

MINUTES OF WORK SESSION
OF THE NEWPORT NEWS CITY COUNCIL
HELD IN THE 10th FLOOR CONFERENCE ROOM
2400 Washington Avenue
May 26, 2009
4:00 p.m.

PRESENT: Dr. Patricia P. Woodbury; Herbert H. Bateman, Jr.; Madeline McMillan; Sharon P. Scott (arrived at 4:15 p.m.); Tina Vick; and Joseph C. Whitaker ----- 6

ABSENT: Joe S. Frank ----- 1

OTHERS PRESENT: Randy W. Hildebrandt; Stuart E. Katz; Mabel Washington Jenkins; Alan Archer; Neil Morgan; Cynthia Rohlf; Lottie Vincent; Allen Jackson; Karen Wilds; Joseph DuRant; Lynn Sugg; Al Riutort; Sheila McAllister; Reed Fowler; Harold Roach, Christine Mignogna; Michael Nall; Sabine Hirschauer; Jennifer Walker; Cleder Jones; Kim Lee; and Jerri Wilson

I. Reauthorization of the Jefferson Park Redevelopment Plan

Mr. Randy W. Hildebrandt, City Manager, reported the Jefferson Park Redevelopment Plan (Plan) was approved by City Council on June 26, 2006, in accordance with Title 36 of the Code of Virginia. Title 36 required that redevelopment projects must be completed in five years and reauthorized in 30 to 36 months from the original approval date by City Council. He introduced Ms. Karen Wilds, Executive Director, Newport News Redevelopment & Housing Authority (NRRHA), to report on the Plan. He explained one issue that should be addressed dealt with the Capital Improvements Plan (CIP) and the need for additional funding to support the completion of the Plan.

Ms. Wilds stated, since approval of the Plan, on June 26, 2006, the NRRHA had accomplished a great deal in property acquisition and blighted structure demolition in the Plan area. She reported the Title 36 State law changed in 2002 and required that redevelopment projects be reauthorized in 30 to 36 months from the original date of approval. Accordingly, she asked for City Council's support in reauthorizing the Plan at its June 9, 2009 Regular Meeting. This allowed the NRRHA to complete the Plan and gave the City the maximum five years under the redevelopment plan that was allowed by Title 36.

Ms. Wilds reported a shortfall in funding for the Plan would occur in FY 2011. Presently, the dollar amount earmarked in the CIP for the Plan was \$300,000. The gap the City would realize to accomplish the Plan, after spending what was left in FY 2009, FY 2010 and FY 2011, amounted to \$1.5 million. In the event redevelopment efforts were not concluded with available funding by FY 2011, City Council would have the option to adopt a new five year redevelopment plan to continue revitalization activities.

Ms. Wilds stated, in addition to the CIP, HUD allocated \$656,000 to the City, under the Economic Development Initiative Program, to be used for blighted, and deteriorated residential structures in Jefferson Park on the west side of Jefferson Avenue. Additionally, NNRHA received a letter from HUD on May 21, 2009, announcing the City would receive \$432,000 in additional funding for Jefferson Park on the west side of Jefferson Avenue.

Councilwoman McMillan inquired whether the funding was in addition to the \$2.1 million that had already been expended in the Title 36 redevelopment area. Ms. Wilds replied the funding was in addition to the \$2.1 million that had already been spent in the Title 36 redevelopment area. The Economic Development Initiative funding was being spent in Jefferson Park on the west side of Jefferson Avenue. Federal funding could only be spent in an area where there was no threat of eminent domain.

Councilwoman McMillan understood the Economic Development Initiative funding did not count as part of the \$1.5 million needed to complete the Plan. Ms. Wilds confirmed that the Economic Development Initiative funding did not count towards the \$1.5 million in additional funding needed for the Plan.

Councilwoman McMillan inquired whether the City Manager had already projected the \$1.5 million in the CIP. City Manager Hildebrandt replied he would have to make an adjustment to that when he presented the FY 2011 – FY2015 CIP to City Council.

Councilwoman McMillan asked the City Manager to elaborate on his comment, “make an adjustment to that.” City Manager Hildebrandt replied, at this point, and since the process had not been started, he would make an adjustment in the sense of increasing the amount of funding from the \$300,000 to \$1.5 million to accommodate funding for completion of the Plan.

Councilwoman McMillan inquired whether the City Manager was talking about another bond issue. City Manager Hildebrandt replied whatever money proposed for the Plan would come out of bonded debt, which was how the City funded the entire redevelopment plan thus far. He hoped by FY 2012 and beyond, the City would be in a better position. The CIP provided for more money being spent in FY 2012, and beyond, and hopefully the City could accommodate that without affecting other projects. Until he went through the process of looking at the CIP in the next five years, he could not anticipate the impact of that additional funding.

Councilwoman McMillan noted a list of properties that had already been demolished and inquired about the number remaining to be demolished. Ms. Wilds replied the City had completed 65% of acquisition for the site, with 35% remaining, which included several blighted commercial structures along Jefferson Avenue. That was the reason the dollar amount increased.

Councilman Bateman inquired about the methodology used in the acquisition of the properties for the Plan. Ms. Wilds replied the City had an independent appraisal done for each property and an offer was based on that.

Councilman Bateman inquired how the City prioritized which properties they acquired. Ms. Wilds replied the Plan, at the time it was approved, designated all properties to be acquired.

Councilman Bateman inquired whether the City had good luck in acquiring properties for less than the appraised value because some buildings were torn down. Ms. Wilds replied that was possible, if a building was cited by the Department of Codes Compliance.

Councilman Bateman inquired about the CIP request for FY 2011 and what alternative the City would have if the CIP was constrained to the point that it could not include the Plan. City Manager Hildebrandt replied the program would have to be stretched out. Ms. Wilds replied a new plan could be designed and/or City Council would have the opportunity to approve another five year plan.

City Manager Hildebrandt asked City Council for their support to adopt a resolution at its June 9, 2009 Regular Meeting to approve the reauthorization of the Plan as required by Title 36 of the Code of Virginia.

II. Memorandum of Agreement – Fats, Oils and Grease (FOG) Program

City Manager Hildebrandt stated the FOG program was a mandate associated with the Regional Special Order by Consent with the Department of Environmental Quality (DEQ). The program would be implemented in coordination with the Hampton Roads Sanitation District (HRSD) and other localities in Hampton Roads. He introduced Mr. Reed Fowler, Director, Department of Public Works, to report on the program.

Mr. Fowler reported the Fats, Oils and Grease (FOG) Program, as a component of the DEQ Consent Order, was essential to the City's maintenance plan. He asked City Council to authorize the City Manager to endorse a FOG Memorandum of Agreement with HRSD and thirteen surrounding jurisdictions.

Mr. Fowler reported FOG was a by-product of food preparation, cooking and cleanup of dishes, pots and pans, utensils, etc. The public purpose of the newly required FOG program was to proactively minimize the environmentally damaging build-up of organic material in sewer lines, which often resulted in expensive back-ups and harmful overflows. These harmful build-ups most often occurred in conjunction with restaurants or other facilities that produced a large number of prepared meals known as food service establishments. (A copy of

the presentation, "City of Newport News FOG Program," and a copy of the Memorandum of Agreement are attached and made a part of these minutes.)

Councilman Bateman inquired whether the City required food service establishments to purchase grease traps. Mr. Fowler replied food service establishments were required to purchase and use grease traps.

Councilwoman McMillan inquired whether food service establishments were advised not to dispose of FOG down their drains. Mr. Fowler replied that food service establishments were advised and instructed not to dispose of FOG down their drains.

Councilwoman Scott inquired how the FOG legislation would be monitored to insure that businesses abided by the law.

Councilwoman Woodbury inquired whether solvents could be used to alleviate the FOG problem. Mr. Fowler replied solvents were not recommended because they were hazardous to the downstream and treatment process. There was no need for solvents if an effective FOG containment system was installed.

Mr. Fowler reported an effective FOG program included: 1) a Memorandum of Agreement (MOA) between HRSD and regional localities; 2) Adoption of a FOG ordinance; 3) Properly sized and maintained grease control devices; and 4) a FOG Inspector to inspect, educate and enforce the City ordinance and, if required, issue fines.

Councilwoman McMillan inquired what would HRSD do in light of the Memorandum of Agreement. Mr. Fowler replied the first phase of the agreement was for the City Manager to agree that HRSD would conduct inspections if Public Works found people not in compliance with the FOG ordinance. The agreement allowed HRSD to do what they legally were able to do.

Councilwoman Scott inquired whether the City had to pay extra funding to HRSD to conduct inspections. Mr. Fowler replied the City paid HRSD through its own user fees. This agreement gave HRSD permission to inspect the City's food service establishments.

Councilwoman Scott inquired how non-compliance issues would be handled. Mr. Fowler replied the City would treat non-compliance issues the same way it treated citizens not in compliance with the Solid Waste Ordinance.

Mr. Fowler stated FOG caused blockages that led to sanitary sewer overflows, which could result in a fine of \$32,500, to a locality by DEQ, per occurrence. Eighty-seven percent of sewer stoppages were caused from grease.

Councilwoman Woodbury questioned when the City would fine an establishment \$32,500, which seemed to be hefty. City Attorney Katz replied a fine of \$32,500 could be imposed upon the City; it was not something the City could impose on a food establishment. Mr. Fowler pointed out the City could impose civil penalties through HRSD. HRSD had the right and ability to cut off water and sewer systems for any food service establishment that was not in compliance.

Councilwoman McMillan inquired whether the City provided food service establishments with avenues to recycle, i.e. a listing of companies that accepted grease for other uses. Mr. Fowler replied the City provided food service establishments with educational resources and HRSD, as part of their private inspections, provided food service establishments with a list of companies that accepted grease for other uses.

Councilwoman McMillan inquired whether the City or HRSD arrived at a food service establishment first. Mr. Fowler replied HRSD arrived first. As the FOG program progressed, Public Works would arrive first. The Memorandum of Agreement allowed HRSD to conduct inspections, on behalf of the City. If a location was found to continuously have sewage overflows, due to FOG, then HRSD was authorized to implement whatever actions they deemed necessary.

Councilwoman McMillan understood Public Works would be the first on the scene of a non-compliant restaurant or food service establishment. She felt, in that case, Public Works could suggest a set of venues for restaurant and food service establishment to explore to effectively rid itself of FOG. Mr. Fowler agreed and stated Public Works would include suggestions on how to effectively rid a food service establishment of FOG.

City Manager Hildebrandt asked City Council to support adoption of a Memorandum of Agreement at its June 9, 2009 meeting. He stated more substantive actions would be required by City Council, over the next several months, including the adoption of a FOG ordinance and the hiring of a dedicated FOG inspector.

Miscellaneous Item

City Manager Hildebrandt inquired whether City Council had questions regarding the supplemental stimulus money, received by the City from the federal government, for the Community Development Block Grant (CDBG) program, for use to rehabilitate and develop new housing. He introduced Ms. Karen Wilds to explain how NNRHA planned to use the stimulus funding.

Ms. Wilds reported the Department of Housing and Urban Development (HUD) notified the City, in early May 2009, that it would receive an additional \$431,000 in CDBG funding. The criteria for allocating the funding required: 1) it to be used for a shelter-ready project; 2) it be used to create jobs; and 3) it be used for a project that the City could commit spending to immediately. In light of such requirements, NNRHA recommended using the funding to rehabilitate six homes they owned. The rehabilitated homes would be offered to first-time home buyers. The homes were primarily located in the Southeast community, on 27th Street, 29th Street, 46th Street, 28th Street, 32nd Street and Marshall Avenue.

Councilwoman McMillan inquired about the amount to be allocated to rehabilitate each of the six homes. Ms. Wilds replied approximately \$60,000 would be allocated to rehabilitate each home, which included advertising costs, environmental review costs, testing costs, etc.

Councilwoman McMillan questioned how the remaining funds would be spent. Ms. Wilds replied 20% of the funding could be used for administrative costs, but NNRHA was only using 10% for administrative costs. The remainder of the funding would be used for the following: 1) \$3,000 for pre-award costs, to include environmental testing, and advertising; 2) \$12,000 on costs related to disposition and underwriting to insure applicants met necessary criteria; and 3) \$2,000 for closing costs per family.

Councilwoman Scott inquired whether the funding could have been used for facelifts for a number of houses as opposed to only six homes. Ms. Wilds replied NNRHA did not have a list of people who were on a waiting list for the facelift program. NNRHA had not funded a facelift program for a number of years. The concern was that NNRHA be able to spend the stimulus funding quickly and create real jobs and homeownership.

Councilwoman McMillan voiced concern that the jobs created to rehabilitate the six homes were temporary jobs, not long-term. Ms. Wilds replied many building trades dramatically had been affected by the economic downturn. Although the jobs were temporary, there was other stimulus funding received from HUD, approximately \$5 million, that would be used to renovate the City's public housing complexes. Such work would take a year or more to complete. Some of the jobs were short-term, but still contributed to the economy. The jobs would be offered to a segment of the economy that had been heavily hit by the economic downturn.

Councilman Bateman inquired whether NNRHA hired Class-A Contractors to perform construction projects on their behalf. Ms. Wilds replied NNRHA only hired Class-A Contractors to perform construction projects.

Councilwoman Woodbury asked for assurance that the work be spread around so that it was not one contractor doing all of the rehabilitation projects. Ms. Wilds assured the work was being spread around and a separate bid was entered for each project.

Councilwoman Scott hoped should the NNRHA receive additional stimulus funding, in the future, that the funding be used for facelift projects, i.e. streets. There was an aging population in her district who could not afford to rehabilitate their homes. Citizens complained that while their homes were nice, their senior neighbors could not afford rehabilitation costs. She felt rehabilitating senior citizen homes would also create jobs. Ms. Wilds agreed such rehabilitation projects were good, and indicated NNRHA would be eager to reinstate the facelift project. The City once funded a facelift project during the summer months (May to October of each year). NNRHA had discussed the possibility of reinstating the program. She reiterated the facelift project was something to consider in that the City's population was aging and home rehabilitation projects would become an issue that needed to be addressed.

Councilwoman Woodbury stated the City had received a presentation from Mr. Aaron Brooks and as she understood it, City Council was to receive a study by the end of March. The City also received a presentation by another entity relating to the Old Newport News Hospital. She inquired whether there was anything new on these projects. City Manager Hildebrandt replied the developers of the Newport News General Hospital filed an application with the State for low-income housing tax credits that was due on May 15, 2009. The City, nor the developer, would know whether the tax credits were approved until September 2009. The developer would report back to City Council once they received word about the credits. Mr. Al Riutort, Director, Department of Planning, stated the project was proceeding. City Manager Hildebrandt knew of two studies that had been completed by the Aaron Brooks team and hoped to provide a report to City Council soon.

III. Freight Containers

City Manager Hildebrandt stated staff had been working on the issue of an amendment to regulate the use of freight containers, outside of the M2, Heavy Industrial zoning district. The intent of the proposed ordinance (copy attached) would help to better manage and regulate the proliferation and reuse of surplus port-related freight containers in the residential, commercial and light industrial zoning districts and to eliminate them from being used as permanent storage. He introduced Mr. Harold Roach, Director, Department of Codes Compliance, to provide a presentation on regulating freight containers.

Councilwoman McMillan stated she assumed, "right off the bat," that freight containers were not allowed in residential neighborhoods. City Manager Hildebrandt replied freight containers would only be allowed in non-residential locations. City Attorney Stuart Katz

replied freight containers were only allowed in non-residential neighborhoods, unless someone had a building permit for a project under construction.

Councilwoman McMillan voiced concern about a freight container that had been in a backyard of a home at 847 Jouett Drive for months, which was visible from the street. City Manager Hildebrandt referred the matter to Mr. Michael Nall, Assistant Director, Department of Codes Compliance.

Mr. Roach reminded the issue to regulate the use of freight containers had previously been discussed by City Council and had been extensively reviewed by staff and the Regulations Committee of the City's Planning Commission. Currently, the City did not have an ordinance that regulated the use of freight containers. The City could construe freight containers to be outside storage, which could prohibit them through the Zoning Ordinance, but doing so would have negative consequences and other unintended effects, i.e. restricting their use at construction sites and retail stores, such as Wal-Mart and Target, who had seasonal storage needs. The intent of the proposed ordinance was to: 1) Accommodate concerns expressed by City Council in the past; 2) Accommodate temporary storage needs for retailers, such as Wal-Mart and Target; 3) Accommodate needs for the construction industry for storage on construction sites; 4) Prohibit the use of freight containers in residential and commercial districts in most circumstances; 5) Discourage the use of freight containers as alternatives to adding onto an existing building; and 6) Prevent freight containers from being stacked in industrial areas, except Port areas. Mr. Roach provided a presentation, "Freight Containers in the City of Newport News," which is attached and made a part of these minutes.

Mr. Roach reported there was an abundant supply of freight containers available from Hampton Roads' port facilities. There was a strong demand for low costs, durable and portable storage in Hampton Roads. There were four businesses in Hampton Roads that resold used shipping containers. Mid-Atlantic Leasing of Chesapeake offered used containers for under \$2,000. Freight containers were frequently used as long-term storage facilities in commercial, industrial and school districts, often without respect to zoning and fire safety codes. In the absence of a specific ordinance regulating freight containers, the City Attorney advised that they be treated as outside storage. Outside storage was permitted by right in the M2, Heavy Industrial district, as an ancillary use in the M1, Light Industrial district, and by special exception in the C2, General Commercial district. Treating all freight containers as outside storage would restrict their use as temporary storage facilities in the City's commercial districts and during construction. To avoid inconsistent enforcement, Codes Compliance had generally avoided prosecutions. The few prosecutions conducted had been the result of complaints received.

A windshield survey conducted in December 2008, by the Department of Codes Compliance, found over 30 locations with freight containers. Some sites contained multiple

containers. Many of the containers found did not observe zoning setback and fire separation requirements, nor were they screened from view from the right-of-way.

Councilwoman McMillan understood that a freight container, on a tractor trailer cab bed, located on the street, in a commercial area, was legal. Mr. Roach replied a freight container, on a tractor trailer cab bed, was legal in commercial areas, with a few considerations. If a freight container was on a trailer, the City would not consider it a freight container for a storage use, provided that the trailer was operable and had valid plates. A freight container was the responsibility of the Department of Codes Compliance if it was parked on private property, and was the responsibility of the Police Department if it was parked on a City street.

Councilwoman McMillan inquired whether the freight containers parked on Industrial Park Drive were legal. City Manager Hildebrandt inquired whether they were connected to a cab. Councilwoman McMillan replied they were not connected to a cab. City Manager Hildebrandt did not believe they were legal by City Ordinance. Councilwoman McMillan inquired whether the freight containers were policed. City Manager Hildebrandt replied he would see to them being policed. Ms. Christine Mignogna, Zoning Administrator, Department of Codes Compliance, believed they were regulated by a separate Chapter in the City Code, by their length, height and width. City Manager Hildebrandt stated he did not believe they were legal on any public street if they were not connected to a cab. He referred the matter to Deputy City Manager Neil Morgan.

Mr. Roach noted the proposed ordinance would accomplish the following: 1) Permit containers to be used for long-term storage in M2 and M1 districts, subject to location and screening requirements; 2) Allow temporary storage as an accessory use in Zoning Districts: P1, Park; O1, Office; O2, Office Park and O3, Office/Research and Development; M1, Light Industrial and M2, Heavy Industrial; C1, Retail Commercial; C2, General Commercial and C5, Oyster Point Commercial, subject to location and screening requirements; 3) Prohibit storage use in residential districts, except when used in connection with an active building permit; and 4) Permit short-term storage uses during construction in all zoning districts.

Mr. Roach noted the following anticipated impacts: 1) Long-term storage uses in Commercial and Park Zoning Districts would be prohibited, affecting Public Schools and the Shipyard Apprentice School; 2) Industrial Uses would be required to provide screening from public right-of-way and site containers in compliance with proposed ordinance; and 3) Industrial uses that could not meet location requirements would be prohibited from having a container.

Councilwoman Woodbury questioned how the Schools used the freight containers. Mr. Roach replied they stored athletic equipment, lawn care products, etc.

Councilwoman Vick inquired how an establishment in a C1 district would be able to have a freight container. City Manager Hildebrandt replied one would have to construct a permanent storage shed that met building code requirements.

Councilwoman Woodbury felt School sites, in particular, would be imposed with increased financial burden to have to replace their freight containers with permanent structures. She inquired what they would do with the freight containers they already had purchased. Mr. Roach replied that issue had been debated and indicated it was fair criticism; however, proponents of regulated freight containers felt sites needed to be improved with permanent structures.

City Manager Hildebrandt inquired of the price to build a permanent storage structure. Mr. Roach replied freight containers were cheaper to purchase at the cost of \$2,000. A permanent structure, about the same size as a freight container, would cost \$4,000.

Councilwoman Woodbury inquired how businesses and Schools would discard of their freight containers.

City Manager Hildebrandt stated only ten schools had freight containers. The City was not talking about much money. The elimination of freight containers would improve the aesthetics of the community.

Councilwoman McMillan stated not only would it aesthetically improve the community, but freight containers rusted easily, and looked horrible after a while. They were metal boxes sitting on the ground and were generally not on any substantial base, so they caused drainage issues and looked horrible.

City Manger Hildebrandt stated with a \$300 million budget the Schools could absorb \$20,000 very easily, in any year.

Councilwoman Woodbury envisioned a horror. While one day driving down one of the highways she envisioned seeing 100 to 150 freight containers that had been discarded. She inquired where discarded freight containers would go. Mr. Riutort replied that was the reason the City was trying to regulate freight containers.

Councilwoman McMillan recalled someone had converted freight containers into temporary housing.

City Manager Hildebrandt stated, since there seemed to be reasonable consensus among City Council, he would have staff move forward with the matter to have the Planning Commission consider and act on the issue. Once approved and acted upon by the Planning Commission, he would present City Council with a formal ordinance for approval.

Page 11
Minutes of Work Session
May 26, 2009

Councilwoman Woodbury felt some language needed to be included in the ordinance about how one disposed of a freight container that was already in use.

THERE BEING NO FURTHER BUSINESS,
ON MOTION, COUNCIL ADJOURNED AT 5:20 P.M.

Jennifer D. Walker, CMC
Chief Deputy City Clerk

Joseph C. Whitaker
Vice Mayor
Presiding Officer

A true copy, teste:

City Clerk