

MINUTES OF WORK SESSION
OF THE NEWPORT NEWS CITY COUNCIL
HELD IN THE 10th FLOOR CONFERENCE ROOM
2400 Washington Avenue-
February 23, 2010
4:00 p.m.

PRESENT: Joe S. Frank; Madeline McMillan; Sharon P. Scott; Tina L. Vick; Joseph C. Whitaker; and Dr. Patricia P. Woodbury ----- 6

ABSENT: Herbert H. Bateman, Jr. ----- 1

OTHERS PRESENT: Neil Morgan; Stuart Katz; Mabel Washington Jenkins; Alan Archer; Cynthia Rohlf; Allen Jackson; Wanda Pierre; Reed Fowler; Sheila McAllister; Kathy James-Webb; Lynn Sugg; Joseph DuRant; David F. Watson; Allen Stambaugh; Lisa Cipriano; Karen Wilds; Cleder Jones; Kim Lee; Joe Lawlor; John H. Benfield; Michelle R. Benfield; Justin Ausura; Alton Huneycutt; Bennie Snead; Susan Huneycutt; and Jennifer Walker

I. North End-Huntington Heights Architectural Review Board ARB-Appeal-10-3

Mayor Frank stated according to City Code, Section 45-3142(a) the purpose of the special zoning regulations for the North End-Huntington Heights Historic District was to encourage uses that would lead to the preservation of historic structures and premises within the district. City Code Section 45-3147(a) created the North End-Huntington Heights Architectural Review Board (ARB), and Subsection (d) (1) required the ARB to prepare guidelines for standards applicable to exterior buildings located within the historic district. City Code Section 45-3147(d) (2) required that all plans for additions and alterations to existing buildings, within the historic district, be reviewed by the ARB. Subsection (c) specified in review of material submitted, the ARB should examine the exterior design and the entire exterior surface. City Code Section 45-3147(e) authorized the ARB to issue a Certificate of Appropriateness for a proposed building alteration when it determined that such alteration was in conformance with the City Code and with its own guidelines.

Mayor Frank stated according to the Supreme Court of Virginia, a decision of the ARB must be upheld, unless City Council determined it to be arbitrary and unreasonable. A legal presumption may exist that the decision of the ARB was reasonable. This presumption could be rebutted by a showing of the property owner that the decision was unreasonable. The City may, then, demonstrate that the ARB'S decision was reasonable and not arbitrary. The Supreme Court required that the decision be upheld if the evidence was fairly debatable (equally balanced between the ARB and the property owner). A motion made, either to support the decision of the board or to overturn the board's decision had to be accompanied by a statement as to what City Council's finding was in regards to the board's decision, in whether it was reasonable and debatable, or unreasonable and not fairly debatable. Issues of constitutionality of the creation of the regulations or designation of the historic district or creation of the North End-Huntington Heights Architectural Board, or whether the guidelines were appropriate or inappro-

appropriate, were not terminable by City Council. Mr. Stambaugh had a right to appeal City Council's decision to the Circuit Court and issues of constitutionality were appropriately addressed in that forum but not at the City Council Work Session. In addition, this was not a personal matter so issues involving people, what they did and their history was not appropriate in Mr. Stambaugh's address to City Council. It was important for City Council to consider whether the plan applied to the guidelines and whether the ARB was reasonable, or arbitrary and unreasonable in its decision. Mayor Frank introduced Mr. Allen Stambaugh to present his case, followed by a presentation by Ms. Sheila McAllister, Director, Department of Planning.

Mr. Stambaugh reported he was not present to state that the ARB did not do their job. He indicated, through research he conducted, a structure should be judged on how much historical integrity it had. His home had 1967 metal siding, and brand new windows that did not go with their original grids. There was one window in the house that had the original grid. His home did not have a slate roof or asbestos. The porch was the only part of the home that could remotely be viewed as a vernacular architectural structure.

Mr. Stambaugh stated there was no reference to his dwelling in his research of vernacular architectural structures. His home consisted of 1967 siding, asphalt shingles, which came around in the 1950s and 1960s, and PVC windows. He purchased the home for \$81,000, and indicated it was probably his worst investment, and was an emotional buy. He lived in the neighborhood for a long time and wanted to ensure that his children were safe in the neighborhood so he bought a home that he never would have bought. The original siding was asbestos and was not the metal tin that was currently on the home.

Mr. Stambaugh indicated he had a Historic Preservation Commission checklist to determine the historical and architectural significance of a County's historic resources. (A copy of the checklist is enclosed in the packet of information provided by Mr. Stambaugh, which is attached and made a part of these minutes.) He stated the checklist would be a good option for the ARB and indicated he would volunteer as a member of the ARB to help with the work noted in the checklist. He felt that the checklist should be followed to determine a structure's historic significance before inflicting historical requirements on homeowners. He purchased his home for \$81,000, while his neighbor bought his home for \$450,000. There was a big difference when one told him that he had to put historical windows back on his home.

Mr. Stambaugh voiced support of the ARB for the neighborhood; however, he felt they needed to act with a voice of reason regarding whether a home had any structural historical integrity left in it. It was unfair to require a homeowner, from this point on, to do things if the home had no historical integrity when it was purchased. His home would never become a Queen-Anne or Craftsman home like others in the neighborhood.

Mr. Stambaugh stated his decision to enclose the porches arose from a concern regarding the safety of the original railings and picket spacing. He stated the railings were too low to meet code requirements and the picket spacing allowed a child's head to become trapped between the pickets. As the homeowner, he should have the ability to protect his liabilities when something such as that happened. He could, by the way the code was written, do a repair to limit his liabilities. The windows he used were similar to a neighbor's windows, which he felt was a classy look. (Pictures noting the windows on a neighbor's property and Mr. Stambaugh's property are attached and made a part of these minutes.) He was told he was no longer allowed to work on his home, so the project was put on hold. Mr. Stambaugh indicated the ARB never saw or heard about a final product, due to his military assignment. He would never ask anyone to overturn the ARB's decision; all he wanted was to present his final product to the ARB and to note that the home did not have a large amount of historical integrity remaining in it.

Mr. Stambaugh stated vernacular architecture tended to evolve over time to reflect the environment, culture and historical context that existed. Vernacular architecture had often been dismissed as crude and unrefined. He could never afford several homes in Huntington Heights that needed to be preserved. His home was not one of those homes. He recalled an article in the Daily Press in 2006 that indicated the members of the community felt that the ARB had gone overboard with their requirements. In talking with neighbors, Mr. Stambaugh stated he got the impression they felt it was a lost cause to do anything to their homes because of the guidelines. Most people were not working on their homes and were not doing work that needed to get done in the neighborhood. Mr. Stambaugh felt the guidelines had a negative effect on the neighborhood.

Ms. McAllister reported the ARB's decision to deny Mr. Stambaugh's request was because his project did not meet the guidelines as set forth in Section III. E. 3 of the North End-Huntington Heights Guidelines for additions and enclosures. This section stated that "the size, style, and placement of the windows shall match the size, style and placement on the original structure." Mr. Stambaugh appealed the ARB's decision to deny his request to enclose the porch, utilizing a myriad of window types and sizes. Mr. Stambaugh contended: 1) He should not be forced to adhere to the guidelines because he did not have the funds to comply with the regulations; 2) The porches were enclosed as a result of an imminent condition and the residence had no historical significance or features; and 3) His home was situated next to a contemporary home and the porches were not visible from the right-of-way.

Ms. McAllister contended that the North-End Huntington Heights ARB and its guidelines were necessary tools to ensure the historic integrity that homes were maintained in the district. Mr. Stambaugh's structure was a good example of Vernacular American Architecture of the 1920s and despite the location of the porch, it was one of the character-defining features of that particular building type. The residence was located in a historic district, which was listed in the National Register of Historic Places and the Virginia Landmarks Register. Adherence to the

guidelines were the only means of ensuring the integrity of the neighborhood. The ARB acted in accordance with its guidelines by declining to Mr. Stambaugh's application to enclose the porch. They were the gatekeepers of the historic district and their denial was not illegal, but enforced adherence to the guidelines. Mr. Stambaugh enclosed the porch without a Certificate of Appropriateness; and as a result, Ms. McAllister stated she and City Manager Morgan recommended that City Council reaffirm the ARB's decision to deny the request.

Councilwoman McMillan inquired whether the ARB kept a history of each individual house in the Huntington Heights neighborhood. Ms. McAllister replied a list of all the homes in that neighborhood were offered to the City when the neighborhood applied for historic preservation status.

Councilwoman McMillan inquired whether a resident was allowed to duplicate improvements made by a prior owner that were done before the ARB was established. Ms. McAllister replied that a resident never had to take a home back to its original status. She stated the guidelines were lenient as to the types of materials that were used. The guidelines emphasized the need to maintain the original structure, so one could use siding. The guidelines also noted the need for windows to remain the same so not change the character of a house.

Councilwoman McMillan inquired whether a Huntington Height's homeowner would have to gain approval from the ARB to duplicate a neighbor's windows. Ms. McAllister replied duplication of a neighbor's windows was not in keeping with the guidelines. A homeowner could only match the windows of their own home.

Councilwoman McMillan inquired whether one could get an exception. Ms. McAllister replied one could not get an exception.

Mayor Frank stated the question before City Council was whether the ARB acted in compliance with the regulations and guidelines, or whether they were arbitrary and unreasonable. He pointed out the purpose of having an ARB was to ensure that no one individual property owner would make improvements or changes to their property that would impact the visual historical nature of other properties in a neighborhood. The ARB risked setting a precedent if they allowed a property owner to deviate from the guidelines. He felt that would cause others to deviate from the guidelines, which would diminish the historic value of the neighborhood. By enforcing the guidelines, the ARB maintained property values and the historical integrity of the neighborhood. It was clear that the windows on the rear elevation of Mr. Stambaugh's property, depicted on page 3 of the attached photographs, did not comply with the historical nature of the windows on the rest of the house.

Councilwoman McMillan inquired whether Mr. Stambaugh could install three over one windows to be in compliance with the guidelines. Mr. David Watson, Environmental Planner, Department of Planning, stated the ARB did not object to the enclosure of the porch; they objected to the design of the windows. He stated Mr. Stambaugh would be in compliance with the guidelines if he installed standard double hung windows on the enclosure of the porch.

Councilwoman Vick inquired whether there was a way to confirm that the residents of Huntington Heights refused to maintain their properties in fear that their projects would be denied by the ARB. Ms. McAllister stated the ARB worked with the residents of the neighborhood to ensure that their projects complied with the guidelines. There may have been some denials, but even in denying applications, the ARB offered references of contractors to the property owners.

Vice Mayor Whitaker moved pursuant to City Code Section 45-3147(h), that City Council affirm the decision of the North End-Huntington Heights Architectural Review Board which denied a Certificate of Appropriateness to Mr. Allen Stambaugh for the enclosure of his porch, located at 343 52nd Street in the City of Newport News, as the decision of the ARB was neither arbitrary nor unreasonable; seconded by Councilwoman Vick.

Roll Call Vote Resulted As Follows:

Ayes: Frank, McMillan, Scott, Vick, Whitaker, Woodbury

Nays: None

II. Public Private Transportation Act (PPTA) and Public Private Education Act (PPEA)

City Manager Morgan stated, on February 27, 2007, City Council passed a resolution to approve the guidelines required under the Public Private Education Facilities and Infrastructure Act of 2002 (PPEA) and the Public Private Transportation Act of 1995 (PPTA). In general, these Acts allowed competitively negotiated design-build projects that included private financing. The PPTA dealt with transportation projects, but the PPEA allowed a wide range of potential projects not limited to education. State law had included these programs with the requirement that each municipality adopt their own specific guidelines.

City Manager Morgan reported in 2009, the PPEA was amended and the General Assembly directed Legislative Services to update its model guidelines. Such guidelines were completed on October 23, 2009. Accordingly, to be consistent with State law, the City's PPEA guidelines required an update. The City's PPTA guidelines were under review by the Virginia Department of Transportation (VDOT) and the Federal Highway Administration (FHWA), who

were required to approve the guidelines before Federal and State transportation funding could be used as part of a PPTA project. The process was complicated and delayed because VDOT and FHWA reviewers sought to compare each line of the VDOT PPTA guidelines with the City's guidelines. The City had not received approval of the current PPTA guidelines. In order to overcome both issues, the City Attorney's office drafted a new resolution and separate PPTA and PPEA Guidelines. These new documents incorporated changes required under State law for such guidelines. This approach was expected to allow the City to immediately use the PPEA Guidelines and to rapidly gain approval of the PPTA Guidelines. A resolution revising the PPTA and PPEA Guidelines was scheduled for adoption at the March 9, 2010 Regular Meeting of City Council.

Councilwoman McMillan inquired about the definition of a wide range of potential projects under the PPTA. City Manager Morgan replied he did not believe the City of Newport News had any real experience with an actual project. Mayor Frank replied an example of a PPTA project was a Fire Station, a Police Station or any other type of public construction project, other than transportation. He stated the word education was misleading.

Councilwoman McMillan stated she did not realize there was a problem with the City's guidelines, which City Manager Morgan noted was under review. City Manager Morgan stated shortly after adoption of the PPTA guidelines, the information was sent to VDOT and the FHWA, who never approved the guidelines. It was concluded that a specialized resolution may never receive approval, and amending the City's guidelines to be consistent with the State's guidelines would be smarter.

Councilwoman McMillan felt that the City's resolution was based on the State's guidelines when it was adopted in 2007. Mr. Stuart Katz, City Attorney, replied it was based on the State's guidelines, but since that time, the State had amended its guidelines. He stated the City needed to be consistent with the State's guidelines. He felt it was best to have separate PPTA and PPEA Guidelines.

III. Fats, Oils and Grease (FOG) Program

City Manager Morgan stated in December 2008, as part of compliance with the Regional Special Order by Consent with the Department of Environmental Quality (DEQ), the City of Newport News, the Hampton Roads Sanitation District (HRSB) and the Hampton Roads Localities submitted their Management, Operations and Maintenance (MOM) Plan to DEQ. An essential part of the MOM Plan was a Fats, Oils and Grease (FOG) elimination program. He introduced Mr. Reed Fowler, Director, Department of Public Works, to offer a presentation on

revisions to the Sewer Ordinance to strengthen the enforcement of FOG violations. He hoped to have the ordinance adopted at the March 9, 2010 Regular Meeting of City Council.

Mr. Fowler stated in May 2009, City Council authorized a Memorandum of Agreement (MOA) with HRSD in an effort to eliminate FOG from the City's sanitary sewer lines and to fulfill the requirements of the State Order of Consent (SOC) with DEQ. This was a temporary measure until an ordinance was adopted to prohibit the introduction of FOG into the sanitary sewer system.

Mr. Fowler reported the revisions to the Sewer ordinance would include the following: 1) Separate Chapter 33, Article IV, Sewer Use Standards, into two divisions [Division 1 (Existing) Sewer Use Provisions Generally; and Division 2 (New) Fats, Oil and Grease (FOG)]; 2) Amend Section 33-48, Enforcement of Article Generally; Indemnification of City of Losses Resulting from Violations, and Section 33-50, Prohibited Discharges to reference Division 2; and 3) Add Sections 33-59 through 33-67, which dealt with regulations, inspection, and enforcement of provisions dealing with the introduction of FOG into the City's sewers.

Councilwoman McMillan inquired whether a FOG problem arising from a business was the only way to know that a FOG situation existed. Mr. Fowler replied the City could note problems by the inspection of establishments, once the ordinance was passed by City Council.

Councilwoman McMillan inquired whether there were establishments not properly disposing of FOG. Mr. Fowler replied there were many establishments not properly disposing of FOG; however, they were compliant with the City's instructions. A big piece of the ordinance dealt with the legal issues as it pertained to FOG; however, the City's efforts would include education.

Councilwoman Scott inquired how the Department of Public Works planned to monitor FOG that was disposed by a resident of an apartment complex or condominium building. Mr. Fowler replied that the proposed ordinance did not include residential properties; it was strictly geared for commercial establishments. He did see many signs of residents creating excessive FOG in the system, and indicated the public would be educated.

Councilwoman Woodbury inquired whether church organizations were included in the ordinance. Mr. Fowler replied church organizations were included in the ordinance.

Councilwoman McMillan inquired about the job title of an employee who would inspect establishments for FOG. Mr. Fowler replied they would be designated as a trained FOG maintenance person. He stated, two employees per establishment would be on the City's FOG inspector's list. Also, grease haulers, who transferred FOG to HRSD, would be required to register with the City.

Councilwoman Scott inquired whether the City would assess a penalty on establishments that did not abide by the FOG ordinance. Mr. Joseph DuRant, Assistant City Attorney, replied that Section 33-67, page 13, of the ordinance, dealt with penalties.. (A copy of the proposed ordinance is attached and made a part of these minutes.) City Attorney Katz stated the purpose of the ordinance was to put the responsibility on the establishments that generated FOG, as opposed to the City of Newport News having to pay penalties to State and Federal regulators.

Mr. Fowler reported 87% of sewer stoppages were the result of grease, which noted the magnitude of the issue. (A copy of the presentation, "City of Newport News – Sewer Use Ordinance Amendment," is attached and made a part of these minutes.)

Mayor Frank inquired about penalties imposed on the City due to FOG buildup. Mr. Fowler replied the DEQ could find the City \$32,500, per day, for FOG buildup that caused a sanitary sewer overflow.

Mayor Frank noted the City sought State legislation to assess a civil penalty on an establishment that did not abide by the FOG ordinance.

Councilwoman Scott inquired whether the Department of Public Works was responsible for reporting overflows to the DEQ. Mr. Fowler replied the Department of Public Works was required to report a sewer overflow to DEQ. It would be a criminal penalty should someone else report the matter.

Mr. Fowler stated food service establishments did not understand the impact they had on the sewer system. He stated the early part of the program would begin with education. Two meetings were held to communicate information related to the FOG ordinance; however, it was poorly attended.

Councilwoman Scott inquired whether the City could mandate that food establishments encourage their employees to comply with the ordinance. Mr. Fowler replied that was the reason for the ordinance.

Mayor Frank felt residents of the City would benefit from the FOG information as well. City Manager Morgan agreed. Mr. Fowler replied there was an initiative underway to educate the public. He stated citizens could go to the HRPDC website to gain more information about handling FOG: www.fatfreedrain.com.

Mr. Fowler reported the Department of Public Works would hire a Wastewater Inspector to inspect, educate, and if necessary, enforce the City's amended sewer ordinance. The

Wastewater Inspector position already existed and funding would be reallocated. The Wastewater Inspector's primary duty would be to inspect and educate food service establishments on FOG responsibility.

City Manager Morgan inquired how the FOG program would be implemented. Mr. Fowler replied it would take 60 days to hire an inspector whose charge would be education for the first six months.

IV. Second Quarter Financial Report

City Manager Morgan introduced Ms. Lisa Cipriano, Director, Department of Budget and Evaluation, to provide the Second Quarter Financial Report.

Councilwoman McMillan inquired about the number of Newport News residents quoted in the Financial Report at 193,212. She inquired whether the City Manager included the working population in addition to residents that lived in Newport News. City Manager Morgan replied 193,212 was the current Census estimate of the City's population.

Councilwoman McMillan inquired whether they had included the resident population and transient population. City Manager Morgan stated citizens were grouped in categories; however, he would obtain the accurate information.

Ms. Cipriano reported the Second Quarter Financial Report was based on actual performance for the first six months (July – December) of FY 2009 – 2010, and a projection of financial activity over the remaining six months (January – June). She stated the First Quarter Report projected a revenue shortfall of \$7 million and an expenditure surplus of \$8 million, which resulted in a forecasted fiscal year-end net surplus of \$1 million in the General Fund. She stated the Second Quarter report projected a revenue shortfall of \$7.0 million and an expenditure surplus of \$10.5 million, which resulted in a forecasted fiscal year-end net surplus of \$2.6 million.

Ms. Cipriano noted the combined forecasted budget surplus of slightly more than \$2.6 million allowed only a marginal comfort level. If the second half of the major revenue source collections (Real Estate, Personal Property, and Machinery and Tool taxes), continued to be similar to the first half, any further drop in consumer-generated taxes and fees (Sales, Meals, and Lodging taxes) should be covered by this present surplus forecast.

Ms. Cipriano reported, while any projected revenue shortfall for FY 2010 was a warning, continuing the steps that were in place to reduce expenditures through the freezing of positions and other cost-saving actions should continue for the remainder of the fiscal year. She felt it was not unreasonable to anticipate a third round of State revenue reductions this fiscal

year, as the State continued to experience its own budget gap. (A copy of the presentation, "FY 2010 General Fund Forecast (Based on Second Quarter Results)," is attached and made a part of these minutes.)

Councilwoman McMillan inquired whether the State's reductions were in mandated programs. Ms. Cipriano stated the State was furloughing the Sheriff's Department on paper for one day in the FY 2010 budget. While the State could not tell a locality to shut down its Sheriff's Department, they would not pay the City for one day.

Councilwoman Woodbury inquired whether the State had totally cut the Commissioner of Revenue and Treasurer's Offices out of the budget. Ms. Cipriano replied that was proposed for the FY 2011 budget. She indicated there was a small cut for FY 2010.

V. Tax Exempt Designation of Orcutt Public Housing Developments

City Manager Morgan reported one of the prerequisites of the Department of Housing and Urban Development's (HUD) approval of the mixed finance package for Phase III of the Orcutt Townhomes project was confirmation that the complex, like other public housing owned and managed by the Newport News Redevelopment and Housing Authority (NNRHA), that used Federal operating subsidies, was exempt from the payment of real estate taxes. For the final two phases of the Orcutt redevelopment, HUD accepted copies of a Cooperation Agreement between the City and the Authority to substantiate the tax exempt nature of the developments. For the last development phase, HUD required an opinion from the City Attorney that the project would be exempt from all taxes and special assessments by the City. Although, the City Attorney could confirm that the Authority would still be exempt, the lease agreement triggered a potential liability on the part of the Limited Partnership/Development Corporation for leasehold taxes. Accordingly, to maintain the status quo, the Authority requested that the property be made exempt from taxation by designation, pursuant to City Code, Section 40-8.

City Manager Morgan stated, the Limited Partnership and Development Corporation created to finance this project, were governed by the same Board of Commission members appointed by City Council. To clarify the exemption from real estate taxes for all three phases of the development, NNRHA filed the necessary applications with the City which had been reviewed and was acceptable. The City Attorney's office had prepared a resolution on behalf of NNRHA's request, that all the Orcutt developments (Ashe Manor, Orcutt Townhomes I and Orcutt Townhomes III), totaling 120 housing units, be exempt from the payment of real estate taxes. City Manager Morgan introduced Ms. Karen Wilds, Executive Director, NNRHA, to report on the matter.


Ms. Wilds reported the development of public housing, over the last six years, was only possible through the utilization of low income tax credits. She stated a Limited Partnership had to be created to use tax credit funding. NNRHA had to come to City Council

and seek approval for the creation of a Limited Partnership, which had already been done for the three phases of Orcutt Homes. In developing the financing package for Orcutt Townhomes III, HUD required a statement from the City Attorney's Office noting the project would be tax exempt. Ms. Wilds stated, in looking at the new arrangement, there was the question of leasehold taxes coming into play for all three phases, so the City Attorney recommended that City Council verify that all three projects would be tax exempt.

City Manager Morgan stated, because of the short timeframes for Federal review of NNRHA's mixed finance application for Orcutt Townhomes III, this item had been placed on the evening agenda for consideration by City Council.

Councilwoman Vick inquired whether the same would be required for HOPE VI funding. Ms. Wilds replied all housing developed with HOPE VI funding would require a tax credit.

THERE BEING NO FURTHER BUSINESS,
ON MOTION, COUNCIL ADJOURNED AT 5:40 P.M.


Jennifer D. Walker
Chief Deputy City Clerk

Joe S. Frank
Mayor
Presiding Officer

A true copy, teste:

City Clerk