

## CITY OF EDEN, N. C.

A special meeting of the City Council, City of Eden, was held on Tuesday, August 22, 2000 at 4:00 p.m., in the Council Chambers, 338 West. Stadium Drive. Those present for the meeting were as follows:

Mayor:		Philip K. Price
Mayor Pro Tem:	(absent)	John E. Grogan
Council Members:		Ronald H. Reynolds
		Ronald L. Janney
	(absent)	Christine H. Myott
		William W. Rorrer
		C.H. Gover, Sr.
		Garry Tudor
Interim City Manager:		Peter Bine
City Attorney:		Charles J. Nooe
City Clerk:		Kim J. Scott
Representatives from New Media:		Rhonda Cranford, <u>The Daily News</u> , Leslie Brown, <u>Greensboro News &amp; Record</u>

MEETING CONVENED:

Mayor Philip K. Price called the special meeting of the City Council to order and welcomed those in attendance.

Consideration of awarding of a contract to D.H. Griffin Wrecking Company, Inc.

Mayor Price read the following item: To consider the awarding of a contract to D.H. Griffin Wrecking Company, Inc., to remove from the premises known as 217 East Aiken Road all of the mobile homes, fork lift, old farm equipment, old appliances, used vehicle parts, tires, scrap metal, heating and cooling units, wood, garbage, oil drums, masonry and other construction debris and junk described in the Complaint, Order and Order of Civil Contempt entered in 99CVD691 and to remove from the premises known as 518 Summit Road all of the old appliances, used vehicle parts, tires, scrap metal, air conditions, heating and cooling units, plastic, wood, garbage, water heaters, masonry, and other construction debris and junk described in the Complaint, Order and Order of Civil Contempt entered in 99CVD690.

He stated that he thought everyone knew the background behind the situation. He explained that they had only one person to make a bid on the bid process. It was before the Council for their consideration to award the contract to D.H. Griffin Wrecking Company to remove this debris.

Council Member Janney asked how much the city was going to pay them.

Mayor Price asked Mrs. Stultz, Planning & Inspections Director, if she could give them the amounts that came back from the bid.

Mrs. Stultz replied that it would be \$700 per load.

Mayor Price asked how many loads she anticipated and Council Member Gover asked who decided what was a load. Mayor Price in reference to Council Member Gover's question replied that they (the vendor) would decide as they were going to bring the semis and the cranes.

Mrs. Stultz agreed. She stated that she was afraid to wager a guess as to how much it would be. She noted that there were extensive amounts of automobiles, mobile homes and other debris up there. The other thing, the city, the way it would work at \$700 a load, stuff would be weighed and the city would get ½ cent a pound. That would be knocked off of what the city owed and then they would have to pay the balance. She explained that what would happen next, the city would proceed with the action to collect those funds that the city would expend for Mr. Pulliam, and his property would be subject to that.

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Mayor Price asked the City Attorney if they had to go back to court to collect that money...to which Mr. Nooe replied, sure. He asked Mr. Bolden, Chief Codes Inspector, if they talked in terms of what size trucks.

Mr. Bolden explained that he had been told that they would bring in a crusher and crush the automobiles on site and then load them up and take them out and then pay the city ½ cent per pound.

Mr. Nooe asked if they talked in terms of what size trucks would be used to which Mr. Bolden replied it would be a semi truck and Mr. Nooe suggested that they could approve it subject to the load being a semi truck trailer load, or as Mr. Bine suggested, crushed vehicles.

Mrs. Stultz pointed out that some of the stuff could not be crushed, but vehicles could be.

Council Member Reynolds commented that it was kind of like signing a blank check right there to which Mr. Nooe replied that they had advertised it twice and only had one bidder. He stated that Mr. Bolden could keep up with it and report to them weekly and if they wanted it stopped they could stop it.

Mayor Price stated that he thought that was a real good point, they could monitor it and let the Council know weekly where they were in terms of expense.

Council Member Janney questioned what the property value was, if they were going to have to end up putting a lien on the property.

Mrs. Stultz replied that he had 72 properties and they have totaled them up and as of 3/6/2000 they were worth \$891,023.

Council Member Janney asked if they would put a lien on every piece of property he had to which Mr. Nooe replied that once they get their judgement it would attach to any piece of property that was in his name. He explained that even though he had that much property he had been in the process of borrowing money as he apparently has some other legal matters going forth...

He stated that they really needed to get on with it. If the Council wanted to stop it, he did not know how they were going to take the position that it was a big undertaking so that they did not enforce the order that they have already asked the court for. He stated that he thought the city really needed to start forward with it and keep track of it as it went each week and Mr. Pulliam may possibly decide to start hauling some of it off by himself.

Council Member Gover asked if he had that option, to haul it himself to which Mr. Bolden replied that he had already removed some of it.

Mr. Bine suggested that the Council might want to consider setting a set maximum. He added that at \$700 a load it would not take very long to get to some serious numbers but 20 loads would be \$14,000, less the credit for whatever the weight may be. He stated that if they wanted to set a maximum advisory at \$20,000 and once they get to that point they come back to the Council for further authorization rather than to try and keep the Council apprised on a weekly basis. He stated that on a weekly basis, they might get in there with a crusher and get 20 to 25 loads out in a week.

Council Member Janney noted that there was a lot of missing information. He stated that he heard what Mr. Nooe was saying and they may disagree, but he could not see the city going in there and spending more taxpayer's money than they thought they were going to get out of it and end up way in the hole, when it was his (Pulliam's) responsibility to clean it up. He admitted

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that he did not know what the next step was in getting him to clean his own mess up, but he had some uneasy feelings about cleaning those places up and putting more in it than they were going to get out. He added that if they could break even that was a different story.

Mr. Nooe pointed out that right in the middle of the legal process was not the time to make the decision evaluating the overall policy of dealing with this junk.

Council Member Janney asked if the courts have told him to clean it up to which Mr. Nooe explained that because of the problems they had with the last, they asked the court if he did not let the city go ahead and do it, it may be that all of that property would not be available to satisfy the cost of the clean up. He stated that at the time they did this and the order was signed he would have thought so. He stated that it was the entirely wrong message to send at this point.

Council Member Gover stated that as he was not on board at the time, asked what the Council had in mind when it asked the Attorney to go ahead and take legal action in October of 1998.

Mayor Price explained that they had so many complaints from the general public and also concerns from the individual Council people that they wanted to clean those two particular areas up. Not only were they complete eyesores they were sending a message out to the community that the city was, as a rule and as a government, pretty slow to enforce some of those things. He stated that it had become a point of concern so that was when the Council advised the Attorney they would like to move forth.

Council Member Tudor noted that this piece of land had value because it was land and it was adjacent to other commercial land and could easily be zoned...to which Council Member Rorrer pointed out that this would not clean that piece of land up. He stated that anything that had been put on there since that court order would not come under it, the burned building or anything (else).

Mr. Nooe replied that the building would not, but any of this type of material, if he put it on there after the order was signed, was in violation of the order.

Council Member Rorrer stated that when this thing started a couple of years ago, if he had brought something in before the court order, would that be included to which Mr. Nooe replied in the affirmative. Council Member Rorrer, for clarification, asked if anything that had been put on there, once Mrs. Stultz started the process, would be included.

Mr. Nooe replied, no and explained that what would be included was what was covered by the court order and those types of materials that were in there and in violation of the order, it did not make any difference when they were put there.

Council Member Rorrer stated that if his memory served him, they came in there and took the serial numbers off of all the stuff and everything else to which Mr. Nooe agreed that they did, with what was there then.

Mr. Bine stated that one of the things that they had to keep in mind was just the very nature of public enterprise, it was not valued or evaluated based upon the cost benefit in analysis. He explained that there were many, many things that they do in the performance of public service, which were not at all related to the cost of the service. He noted that law enforcement was one of them and fire protection being another. The cost of doing those services were lots of times not even related to the actual recovery value of what goes on. So, he thought they had to keep back in their minds the thought that those types of ordinances and their enforcement were for the general community good. In some cases there may be a relationship of return and in other cases there may not be. He asked if this was what this community wanted to do in the pursuance of public good (and) if it was, then theoretically the cost did not matter because there was an overall

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public benefit involved there. There were often times analysis done of criminal investigations and trials that cost millions and millions of dollars to recover fairly small amounts of money or to punish people for relatively short periods of time. That was one of the decisions they make as a society, to do those sorts of things. This on a different, but parallel plane, was the same type of community based decision.

Council Member Reynolds commented that to him they were sitting there trying to vote on something that they did not know whether they were going to spend \$20,000 or end up spending \$70,000.

Mayor Price noted that what he said and what the Attorney had said was that they needed to follow along some reasonable amount of disclosure on a weekly or daily basis of what it was going to in terms of the total charges and in his mind that was a very reasonable way to look at it. He stated that he thought everybody there that had looked at it understood that they needed to move with it, they have worked on it for two years.

Council Member Reynolds agreed, but added that he hated to put a blank check out there.

Mayor Price replied that nobody wanted to put a blank check, but he thought it was certainly in reason to expect a group of people to make a decision to do this and say "Okay we are going to monitor this as time goes on and let the Council people know how much it was going to be, certainly on a weekly basis."

Mr. Nooe commented that what Council Member Reynolds said was entirely correct and that went back to, just like at the last meeting, he said the Council needed to look at it overall and decide how much in a year it was willing to commit to this type of legal action, code enforcement. He stated that he really felt strongly that since the city had gone this far and went to court, they had the facts to justify the order, the court had backed the city up as far as its code enforcement was concerned, and he thought it would be a big mistake from his standpoint to back off from this now. He stated that he thought it would be far more costly in the long run than it would be to get this project on the way and when they have their meeting it would be something else to consider when they decide in the next couple of years how far they want to push those type cases.

Council Member Tudor asked if 30 loads seemed reasonable to begin with, as that would be \$21,000.

Council Member Gover asked how many vehicles were out there.

Mrs. Stultz replied that it would be more than 100 for both sites together. Additionally, there was really large equipment back there that had been abandoned. There was an old crane, a lot of metal debris and mobile homes. That represented part of the difficulty in getting someone to bid on it as finding a contractor with the ability to handle all of that was really tricky. They knew from the research that their staff did that this was the firm that most everybody in the state, that did this kind of enforcement, used because they were able to dispose of it and properly. She added that this had been a very long and labor intensive process for the Planning Department, Mr. Nooe and his staff.

Council Member Gover pointed out that it had been ongoing since 1998 to which Mrs. Stultz agreed and stated that it was very important to the integrity of their enforcement program that they follow through.

Mayor Price stated that Council Member Tudor had suggested 30 loads, which would put it at \$21,000, and he asked if that sounded reasonable.

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Council Member Janney commented that he still thought that they could, if they looked at the last situation that they had, they had money tied up in that thing that they would never get because the property was not worth what they cleaned up. He questioned that it was something like \$6500 and mentioned that he was referring to the one adjacent to Blue Creek.

He stated that when they look at where they were with this city financially and they were going to undertake all those projects, they better start counting their pennies because everyone of them was going to cost money that was not budgeted. He asked that suppose they go into this thing, and he heard them all say that at any point the owner could start pulling stuff off himself, how was that going to work, if they go in there and say, "okay Griffin we are going to..."

Mr. Nooe replied that Griffin would be doing it by the load. They were not assured of any quantity by the way the contract was, so if Mr. Pulliam got in there and started cleaning up one of his sites, maybe this would be an incentive. This was one situation, there was no guarantee that the city would recoup all the cost of it, but if they have to spend the next 2 or 3 years trying to recoup it they would just do that and maybe they would recoup it.

Council Member Janney stated that he heard that, but if he was in there (as a contractor) and was going to get so much a load to get it out, he was going to get his and he was going to get the best part of whatever it was.

Mr. Nooe pointed out that the contract was not \$700 a load of the best junk to haul off, it was \$700 of what...to which Council Member Janney replied that he understood, but it he could pick and choose. Mr. Nooe stated that it would not be picking and choosing it was going to be hauling it for \$700 a load.

Council Member Gover stated that he had ample time to clean the property had he not, to which Mr. Nooe replied that he had and part of the delay was because at one point there was illness in his family. He stated that they did not push it at that point for several months, but then once the order was signed and served on him and he had several months to do something about cleaning it up and that had not taken place.

A motion was made by Council Member Tudor seconded by Council Member Reynolds to proceed with the action, not to exceed 30 loads, without further approval by the Council.

Council Member Rorrer commented that he sat there the other night and voted against going to Guilford County or wherever they went to get somebody. He stated that he knew there was a mess there and he knew a lot of it needed to be cleaned up but he could not see taking good stuff and crushing it along with junk and that was what they were talking about.

Mr. Drewey Pulliam, the property owner, spoke up and stated that he had two vehicles sitting up there and one of them he paid the City of Eden \$6,500 cash for.

Action on the motion was as follows: Council Members Gover, Reynolds and Tudor voted in favor of this motion. Council Members Rorrer and Janney voted in opposition. This motion carried.

Mr. Pulliam explained that the reason he had not been able to do much to it was that in the last year he lost his wife, last August 1<sup>st</sup>, and he had a funeral bill for over \$6,500. He stated that he had been to the Baptist Hospital with a heart attack and on top of that he was almost 76 years old and he was a World War II combat veteran. He stated that he wanted them to know that he was over there ducking in and out of fox holes for people like this and they would be under Communist rule if there had not been people like him, 18 or 19 years old. He recalled walking on a beach seeing one leg here and a neck over there and just not thinking. He pointed out that they were supposed to live in this place and get along with one another. He stated that his

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privacy fence should give him some privacy and he even had a chain link fence around it, which they told him, that would take care of it at one time. They talked about the vehicles. He had a crane up there to lift a set of forms up for building a small water treatment plant and he already had some of them made. He stated that this was a business lot and the men that auctioned it off told to him that he could use it as a business.

He stated that they moved the city line and it used to be just across a couple of classrooms. He was outside the city where he put all this stuff. The city went in there and got him and the same thing happened down at his house, the last 150' was outside the city. He stated that he built a shop hoping it would be outside the city and now it was inside. He stated that all of this went on way before the city was incorporated, part of it did down at the house because he had been there since 1952.

He stated that he did not have anything that he could not put behind in fences. He stated that he thought it had to be complaints from neighbors on each corner of his property and nobody down there was griping about it at his home. He stated that up there at the other place, Mr. (Danny) Wooten had told him, and some of the others around there, that they have never said nothing to the city about anything out there. He noted that it did not sell drugs at night, it did not fight, it did not cuss or raise Cain, it was quiet, every bit of that property.

He stated that he was getting so now that he could move some and they had moved about 8 or 10 vehicles off of the property already, at his house and up there together. He stated that he was just getting to where he had a license now for his wrecker. He had the equipment to do all the stuff that Griffin could do. It might not be as big as his, but he had the stuff that would do anything. He had got dump trucks sitting out there with about \$600 worth of license on.

Council Member Tudor referred to the school and noted that he had all of that junk around the school building and it caught on fire. He asked if he had any idea as to how it came to catch on fire.

Mr. Pulliam replied no that he did not and he did not have a lick of insurance on it either.

Council Member Tudor asked if they did not have a responsibility when they see a site that was piled with any variety of items that most reasonable people would construe to be junk and then unbeknownst to him and Mr. Pulliam, and he assumed unbeknownst to the Fire Chief it caught on fire. He asked if he did not understand that he, as an elected representative of this community, had the responsibility to ensure their safety and was this not a prime example of a risk to this community.

Mr. Pulliam replied that they have had chances to do something about that. He did not know who set the fire

Council Member Tudor asked if he was assuming it was set to which Mr. Pulliam replied that he thought somebody set it.

Mayor Price interjected that they pretty much knew his feelings on this and the city had made a decision to which Mr. Pulliam replied that he just wanted them to know that they better check the deed to find out how much was against the property as there was \$82,000 against it. He asked that he would not wind up with any of it would he.

Mr. Nooe pointed out that he should have been thinking about that all along while he was leaving that junk sitting there.

Mr. Pulliam replied that he had not been able to look after his business like he should have for the last few years.

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Presentation of consultant's report of water utility underbilling:

Mayor Price asked Mr. David Cain of Finkbeiner, Pettis, & Stout, to come forward to give his report.

Council Member Janney stated that he wanted to ask a question before Mr. Cain got started. He asked if there had been a meeting recently with any of those contract customers to which Mr. Bine replied there had.

Council Member Janney asked when the last meeting occurred with those contract customers and what was it about.

Mr. Bine replied that it occurred last Thursday in the conference room at City Hall. Mr. Cain was there and explained to the folks from Miller Brewing Company the process for establishing the information, which was presently being presented.

Council Member Janney stated that he did not understand why there was a meeting with Miller and not with the other vendors and he also did not understand why there was a meeting. He asked if everybody was there, that the Council said needed to be associated, with him in that meeting.

Mr. Bine replied that he did not understand the question to which Council Member Janney clarified his question to ask if everybody that the Board (Council) had said that set out to look at this thing, if they were in that meeting.

Mr. Bine replied that he did not know who all they were saying were set out to look at it.

Council Member Janney asked who was there to which Mr. Bine replied that Mr. Cain was there, a representative from Miller, Ray Sharp and he (City Manager) was there, four people.

Council Member Janney asked where the City Attorney was to which Mr. Bine replied that he was not there.

Council Member Janney pointed out that he should have been there. He stated that he had said something the last weeknight about where they were going with this thing and he thought maybe they were jumping traces and they must have took off soon after that and had another meeting. He stated that his understanding was that there was not going to be any meetings. They set out to get with contract customers and tell them exactly what this Board had decided to do with this thing, no more. He stated that it was his understanding that Mr. Cain was going to be working with the Attorney. He asked if that was right or wrong.

Council Member Rorrer stated that it was his understanding that the two of them was going to do it to which Council Member Janney noted that he had mentioned that the other night and ...

Mayor Price interjected that to be honest, he did not understand it that way and all of the people had spoken to him and they offered to them to have their staff people to come in and meet with David Cain to explain everything in the contract to them, to work over every detail, and some have come several times and that was the city's offer, to provide every bit of help that it could provide to them.

Council Member Rorrer asked if the Mayor was in that meeting.

Mayor Price replied no, that they could have their people to understand the facts and several of them have really gotten down to detail. He stated that he did not personally have any

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understanding that they were expecting to have the city's legal counsel to have to get involved with it.

Mr. Cain addressed the Council and explained that he and the former City Manager, Radford Thomas, met with Miller, then National Textiles and both of those times coincided within a few days of each other with the delivery of an invoice for this past year's amounts of under billing. He stated that the meetings were just to explain what that was and what it consisted of and basically to give them a background of their personal situation and they took that in and said they would look at it and if they had questions they would get back with them.

He explained that the way he understood their second meeting with Miller, they had had a chance to look at it and were confused and had some specific questions they wanted to ask. He stated that was the reason for the meeting of last week. He stated that they tried to meet with Dan River and the first time that could happen would be September 12<sup>th</sup> and he was scheduled to be at their board meeting on that date to have the same discussion with them as he had with the other two.

Council Member Janney stated that someone else had to tell him that they did not understand the Attorney was supposed to be involved in it when they told the Attorney to get with Finkbeiner and start looking at it. He asked if that was correct to which Council Member Gover agreed that was his understanding.

Council Member Janney stated that they needed to get their "p's" and "q's" together because either he was way off base or something was going on that he really did not like.

Council Member Tudor commented that when they left the meeting he imagined that it would be the Attorney and Mr. Cain. He stated that he did not know if the Attorney was of the opinion that if the City Manager was there and he was not there that it was not a difficulty. He added that he did not preclude that necessarily when it comes to a contract to second-guess the City Attorney. He stated that if the City Attorney told him that he did not know that the City Manager was going to go in his place then he would say that maybe this was a problem.

Mr. Nooe stated that he knew nothing about any of the meetings, what their agenda would be or who would be in the meetings of that nature. He stated that he had heard after the fact that there were some discussions. He stated that he was concerned for several reasons because the computation of the rates, that was in his (Cain's) field, he helped design the formula and should understand the computation of the rates, (and) he really thought of that as just an administrative process of determining what the rate adjustments should have been annually and what that would lead up to the rates being currently and that his (Nooe's) involvement would be having to do with the legal interpretation of the language of when the rates were to be adjusted, what the city's legal rights were in dealing with the companies as to how far back they could go retroactively and those sorts of things, (and) his concern, when his clients were meeting in matters involved in which there may be a dispute over a contract document, he was reluctant to have them there making comments about what a contract means without being there, but at any rate, no he did not know about the meetings.

Council Member Janney stated that he was not trying to put Mr. Nooe on the spot. He stated that he thought they should get things right and once this Board said something, whether he agreed or not, that was the way it should be and that was not happening and it was obvious from what he said.

Mr. Bine commented that he guessed he needed to say, "Through my fault, through my fault, through my most grievous fault," he certainly did not know what the direction of the Council was or he would not have undertaken the meetings of which he was involved in. He explained that it came to him that of this issue of under billing, shortly after he came there and he was to try



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to fare it out, what the situation was. In that process he stated that he had met with Mr. Cain in his office twice back in July and after having the opportunity to review the information and the contracts, etc., it never was in his effort the desire to leave the Attorney out of anything. He apologized for that, however the contracts were difficult but they were not impossible. He stated that he had read them on several occasions and reviewed them with Mr. Cain. He stated that he understood them fairly well, (though) not as thoroughly as the author for sure, but on that basis, it was his understanding that one of the contractors that was not met with as Mr. Cain had pointed out was the Miller folks, which he had attempted to do. He stated that he never intended, in fact that was why he asked the Council last week what their essential wishes were in this matter, regarding the under billing and the subsequent collection and he asked that if they would recall that was made fairly clear to him.

Council Member Janney stated that was why he said he could not believe the next week (that) he would hear something.

Mr. Bine replied that it was certainly communicated to the Miller people last week at that meeting. He stated that he did not know what he would have heard subsequent to that meeting, but that was what they understood and he thought they left with an appreciation for the issue in general and understanding of the city's position in particular. He stated that he did not know what else to say in the matter as he thought he was doing the right thing and the wishes of this Council, but obviously he did not.

Council Member Tudor stated that he appreciated his comments and thought what they have was what they have had a couple of times. He explained that they have a turnover in the City Managers, a turnover in leadership, with somebody picking up where somebody else left off and that was not an easy task. He stated that it was very easy for directives and intents to not be properly communicated, thus they were not necessarily understood the way everybody wanted them understood. He added that he also understood the City Manager had the correct intent as well as Council Member Janney and the Attorney, which was the best service to the community and maybe if they did not continue turning over City Managers every 3 years they would not continue to have this happen once they get it straight.

Council Member Janney pointed out that the only thing he was saying there today, and he had heard somebody else say it the other day, he was getting a little bit disturbed by the way they were going and maybe they were getting a little disturbed with him and that was fine, but he was going to be there a while and every time he did not follow the wishes of this Board, he was going to say something about it and he had just had enough of it. He stated that if the rest of them wanted to sit there and take it then they could just sit there and take it without saying anything.

Council Member Gover commented that it happened last month and he had emphasized that, the wishes of this Board had not been carried out so it was not just in this matter it was in others.

Council Member Rorrer commented that he had served a total of 19 to 20 years on the Council and in the last 2 ½ years he had seen more, disregard of the Council's wishes, he did not want to say it but it was a reality. The Council would vote on one thing and then they would go out there a few days later and it was different. He stated that he agreed with Council Member Janney. He did not want any more of it and whatever the Council said, whether he was a part of it or not (in agreement), he wanted it done, what the majority said do.

Mr. Cain began his presentation and explained that the first sheet was a summary of everything that they looked at (*Summary of Negative Impacts to Revenues*) and when he first started looking into this situation, what he had tried to do was, not only look at what under billings there may have been or billing differences, but all of the impacts that he saw to the Water & Sewer Fund over a ten year period, since 1990 when the last rate study was done when the bond projects were first initiated. He explained that the table summarized it pretty succinctly and it showed by year

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the differences in what he had calculated should have been generated in revenue versus what actually happened. He stated that in looking at some of those numbers he was just going to look at the total numbers.

He stated that the total undercharges to the four contract customers, *Pluma, Sara Lee (National Textiles), Miller Brewery, and Dan River Water*, if they looked at the total over to the far right hand side, through the ten year period, under billing was about 2.1 million dollars and all four of them were for different reasons.

Mr. Cain noted that the next line item was called Transfers to General Fund. He stated that each of those industries were charged a certain amount according to their benefit of that overall \$20 million project. He noted that incidentally, it just so happened that by the projects coming in cheaper it offset that grant that was never received, which the letter essentially absolved Sara Lee of any responsibility, but again that was a question for the attorney.

He noted that if they turned the page, the next item turned out to be a very significant one. It was an interlocal agreement that was executed between the city and Rockingham County, which allowed the city to be paid a certain amount of the increase in tax value, or the increases in taxes that were generated by Sara Lee's plant expansion for a ten year period. He stated that the estimate was that the city would receive \$280,000 a year for ten years, just based on the extra tax value that was out there. Sara Lee would pay Rockingham County and they would pay it back kind of as a rebate to the City of Eden. He stated that unfortunately, as years went by, not that much tax value was added and at one point when Sara Lee sold to National Textiles he thought the value was dropped to some extent, so that \$280,000 a year was never reached.

He explained that, for example, in a single year, the city only got \$140,000 from Rockingham County, which was half of what they should have gotten, so they have to recoup that other \$140,000 some way, and it stated in Sara Lee's contract that a way to do it was through an increase to their capital repayment portion of their rates. So each year the city should have been looking at how much money they got back, and ask if it was \$280,000 and if it was not, if it was not that much, then adjust their rates. He stated that was done two times and it was done, he did not remember the years, but it was while Mr. (Steve) Routh was still City Manager, but when he left it was never considered again. So that was a pretty significant amount of money each year that had to be recouped. Other than since 1992-1993 there were just some minor items that contributed to the under billing in addition to that. But again, they use a lot of water and sewer so that would generate a lot under billing, about \$1.9 million over that time period.

Mr. Cain stated that Dan River was the simplest of all as they only take water and all they have is a base rate. He stated that they did have capital repayment, but it was set forth in the contract. They did have some under billings based on the base rate calculations from water, just like Sara Lee, over a time period. Again, he stated that theirs was not significant at about \$75,000 or so, which that was a lot of money, but not compared to the others.

Council Member Janney stated that theirs changed from 749 (\$74,922) to 75056 (\$75,056) from the first time until now.

Mr. Cain replied that there was no telling why. He explained that he had so many spreadsheets that were all linked together. He added that it could be rounding in some cases. He stated that he knew that was the case in some of them. He also went back and double checked some numbers too just to make sure that they were all right and he would not worry about a couple of hundred dollars.

Mayor Price stated that so far they have gotten that the shortages occurred from the failure of putting those expense items in that they were talking about, failure to factor in the \$280,000 amount to which Mr. Cain agreed that was one of the biggest failures. Mayor Price continued in

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that it was a failure for Miller, to have their treatment costs, escalate and then after 1995, not changing the rate there, and then in Dan River's case, not keeping the rate, the rate was just not billed correctly.

Mr. Cain agreed and that was a base rate, which Pluma, Sara Lee, and then Dan River shared in common and of course after 1995, Miller shared that in common. So all four of them have that base to which Mayor Price stated they simply were not billed correctly on that base rate.

Mr. Cain replied that was correct. The rest of the package was a lot of background information as far as numbers were concerned. Where the numbers come from, how do they compare year to year, what he could do was just basically tell them what these are, and if they basically have specific questions about any of them he'd be happy to answer them, but he think they have talked about most of these issues already.

The next two pages showed a *Water Rate Summary*, Miller Brewery and Dan River Water. All that did was show from year to year what the rate actually was that they were billed, versus what it should have been. And where it says calculated, that is what it should have been and where it said actual that is what their bill was actually charged. Looking at Miller and that actual column, it started in 1991 it says, a little over .045 per thousand gallons, and the next year going down the column, slightly different, but still around .045, and the third year it goes up two cents to .047. Then look at every year after that, it says the same number. That quickly raised a flag, but it should have been different in some way.

To the far right, out of the table, it showed the dollar impact from year to year based on the amount of water they used.

Mayor Price asked how many variables were between calculated and actual, those 4 or 5 things he just spoke about.

Mr. Cain replied that some years there were more than others. He explained that it was things like the billing and collection dropping out and never getting put back in. In some cases not all of the line items were picked up like they should have been. He stated that when they get into Sara Lee and Pluma, some of their rates for capital repayment would be charged correctly for water and incorrectly for sewer, it was a whole myriad of little things on the base rates.

He then referred to the next sheet, *Water Rate Summary*, Dan River Water. He stated that again, the table was set up the same way. He added that theirs was obviously not as extensive as Millers because they were having their rates adjusted each year, just not as much as it should have been.

He explained that the next ten sheets showed Sara Lee and National Textiles year to year. Using the 1994-95 fiscal year as an example, he explained that it just showed the impact from each of those various items. For example, water, there were four components to their water rate. They have a base rate, which they pay, then they have a capital repay rate, which was to help refund the city for capital facilities that were put in solely for Sara Lee's benefit. Then they have a line item for what was called base take or pay rate, which meant that they were saying that they were going to use "x" number of gallons and if they used 10 million gallons less than that they have to pay for that 10 million gallons at a reduced rate. He noted that was pretty clearly set out in the contract, how that reduced rate was calculated. Again they have a capital repay rate for any water that they did not use and they still have to pay that capital repayment, because that was how it was set up in the beginning. He stated that they have the same group of rates for sewer as well.

He noted that at the bottom of the sheet, since this was Sara Lee, they had to take into account the Rockingham County Interlocal Agreement. It showed there was a line item there "Payment

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Received from Rockingham County in 1993-1994, \$187,094. That was what the city actually received. He noted that the city should have gotten \$280,000 so there was a deficient of almost \$93,000 that had to be factored back into their rates.

Mr. Cain stated that the next series of sheets were a series of pieces of information that was put together for the City Attorney that showed, in general, what the increases in cost were for 1993-94 up through 1999-2000 fiscal years and what increases in rates that would translate into for each of the contract customers. He noted that those matched pretty closely to those previous sheets that they just looked at that showed rates from year to year, there would be some small differences, maybe a penny or so, and again that was rounding. He explained that this was more for information purposes, more so than the other was as the other was the true calculation.

He referred them to sheet 24, which was the last group of pages in this package. He stated that from page 24 all the way through the end was a series of calculations that he looked at to see what was going to happen on their expenses and revenues for this past year and the upcoming budget year, to give them an idea of what their rates should be for their contract customers. He stated that he took this information from the previous City Manager's budget presentation. He took those numbers directly out and put it in there to do the calculations, to make some estimations of what water and sewer rates had to be to generate sufficient revenues.

He noted that if they would look, starting on page 26, all the way through the end, it gave several scenarios of what water and sewer rates would have to be to generate the funds that they would need to cover their expenses and his understanding was, and he might be completely wrong, was that the Council raised residential rates only up to a certain level, \$1.14 for water and \$1.34 for sewer. He asked if that was correct, as he had never heard that officially.

Mayor Price replied that was correct.

Mr. Cain pointed out that there were several ways to "skin this cat" and that was what the rest of those sheets were showing.

Mayor Price asked if in other words there were probably 10 or 15 different billing errors, built into all those computations.

Mr. Cain replied over time, yes, some of them were pretty small and he tried to identify all of them.

Mayor Price referred to page 24. They were talking revenue there, but something touched on practically all of those in some form or fashion to which Mr. Cain replied that he was not sure he understood his question.

Mayor Price explained that the things that they just reviewed were the actual errors made, probably ten or fifteen different, major billing errors made, over a period of time.

Mr. Cain agreed that it was over time, and some of them were the same error from year to year.

Mayor Price asked that with the program that he had now devised, would it eliminate those errors to which Mr. Cain replied that he certainly hoped so.

Mayor Price asked if it was designed to cover and recalculate all those things that he had found to be in error to which Mr. Cain replied, yes it was pretty much straight forward. They would only have to insert a few numbers each year. But, he cautioned whoever would do this, they still needed to have an understanding of where those numbers came from. He stated that he could direct someone in the first year to say, "Okay, this is what you need to be aware of," and put it in the formula. But from year to year, just from looking back at the audit reports, it was clear that

things change in the way the accounting was done, the way the line items were named, and so people had to be aware of that from year to year. He stated that it was not a simple “plug and chug” if they were starting to change the way they did their accounting.

Mayor Price asked if it would be fair to go along with what Mr. Nooe said, as part of their auditing and budgeting process, that they have a separate meeting altogether to review all the water and sewer billing, go over it to make sure the entire Council had a clear understanding. He explained that his point was, rather than having it “hidden”, not hidden to the sense that it was something that nobody should know about, but have it out in the open so everybody would be accountable for this.

Mr. Cain replied that he thought that was an easy answer and noted that their bottom line was 7 or 8 million dollars. The Council was ultimately responsible for that money, so he thought that while they needed to have an understanding as a Council of where this comes from, they also had to depend on their staff, because they were professionals and were the ones putting this information together. He added that he did think that they had a better understanding now than they did before and they know what questions to ask, which was a good position for the Council to be in.

Mayor Price pointed out that this was public business that changed and it went on. They needed to have something in place every year that was going to be a part of the procedure. He stated that he would certainly like to see the Council adopt something later on to have it as part of their budgeting process.

Mr. Cain suggested that they needed to have someone who would do back up, not just one person, because they saw with the City Manager changing, that transition, they did not always get all the information from one (Manager) to the next. If they had multiple people it would be really good.

Council Member Janney pointed out that he still had not answered all of his questions. He stated that he knew the exact amount of money, based on his numbers, that was not billed. He knew who did not get billed, based on what Mr. Cain had said. He stated that he could figure out that they did not get billed, the length of time, based on what he had, but he did not know why they did not bill. He stated that he did not know who was responsible for not billing. He stated that he was not comfortable at this point, until they go back and talk some more about their contract, that they should not have picked that up in their audit. He stated that he thought that it was somebody’s responsibility for this problem and it needed to be addressed. He closed in saying that he wanted some answers, but they were not Mr. Cain’s answers.

He stated that Mr. Cain was correct, had Pluma not filed bankruptcy, they would probably still be sitting there “fat, dumb, and happy”. He stated that he still did not agree that Pluma was the problem. They helped them get there, unfortunately, but he wished it had not happened.

Mr. Bine commented that he thought, from Administration’s perspective, they would like to answer the question, but he did not know how to answer it. He stated that it was sort of like unscrambling the egg, to go back to one of those points in time and try to discern. He stated that the most obvious one, where most of the issues started to come and have a financial impact, was the 1994-1995 fiscal year. He stated that he did not know what transpired in that year, other than the fact that there was a change in City Managers and there was an Interim City Manager for a period of time, followed by a Manager who was there for a year, followed by an Interim Manager who was there for a period of time, followed by another Manager. He stated that he did not know if there was anybody there other than the Manager back in the early 90’s, who knew, that helped to create this with the Attorney and the Engineer, who knew those numbers.

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Council Member Janney replied that he wished he could buy that. He explained that his reasoning was, when he was employed he was ultimately responsible for the function he had to do. He stated that if his immediate boss changed, if his boss changed, if the plant manager changed, if all the superintendents changed, he still had that responsibility, no matter what happened. He stated that whoever was responsible for it was responsible.

Mr. Bine stated that he did not disagree at all. He stated that he was not offering this as an excuse, only as an explanation.

Mr. Nooe asked Mr. Bine that if that was the reason it happened, what should the Council do to be assured that it did not ever happen again to which Mr. Bine replied that he did not know if they ever could be assured of that.

Mr. Nooe stated that he could be assured of where the responsibility was very easily to which Mr. Bine agreed. Mr. Nooe stated that if he read that the job descriptions, say for the City Manager, and the job description for this particular Department Head, then if there was any vagueness of the descriptions of their duties, then the Council could solve who was responsible, and then there would be the question of what it would do, as far as somebody not carrying out their job. He stated that he did not even know that the descriptions in the job descriptions were that big, but if they were that he would assume they would correct it by an appropriate resolution of an ordinance of the City Council.

Mayor Price stated that he guessed they could have an ordinance or anything they wanted that was legal, but as much as they discussed expenses in this city, which they should, it seemed to him like they should allocate time and by ordinance or some fashion have discussion of revenues and to have some type of regulation built into that, that it was audited.

Council Member Janney pointed out that what he was hearing was whatever happened, happened, nobody was held responsible. He stated that was not the way the system worked. If there was not something in black and white that said, "I do this", then he agreed with the Attorney that it needed to be. He stated that somebody was responsible for this problem and they needed to be dealt with.

Council Member Rorrer asked if anybody went back and tried to find out why they stopped doing this in 1994-1995.

Mr. Cain stated the only thing that he heard was that when Mr. Routh left, he left a series of spreadsheets which were used in previous years for each of the contract customers and then continued to be used with some modification. But the spreadsheets alone did not explain how to apply the spreadsheets from year to year when conditions change. If that information was not passed along, and he had no idea if it was or was not, if it was not passed along, but rather all they have is a spreadsheet, a spreadsheet is like a computer, it is dumb, until somebody on the outside tells it what to do and those same issues would be carried forward year to year and again it was just doing the numbers.

Council Member Janney stated that he did not think Mr. Cain should even be addressing this issue to which Council Member Rorrer added that it had to be done there (in Council) and Council Member Janney agreed as they were being unfair to Mr. Cain.

Mayor Price replied that was fine, but personally, he was there and had given some good advice.

Council Member Rorrer stated that he was not disagreeing with Mr. Cain, he was saying that they were to the point now where they had to look at the other end.

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Mayor Price agreed, but he was explaining the situation. He stated that they were not through with this thing, they were just trying to find the background. He asked Mr. Cain that when all of that was done with, there should have been some explanation to the people doing the billing as to how to do this, in 1993-94.

Mr. Cain replied that certainly without explanations, they could not begin to understand it. They could go back and try to look at all the contracts and figure it out. He added that as he had said, when it first started, he knew what was going on and it took him a while to go back and figure out the way it should be done. He stated that for somebody to step into it cold, that would be difficult.

Mayor Price asked how many communities in North Carolina had billing systems as complicated as Eden's.

Mr. Cain replied that every time he made a generalization, he would think he was wrong. He explained that each situation was so unique, and stereotype and somebody else had something that was really screwed. As far as contracts, he did not think he had seen as many places that had contracts that were as beneficial to the city as Eden had, over a period of time. He stated that he saw a lot of long term contracts where a rate was set and for 20 or 30 years, they could not go above that rate. He noted that there were a lot of places that were charging somebody, say .50 a 1000 gallons and it was costing .75 to produce it.

Mayor Price asked that in his opinion, they had the right type of contract to which Mr. Cain replied that they had the potential for having a good arrangement.

Council Member Janney stated that he did not think there was anything wrong with the contract.

Council Member Rorrer commented that he did not think that anybody had even tried to find out how it stopped. He stated that he got half of his information off of the street and he knew who issued the order to stop doing it.

Mayor Price questioned if that was to stop the billing to which Council Member Rorrer replied yes.

Council Member Rorrer stated that he could name three (3) people who were told to stop doing it. He stated that if someone had tried they would have found out what he picked up out on the street.

Council Member Janney commented that he had heard that too, but the reason he said that they had to go back to the source, if the person responsible, did not have enough initiative to stand up and say, "Somebody told me to do this or not do this", then they still take the rap.

Council Member Rorrer stated that they would have the initiative if they would be asked.

Council Member Janney replied that he did not know about that, but somebody was responsible.

Mayor Price asked if there were any other comments about the contracts.

Council Member Rorrer commented that they needed to quit playing around and get an answer to people to which Council Member Reynolds replied that he thought they were expecting one and he hoped they got one.

Mayor Price stated that they were getting closer and closer to what was not billed and that was the main thing. He thanked Mr. Cain for his time and letting them know where they were.

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He continued in that Council Member Janney had questioned why it did not get billed and who was involved and why it was not picked up in an audit.

Mr. Nooe suggested that he thought all of the City Council Members should be provided, since apparently, some of them may not have it readily available, all of the General Statutes, the Personnel Ordinance, and any other ordinance or resolution, that assigned duties to various officials with the city and read them, and then decide for themselves who was responsible for it, and there was nothing that could be done about it but move on. He stated that was where they had to start, as the whole structure of city government was state law, city ordinances, and city resolutions. Corporations may have by-laws, articles of incorporation, and they were not going to run into the problem of who was responsible for doing various duties, administrative or otherwise.

It was decided among the Council that this information be compiled and given to them.

Council Member Janney stated that they should not think that this was going to be swept under the table and walk away from it.

Mayor Price stated that he did not think it would be.

ADJOURNMENT:

A motion was made by Council Member Gover seconded by Council Member Reynolds to adjourn. All Council Members present voted in favor of this motion.

Respectfully submitted,

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Kim J. Scott  
City Clerk

ATTEST:

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Philip K. Price  
Mayor