closing.

2. All financing contracts and all related documents for the closing of the financing (the "Financing Documents") shall be consistent with the foregoing terms. The Finance Director of the City is hereby authorized and directed to execute and deliver any Financing Documents, and to take all such further action

as she may consider necessary or desirable, to carry out the financing of the Project as contemplated by the proposal and this resolution. The Financing Document shall include a Financing Agreement and a Project Fund Agreement as Wachovia may request.

3. The Finance Director is hereby authorized and directed to hold executed copies of the Financing Documents until the conditions for the delivery of the Financing Documents have been completed to such officer's satisfaction. The Finance Officer is authorized to approve changes to any Financing Documents previously signed by City officers or employees, provided that such changes shall not substantially alter the intent of such documents or certificates from the intent expressed in the forms executed by such officers. The Financing Documents shall be in such final forms, as the Finance Director shall approve, with the Finance Director's release of any Financing Document for delivery constituting evidence of such officer's final approval of the Document's final form.

4. The City shall not take or omit to take any action the taking or omission of which shall cause its interest payments on this financing to be includable in the gross income for federal income tax purposes of the registered owners of the interest payment obligations. The City hereby designates its obligations to make principal and interest payments under the Financing Documents as "qualified tax-exempt obligations" for the purpose of Internal Revenue Code Sections 265(b)(3).

5. All prior actions of City officers in furtherance of the purposes of this resolution are hereby ratified, approved and confirmed. All other resolutions (or parts thereof) in conflict with this resolution are hereby repealed, to the extent of the conflict. This resolution shall take effect immediately.

Adopted this the 12th day of March, 2007.

s/Judy Jennette
JUDY JENNETTE
MAYOR

ATTEST:

s/Rita A. Thompson
RITA A. THOMPSON, CMC
CITY CLERK

**APPROVE – REVOCATION OF LILLIE G. GRAY'S CERTIFICATE OF
CONVENIENCE AND NECESSITY D/B/A L G TRANSPORTATION AND
TAXI CAB SERVICE**

Mayor Jennette called for the public hearing.

There was no one present to speak.

Mayor Jennette closed the public hearing.

On motion of Mayor Pro tem Woolard, seconded by Councilman Brooks, Council unanimously revoked the Certificate of Convenience and Necessity issued to Lillie G. Gray to operate one taxicab in the City of Washington.

**APPROVE – REVOCATION OF TYRONE WILSON'S CERTIFICATE OF
CONVENIENCE AND NECESSITY D/B/A BASIC TRANSPORTATION**

Mayor Jennette called for the public hearing.

There was no one present to speak.

Mayor Jennette closed the public hearing.

On motion of Mayor Pro tem Woolard, seconded by Councilman Brooks, Council unanimously revoked the Certificate of Convenience and Necessity issued to Tyrone Wilson to operate two taxicabs in the City of Washington.

COMMENTS FROM THE PUBLIC

Carolyn Ganley spoke against a hotel being built on the waterfront. She stated she has polled people visiting her shop on Main Street and asked their opinion. None of the people she talked to said they would stay in a hotel on the waterfront, they had rather stay in a place that would be a quick out to the highway. The named ten towns nearby, along with South Carolina, Georgia, Florida, New Jersey, Pennsylvania, Maryland and Massachusetts the reaction came from. In addition to the 800 people signing the petition, that this might be interesting to mull over before making a decision.

Susan Cheryl spoke on the opportunity to have a local public radio station offered by the FCC which has not been opened in a long time. It would be a non-commercial radio station that could communicate happenings to thousands of people, along with musical events the City has. She stated it would be a joint process to make this happen. It is a matter of timing, as the application and license is coming up. A non profit organization could make the application but she believes it should be a joint process to make it happen. This may be the last chance for a community like ours to apply and have one. There are grants for this, along with fundraising from the community.

Chris Furlough, speaking in reference to the Evans Property, suggested that Council, when they make a decision, owe it to the community the best to succeed from a demand standpoint (1) hotel development in downtown – if 80 rooms would be more successful, they need to hold out for that, and (2) a lot of decisions on development were based on the Comprehensive Plan. He asked then why are we faced with an island that we want to lift that parcel out with no consideration to the Comprehensive Plan and public consideration. He stated that when he was Chairman in the past they developed a plan that met public consensus and has been consistent over the years. Every time the waterfront was looked at by several Councils, Mayors, Managers, etc., there was an effort to solicit input from everyone. We have those who would like to put possible development up and down the waterfront, and we have folks who feel we can't build anything, anytime, or any place. It has been successful going process because he has faith in the process method of community. He generally feels they have the answers. We should be willing to lay down our personal agendas for the growth of our downtown community. The property should be packaged together. Look at the long term relationship of the community and we can best fulfill the community's needs and public venue. This is one of the few opportunities to blend the community with the sake of positive growth.

Zane Buckman said he was one of the old town people who has a new vision. He spoke of his grandfather running Buckman's clothing store and how he made many friends. He talked about joining with DOT and aligning the Washington Park bridge down the railroad track, relocating Blackwater Jacks to the water where people could come and tie up and eat. It would also create a large area for parking. Washington Park and the City would have to get together with DOT, and the Wildlife Commission. Councilman Jennings asked why not move the boat ramp and Mayor Jennette suggested putting an additional boat ramp on the other side. Mr. Buckman stated he was trying to find a way to make everybody happy.

Jim Poteet, a property owner, homeowner, and business owner in downtown, stated he is investing a great deal of money in downtown. He stated, that being on the DWOW board and TDA board, the charge is to get more people in this town. It is hard for him to say, "no hotel." As a restaurant owner, he sees a lot of traveling people. He doesn't see the shoppers, but sees business people looking for property, people spending more than retail money. There are sales people supporting other businesses in town. Tourists mostly stay in Bed and Breakfasts., which we are limited. We are in competition with New Bern, not because of a park, but they are set up for an historic district that is a maintained entity where they have large hotels in a tourist area. They have a lot of people investing money in their downtown. He cannot see any reason why In the set up with Evans property with a municipal parking lot across the street, he doesn't know why we would not allow someone to make a positive investment in the community that's going to put money back into the tax base and be profitable for him.

Scott Sheppard stated that he has served in a number of different city capacities and has a number of different opinions and statements to make. Back in 2000, as a member of the Downtown Washington Development Commission, the waterfront did not begin nor should they end with the Renaissance Plan. After components of the Renaissance Plan were implemented, DWDC solicited input form the N. C. Department of Commerce, Rodney Swink and from Bobby Murphy from Wilmington, who recommended that DWDC move away from an Advisory Committee and into DWOW. They also recommended that the city move beyond the Renaissance Plan and focus on two primary components of the four main Street Program components and those are economic restructuring and design. The Renaissance did a good job with design improvements by leveraging the five acres of the Moss property, and with the City's input and transfers from the electric utility fund, they were able to fund almost \$5 million dollars in Stewart Parkway rerouting, a repavement of the parking lot, brick promenade, and boardwalk (for public use). Unfortunately the Renaissance Plan did not focus on restructuring opportunities that could have existed in 1996. Being one for the redevelopment for Evans Seafood Property "by somebody", this property was purchased for development in 1999. (He found that the money was General Fund transfers, not utility department surplus in an effort to hide money in the fear of deregulation. The property is zoned commercial and was a commercial use, purchased for commercial development. It would bring tax base, jobs, etc. into this community. He agreed it is not four or five acres. But he was never quoted saying that. He doesn't know where the number came from. The Evans Property represents 18% of a private development by someone that can be leveraged into the public enhancement of the remaining 82% of that property. Municipalities don't pay \$380,000 for park space, hoping to generate traffic for its downtown business district. Also, he has heard a very loose definition of what a park is. That is not a park. Havens Gardens is a park. This is open green space poorly maintained in his opinion. We need a hotel in downtown Washington. W. K. Dickson's Plan said we could support 200 rooms. If this half acre is not suitable for a percentage of those 200 rooms, then show him somewhere in downtown where a motel can be put. The same ones fighting for an amphitheater on that site in 2007 were fighting animatedly against one in 2003 and 2004 because of the noise that would be projected in the downtown historic district. You can't have it both ways. It should be redeveloped for its original use and enhancing the rest of the 82% of the public component that exists between the Maola Property and the Estuarium.

Mac Hodges stated the property being talked about is 2.6 acres. What's left is about 100 ft by 1000 foot irregular piece of green space. The deal with the amphitheater is gone. In fact, Blount Modlin, Scott Shepherd, and Fred Fletcher went to Greenville to put the amphitheater in a few years ago. When he built his building, he was going to put a 10 foot porch on to watch all the plays. In 1990, Jack Swanner was suing the City and that is why the Evans Seafood property

was bought. There was no real plan for what happened afterwards, they were trying to handle that situation. The highest and best use has nothing to do with the way a City runs. He gave some exaggerated examples of the highest and best uses. Highest and best use is what the people want. He had a petition with 733 names, marking out of town people. He stated that at the Planning Board meeting, there were eight members there are on the Committee of 100 or DWOW, speaking for development. There were nine speakers at the Planning Board meeting. Terry Smithwick was the only one not on those two boards. There were 23 total speaking. He asked Council to have one more public hearing. People want the park; developers want to build something on it.

Tom Howard read a letter he had hoped to send to the Editor but this came up quickly. It was evident that the Mayor and certain Councilmembers want this issue resolved here and now. He stated it was a done deal before it went into the hands of the Planning Board, some of whom were managed by the last election, or hand picked by the same individual acting as an agent for the current buyer/developer of the property. The public should know who provided such elaborate maps handed out at the Planning Board meeting. He asked that a hold be laced any further action until these questions are resolved. He suggested that Council go down and look at the site, I imaging a five story building there.

Mayor Jennette stated this makes the third public comment session. She asked council want they want to do?

Councilman Jennings appreciated the Planning Board and the Council sticking to a process that we can hang our hats on. However, there are several questions around this piece of property that needs to be answered before Council can formulate a solid strategy. One is several references were made to the Dixon Plan that the City had basically adopted this plan and its content. Councilman Jennings stated we never adopted the plan, we adopted the basic tenants of the Dixon Plan and we need to clarify that. Also, the configuration of that property, we need to look at that half ace for commerce use and the actual acreage. Also, we need to explore that we got a good appraisal. We need to look at the "cost" of green space. Let's accept the Planning Board's recommendation as only one component of Council's consideration of this piece of property. Public Input should be another and Council's vision for that particular part of the commercial district of downtown. He stated he would be against "focused" selling of any parcel that the City owns. He said he would take issue with anybody that says this was a done deal, this is not true. If it gets to that point, there should be an open market transaction with everybody aware of what is going on. We need to allow the other opportunities of this type to play themselves out. We need to take this under advisement and get questions answered and formulate a strategy down the road.

Councilman Gahagan stated we need to begin to take proposals on this property with the understanding there will be certain conditions, time commitments or it reverts back to the City, etc. The rest can be used for green space.

Councilman Brooks stated that he doesn't see a real need to sell the property as of yet. We need to find out what our needs are and make a decision after all the questions are answered. Before he can make a decision on selling the property, he needs for all the questions to be answered. If taxpayers don't want to sell it, we need to wait and not rush into it. There are other things to work on to benefit the City that we need to go ahead and fix.

Councilman Gibson stated that he agrees with the Councilmembers, that some of the issues brought up by Councilman Jennings could be an ongoing thing while Council at least listens to some of the propositions from some of the

professionals. The Planning Board recommends this area be used for commercial development. We should have a stipulation that they are committed to a park in an orderly manner rather than an empty lot. He stated he appreciates public input. We are getting a reputation of "further study"... "put it off until the next meeting"... This has been in the mill for several months now, we need to listen to propositions from developers in accordance with the Planning Board's recommendation.

Mayor Pro tem Woolard stated we should go forward to search for possibilities and have some stipulations. Questions need to be answered and people should have input. We should have some presentations, that don't mean we have to sell; we need "public input." He wants to hear from the public about anything that would go there.

Mayor Jennette stated this will jumpstart us to get started on what we want to see downtown. She asked what is our leveraging tool? What do we accept as a purchase price? She asked Council if they want more public hearings. She stated that Council has to start meeting to talk about this property.

Councilman Jennings stated that this needs to be the beginning. We don't know enough about this property to entertain an offer to purchase. We need to know some answers. If this is for sale, let's make it for sale. Let's stake our position and stand behind it if it's the right thing to do.

Councilman Gibson stated we need to listen to what people are offering in the way of development as well as listening to the public. Councilman Gahagan agreed that this information can be gather concurrently as we find out what type information is out there.

Councilman Gahagan made a motion to accept the recommendation of the Planning Board regarding the use of the former Evans Seafood property for commercial purposes as the highest and best use in accordance with the intent of its original acquisition by the City and the area outside the former Evans Seafood Property remain as open space and that we begin to accept proposals from interested parties.

Councilman Gibson asked if the motion included the stipulation of maintaining a park area would be on the shoulders of any developer? Councilman Gahagan stated he did not make that stipulation in the motion, but we can do that. Mayor Pro tem Woolard asked, with public input?

Councilman Gahagan added to his motion, "developers proposing design and maintenance of open space for a period of time." Councilman Gibson seconded the motion.

Mayor Pro tem Woolard asked about adding public input. Councilman Jennings and Mayor Pro tem Woolard pointed out the motion should have something in it for public input.

Councilman Jennings stated the motion got a little in the far field the information we have deals only with accepting the recommendation of the Planning Board as to the best use in accordance with its intent of its acquisition. Then we got off on terms. If we want to go back and keep this thing on track, we're skipping steps by adding in terms.

Councilman Gahagan stated he can do a separate motion to accept proposals. Mayor Pro tem Woolard stated we do have the power to do this at any given time that you can't buy and put these stipulations, etc. but we need to make sure it is conveyed to the public even though its not in your motion that it is

the intent of the Council to get public input and ensure them that we will do it a certain way.

Councilman Gibson withdrew his second and stated this will be the front door of whatever commercial development is made down there. If there is a commercial development, there needs to be a place where people can enjoy the river and open space provided by whoever purchases this property if its ever purchase, and including maintenance of it.

Councilman Gahagan moved that we accept the recommendation of the Planning Board regarding the use of the former Evans Seafood property for commercial purposes as the highest and best use in accordance with the intent of its original acquisition by the City and the area outside of the former Evans Seafood Property remain as open space. Councilman Gibson seconded the motion.

Councilman Jennings asked what the motion meant, for the benefit of the public. We are not bound by that. Councilman Jennings asked if an amendment would be except that the language should be "non binding", and give us flexibility down the road. Councilman Gibson stated he never heard of that before.

Mr. Holscher stated that if the amendment proves to totally defeat the original motion, such an amendment is not proper.

Councilman Jennings stated that what he is saying is that he does not want to be bound by terms of that recommendation. He accepts the recommendation, but he does not want to be bound by that.

Mayor Jennette stated that she does not know what purpose that serves. Councilman Jennings stated that it gives Council the flexibility of letting people come to us and tell us what we need to do with that piece of property as we go down this murky road.

Mr. Smith pointed out that if Council is serious about getting proposals, people will not get in the middle of Washington politics. They will not spend money to come up with plans unless they know for sure.

Mr. Holscher stated that you have an amendment as a separate motion and you have the original motion to be voted on, depending upon the amendment. The amendment is a separate procedural motion which has to be seconded and passed.

Councilman Jennings moved that this language be constituted as non-binding. Councilman Brooks seconded the motion. Councilman Gibson, Mayor Pro tem Woolard, and Councilman Gahagan voted no. – Motion failed.

Mayor Jennette called for a vote on the original motion. Voting for the motion was Councilman Gibson, Mayor Pro tem Woolard and Councilman Gahagan. Councilman Jennings and Councilman Brooks voted. –Motion carried by majority vote.

Councilman Gahagan moved that we accept proposals for possible projects on the Evans Seafood Property with the stipulation that all proposals must address park components in both design and maintenance. Councilman Gibson seconded the motion. Councilman Jennings and Councilman Brooks voted no. – Motion carried by majority vote.

Councilman Jennings stated that the property ought to be for sale or not, this seems to be in between to him. The seller should know everything there is

to know about the property before its put on the market. Councilman Gahagan stated that we need help from the people who are going to make proposals to help us understand what's possible.

Councilman Gibson stated we can solve some of the problems and stipulations that might be associated with this property.

Mayor Jennette asked staff to get a list of things to look at so Council can identify what kind of development we want to see and what public process will be at the next meeting.

**ADOPT – ORDINANCE TO AMEND CHAPTER 11, ARTICLE I,
SECTION 11-15, (13) OF THE CITY CODE IN ITS
ENTIRETY (SPECIAL EVENTS POLICY)**

The ordinance change is to amend the City Code to coincide with the Specials Events Policy.

On motion of Mayor Pro tem Woolard, seconded by Councilman Jennings, Council unanimously adopted an ordinance to amend Chapter 11, Article I, Section 11-15, (13) of the City Code in its entirety (Special Events Policy).

**AN ORDINANCE TO AMEND CHAPTER 11, PARKS AND RECREATION OF
THE WASHINGTON CITY CODE**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WASHINGTON
NORTH CAROLINA:**

Section 1. That Chapter 11, Article I. Section 11-5, (13) be deleted and replaced with the following:

- (13) There shall be no peddling or soliciting on parks or recreation properties or facilities except on the site of and as a part of a permitted special event.

Section 2. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 4. This ordinance shall become effective March 12, 2007.

This the 12th day of March, 2007.

s/Judy Jennette
JUDY JENNETTE
MAYOR

ATTEST:

s/Rita A. Thompson
RITA A. THOMPSON, CMC
CITY CLERK

**AUTHORIZE – MANAGER TO SIGN A DECLARATION BY THE
CITY OF WASHINGTON FOR STORMWATER
MAINTENANCE FOR SECOND FIRE STATION**

Allen Lewis, Public Works Director, stated that this is a requirement under the Tar-Pamlico Rules.

On motion of Councilman Gahagan, seconded by Mayor Pro tem Woolard, Council unanimously authorized the Manager to sign a Declaration for Stormwater Maintenance for Second Fire Station.

PREPARED BY AND RETURN TO:
RODMAN, HOLSCHER, FRANCISCO
& PECK, P. A., Attorneys at Law
320 N. Market St., P. O. Box 1747
Washington NC 27889
Telephone: (252) 946-3122

**DECLARATION BY THE CITY OF WASHINGTON FOR STORMWATER
MAINTENANCE**

This Declaration is herein made by the City of Washington, North Carolina (the "City").

WITNESSETH

WHEREAS, the City is the owner of certain real property described by Beaufort County tax map/parcel identification # 567610 and as recorded by a Deed in the Office of the Register of Deeds of Beaufort County, North Carolina in Deed Book 1549, Page 573 (the "Property");

WHEREAS, the City is proceeding to build on and develop the Property;

WHEREAS, the Site Plan known as Fire-Rescue-EMS Station Number 2 (the "Plan"), which is expressly made a part of hereof, as adopted by the City, provides for at least one stormwater management system, including all components designed to regulate flow, provide storage for runoff, provide water quality protection and ensure safety of the system, (the "System") within the confines of the Property;

WHEREAS, the City, its successors and assigns, agree that the health, safety and welfare of the residents of the City requires that an on-site System be constructed and maintained on the Property; and

WHEREAS, the City declares that it, its successors and assigns, shall construct and adequately maintain an on-site System as shown on the Plan.

NOW, THEREFORE, the City does hereby declare and subject the above described Property to the following:

1. The on-site System shall be constructed by the City in accordance with the plans and specifications identified in the Plan.
2. The City, its successors and assigns, shall adequately maintain the System in accordance with the various provisions contained herein. This maintenance includes all pipes and channels built to convey stormwater to the facility as well as all structures, improvements, and vegetation provided to control the quantity and quality of the stormwater. Adequate maintenance is herein defined as good working condition so that these facilities are performing their designed functions.
3. The City, its successors and/or assigns, shall have the System inspected annually by a professional and submit and/or maintain, as the case may be, certified inspection reports of said inspections. The purpose of said inspections is to assure safe and proper functioning of the System. Said inspections shall cover the entire System including, but not limited to, berm, outlet structure, pond areas, access roads, etc. Deficiencies shall be noted in the inspection reports.
4. In the event the City should convey the Property, the City, its authorized agents and employees, shall have the right to enter upon

the Property and to inspect the stormwater System whenever the City deems necessary. The purpose of such inspections includes, but is not limited to, follow-up on reported deficiencies and/or response to citizen complaints. The City shall provide any subsequent landowner, its successors and assigns, copies of inspection findings and a directive to commence with repairs, if necessary.

- A. In the event a subsequent landowner, its successors and assigns, fails to maintain the stormwater System in good working condition acceptable to the City, the City may enter upon the Property and take whatever steps are necessary to correct deficiencies identified in an inspection report and to charge the costs of such repairs to the subsequent landowner, its successors and assigns. This provision shall not be construed to allow the City to erect any structure of permanent nature on the land of a subsequent landowner outside of the easement for the stormwater System. It is expressly understood and agreed that the City is under no obligation to routinely maintain or repair said System. In no event shall this Declaration be construed to impose any such obligations on the City.
 - B. In the event the City, pursuant to this Declaration, performs work of any nature or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like, the subsequent landowner, its successors and assigns, shall reimburse the City upon demand, within thirty (30) days of receipt thereof for all actual costs incurred by the City hereunder.
 - C. This Declaration imposes no liability of any kind whatsoever on the City. The subsequent landowner, its successors and assigns, shall hold the City harmless from any liability in the event the stormwater System fails to operate properly.
5. The City, its successors and assigns, will perform the work necessary to keep the System in good working order as appropriate. The maintenance schedule for the stormwater System (including sediment removal) as outlined in an approved maintenance agreement shall be followed and shall include, at a minimum, those specified by practice in the North Carolina manual of *Stormwater Best Management Practices*.
 6. This Declaration, including the restrictions and obligations provided for herein, shall cease and terminate in the event the City is released from the requirements imposed upon it by the current Tar-Pamlico Stormwater Rules (15A NCAC 2B.0258), as amended, or its equivalent.
 7. This Agreement shall be recorded among the land records of Beaufort County, North Carolina, shall constitute a covenant running with the land, and be binding upon the City, its successors and/or assigns, and any other successors in interest.

WITNESS the following signatures and seals:

CITY OF WASHINGTON

s/James C. Smith
JAMES C. SMITH
CITY MANAGER

ATTEST:

s/Rita A. Thompson
RITA A. THOMPSON, CMC
CITY CLERK

JIM NANCE – EVANS PROPERTY VOTE

Mr. Nance stated that he did not want to influence Council's vote on the Evans Seafood property. The Planning Board members' vote was based on the fiscal situation of our community. The water, sewer and electric rates going up from 16% to 18% in the last three years. It was extremely hard for Dan McNeil and John Tate to make that decision. Those decisions were behind economics vs. park. It was about our current fiscal situation and yes, whatever you sell the property for is a drop in the bucket but it's the first step towards reclaiming a tax base. There is about \$120 million dollars worth of development and almost none of them require incremental infrastructure to the town. Sixty cents on \$120 million dollars in six years is \$720,000 a year we don't have.

Councilman Jennings stated that he is so disappointed because that is not the Planning Board's job. Mr. Nance said it was not brought up in the meeting. Mr. Nance stated it was bought for commercial purposes. Councilman Jennings stated that was not the charge the Council gave the Planning Board. Mr. Nance stated that charge was partial to it. Councilman Jennings stated that Council makes the fiscal decisions and the decisions that can get them voted in or out of office, they can't vote the Planning Board in and out of office.

CLOSED SESSION – UNDER G. S. 143-318.11 (a)(3) ATTORNEY/CLIENT

At 9:00 p.m., on motion of Mayor Pro tem Woolard, seconded by Councilman Brooks, Council unanimously agreed to go into closed session under G. S. 143-318.11 (a) (3) Attorney/Client (4) Economic Development and (6) Personnel.

At 9:50 p.m., on motion of Mayor Pro tem Woolard, seconded by Councilman Gibson, Council unanimously agreed to come out of closed session.

CHANGE APRIL MEETING DATE

On motion of Mayor Pro tem Woolard, seconded by Councilman Gahagan, Council unanimously agreed to change the April 9th meeting to April 16th.

On motion of Mayor Pro tem Woolard, seconded by Councilman Gahagan, Council unanimously adjourned the meeting until Monday, March 26, 2007 at 4:30 p.m. in the Council Chambers.

Rita A. Thompson, CMC
City Clerk