

CITY OF EDEN, N. C.

The regular meeting of the City Council, City of Eden, was held on Tuesday, February 18, 2003 at 7:30 p.m. in the Council Chambers, 308 E. Stadium Drive. Those present for the meetings were as follows:

Mayor:	Philip K. Price
Mayor Pro Tem:	John E. Grogan
Council Members:	Ronald H. Reynolds
	Billy Vestal
	Christine H. Myott
	Jerry Epps
	C. H. Gover, Sr.
	Garry Tudor
City Manager:	S. Brad Corcoran
City Attorney:	Tom Medlin, Jr.
City Clerk:	Kim J. Scott
Deputy City Clerk:	Sheralene Thompson
Representatives from City Departments:	
Representatives from News Media:	Scott Michels, <u>News & Record</u>

MEETING CONVENED:

Mayor Price called the regular meeting of the Eden City Council to order and welcomed those in attendance. He explained that the Council meets the third Tuesday of each month at 7:30 p.m. and works from a prepared agenda; however, time would be set aside for business not on the printed agenda.

INVOCATION:

Mr. Brad Pharr, Pastor, First Wesleyan Church, was present to give the invocation.

ADDITION TO AGENDA:

The Planning Department requested that item 8(e) be removed and that two items be added. One, under New Business to call a public hearing on Zoning Case Z-03-03 to change a subject property from I-2 to B-G, Item 8(h). Also, to adopt a resolution and call a public hearing to consider voluntary annexation of property owned by T&S Properties of the Southeast, located on Mebane Bridge Road, item 8(i).

A motion was made by Council Member Myott seconded by Council Member Gover to remove item 8(e) and add items 8(h) and 8(i). All Council Members voted in favor of the motion. The motion carried.

The City Manager requested that item 9(g) be removed.

A motion was made by Council Member Tudor seconded by Council Member Gover to remove item 9(g). All members voted in favor of the motion. The motion carried.

As there were no further items for discussion, Mayor Price ordered the agenda set.

4. PUBLIC HEARINGS AND ADOPTION OF ORDINANCES:

- (a) Consideration of a zoning text amendment request to amend Section 11.26(c), the Board of Adjustment section of the City of Eden Zoning Ordinance to create a special use permit for carports in the front yard in residential districts. Request submitted by the City of Eden Board of Adjustment. ZONING CASE Z-02-12.

The memorandum presented to Council explained that the Board of Adjustment at their regular meeting on October 3, 2002 initiated a text amendment to the City of Eden Zoning Ordinance. This request is to amend Section 11.22(q) pertaining to carports in the front yard. The Council at a meeting in November, 2002 scheduled this public hearing to consider the request. At a meeting in January, 2003, the Board of Adjustment requested that Section 11.26(c) – the Board of Adjustment section of the City of Eden Zoning Ordinance be amended to create a special use permit process that would allow such carports. The Planning and Inspections Department recommended denial of the text amendment request. At their January 28, 2003 regular meeting, the Planning Board voted to recommend that the City Council deny this request.

Minutes of the regular February 18, 2003 meeting of the City Council, City of Eden, continued:

Mayor Price asked Mrs. Stultz to come forward with a report.

Mrs. Kelly Stultz, Director of Planning and Zoning, explained that the particular case had been quite arduous for the staff, the Board of Adjustment, Planning Board, and the City Council. She said that the Board of Adjustment originally initiated the request. She noted that they felt there were some issues that had arisen about carports with which they were uncomfortable. She stated that currently, the ordinance did not allow for carports in the front yard. She explained that the Board of Adjustment recommended that a request be made to create a special use permit process to allow them to be permitted in some circumstances. She said that the text was the basic boiler plate stuff, like all special use permits required. She noted that it would allow that a carport to be placed in the front yard of a principle residence saying it shall create no safety or hazardous conditions and that it must adhere to all the district requirements. She advised that the applicant, should this process be create, would have to provide proof that the carport in question could not be located in the normally permitted places on a lot. She said that consideration would be given to the massing and scale of the carport as it related to other principle and accessory structures. She stated that no carport would be permitted if such development would adversely affect the character of the area. She said that if permitted, the carport should conform to the neighborhood character. She pointed out that the carport would have to constructed of materials with a matte or non-reflective finish and could not be fluorescent in color. She added that the carport could not have a negative impact to the property values in the area. She said that all carports and parking pads should be out of the public right-of-way and should not create sight visibility issues.

Mrs. Stultz explained that the request as amended was to permit carports in the front yard as a special use in all residential districts. She advised that in recent years, the Eden City Council had made numerous changes to it's development regulations regarding carports. She stated that none of the changes were designed to direct carports or any other accessory structure to be located in the front yard of the principle residence. She said that accessory structures, carports included, were just what they sounded like they were. She explained that it was a use that was secondary to the principle use of land. She advised that in present circumstances, it was as a residence. She noted that if conditions were present that prevented a carport from being located to the side or rear of the principle structure, the ordinance provided the opportunity for the owner to apply for a variance. She said that based upon the foregoing information, the staff recommended denial of the request. She added that at their January 28, 2003 regular meeting, the Planning Board voted to recommend that the City Council deny the request.

Council Member Vestal stated that he had several questions. He said that the entire Board of Adjustment had asked for it. He asked if it was not true that there was a consensus of the Board of Adjustment changing from a variance for carports to special use permit.

Ms. Stultz answered that that was her understanding. She advised that she was not under the impression that it was unanimous.

Council Member Vestal told Mrs. Stultz that she mentioned eight times in the report "in the front yard". He noted that he had served on the Board of Adjustment several years, along with Council Member Gover who was on a lot longer than he was, and he thought that the "front of the building line" would be a more appropriate term instead of "in the front yard". He said that she was painting a picture of people putting carports in the front yard and that was not what the Board of Adjustment wanted either. He noted item 2 on the third page of Mrs. Stultz's report and asked if in the terminology of "all applicable district requirements" was talking about setbacks.

Mrs. Stultz answered that it would not include the ones that it was allowed to encroach on by the permit. She stated that it was just all other things.

Council Member Vestal stated that if one adhered to that verbatim, one would not be able to put anything there.

Minutes of the regular February 18, 2003 meeting of the City Council, City of Eden, continued:

Mrs. Stultz replied that it was in most of the special use processes just so applicants understood they would have to do everything else the ordinance said. She explained that if they received the permit they just got an exception.

Council Member Vestal questioned what the vote on the Planning Board was when it had presented to them.

Mrs. Stultz answered that it was five to two.

Council Member Vestal replied that he thought it was four to three.

Mrs. Stultz asked if it was four to three.

Council Member Vestal answered that it was. He said that one board asked for it and the other board was almost evenly split wanting to do something about it. He stated that in his entire time on the Board of Adjustment, probably well over half of the items coming before the Board of Adjustment had been carport variances because it was the second biggest investment people had besides their house. He noted that the five findings of fact on a variance were real strict. He said that it was hard to grant variances a lot of times on those carports. He stated that if you put a variance on a piece of property, and he asked Mrs. Stultz to correct him if he was wrong, that variance, if you grant a carport for a variance and it is attached to the structure, they could actually be closed in and become part of the house. He asked Mrs. Stultz if that was not true.

Mrs. Stultz requested that he repeat the question.

Council Member Vestal replied that if they granted a variance for a carport and it was in front of the building line but attached to the house, the owner could actually close it in and it could become a den.

Mrs. Stultz replied that yes, it had actually had several times. She commented that they had looked at some pictures of it.

Council Member Vestal said the only thing the Board of Adjustment wanted to do was transfer the carport uses from a variance over to a special use permit. He stated that if you take the same situation and attach that same carport under a special use permit, you could not change it or enclose it as the special use permit would be revoked. He asked her if that was not true.

Mrs. Stultz answered that she thought the Board of Adjustment was well within its rights because her understanding of the whole amendment was that it was about free standing carports, not what would become an attachment to the house. She advised that the Board of Adjustment would be well within its rights each time to make it a condition that the thing not ever be closed in. She said that regarding the question he had asked about the front yard, the ordinance defined a yard front as an open space on the same lot with a principle building between the front line of the building, exclusive of steps, and the front property or street right-of-way line and extending across the full width of the lot. She stated that she was not trying to manipulate anything by saying front yard.

Council Member Vestal told Mrs. Stultz that she was painting a picture of putting carports in the front yard. He said that it still was going to be a decision up to the staff to recommend either way.

Mrs. Stultz added or to deny.

Council Member Vestal agreed or to deny. He said that it would be up to the Board of Adjustment to approve or deny. He stated that item 5 on page 3 stated "shall conform to the neighborhood characteristics". He pointed out that based on that, if no one else had a carport in front of the building line, that would not be conforming if you allowed one. He noted that that would eliminate a lot of the problems.

Minutes of the regular February 18, 2003 meeting of the City Council, City of Eden, continued:

Mrs. Stultz replied that she was going to play devil's advocate with him for a second. She said to assume that the guy in the middle of the block that they were talking about had a bonified reason to be granted a variance for a carport that lands in the front yard. She suggested that then the neighbor who did not have a bonified variance reason could come in and plunk down his \$150.00 and it would be little harder for her to say that it did not conform to the character of the neighborhood because they already had one.

Council Member Vestal pointed out that there were seven other items there that he had to meet so if he could do it on the side, that could be one thing they could eliminate on it. He thanked Mrs. Stultz and said that that was all he had to say. He noted that Council Member Epps had been at some of the meetings and might want to say something.

Council Member Epps stated that he concurred with what Council Member Vestal said because he was at the meetings and heard all the same debate as Council Member Vestal did. He said that they just said a flat no to everybody across the city. He commented that the special use permit would give somebody an opportunity to try and maybe succeed in getting one.

Mayor Price asked if there were anymore comments or questions of Mrs. Stultz.

Council Member Gover stated that he would like to echo Council Members Epps and Vestal. He advised that he was on the Board of Adjustment for 18 years. He commented that it seemed like the carport was a sore finger for them every time one came up. He noted that they have had to come up with restrictions and stipulations. He said that he was for the Board of Adjustment moving it to the special use because they finally found a place for the carports. He stated that it was more restrictive having it in the special use and more restrictive than it is openly like it is today. He reiterated that he echoed those two and was for the special use.

Mayor Price asked if there were any other comments.

Mayor Price called for the public hearing and asked for those wishing to speak in favor or in opposition to this request.

Giles Hunnings, 514 Patrick Street, stated that he was a member of the Board of Adjustment. He said that he was speaking for the Board of Adjustment, although they were not all in agreement on the issue. He suggested that, in an informal poll, six of them would favor a special use permit and three were against it. He explained that they all did want clarification on the issue as carports was what they heard most about, as Council Members Gover and Vestal had said. He noted that the Board was divided over how to handle accessory structures that did not meet the requirements of the ordinance. He pointed out that, as Council Member Vestal had said, interpretation of the findings of fact did make it difficult to approve carports in front of the building line of the house. He said that some of them felt that the Board of Adjustment was being used to end-run around the ordinance at times. He commented that he was not speaking about any particular case but that he had seen cases that were very difficult to try to pass. He said that then there were a lot of community support behind allowing that person to build the carport and it was difficult for them to turn it down. He noted that even though they had in the past, it was a difficult decision to make. He added that another reason they wanted it to be revisited was that Council Member Epps and Council Member Vestal had both shown interest in changing the case in conversations that they had with them and in meetings and comments they had made. He stated that finally, they believed that the city Planning & Inspections Department had been having trouble enforcing the ordinance because they were waiting on decisions and pending cases that were before the Board of Adjustment where this house had a non-conforming carport and they were deciding on the one next door. He said that it had been tough for them to tell which way they were going to go. He explained that for those reasons, and since there seemed to be quite a bit of support behind it in the community from what they were hearing, the Board of Adjustment would like for the City Council to revisit the issue so they would have guidance as to how City Council, as the elected officials, would like to handle this issue. He said that it was so enforcement of the issue could be improved and that, hopefully the Board of Adjustment's decisions would be made easier.

Minutes of the regular February 18, 2003 meeting of the City Council, City of Eden, continued:

Council Member Myott asked Mr. Hunnings if he was saying to table the issue that night and visit it later.

Mr. Hunnings answered that maybe revisit was the wrong word. He suggested that they look at the ordinance again to either change or not change. He said that he thought they wanted a firm word from the Council as to whether they wanted carports. He stated that the Council were the elected representatives and they were just the Board of Adjustment. He said that they were not elected representatives and they did not think that they should be making changes in the ordinance. He pointed out that that was what they thought they were doing when they allowed the carports. He said that if the Council felt, and thought that the community felt, that the change should be made, just to be honest about it, it made the Board of Adjustment's decisions a lot easier. He commented that maybe they were chickens but the decisions had been tough and grueling. He stated that they had had a lot of discussion over them. He said that for those reasons, they would like for the Council to look at the ordinance, decide what they thought the community needed and wanted, and that would make their decisions easier.

Mayor Price asked if there were any other questions of Mr. Hunnings.

Council Member Myott stated that maybe she was a chicken, but she did not want to see it changed.

Mayor Price stated that they would continue on with the public hearing. He asked if anyone else wanted to speak in favor or opposition.

Dorrie Coleman, Carolina Avenue, stated that she was a member of the Eden Appearance Commission. She said that she would tell them the story behind the whole thing. She noted that Mrs. Stultz had said she opened up a can of worms, and she acknowledged that she probably did. She noted that she was speaking for Mr. Riddle at his house and not her house. She said that they had wanted to do the right thing and get a permit, which she said she knew that most people did not get for a carport to start with. She advised that what started it was that Mr. Riddle had a problem with water running down the road and into his front porch because he lived on an incline that was just about impossible to mow. She stated that they called the City and asked them to come down and tell them if what they were going to do was the right thing. She advised that Mr. [Jimmy] Bolden, Chief Inspector, came and they told him they were going to put up a retaining wall to take care of the water problem. She said that Mr. Bolden said that that probably would be the best thing that would happen. She explained that it happened to be a mound that he used as a driveway. She said that most people thought that they put a retaining wall around the driveway and it was new. She advised that it was not and had been there for many, many moons. She stated that after the retaining wall and the retaining wall around the driveway, she had asked Mr. Bolden about putting in a carport. She reported that Mr. Bolden had said that he did not think it would be a problem because the others had a carport but he told them that they would have to go through the Board of Adjustment. She said that was no problem. She explained that Mr. Riddle's front was like 54 front and his house was like 36. She noted that even if he could put a carport on either side, he would be in someone else's yard anyway. She asked if carports were about ten or twelve foot wide. She said that even if that were the case and he could do it, which he could not because of the incline of the land, it would be a nice hardship for him. She stated that it was the only reason they started it, because they did not think it would be a problem. She said that they wanted to do the right thing about it and put up a carport where the existing driveway was. She noted that regardless of whether the carport came along or not, the driveway was still there, the retaining wall was still there, and it was under the grandfather clause so there was not much they could do about it. She stated that they were not going to tear it down just to move. She said that if a carport was put up, it would have to be down in the backyard. She advised that Mr. Riddle was 67 years old and he was not in a position to be climbing the hill and to be cleaning his car off. She suggested that the carport would be an ideal thing to have to keep him from having to clean his car off when it snowed or whatever, which was the reason they wanted the carport.

Mayor Price thanked Ms. Coleman and asked if there was anyone else who wanted to come forward to speak in favor or opposition of the request.

Minutes of the regular February 18, 2003 meeting of the City Council, City of Eden, continued:

Mayor Price asked Mrs. Stultz why her department was in opposition to it.

Mrs. Stultz answered that the whole thing had gotten a little bit convoluted. She stated that the staff recommended denial of the original variance request that Ms. Coleman brought in behalf of Mr. Riddle, whom she had helped along the way as she had been to about ten meetings up to then, because there were some very specific things with the variance that said if there was a hardship it could not be created by the property owner. She noted that Mr. Riddle probably did not build the big mound of dirt that was there, but he did build the retaining wall. She noted that lots of people on that street parked on the mounds. She suggested that if he had taken down the mound, he could have parked beside his house. She added that that was further brought home to her because the house next door, and if they looked at all the aerial photos they even had a picture of a car parked down next door. She stated that truly the issue before them was a text amendment to the ordinance and not Ms. Coleman's application. She said that it was a very difficult thing for them and the reason they recommended denial of the variance was because the ordinance was very clear. She explained that in her role as zoning administrator, she was charged and put her hand on the Bible and promised to enforce the ordinance adopted by the Council. She said that she did not have the ability, anymore than the Board of Adjustment did, to make recommendations that made policy changes to the ordinance. She noted that she felt pretty strongly that she had to recommend denial of that. She suggested that the reason she had steadfastly recommended denial of accessory structures and carports in front of the front building line or in the front yard, however you wanted to define it, was simply that she was not sure as the City's Planner she could support it as a blanket notion. She said that she was not sure how easy it was going to be to enforce them and to deal with the permits as they came through. She stated that it was just one of the those recommendations she had to make. She added that she would share with them that the members of the Board of Adjustment were not thrilled with her that she recommended denial of their request. She stated that it had absolutely nothing to do with how she felt about them or their ability and right to make it.

Council Member Gover said he witnessed the carports all over the city, as Mrs. Stultz had mentioned, in his 18 years on the Board of Adjustment. He said there were about as many in the front line of the yard as there were on the side of the house.

Mrs. Stultz stated that the Board of Adjustment had granted a number of variances.

Council Member Gover replied that they had granted them all over the city and they were sitting out in the front yard and almost up on top of some of their houses. He asked what the difference was.

Mrs. Stultz answered that it was a policy decision for the Council to make.

Council Member Vestal told Mrs. Stultz that she could still enforce it under the special use permit. He said he was sure she could still do that.

Mayor Price asked her if she could.

Mrs. Stultz answered that if the Council put it in the ordinance, that was her job.

Mayor Price asked if anyone else wanted to speak in favor or opposition.

Charles Martin stated that he was the Chairman for the Board of Adjustment. He noted that this had been an unusually controversial matter over the last few weeks. He said that it started basically with a proposal. (Mr. Martin distributed copies of the proposal) He pointed out that basically everything was there. He noted that on behalf of the six or more Board members who would prefer to handle it under special use, he said they felt like they had better control. He suggested that the Board of Adjustment would revoke anything that was a problem. He noted that the restrictions were written so specifically that they were not going to be popping up everywhere. He pointed out that the only reason it had to be even considered, for outside of certain areas, was that Mrs. Stultz said that they could not be specific as where they were having problems. He commented that

Minutes of the regular February 18, 2003 meeting of the City Council, City of Eden, continued:

they had hills and topographical problems all over the area. He said that they could revoke special use where the variance went with the land. He stated that basically the strength of their case was that they would have better control. He noted that Mrs. Stultz had given them a slide presentation one evening of about a dozen carports and he asked her if basically all of them were problems.

Mrs. Stultz answered that the vast majority of the ones they had looked at that evening were ones that the Board had granted variances for in the past. She noted that there were several of them, however, when she and the staff were out taking a look to make pictures of those, they discovered they were unaware were there. She stated the violations were like any other in that they cropped up and the reason they were in violation was because they did not know about them. She advised that that was what the presentation was about.

Mr. Martin replied that the presentation did have, in his opinion, about half that never came before the Board and were just out there. He advised that if papers were served on those citizens to get those in compliance, they were expecting a mess. He said that they just felt like they would have better control in the future.

Mayor Price asked if anyone else would like to come forward to speak in favor or opposition to the request. As no one came forward, Mayor Price declared the public hearing closed.

Council Member Grogan stated that he would like some clarifications. He asked Mr. Hunnings if he would like to see a special use permit along with Mr. Martin. He said that they were getting paid a whole lot to make those decisions.

Mr. Hunnings answered that the majority of people on the board would . . . (inaudible)

A motion was made by Council Member Gover seconded by Council Member Vestal to accept the proposal as presented.

Action on the motion was as follows: Voting in favor of the motion were Council Members Epps, Reynolds, Grogan, Gover, Tudor and Vestal. Council Member Myott voted in opposition. The motion carried.

- (b) Consideration of a zoning map amendment request to rezone property at 110 W. Meadow Road from Residential-12 and Office and Institutional to Office & Institutional. Request submitted by Philip E. Berger, Authorized Representative for Irene C. Tulloch. ZONING CASE Z-02-15.

The memorandum explained that at their regular meeting in January, the Council scheduled this public hearing to hear comments regarding a zoning map amendment request filed by Philip E. Berger, Authorized Representative for Irene C. Tulloch. The request was to rezone property at 110 W. Meadow Road from Residential-12 and Office & Institutional to Office & Institutional. The Planning and Inspections Department recommended approval of the map amendment request. At their January 28, 2003 regular meeting, the Planning Board voted to recommend that the City Council approve this request.

Mayor Price asked Mrs. Stultz to come forward with a report.

Mrs. Kelly Stultz, Director of Planning and Zoning, explained that the request before the Council was to rezone approximately 1.43 acres from R-12 and O&I to Office & Institutional. She advised that the Residential-12 district was a medium lot single family residential district. She said that the subject property fronted a highway interchange at Meadow Road and Highway 14. She stated that the area to the north and east of the subject property was zoned Office & Institutional. She pointed out that the property to the south and west was zoned R-12 for medium density residential use. She explained that the property to the south was a single family residence. She stated that the Office & Institutional district was designed primarily for Office & Institutional uses which had only limited contact with the general public and which had no offensive odors, noises, smoke, fumes, or other objectionable conditions. She advised that the Office & Institutional district also allowed residential uses. She said that based upon the character of the area and the business in medium density residential uses in the area, along with the fact that part of the subject property is presently zone O&I, staff recommended in favor

Minutes of the regular February 18, 2003 meeting of the City Council, City of Eden, continued:

of the request. She explained that at their January 28, 2003 regular meeting, the Planning Board voted to recommend that the City Council approve the request.

Mayor Price asked if there were any questions of Mrs. Stultz. As there were no questions, Mayor Price called for the public hearing and asked for those wishing to speak in favor or in opposition to this request.

Senator Phil Berger advised that basically part of the property, as Mrs. Stultz indicated, was already zoned O&I. He said that they were just asking that all of it be zoned O&I. He noted that there was a brick building on the part that was currently zoned residential that had been formerly used as a residence. He explained that the plan was to have that remodeled and used as an office building.

Mayor Price asked if there were any questions of Senator Berger.

Council Member Tudor asked if there was a garage building in the back that had an apartment in it.

Senator Berger answered that there were actually four structures on the property. He stated there was a fifth structure if you counted what he referred to as the Beverly Hillbillies kind of barn that was off to one side. He said that there was the residence that was to be remodeled, a garage, which was basically a steel structure, and a garage with an apartment above it and there was a one-bedroom house. He advised that all of those structures were on the one parcel.

Mayor Price asked if there were any other questions of Senator Berger. He questioned if anyone else wanted to come forward to speak in favor or opposition to the request. As no one came forward, Mayor Price declared the public hearing closed.

A motion was made by Council Member Epps seconded by Council Member Gover to approve the request. All members voted in favor of the motion. The motion carried.

(b-1) Consideration of adoption of an ordinance rezoning property at 110 W. Meadow Road from Residential-12 and Office and Institutional to Office and Institutional. ZONING CASE Z-02-15.

A motion was made by Council Member Vestal seconded by Council Member Gover to adopt the ordinance. All members voted in favor of the motion. The motion carried.

(b) Consideration of a zoning text amendment request to amend Section 11.24(i), the Business-Highway #1 zoning district to allow nonfranchised automobile dealers as a permitted use. Request submitted by Joseph G. Maddrey. ZONING CASE Z-03-01.

The memorandum explained that at their regular meeting in January, the Council scheduled this public hearing to hear comments regarding a zoning text amendment request filed by Joseph G. Maddrey. The request was to amend Section 11.24(i) – the Business-Highway #1 zoning district, of the City of Eden Zoning Ordinance to allow nonfranchised automobile dealers. The Planning and Inspections Department recommended approval of the text amendment request. At their January 28, 2003 regular meeting, the Planning Board voted to recommend that the City Council approve this request.

Mayor Price asked Mrs. Stultz to come forward with a report.

Mrs. Kelly Stultz, Director of Planning and Zoning, explained that the particular case had to do with car sales businesses in the Business-Highway 1 zoning district. She said that there had been much discussion that day about that particular issue and the applicant apparently had some discussion with members of Council and anticipated a motion being made to table the request. She stated that he and his client supported that if the Council chose to.

Mayor Price asked if there was a motion to table it.

Minutes of the regular February 18, 2003 meeting of the City Council, City of Eden, continued:

A motion was made by Council Member Epps seconded by Council Member Tudor to table the public hearing for the Planning Department (and come back with some standards that would be applicable to the case).

Mrs. Stultz explained that it was a motion to table it and have the staff bring it back with some standards.

Action on the motion was as follows: All Council Members voted in favor of the motion. The motion carried.

- (c-1) Consideration of an ordinance amending Section 11.24(i)-the Business-Highway #1 zoning district of the City of Eden Zoning Ordinance to allow nonfranchised automobile dealers as a permitted use.

This item was tabled.

- (d) Consideration of a zoning map amendment request to rezone property on Fisher Hill Road in the city's extraterritorial zoning jurisdiction from Residential-20 to Residential-Suburban. Request submitted by Jeffrey Fain, Authorized Representative for Melvin Fain. ZONING CASE Z-03-02.

The memorandum explained that at their regular meeting in January, the Council scheduled this public hearing to hear comments regarding a zoning map amendment request filed by Jeffrey Fain, Authorized Representative for Melvin Fain. The request was to rezone property on Fisher Hill Road in the city's extraterritorial jurisdiction from Residential-20 to Residential-Suburban. The Planning & Inspections Department recommended approval of the map amendment request. At their January 28, 2003 regular meeting, the Planning Board voted to recommend that the City Council approve the request.

Mayor Price asked Mrs. Stultz to come forward with her report.

Mrs. Stultz said that the particular request discussed the zoning on a particular piece of property that was in the extraterritorial area that contained more than 36 acres. She pointed out that if they would notice from the maps they had been sent, there had been several residential suburban requests in the area since 1989. She advised that the request was to rezone a tract in the ETJ from R-20 to Residential-Suburban. She explained that Residential-Suburban was a zoning district characterized by suburban residential and agricultural uses. She stated that one purpose of the district was to encourage the continued use of land for low-density, residential, and agricultural uses. She pointed out that the Residential-Suburban district required a larger lot than residential twenty. She stated that the area was characterized by rural large-lot residential development and farm uses. She noted that she had a question asked of her earlier in the evening about the issue of the particular property being rezoned with others around it remaining R-20. She said that she thought that the sheer size of the piece of property and its agricultural use certainly made it a reasonable decision. She stated that that was how they made the recommendation. She explained that there was always a lot of talk about spot zoning and it was hard to imagine 36 acres being a spot but she supposed that it could be called that. She said that there was spot zoning and illegal spot zoning and in order for something like this to be zoned legally it could not be a capricious arbitrary decision. She stated that there had to be a rational nexus for it. She advised that the Planning Board in discussing the particular piece of property certainly supported making the rezoning change but they also had asked that as the staff planned the work for the next year, they look at doing a land use study for the entire area. She explained that much of the area remained in the rural kind of character that it had for the last 75 years. She said that they felt like R-S would be appropriate for much of the area so the staff was going to take a look at that as the spring and summer go on. She stated that based upon the land development plan and the characteristics of the area, the staff was of the opinion that a Residential-Suburban rezoning was appropriate and; therefore, they recommended in favor of the request. She added that the Planning Board recommended in favor of it also.

Council Member Vestal asked Mrs. Stultz if in Residential-Suburban it would be easier for the people out there to have accessory structures and all rather than in R-20.

Minutes of the regular February 18, 2003 meeting of the City Council, City of Eden, continued:

Mrs. Stultz answered that it would. She stated that for real agricultural uses they had made recommendations in R-S. She advised that the Council changed the ordinance such that they could have barns and those sorts of things that were necessary. She noted that R-20 would only allow them to have half the square footage of the house or 600 square feet, whichever was greater.

Mayor Price asked if anyone wanted to speak in favor or opposition to the request.

Mr. Jeffrey Fain, applicant, advised that the property had belonged to his grandparents as long as they had lived. He said that he had been on the property for about 33 years. He advised that he was living in his grandmother's house since she passed away and it was just one bedroom. He noted that it was really difficult to be in a house that small with his wife and himself and be able to get around. He pointed out that he was disabled and the doctors said that he may need to be in a wheelchair in the future so he needed a larger structure house because he could not hardly turn around in the hall or anywhere in there as it was presently. He said that all they were looking for was not to build condominiums or anything else like that out there. He stated that they just wanted to have a house that they could afford to live in, and like anyone else just be there. He noted that pretty much the property was going to stay like it was. He said there was nothing but trees and hollers where they were at and it would pretty much stay that way. He advised that if it was approved like they had asked for, they could pretty much guarantee everything else would be like it is. He noted that at a lot of places outside Eden you would find trees being bulldozed down and lots being cleared. He stated that would be the last thing that would ever happen to that property because he loved it the way it is. He commented that a lot of wildlife had come onto the property. He said that she [Mrs. Stultz] was talking about changes being made and not having a lot of changes. He stated that they were in agreement with that and did not want a lot of change but wanted another house that was there on the property.

Mr. Tom Medlin, City Attorney, asked Mr. Fain if he believed that by changing this it would help to protect the character of the property, the openness and the way that he desired to have it.

Mr. Fain said that he did not know if he quite understood what Mr. Medlin was asking to which Mr. Medlin told Mr. Fain that he had said that he wanted to have larger areas.

Mr. Fain replied that no, he had said he wanted to have a larger house.

Mr. Medlin answered okay.

Mr. Fain further explained that it had been surveyed for the last couple of months as they could get around to do it, weather permitting. He noted that all he was saying was that hardly any of the trees would be cut down that was there, just enough to put the structure up. He said pretty much else was going to stay there. He commented that they had creeks going through it and everything else.

Mayor Price thanked Mr. Fair and asked if anyone else wanted to speak in favor or opposition to the request. As no one came forward he declared the public hearing closed.

Council Member Myott said that she did not quite understand why Mr. Fain would need a change in zoning if all he wanted was a larger house.

Mrs. Stultz stated that her conversations with Mr. Fain over the last several months had indicated that what he would like to have was a manufactured home. She stated that could not be done in R-20..

Council Member Myott asked if was [noted in the information] to which Mrs. Stultz replied that it was not.

Mayor Price asked Council Member Myott if that had answered her question to which she replied that it did.

Minutes of the regular February 18, 2003 meeting of the City Council, City of Eden, continued:

A motion was made by Council Member Grogan seconded by Council Member Gover to approve the request. All Council Members voted in favor of the motion. The motion carried.

(d-1) Consideration of an ordinance rezoning property on Fisher Hill Road in the city's extraterritorial jurisdiction from Residential-20 to Residential-Suburban. ZONING CASE Z-03-02.

A motion was made by Council Member Grogan seconded by Council Member Gover to adopt the ordinance. All Council Members voted in favor of the motion. The motion carried.

(e) Consideration of a request to close an unopened portion of Monticello Street. Request submitted by Pleasant View Baptist Church, John A. Atkinson and Homer E. Wright, Jr. STREET CLOSING SC-03-01.

The memorandum explained that at their regular meeting in January, the Council adopted a Resolution of Intent to Close an Unopened portion of Monticello Street. The Council also scheduled this public hearing to hear comments on this street closing request filed by Pleasant View Baptist Church, John A. Atkinson and Homer E. Wright, Jr. The Planning and Inspections Department recommended approval of the street closing subject to an easement being granted to the city. At their January 28, 2003 regular meeting, the Planning Board voted to recommend approval of this street closing subject to the easement being granted.

Mayor Price asked Mrs. Stultz to come forward with a report.

Mrs. Kelly Stultz, Director of Planning and Zoning, explained that the department recommended approval of the street closing subject to an easement being granted to the City of Eden. She advised that at their January 28, 2003 regular meeting, the Planning Board voted to recommend approval of the street closing subject to the easement being granted. She stated that the City had received a petition signed by 100% of the abutting property owners requesting that an unopened right-of-way be closed. She advised that the subject portion of the street had never been opened and the land abutting the unopened right-of-way had primary access onto West Meadow Road and Moore Street. She stated that the Eden City Code, Chapter 13, Article 3, Division 3, and the North Carolina General Statutes authorized the City Council upon recommendation from the Planning Board to consider the closing or vacating of a street in accordance to the rules and procedures set forth therein. She noted that furthermore, it permitted the City Council to close the street provided that after a public hearing had been held, it appeared to the satisfaction of the Council that closing the street or alley was not contrary to the public interest and that the City had no interest in preserving the dedication of the street or alley for municipal purposes and that no individual owning property in the vicinity of the street or alley would thereby be deprived of reasonable means of ingress or egress to the property. She noted that they did contact all the public service corporations, including the City of Eden. She advised that the engineering staff, with the concurrence of the collection and distribution personnel, recommended that the City retain a 20 foot easement for the outfall line and manhole located within the unopened right-of-way. She said that the Duke Power Company had no objections. She noted that the following companies had yet to respond to inquiries regarding locations of the utilities in the area or their future plans: Sprint, Dan River Water, Time-Warner Cable, and NC Gas. She said that according to the statutes and the code, the City had to meet two requirements. She commented that it was the opinion of the staff that that had been done. She said that in regard to the required findings, the Planning & Inspections Department issued the following comments: contingent upon comments from the public service corporations, staff was of the opinion that the street was not required for public utility service for the area except as subject to as easement granted for the benefit of the City of Eden. She stated that based upon the fact that the street had never been opened, nor was the street in the City thorough-fare plan or any other transportation improvement plan, the staff was of the opinion that the street was not necessary to the general public for travel and traffic circulation in the area. She said that based upon the fact that all properties in the area had their primary access off of West Meadow Road or Moore Street, and all the property owners signed the petition, the staff was of the opinion that no one would be denied reasonable means of ingress and egress because of the closing. She stated that therefore,

February 18, 2003

City of Eden, N. C.

Minutes of the regular February 18, 2003 meeting of the City Council, City of Eden, continued:

and based upon the stated findings, the staff recommended that the street be closed as requested subject to the easement for the benefit of the City.

Mayor Price thanked Mrs. Stultz and asked if anyone had questions for her. As there were no questions he called for the public hearing and asked for those wishing to speak in favor or in opposition to this request. As no one came forward, he declared the public hearing closed.

A motion was made by Council Member Epps seconded by Council Member Tudor to grant the street closing. All Council Members voted in favor of the motion. The motion carried.

RESOLUTION OF INTENT TO CLOSE AN UNOPENED
PORTION OF MONTICELLO STREET

BE IT RESOLVED by the City Council of the City of Eden, North Carolina, that:

Pursuant to the provisions of Chapter 13, Article III, Division 3 and Section 13-88 of the Eden City Code and Section 160A-299 of the North Carolina General Statutes, the City Council of the City of Eden, North Carolina, does hereby declare its intention to close the following described street being the portion of Monticello Street located between Meadow Road and Moore Street.

BEGINNING at an iron pipe in the southern right-of-way line of Meadow Road, said iron pipe marking the southwest intersection of Meadow Road and Monticello Street; thence with the western line of Monticello Street South 32 deg. 13 min. E. 175.60 feet to an iron; thence South 11 deg. 45 min. E. 43.50 feet to an existing iron pipe marking Homer E. Wright, Jrs', northeastern corner; thence continuing along the western right-of-way line of said Monticello Street 557.5 feet to a point being the northwest intersection of Monticello Street and Moore Street; thence from said point along and with the northern right-of-way line of said Moore Street 50 feet to a point being the southwest corner of the intersection of Monticello and Moore Street, said point being the southwest corner of the John A. Atkinson property; thence from said point along and with the east right-of-way line of Monticello Street along and with the west property line of Atkinson 360 feet to a point, said point being the northwest corner of the Atkinson property and the southwest corner of the property of Pleasant View Baptist Church (formerly Bolen); thence from said point continuing along the east right-of-way line of Monticello Street 250 feet to a point; thence continuing along said right-of-way approximately 194.6 feet to a point being the southeast intersection of Monticello Street and Meadow Road; thence in a westerly direction along and with the right-of-way line of Meadow Road 50 feet to the point and place of beginning.

BE IT FURTHER RESOLVED that the City Council does hereby call for a public hearing on the said closing to be held on the 18th day of February, 2003 at 7:30 p.m.

BE IT FURTHER RESOLVED, that this Resolution will be published once a week for four successive weeks prior to the said hearing, a copy of said Resolution be sent registered or certified mail to all owners of property adjoining said street as shown on the county tax records, and prominently posted in at least two places along said street.

BE IT FURTHER RESOLVED, that the Planning Board is hereby requested to submit its recommendation on the proposed closing of said street for consideration of the City Council at the time of said public hearing.

APPROVED, ADOPTED AND EFFECTIVE, this 21st day of January, 2003.

City of Eden
s/Philip K. Price
By: Philip K. Price, Mayor

Attest:
s/Kim J. Scott
Kim Scott, City Clerk

MONTHLY FINANCIAL REPORT:

(a) Financial Report.

Mayor Price advised that they could see it as presented. He noted that the staff had done an excellent job. He said they could see that in terms of the revenue and expenditures, the City was just about where it should be for that time of the year. He commented that they were very fortunate to have a very capable group of people who have given them information. He recognized that Mrs. Dala Stanley, Accounting Coordinator, was present and he thanked her for the excellent job.

February 18, 2003

City of Eden, N. C.

Minutes of the regular February 18, 2003 meeting of the City Council, City of Eden, continued:

A motion was made by Council Member Tudor seconded by Council Member Gover to accept the report. All Council Members voted in favor of the motion. The motion carried.

REQUESTS AND PETITIONS OF CITIZENS:

No one came forward to speak.

UNFINISHED BUSINESS:

(a) Consideration of Ward 6 appointment to the Community Appearance Commission.

Council Member Grogan stated that he did not have anybody to appoint.

(b) Consideration of 2003 lawncare bids for the Public Utilities Facilities.

Information provided to Council explained that the City Finance Department received sealed bids for the lawncare services contract for the 2003 mowing season on January 30, 2003. This followed public notice advertising in the local newspaper and mail solicitations of all known mowing vendors in the area. Seven lawncare vendors submitted bids for this contract work.

Only three vendors met all the criteria required in the bid specifications. The only local vendor submitted the third lowest bid. The Finance Department has all of the submitted bid documents from the vendors.

The staff recommended that the contract be awarded to Green Lawn Services, Inc. Green Lawn Services has held this contract before.

Green Lawn Services, Inc.	\$13,650.00
Jefferson Landscaping	\$14,840.00
Belcher's Lawn Care & Firewood	\$15,750.00

Mayor Price noted that they could see the information as presented by Mr. Dennis Asbury, Director of Public Utilities, and Mr. Brad Corcoran, City Manager. He said that their recommendation was that the contract be awarded to Green Lawn Services who had the contract in the past and had the low bid.

A motion was made by Council Member Epps seconded by Council Member Myott to award the contract to Green Lawn Services, Inc.

Council Member Gover asked if everyone in Eden had been given an opportunity to bid on [the contract]. He then stated that he was sure they had that qualified.

Council Member Gover said that he wanted to make sure everyone in Eden that qualified for that type of work was given an opportunity to bid on it.

Mayor Price replied that as he stated, there was a public notice advertising in the paper and a mail solicitation.

As there were no further questions or comments, Mayor Price noted that there was a motion on the floor.

Action on the motion was as follows: All members voted in favor of the motion. The motion carried.

NEW BUSINESS:

(a) Consideration of a request to initiate amendment to the City Code for nuisance provisions.

Information provided to Council explained that over the past several years, the City Council has discussed nuisance enforcement many times. Each time the ordinances have been reviewed, the Planning Staff had tried to make the process smoother, cleaner and quicker. The value of surrounding properties is impacted by conditions that constitute nuisances.

Minutes of the regular February 18, 2003 meeting of the City Council, City of Eden, continued:

The City Council was asked to initiate an amendment to Chapter 6, Article II of the Eden City Code relating to nuisances and call a public hearing for March 18, 2003. Staff proposed that the Council change the height of vegetation that constitutes a nuisance to 12 inches. Many other jurisdictions use this level. This would mean that the letters could be sent sooner and the vegetation would not get as high before it is mowed or cleared. Thus, reducing mowing costs and aggravation to citizens. Additionally, it was recommended that Council consider changing the number of days from 20 to 15 required before the city steps in to clear the property and then bill the owner. If this is done there will be a need to reduce the number of days to file an appeal from 20 to 15 as well.

The operating procedure was changed so that the property is posted the same time the letters are sent. The current ordinance allows the city to post the property if the owner cannot be found. If both types of service are done, then the city will not have to wait to abate the violations if the owner refuses service or the letters come back unclaimed.

Mayor Price advised that they could see the information as presented by Mrs. Stultz. He noted that she was asking to make their office a little more responsive to the problem that comes in every year with the high grass. He said she was asking that the height be adjusted and she had shown where she could initiate some things to make this more manageable for the City of Eden and make it certainly more responsive to the requests of the citizens.

A motion was made by Council Member Gover seconded by Council Member Tudor to approve the amendment to the City Code. All Council Members voted in favor of the motion. The motion carried.

(b) Consideration of a request to adopt an ordinance for the demolition of a structure at 621 Fisher Street under the City of Eden Human Habitation Ordinance

Information provided to Council explained that attached to the memorandum was a section of the Human Habitation Standards ordinance relating to the steps to be taken when an owner fails to comply with an order to repair or demolish and a report from staff on the subject action. The City of Eden Human Habitation Standards Ordinance and the enabling legislation permit the City Council upon adoption of an ordinance to order the repair or demolition of the structure. Once the demolition is done at city expense, actions can be taken to recoup the funds in the same manner as the collection of special assessments.

Mayor Price said that they could see the information as presented by the code enforcement department. He noted that they could see that it was pretty lengthy as to what they had to do and the types of things that were required. He asked if there were any questions.

Council Member Vestal said that he had a question for Mrs. Stultz. He noted that they had talked about the pieces of property several times in the past. He stated that he thought they might have a little problem on this one. He pointed out that on 11/12/02, Mr. Baldwin secured a building permit for a roof for replacement and on 11/13/02, 90 days. . . He questioned if there was a North Carolina law that when a building permit was received the person had 6 months before a stop order could be issued on them.

Mrs. Stultz answered that there was a period of time that they had to allow the permit to stay valid if he did not do any work. She noted that it did not stop them from continuing on with those actions. She said that had he been making progress when Mr. [Bob] Vincent, [Building Inspector] went back to do the progress inspection, had he been doing anything, they as a staff had always tried to give people more time if they were making an effort. She stated that as it was, nothing had been done at the end of that period of time.

Council Member Vestal stated that he agreed that there were not any that needed to come down worse than that one but he just wanted to make sure that they were legal as far as that went.

Mrs. Stultz replied that the final confirmation of that needed to come from the gentleman on [Council Member Vestal's] left.

Mr. Medlin stated that he would address that by the fact that he got a building permit for roof replacement but he also had 14 violations and all the other violations, except for the roof, were still actionable. He explained that just because he got a roof permit did not mean that they could not proceed on all the other violations. He said that he thought that

Minutes of the regular February 18, 2003 meeting of the City Council, City of Eden, continued:

if he did not move forward on the roof replacement that would become moot because of all his other violations.

Council Member Vestal explained that he just wanted to clarify and make sure it was legal.

Council Member Tudor asked if it was not a ploy that was often used, when a property had been complained about, for a owner to come down and get a permit to do something and say that he was in the process of fixing [the property] up so that he could stall.

Mrs. Stultz told Council Member Tudor that she had heard that on more than one occasion. She stated that Mr. Vincent just reminded her that the permit was only for the roof as Mr. Medlin had said, and not the myriad of other problems with that particular structure.

A motion was made by Council Member Gover seconded by Council Member Tudor to adopt the ordinance.

Council Member Grogan stated that he had a question and he thought it would go onto other properties as they talked. He noted that they were showing a tax value of \$6,700 and a repair cost of \$8,000. He asked if by some chance the City of Eden did get involved and had to demolish the property and put a lien against it and it did not bring enough to get their money back could they go against other properties that Mr. Baldwin and Mr. Herring own.

Mrs. Stultz answered that Mr. Medlin had said yes.

Council Grogan then expressed his support of the motion.

Action on the motion was as follows: All Council Members voted in favor of the motion. The motion carried.

(c) Consideration of a request to adopt an ordinance for the securing of a structure at 422 Morgan Road under the City of Eden Human Habitation Ordinance.

Information provided to Council explained that attached to the memorandum is a section of the Human Habitation Standards ordinance relating to the steps to be taken when an owner fails to comply with an order to secure the structure and a report from staff on the subject action. The City of Eden Human Habitation Standards Ordinance and the enabling legislation permit the City Council upon adoption of an ordinance to order to secure (take proper steps to vacate and close) the structure. Once the structure is secured at city expense, actions can be taken to recoup the funds in the same manner as the collection of special assessments.

Mayor Price stated that they could see the information as presented by code enforcement.

A motion was made by Council Member Grogan seconded by Council Member Vestal to adopt the ordinance. All Council Members voted in favor of the motion. The motion carried.

(d) Consideration of a request to adopt an ordinance for the demolition of a structure on the corner of The Boulevard and Irving Avenue under the City of Eden Non-Residential Maintenance Standards.

Information provided to Council explained that attached to the memorandum is a section of the Non-Residential Maintenance Code relating to the steps to be taken when an owner fails to comply with an order to repair or demolish the structure and a report from staff on the subject action. The City of Eden Non-Residential Code permits the City Council upon adoption of an ordinance to order the demolition of the structure. Once the structure is demolished at City expense, actions can be taken to recoup the funds in the same manner as the collection of special assessments.

Mayor Price stated that they could see the information as presented by code enforcement.

A motion was made by Council Member Tudor seconded by Council Member Myott to adopt the ordinance.

Minutes of the regular February 18, 2003 meeting of the City Council, City of Eden, continued:

Council Member Vestal said that he had not had privy to go inside the building. He asked if it was as bad inside as he heard.

Mrs. Stultz replied that she had been inside. She advised that there was a hole in the roof about the size of her office. She said that as you went in the door, the floors did a number. She noted that there was a bunch of stuff that he had in there in the past but she thought he had gotten some of it out. She stated that the staff was of the opinion that it was pretty bad.

Council Member Tudor stated that he had numerous complaints from business people on the street about different types of vermin. He said that it was embarrassing to the City to hear business people come to them and say that they had a problem and the City needed to help them out. He noted that they were saying that to him when he was campaigning for office so it was a problem that had been going on for a long time.

Council Member Vestal commented that he thought they needed to proceed on a lot more other pieces of property with this also.

Mrs. Stultz replied that there would be more every month.

Mayor Price noted that they had a motion from Council Member Tudor seconded by Council Member Myott. All Council Members voted in favor of the motion. The motion carried.

- (e) Consideration of a request to initiate an amendment to the Zoning Ordinance to incorporate the Watershed Regulations.

(This item was pulled from the agenda)

- (f) Consideration of a request for legal action for a zoning violation of property located at 216 The Boulevard.

Information provided to Council explained that the Planning and Inspections Department notified the owner of property located at 216 The Boulevard of a zoning violation. The owner was given 30 days to appeal this action and has not done so. Staff requested legal action to remedy this violation.

Mayor Price advised that they could see the information as presented.

A motion was made by Council Member Grogan seconded by Council Member Gover for approval. All Council Members voted in favor of the motion. The motion carried.

Council Member Vestal asked if it was a misprint or typo on the address.

Mrs. Stultz answered that it was the old theater.

Council Member Vestal said that 216 was on the beauty shop there.

Mrs. Stultz replied that it all had the same address but it was the theater building.

- (g) Consideration of ordinance amendments to Chapter 10 of the Eden City Code.

Information provided to Council explained that the Council had for their review a copy of the proposed amendments to Chapter 10 of the Eden City Code. After several months of discussion by the Council's Public Safety Committee as well as the city's Safety and Loss Control Committee, they were prepared to submit recommendations for formal consideration by the City Council.

Mayor Price advised that this was a program that had been under a lot of discussion the last 6 months. He said it was result of a lot of good work on behalf of the staff and various Council Members.

Council Member Grogan made a motion that it be approved. Council Member Gover seconded the motion.

Minutes of the regular February 18, 2003 meeting of the City Council, City of Eden, continued:

Council Member Vestal thanked the City Manager for putting a lot of time and work into the program. He noted that being on the Safety Committee, he knew the City Manager had put a lot of time into it.

Council Member Tudor said that he seconded that also.

All Council Members voted in favor of the motion. The motion carried.

8(h) Call a public hearing on Zoning Case Z-03-03 to change the subject property from Industrial-2 to Business-General.

Mayor Price noted that they had added two items. He said that one was to call a public hearing case on Z-03-03 to change the subject property from Industrial-2 to Business-General. He explained that it was a property located on Mebane Bridge Road. He said that the request was made by Mr. Howard Tate and his partners.

A motion was made by Council Member Epps seconded by Council Member Vestal for approval. All Council Members voted in favor of the motion. The motion carried.

8(i) Adopt the resolution and call the public hearing to consider voluntary annexation of property owned by T&S Properties of the Southeast located on Mebane Bridge Road.

Mayor Price stated that next was a request to adopt a resolution and call a public hearing to consider voluntary annexation of property owned by T&S Properties of the Southeast located on Mebane Bridge Road.

A motion was made by Council Member Tudor seconded by Council Member Epps to adopt the resolution.

Council Member Grogan asked if they could tap the sewer line. He noted that they were talking about voluntary annexation and it was across the river.

Mayor Price asked if that discussion had been talked about.

Council Member Grogan said if they were going to accept them into the city limits.

Mayor Price said that they certainly would have sewer service of some sort. He asked City Manager Corcoran if he was correct.

Council Member Grogan asked if it was just a public hearing.

Mayor Price answered that that was right. He noted that they were calling for a public hearing.

Council Member Tudor stated that when a developer wanted to develop the property and have the City annex it, they were to develop the property according to the guidelines as if the city had done it to begin with. He asked if that was correct. He noted that when [the developer] did the property, he would do the sewage and then if it was appropriate and passed the city inspections, only at that time they would annex it. He asked if that was right.

Mayor Price stated that he thought Council Member Grogan had his question answered.

Mrs. Stultz said that when it was a voluntary annexation, the Council did not have to pay for doing anything for them.

Mayor Price noted that a motion was on the floor. All Council Members voted in favor of the motion. The motion carried.

(Note: This item was considered again at the February 27th retreat due to incorrect forms provided to the Council)

Minutes of the regular February 18, 2003 meeting of the City Council, City of Eden, continued:

9. CONSENT AGENDA:

- (a) Approval and Adoption of minutes – January 15, 21, 2003.
- (b) Approval and adoption of a motion to hold a public hearing to consider an to rezone property on Roundhouse Road in the city’s extraterritorial jurisdiction from Industrial-2 to Residential-Suburban. ZONING CASE Z-03-04.
- (c) Approval and adoption of a motion to solicit bids for the 2003 Street Contract.
- (d) Approval and adoption of a motion to re-appoint the chairman of the ABC Board.
- (e) Approval and adoption of fire truck financing.
- (f) Consideration of Budget Amendments 9 and 10.

This is the Ninth Budget Amendment for the year.

<u>Budget Amendment #9</u>	<u>Account #</u>	<u>From</u>	<u>To</u>	<u>Amount</u>
General Fund				
Contingency	10-9990-99100	\$ 98,020.00	\$ 78,520.00	\$ (19,500.00)
Police-Separation Allowance	10-4310-12900	\$ 52,500.00	\$ 72,000.00	\$ 19,500.00
				<u>\$ -</u>

Budget Amendment # 9 is record additional contribution needed to the Police Pension Fund

Adopted and effective this 18th day of February, 2003

Attest:

Kim J. Scott
s/Kim J. Scott, City Clerk

Philip K. Price
s/Philip K. Price, Mayor

This is tenth Budget Amendment for the year.

	<u>Account #</u>	<u>From</u>	<u>To</u>	<u>Amount</u>
Water and Sewer Revenue				
Rural Center Grant – Sewer	30-3336-33002	\$ -	\$ 40,000.00	\$ <u>40,000.00</u>
				<u>\$ 40,000.00</u>
Water and Sewer Expenditure				
Contingency	30-9990-99100	\$ 100,000.00	\$ 140,000.00	\$ <u>40,000.00</u>
				<u>\$ 40,000.00</u>

Budget Amendment # 11 is to record receipt of a rural center grant to assist in payment of the City’s Water and Sewer master plan.

Adopted and effective this 18th day of February 2003

Attest:

Kim J. Scott
s/Kim J. Scott, City Clerk

Philip K. Price
s/Philip K. Price, Mayor

- (g) Approval and adoption of a supplemental agreement, Project B-3368, Bridge #45 over the Dan River. (REMOVED FROM CONSENT AGENDA BEFORE VOTE)
- (h) Approval and adoption of a resolution authorizing a lawsuit to recover reimbursement and receipt of revenue due to the City of Eden being illegally withheld by the State of North Carolina.

February 18, 2003

City of Eden, N. C.

Minutes of the regular February 18, 2003 meeting of the City Council, City of Eden, continued:

RESOLUTION

EDEN CITY COUNCIL AUTHORIZING A LAWSUIT TO RECOVER REIMBURSEMENT AND RECEIPT OF REVENUE DUE THE CITY OF EDEN BEING ILLEGALLY WITHHELD BY THE STATE OF NORTH CAROLINA.

WHEREAS, the 641 towns, cities and counties of North Carolina have long depended on tax revenues to which by law they are entitled upon collection by the Secretary of Revenue, and the General Assembly until now has historically held local governments harmless by appropriated reimbursement when one or more local revenue sources is diminished or eliminated; and

WHEREAS, local government revenues for FY 2001-2002 were withheld illegally for FY 2001-2002 by the Secretary of Revenue and it appears the Governor will order the Secretary to withhold FY 2002-2003 local revenues due to be paid beginning September 15, 2002, and otherwise; and

WHEREAS, no administrative remedy exists to correct the illegal conversion of the local revenues and a genuine controversy exists about proper interpretation of the law as to ownership of the local tax revenues, and enactment of the pending clarifying legislation favoring local governments will likely not be enacted; and

WHEREAS, the General Court of Justice is the sole, proper and independent branch of government to make a final legal determination of the rights of the respective parties.

NOW, THEREFORE, BE IT RESOLVED that the City of Eden hereby authorizes its City Manager to retain Boyce & Isley, PLLC, of Raleigh, North Carolina, at a cost not to exceed \$200 with all other fees, costs and expenses of litigation, if any, paid on a contingency basis not to exceed fifteen percent (15%) of any total monetary recovery by settlement or judgment or as may be ordered by the Court. Outside counsel will agree to prosecute a civil action in Wake County Superior Court to have declared the legal rights of local government to recover past tax revenues and reimbursements withheld and to enjoin withholding of future tax revenues as above set forth.

ADOPTED this the 18th day of February, 2003.

Philip K. Price
s/Philip K. Price, Mayor

Mayor Price noted they had removed item 9(g). He asked if there were others that the Council would like to remove or pull out for further discussion.

A motion was made by Council Member Epps seconded by Council Member Tudor to approve the consent agenda. All Council Members voted in favor of the motion. The motion carried.

10. ORDINANCES AND RESOLUTIONS:

- (a) Consideration of adoption of an ordinance for the demolition of a structure at 621 Fisher Street.

A motion was made by Council Member Gover seconded by Council Member Vestal for adoption of this ordinance. All Council Members voted in favor of the motion. The motion carried.

- (b) Consideration of adoption of an ordinance for the securing of a structure at 422 Morgan Road.

A motion was made by Council Member Epps seconded by Council Member Vestal for adoption of this ordinance. All Council Members voted in favor of the motion. The motion carried.

- (c) Consideration of adoption of an ordinance for the demolition of a structure at the corner of The Boulevard and Irving Avenue.

A motion was made by Council Member Myott seconded by Council Member Tudor for adoption of this ordinance. All council Members voted in favor of the motion. The motion carried.

February 18, 2003

City of Eden, N. C.

Minutes of the regular February 18, 2003 meeting of the City Council, City of Eden, continued:

11. VOUCHERS:

Mayor Price advised if they had information or would like to have further clarification of items, they should talk to the City Manager to make sure they understood them.

ADJOURNMENT:

A motion was made by Council Member Grogan seconded by Council Member Gover to adjourn. All Council Members voted in favor of the motion. The motion carried.

Respectfully submitted,

Kim J. Scott
City Clerk

ATTEST:

John E. Grogan
Mayor Pro Tem