

MINUTES OF WORK SESSION
OF THE NEWPORT NEWS CITY COUNCIL
HELD IN THE 10th FLOOR CONFERENCE ROOM
2400 Washington Avenue
September 22, 2009
3:00 p.m.

PRESENT: Joseph C. Whitaker; Dr. Patricia P. Woodbury; Herbert H. Bateman, Jr.; Joe S. Frank; Madeline McMillan; Sharon P. Scott; and Tina L. Vick ----- 7

ABSENT: None ----- 0

OTHERS PRESENT: Neil Morgan; Stuart E. Katz; Mabel Washington Jenkins; Alan Archer; Cynthia Rohlf; Wanda Pierre; Allen Jackson; Lisa Cipriano; LaVerne Lovett; Brian Ramaley; David Morris; James J. Regimbal, Jr.; Dr. David Trump; Cathy Grimes; and Jennifer Walker

I. State Budget Outlook

Mr. Neil Morgan, Acting City Manager, introduced Mr. James J. Regimbal, Jr. Fiscal Analytics, Ltd., Richmond, Virginia, to report on the fiscal outlook and the potential impact of the shrinking state budget.

Mr. Regimbal reported, on August 19, 2009, Governor Timothy Kaine announced a \$1.5 billion budget shortfall for FY 2010, comprised of a \$300 million budget shortfall at the end of FY 2009, and an additional \$1.2 billion forecasted reduction for FY 2010. He stated the Governor had \$1.5 million in reserves available, which included stimulus funding. The state had to institute a \$1.35 billion budget reduction plan to balance its FY 2010 budget.

Mr. Regimbal indicated that localities across Virginia, particularly in state government, benefitted from use of the State's balance sheet and rainy day funds, which helped to make the economic downturn bearable; however, that was coming to an end. A weak economic recovery would result in a tougher FY 2010 state budget. Rainy day funds would not be available in FY 2010 unless the State saw another downturn in revenue, beyond what was seen in FY 2009. Federal stimulus funding would expire in mid FY 2011. Local and state governments would feel the worse in the next biennium because stimulus funding had effectively replaced general funds. Mr. Regimbal indicated the State needed additional general funds to keep its operating programs in the same shape once stimulus funding disappeared.

Mr. Regimbal explained the State would not only lose stimulus funding, used for Medicaid, but general funds for Medicaid would consume all new available general fund revenues for the next biennium. He stated Medicaid had no other place to go than the State's general fund to match the federal dollars that came in to fund it. The State could count on 7% growth per year at a minimum in utilization of Medicaid. The recession caused more people to need Medicaid and 7% would probably not be enough. The cost to fund Medicaid was 12% in 2009.

Councilwoman McMillan understood that the State's budget for Medicaid was estimated to increase by 7% in FY 2010, from 12% in FY 2009. Mr. Regimbal confirmed Councilwoman McMillan's statement.

Councilwoman McMillan inquired about the total percentage of the State's budget used to fund Medicaid. Mr. Regimbal replied 16% of the State's budget funded Medicaid and an additional 10% funded all other Health and Human Services (HHS). The total cost for Medicaid and HHS was approximately 25% of the State's budget. Add K-12 funding of 35% and the State's cost totaled 60% of the general fund budget.

Mr. Regimbal stated major policy changes would be required in the next biennium to align ongoing revenues with ongoing expenditures, unless state and/or local taxes were raised significantly. The State was not going to have the luxury of using reserves and federal stimulus funding to balance the budget. FY 2010 State policy changes would be announced and introduced on December 18, 2009 by outgoing Governor Kaine.

Mr. Regimbal reported there was a 9.2% decline in state general fund revenue in FY 2009 and an estimated 1.5% decline in FY 2010. The cumulative results of such declines amounted to less than \$4.4 billion in FY 2008 - 2010 state budget reductions under Governor Kaine. A 10% revenue growth was required in FY 2011 to fund existing expenditures.

Mr. Regimbal advised the State lost 115,000 jobs between August 2008 and August 2009. The job losses were slowing, but there had been no job increases. The State would not be out of the woods or be in a position to grow until there was an increase in employment. Job availability and employment growth were the key elements to end the recession in terms of state and local revenue.

Councilwoman McMillan inquired whether the unemployment rate had reached 6%. Mr. Regimbal replied the unemployment rate was 6.5% statewide and 9.7% nationally. Virginia had ranked better than the nation in the rate of unemployment and revenue growth. The State had a negative 9% in revenue growth, which was not as bad as 18% that the federal government experienced.

Councilwoman McMillan inquired whether the negative 9% revenue growth could be attributed to the lack of rejected business expansion. Mr. Regimbal replied the negative 9% was totally due to job losses and a lack of consumer confidence.

Mr. Regimbal explained the State would need 10% revenue growth in FY 2011 to fund existing services; however the forecast was only 3.8% in FY 2011 and 5.3% in FY 2012. The State was nowhere near the 10% needed. The problem would not be solved even if the State grew 2% each year.

Mr. Regimbal presented Governor Kaine's FY 2010 General Fund Budget Reduction and Revenue/Transfer Plan, as of September 8, 2009, noting appropriation amounts and changes in the following categories:

- 1) Legislative and Executive Departments – \$1.6 million;
- 2) Judicial Department – \$0.0;
- 3) Administration, Finance and Technology – \$55.5 million;
- 4) Commerce and Trade, Agriculture, Natural Resources – \$24.8 million;
- 5) K-12 Direct Aid – \$171.7 million;
- 6) Higher & Other Education – \$209.8 million;
- 7) Medicaid – \$97.0 million;
- 8) Other HHS – \$115.3 million;
- 9) Public Safety – \$130.6 million;
- 10) Transportation – \$17.5 million;
- 11) Central Appropriations (incl. car tax), Capital – \$159.8 million;
- 12) Misc. Transfers – \$18.4 million;
- 13) Additional Balances - \$68.1 million; and
- 14) Rainy Day Fund Withdrawal - \$28.0 million.

Mr. Regimbal stated the above changes amounted to \$1,353.2 million in total general fund savings and a revised general fund balance of \$2.7 million. He stated the Governor's FY 2010 budget balance strategies amounted to approximately \$340 million in cuts to localities; however, the City of Newport News would only realize a reduction of \$1.9 million. (A copy of the presentation, "The Potential Impacts of a Shrinking State Budget," is attached and made a part of these minutes.)

II. H1N1 Update

Acting City Manager Morgan introduced Dr. David H. Trump, District Director, Peninsula Health District, and Mr. Alan Archer, Assistant City Manager, to report on the City's efforts in anticipation of the H1N1 virus pandemic.

Mr. Archer stated the H1N1 virus had an impact on the region, country and world. He introduced Dr. Trump to offer an update regarding issues associated with the H1N1 virus, provide a snapshot of some of the Virginia Department of Health guidelines and tell what the schools were doing to prepare for the virus.

Dr. Trump reported the H1N1 Influenza A virus first appeared in the spring of 2009 (April, May & June). He stated the H1N1 virus continued to circulate in late spring and the summer of 2009. The H1N1 influenza virus was very different from the seasonal flu virus. It affected the 5 to 24-year old age group. Few cases were seen in people older than 64 years of

age. People at higher risk for severe complications of the flu were: 1) Children, less than five years old; 2) Pregnant women; 3) People with chronic medical conditions and/or who were immune-compromised; 4) People 50 years of age and older and 5) People who lived in nursing homes.

Councilwoman Woodbury inquired whether the reason for the low incidence of the H1N1 virus in individuals 64 years of age and older was due to the fact that they received the first seasonal flu immunizations. Dr. Trump replied no studies had been done but noted 30% of Americans, older than 64 years of age, had some testable immunity in their blood.

Dr. Trump advised of procedures for individuals and employers to take in response to the 2009-2010 Flu Season: 1) Wash hands frequently; 2) Cover cough; 3) Socially distance yourself by six feet; 4) Stay home when sick; 5) Get seasonal flu vaccine immediately; 6) Get H1N1 vaccine, when available; 7) Encourage employees to stay home when sick; and 8) Encourage employees to get vaccinated.

Dr. Trump announced the first round of the H1N1 virus vaccine would be available by early October 2009 in limited quantities with a large supply available by the end of October 2009. There would be wide availability of the H1N1 vaccine in November 2009. He recommended that anyone who normally received a seasonal vaccine should receive the H1N1 vaccine. The primary group of individuals that would receive the vaccine when available in October included: 1) healthcare workers; 2) Emergency Medical Technicians; 3) pregnant women; 4) all children and young adults up to the age of 24 years; and 5) anyone suffering from a chronic healthcare condition.

Dr. Trump stated the H1N1 vaccine would be distributed during the school day at middle and high schools, after-school at Pre-Kindergarten and elementary schools, at physician's offices, hospitals, and pharmacies and at the Peninsula Health Department. He stated there would be an influenza surveillance, communication and education as well as coordinated community emergency planning. (A copy of the presentation, "H1N1 Influenza Preparedness & Response," and an informational brochure are attached and made a part of these minutes.)

Councilwoman Scott inquired whether school-aged children would be assessed a fee for the vaccine. Dr. Trump replied there would be no cost for the vaccine to school-aged children while at school.

Councilwoman Woodbury inquired whether there would be a test for those who might have had the flu. Dr. Trump replied there would be no testing; the vaccine would only boost a person's immunity to the disease.

Councilwoman Woodbury inquired whether the H1N1 vaccine had any known side effects. Dr. Trump replied there had been no known side effects to the H1N1 vaccine.

Mr. Archer reported the City Manager's office established a Continuity of Operations Planning (COOP) Team in June 2009 to plan for continuation of essential services during an emergency situation such as a pandemic. The team consisted of twelve departmental representatives who coordinated emergency planning activities in other City departments. In August 2009, the Virginia Department of Emergency Management issued a Pandemic Influenza plan template to augment municipal emergency operation plans. The COOP Team was using the template to prepare and finalize the City's plan for a pandemic outbreak of influenza. It was important to note that workforce absenteeism could rise as high as 40%. Key components of the City's plan included: 1) Providing a clear line of succession to authority in each department; 2) Identifying essential employees and critical needs of the public that must be maintained; 3) Clarifying the use of alternative work schedules and telecommunicating to provide services; 4) Increasing the number of virtual private network connections that enabled employees to work from home; and 5) Educating the citizens and workforce about the virus efforts to-date to include sending postmaster emails to employees, developing brochures for distribution in public facilities, and posting information on the City's internet and intranet sites. Additionally, the City would administer the seasonal flu vaccine free of charge to all City employees and retirees beginning in October 2009. As the H1N1 vaccine became available, the Center for Disease Control recommended that vaccination of Tier-One populations occurred first, which included pregnant women, people who lived with and cared for children younger than six months of age, healthcare and emergency service personnel, persons between the ages of six months and 24-years, and people from ages 25 to 64 years who were at higher risk of H1N1 due to chronic health disorders or compromised immune systems. The only Tier-One employees who qualified for vaccination were Emergency Medical Technicians. As the vaccination became available to other tiered populations, City staff would evaluate vaccination program options for other employees. To date, the City's seasonal flu shot provider had not been authorized to issue the H1N1 vaccine, so the City was encouraging all of its employees, should they fall into a Tier-One category to pursue a vaccination with their primary and/or private medical provider, or the health department. The COOP Team estimated completion of its Pandemic Influenza Plan in October 2009.

Acting City Manager thanked Mr. Archer for taking the lead and pulling the departments together.

III. Fourth Quarter Financial Update

Acting City Manager Morgan introduced Ms. Lisa Cipriano, Interim Director, Department of Budget and Evaluation, to provide a Fourth Quarter Financial Update. He advised effective October 1, 2009, Ms. Cipriano would become the Director of Budget and Evaluation.

Ms. Cipriano noted a snapshot of budgeted revenues to actual expenditures based on FY 2009 General Fund forecasted Fourth Quarter results. She explained there were many transactions that needed to occur by the time Finance closed its books at the end October 2009, which would be the official report to City Council. The information provided was to show how the City had progressed through FY 2009, with multiple changing scenarios and revenue projections.

Ms. Cipriano noted the FY 2009 General Fund Forecast, First, Second, and Third Quarter results, which resulted in a Third Quarter surplus of \$1,877,665. She stated the City was projecting it would be \$9.5 million short of at the revised budget of \$433 million by the end of the fourth quarter of FY 2009, which was better than \$11 million that was anticipated at the end of the Third Quarter. Expenditures savings were \$19 million as of the Fourth Quarter of FY 2009. With \$9.5 million less in revenue and \$19 million in expenditures savings, the City projected \$9.7 million in budget to actual savings. This did not take into account approximately \$3 to \$4 million of year-end transactions that Finance would make. In addition, during the FY 2009 budget preparation season, initial proposals were made to institute changes to the City's financial policies by setting up financial reserves that could be tapped during the year without impacting the City's use of fund balance. Those policies were still in final formation and it was anticipated the City would need \$4 million to set-up as a reserve that City management and City Council could use without affecting the City's bond rating with the rating agencies. If the above number holds, taking into account the \$3 to \$4 million worth of year-end financial transactions, and \$3 to \$4 million of capital reserves for future transactions, the variance at year-end would be approximately \$3 to \$4 million. (A copy of the presentation, "FY 2009 General Fund Forecast [Based on Fourth Quarter Results]," is attached and made a part of these minutes.)

Acting City Manager Morgan noted a word of caution in that FY 2010 and FY 2011 would be less favorable.

Councilwoman Woodbury inquired what was presently included in the City's reserve fund. Ms. Cipriano replied the City's adopted reserve policy was 5%, while the City's informal practice was 10%. The City would need to add approximately \$200,000 to its reserve fund to meet the 10%, which would amount to approximately \$42 million in reserves.

Acting City Manager Morgan stated the City could not withdraw money from its reserve fund, once funding was deposited, no matter the ratio. The rating agencies responded negatively to the City's use of reserve funding. Through discussions, over the previous months, Ms. Cipriano felt it was the right time to move forward with a separate reserve fund that was not rated by bond companies. Such a fund could be used for emergencies and/or investments. He would report on the specific policy recommendation once it was finalized by staff.

Councilwoman McMillan inquired about the decrease in lodging noted in the Fourth Quarter results, which amounted to a deficit of \$585,718, and whether the monthly de-

crease was seasonal. Ms. Cipriano stated she would research the matter and provide the information to City Council.

Councilwoman McMillan noted the huge drop in the City's hospitality market. She was interested if there was a pattern. Ms. Cipriano felt the drop was due in part to decreased fuel prices, and indicated she would look into the matter further.

Councilwoman McMillan inquired whether there had also been a drop in corporate travel.

Councilman Bateman inquired about real estate tax projections. Ms. Cipriano replied the City was projecting \$168 million in real estate tax revenue for FY 2010.

IV. Waterworks – King Williams Reservoir Project

Acting City Manager Morgan reminded on May 12, 2009, City Council adopted a resolution suspending work on the King William Reservoir (KWR) Project for a period of 120 days and authorized analyses related to continuation or termination of the project. He stated Waterworks had completed its report in accordance with City Council's direction. Based on the results, it was recommended that the project be terminated immediately. He introduced Mr. Brian Ramaley, Director, Department of Public Utilities, to report on the particulars of the termination of the KWR project.

Mr. Ramaley reminded Resolution 11820-09 passed by City Council on May 12, 2009 suspended work on the KWR project for a period of 120 days and authorized analyses related to continuation or termination of the project. He stated the 120-day period ended on September 9, 2009. Upon review of the challenges to project implementation and the impacts of development on other key permits and project hurdles, the City recommended that the KWR project be terminated. He indicated there was no failed attempt to revive the project at a later date. The KWR project, as now configured, had little or no chance of being implemented as was planned, and there was nothing to be gained by continuing the current process and pursuit of implementation. The City and Waterworks believed it would be better served by withdrawing the KWR permit application and carefully restarting the process of looking at the current system to determine need. Waterworks recalled that Brackish Groundwater Desalination at Lee Hall and enhanced conservation were two aspects of the KWR project that were successfully implemented. Those two aspects of the KWR project allowed the City the time and opportunity to reconsider its options. (A copy of the report, "Newport News Waterworks King William Reservoir Water Supply Program – Implementation Assessment, September 9, 2009," is attached and made a part of these minutes.)

Mr. Ramaley reported KWR project expenditures had totaled nearly \$55 million, including \$2.7 million for the purchase of land that was expended since the project was suspended. Of the \$55 million, approximately \$14.4 million was spent on land for the reservoir, intake, outfall wetland and stream mitigation sites, wetland and stream mitigation bank credits and a preservation credit for an endangered plant species. The \$14.4 million had some residual market value that had not yet been determined. It was also important to note that the rate of project expenditures had accelerated as the City entered the final implementation stages of the project in recent years. Project costs were accruing at the rate of \$1 million per month or more. Over the next five to ten years, the Capital Improvement Plan (CIP) and cash flow projections indicated that \$15 to \$20 million per year would have been spent on the project. Terminating the project now, while having expended \$55 million, avoided the bulk of the project costs, which were expected to total nearly \$300 million in 2007 dollars.

Mr. Ramaley stated the next decision for City Council to consider was what to do now that the KWR project had been terminated. He noted the following ten specific recommendations for City Councils' consideration:

- 1) Terminate existing consulting contracts in accordance with provisions contained in contracts. Termination would include final, minor close-out costs associated with file transfers and final invoicing;
- 2) Terminate agreements with King William County in accordance with the provisions contained in the agreements. In addition to the formal, legal notification requirements, staff recommended that City Council consider preparing a notice of advertisement in the Tidewater Review, a local newspaper, thanking the residents and staff of King William County for their patience and participation in the project over the past two decades;
- 3) Make preparations to market properties acquired for the KWR Project in accordance with project development agreements, contracts, and permits;
- 4) Repay the \$20 million VRA loan principal balance with unspent cash proceeds from the loan (\$17.4 million), combined with cash from other sources (\$2.6 million). This would result in an estimated net interest savings of \$1.3 million;
- 5) Following formal termination of all contracts and subcontracts, revoke or amend appropriations to the KWR Project and reallocate remaining revenue bond proceeds to other needed capital projects in the Waterworks CIP;
- 6) Submit a formal request to rescind the Joint Permit Application for the project to the Corps of Engineers and the Virginia Department of Environmental Quality;

- 7) Apply future proceeds from the sale of property that was purchased as part of the KWR project to reduce or repay general obligation bonds and/or revenue bonds based on specific interest rates and financing terms contained in each program;
- 8) Initiate a new water needs assessment and complete by the end of 2012. This would include interviews with all major industrial and military customers, and would include discussions with regulators and other stakeholders;
- 9) Identify and evaluate alternatives based on availability, total costs, and environmental impacts; and
- 10) Waterworks would continue to investigate and implement watershed protection measures at all existing water supply facilities to ensure the continued viability of supplies, and to sustain water resources.

Acting City Manager Morgan stated several recommendations required approval of resolutions and/or ordinances by City Council.

Councilman Bateman asked to see a management plan that incorporated the possibility of planting timber for a return on the land that was purchased for the KWR project by Waterworks and James City County. Mr. Ramaley replied the City would propose divesting any of the land purchased by Waterworks or James City County, and there was only one additional piece that was pending that he felt the City Manager was authorized to proceed with. He stated Waterworks managed timber on one-third of the land it owned and planting timber on any land that the City kept for the KWR project would be compatible with what they already did.

Councilman Bateman asked, as Waterworks moved through and looked at some of the real estate aspects, that they look at it in a short or long-term strategy, i.e., would there be benefit in what the City did with the cash as opposed to holding onto the land. Mr. Ramaley replied, as was suggested in the attached report, as Waterworks sold the property, the proceeds would be used to pay-off bond debt that had incurred or to reduce budgetary requirements.

Councilman Bateman suggested, as Waterworks moved forward in its quest for alternatives, it would be important to include a strategy that incorporated consensus among the groups that opposed the KWR project. Mr. Ramaley replied the strategy would be to incorporate consensus among groups who opposed the KWR project.

Councilman Bateman inquired about "Desalination of river/estuary sources," noted in the report on page 38 and whether it included the possibility of taking water from the York River. Mr. Ramaley replied Desalination of river/estuary sources did include the James and York Rivers, which were considered estuaries.

Mayor Frank inquired whether the State Water Control Board changed any of its policies about withdrawals or attributes so that the City could, at some point, consider expanding the desalination facility. Mr. Ramaley replied the State Water Control Board had not yet changed any of its policies. The Department of Public Utilities was putting together an Advisory Committee that would meet to consider what to do about, and how to approach, the issue of the Eastern Virginia Groundwater Management area in which the City was located. Mr. Ronald Harris, Chief of Water Resources, Department of Public Utilities, Natural Resources Division, was on the Advisory Council and was the Project Manager for the Brackish Groundwater Desalination project. Mr. Ramaley stated Mr. Harris would inquire whether there was interest in the process and any potential for moving forward. It would be beneficial if the City could acquire rights to additional brackish groundwater for desalination purposes; however, he could offer no real hope that it would go forward at this point in time.

Councilwoman Woodbury inquired about the Waterworks personnel who had been specifically assigned to the project and how Waterworks would handle the extra staff. Mr. Ramaley replied Waterworks had not added staff. In fact, the Natural Resources Division, that had been the prime carrier of the project, was essentially the same size and had recently lost personnel, which Waterworks would not replace. Some downsizing had already taken place. He further advised that Ms. Nancy McPhail, Water Resource Planner, Department of Public Utilities, Natural Resources Division, who had handled the cultural resources aspect of the KWR project, was also the lead conservation officer. Conservation would become more prevalent as the KWR project faded, and Ms. McPhail would have much to do. Mr. Ronald Harris, who was the Project Manager for the KWR project, would be focused on the potential for groundwater desalination reuse, as would Mr. David Morris, Natural Resources Manager, Department of Public Utilities, Natural Resources Division. Much of the KWR project work was done with outside consultants and coordinated in-house. There would be work remaining, but Waterworks would continue to ensure it was staffed correctly. None of the KWR project had moved to operational status, which was when it would have become necessary to hire additional staff. There was no need to hire additional staff as long as the project was in the permitting and design stage.

Councilwoman Woodbury inquired about the Dam repair of the Lee Hall Reservoir, and repair to all of the City's Dams. It was her understanding that the Lee Hall Dam had to be maintained at a lower level because of cracks, and inquired whether that was still true. Mr. Ramaley replied that was correct, but the City had a copper Dam, so the original levels would be maintained. The Dam maintenance projects had been in the works for approximately ten years and were large and expensive projects. Waterworks had completed work at Diascund Reservoir. Little Creek Reservoir was the one Dam that really needed no improvements; just maintenance. Diascund Reservoir required major work. Harwood's Mill Reservoir was the next project, and the two remaining projects were Lee Hall and Skiffe's Creek Reservoirs, which were included in the CIP. The Walker's Dam, at Chickahominy, was another Dam project.

Councilwoman Scott inquired about the number and types of contracts that were still pending on the KWR project. Mr. Ramaley replied there were eight contracts and sub-contracts still pending. There was a team of wetland scientists and engineers designing the Wetland Mitigation sites, who had been working for more than a year; a team designing the Dam and the Reservoir Impoundment; a team working on archeological and cultural resources, that were doing much of the preliminary archeological work; another team that was looking at eco-monitoring in the Mattaponi River, that was confirming the period of time during which the City would not be pumping, based on the shad presence and reproductive cycles; an outside legal team; and a team working on the permitting aspects.

Councilwoman Scott inquired about the amount of funding that was owed on the contracts. Mr. Ramaley felt the City was essentially up-to-date on contract funding; however, there would be some minor close-out costs, but nothing significant.

Councilwoman Woodbury inquired about the reason that Colonel Carroll's original decision, by the Norfolk Corps of Engineers, and his letter delineating many of alternative sources was not included in the attached report, since that really was the beginning of the first denial of the KWR project. Mr. Ramaley replied Colonel Carroll's recommended record of decision to deny the KWR permit was in 1999, which was about half-way through the project. That was a major piece of work and if Waterworks included all the major decisions and pieces of work, the report would have had to be distributed in an electronic format due to length. He did not believe it was the most germane piece of work to the report, considering where they were and how they would move forward. Mr. Ramaley agreed that the original decision was significant.

Councilwoman Woodbury inquired about the continuation to provide water to James City County and Williamsburg. She inquired whether there were options for the City to cancel each of the contracts should there be any danger of not being able to supply James City County and Williamsburg with water. She questioned why the City would want to continue with the contracts. Mr. Ramaley replied the City was bonded by the contract to provide water to James City County and Williamsburg. James City County and Williamsburg, respectively, paid for 2 million and 1 million gallons per day (mgd), and had an option in the contract to pay a second payment for 3 mgd. They could drop the second payment and only be entitled to the 2 mgd and 1 mgd, which they now received. Mr. Ramaley understood James City County and Williamsburg intended to make the payments, because they needed the water, and Waterworks felt they could provide it. James City County and Williamsburg would pay Newport News to develop and augment its systems, in incremental steps, to meet their needs and Newport News' needs.

Councilwoman McMillan shared a list of questions she had based on the report. A number of the questions were rhetorical and historical and she understood would not be able to be answered by Mr. Ramaley without some research. She asked Acting City Manager Morgan to provide answers to her questions in an analytical and non-defensive manner. Councilwoman

McMillan indicated she did not want to pass stones, but understood the City hired outside consultants and attorneys. She voiced concern about the information and advice that was given to City Council and the accountability of such consultants and attorneys about the KWR project. (A copy of Councilwoman McMillan's questions are attached and made a part of these minutes.)

Councilwoman McMillan inquired about the reason the Mattaponi Tribe was left off of the list of plaintiffs in the Federal suit, as noted on page 1 of the report (attached to these minutes). She stated the Mattaponi Tribe had their Treaty Suit, but had also joined in with the Chesapeake Bay Foundation. She felt they should have been listed with the plaintiffs. Mr. Ramaley understood, while the Mattaponi Tribe had a suit, they did not actually file a suit; he understood it was a procedural issue; they were not actually a party to the filed suit. Councilwoman McMillan felt the Mattaponi Tribe were a party to the suit and asked for clarification.

Councilwoman McMillan stated the 3rd paragraph, on page 2 of the report, noted suspension of the permit and the 2nd paragraph, on page 21, noted \$2,718,330 that had been spent since project suspension. She inquired whether the \$2,718,330 included staff time, travel, or any other expenses related to the project. Mr. Ramaley replied the \$2,718,330 was cash flow and did not include expenses carried in the Waterworks operational budget, i.e. staff time.

Councilwoman McMillan inquired about the project background noted on page 5 of the report. She inquired why the Regional Raw Water Group's evaluations of the 35 raw water supply alternatives were not included in the packet. Mr. Ramaley replied the evaluations would have weighed City Council down with information. The evaluations were contained in a number of documents; not a single document.

Councilwoman McMillan noted several comments made by Governor Gilmore in 2001, which were not included in the report. She inquired how the Governor arrived at his position, and whether it was his personal opinion. She inquired whether the Governor received data from Newport News and on City correspondence. She inquired whether the City corresponded with the Governor to ask that he take a certain position. Mr. Ramaley replied he was not involved in such discussions and could not answer such questions, but would look into the matter.

Councilwoman McMillan stated, Malcolm Pirnie, as the City's consultant, was mentioned a number of times in the report. She felt they made great errors in the projection concepts. She inquired what the industry's standard was for margin of error for a company of their reputation. She understood that Dr. Donald H. Phillips, Ph.D., was one of the Scientists that submitted a perspective and research on the KWR project several times over the years. (A copy of "Comments on the Prospectus for the City of Newport News Water Revenue Bonds, Series 2007," by Dr. Phillips is attached and made a part of these minutes.) Councilwoman McMillan stated, in the end, Dr. Phillips was right on target. She inquired about the amount of

money that was paid to consulting firms to receive inaccurate information. Mr. Ramaley stated he did not know of the industry's standard, but would look into the matter and provide Councilwoman McMillan with an answer.

Councilwoman McMillan inquired whether the City could have sought options on the Wetlands and Stream Mitigation property sites, as noted on page 9 of the report. She inquired about the amount of money that would be lost on the resale of the properties, and what would happen should the properties not be sold. She questioned whether the City was in the wetlands business. Mr. Ramaley responded that the matter needed to be studied to see what could be recovered; however, he needed to refer the legal questions to the City Attorney, Stuart E. Katz and staff. As he understood by legal advice given to the County, who was the primary purchaser of land, that options could not be included in the purchase of the property. Councilwoman McMillan questioned how it was determined that the property could not be purchased with options. Mr. Ramaley referred the question to City Attorney Katz.

Councilwoman McMillan inquired about the location of the artifacts that were noted under Archeology and Cultural resources, on page 11 of the report and whether they were the property of the Indians or the City of Newport News. She inquired whether Newport News would give the artifacts to the Indians, and who would have ownership. Mr. Ramaley replied the artifacts belonged to the landowners and were being held by the consultants. City Council would need to determine the disposition of the artifacts owned by the City.

Councilwoman McMillan inquired where the Hampton Roads Planning District Commission would receive information for a Regional Water Supply Plan, as noted on page 13 of the report. She did not have any confidence in a regional plan if it was based on faulty assumptions and inaccurate information the City received from consultants. Mr. Ramaley replied there was a new series of data that had been developed. The Hampton Roads Planning District Commission had staff that was compiling the information. Much of the information would be provided to them by the Natural Resources Division of the Department of Public Utilities. They were not receiving information from Malcolm Pirnie or the other consultants who worked on the KWR project.

Councilwoman McMillan inquired whether the information, on page 16 of the report, noting the DEQ permit would expire in 2010, was correct. She recalled the City's original permit in 2005 was scheduled for renewal in five to seven years. Mr. Ramaley replied the original permit expired in 2007, and the City received a five-year extension, which extended the permit to the end of 2012; however, the permit extension required that the City reapply for the permit by the beginning of 2010. The permit expired at the end of 2010 if the City did not reapply in the beginning of 2010.

Councilwoman McMillan stated it was noted at the time of suspension of the KWR project the remaining capital cost was \$217 million (see page 19 of the report). She

inquired whether that was the current cost projection and whether there were other costs beyond capital costs. Mr. Ramaley replied the \$217 million was the remaining costs associated with the project, which included contingencies.

Councilwoman McMillan felt inaccurate information (population increases, water revenue and per capital consumptions) was represented to the financial houses in 2007, in relation to the \$40 million revenue bond noted on page 20, 1st paragraph, of the report. She questioned who had the oversight in the presentation of the data. She stated the correct information was clearly presented in the Bond Prospectus supplied to the City by Dr. Phillips. Mr. Ramaley did not have an answer, but indicated the bond agencies were more interested in current rather than future predictions when City representatives travelled to Wall Street.

Councilwoman McMillan inquired whether Williamsburg and James City County were aware that they were going to pay 10% and 20%, respectively, of the continued operating and maintenance costs until the surplus properties were sold (see information on page 24 of the report). She inquired about Williamsburg and James City County's reaction. Mr. Ramaley replied the City had not received a reaction from Williamsburg and James City County. He felt, from discussions with his counterparts in the James City County Service Authority and Williamsburg, that they were satisfied with the agreement and terms.

Councilwoman McMillan questioned the reason the City had to hire an outside attorney to handle the real estate transactions of the KWR project rather than use City staff; it seemed fairly simplistic. She recommended that the City Attorney's office handle the transactions. City Attorney Katz stated it depended on the scope and magnitude of the number of parcels to be sold and the timing in which it had to be done.

Councilwoman McMillan stated she would have further questions for City Attorney Katz at a later date, regarding the accountability of the consultants.

Councilwoman Woodbury recalled Mr. Ramaley mentioned looking at alternatives. She stated there had been a number of citizens who had stepped forward and said they wanted to play a part in the search for alternatives, which included a retired NASA Engineer. She inquired whether Mr. Ramaley would be open to citizen input on alternatives as advisors. Acting City Manager Morgan stated the City needed to get its act together, internally, before being open to citizen input. Once that was done, the City would envision a process that would allow for input. Councilwoman Woodbury stated she would like to see that happen. Mr. Ramaley was open to Councilwoman Woodbury's suggestion, but indicated the form in which it needed to be done would have to be worked out.

Councilwoman McMillan asked the City Council members who had not read Dr. Phillips perspective to take a moment and look it over. (A copy of "Comments on the Prospectus

for the City of Newport News Water Revenue Bonds, Series 2007,” by Dr. Phillips is attached and made a part of these minutes.)

Councilwoman Woodbury inquired whether Mr. Ramaley would alter his perspective about the KWR project should the permitting process change. Mr. Ramaley replied, it was a matter of perspective, but felt it would not change his mind.

Councilwoman Woodbury stated she was glad there were multiple permitting processes, because it allowed for checks and balances in government, which was what America was about.

Mayor Frank stated another opportunity might be for the City to consider a Wetlands Mitigation Bank when considering whether to sell the land it acquired for the KWR project. The Bank could produce revenue that might not materialize if the City sold the property. Mr. Ramaley pointed out the City owned some Wetlands Mitigation bank credits that could be used as investments that may actually accrue in value. Waterworks would look into the matter to see whether the City could recover its money and enhance its financial investment.

Councilwoman Woodbury inquired about the \$20 million bond that was borrowed for the KWR project in September 2007 and whether it would be repaid by Waterworks. Mr. Ramaley stated Waterworks would repay the \$20 million. Repayment of the \$20 million was one of the first actions to take place in upcoming months. He stated \$17 million of the \$20 million bond was still in the bank collecting interest. The City would reduce its total interest and principal payment by \$1.3 million over four or five years by repaying the \$20 million.

City Manager Morgan inquired whether there was consensus from City Council to move forward with termination of the KWR project and to implement the ten specific recommendations, as noted on page 42 of the report.

There was consensus among City Council to terminate the KWR project and authorize the Acting City Manager to implement the ten specific recommendations and outstanding issues (as noted on page 42 of the attached report).

THERE BEING NO FURTHER BUSINESS,
ON MOTION, COUNCIL ADJOURNED AT 5:47 P.M.

Jennifer D. Walker
Chief Deputy City Clerk

Joe S. Frank
Mayor
Presiding Officer

A true copy, teste:

City Clerk