

DURHAM CITY COUNCIL WORK SESSION
Thursday, January 22, 2015 @ 1:00 p.m.
2nd Floor Committee Room – 101 City Hall Plaza

Present: Mayor Pro Tempore Cora Cole-McFadden and Councilmembers Eugene Brown, Diane Catotti, Eddie Davis, Don Moffitt and Steve Schewel. Excused Absence: Mayor William V. “Bill” Bell.

Also present: City Manager Thomas J. Bonfield, City Attorney Patrick Baker and Deputy City Clerk Diana Schreiber.

Mayor Pro Tempore Cole-McFadden called the meeting to order and welcomed all in attendance.

Mayor Pro Tempore Cole-McFadden asked if there were announcements by Council. There were no announcements.

[PRIORITY ITEMS]

Mayor Pro Tempore Cole-McFadden asked for priority items from the City Manager, City Attorney and Deputy City Clerk.

City Manager Bonfield referenced Item #6, Amendment to Contract with Terracon Consultants, Inc. for Additional Investigation and Testing Services for the Police Headquarters Complex Project; and requested Council pull the item for discussion and requested that the rules be suspended for council to vote on today.

The City Manager’s item was accepted by Council.

City Attorney Baker referenced two items for closed session of which both fell under attorney – client consultation; and specifically addressed the case Developers Surety v. City of Durham pursuant to N.C.G.S. 143-318.11(a)(3).

The City Attorney’s items were accepted by Council.

There were no priority items from the Deputy City Clerk.

After Mayor Pro-Tempore Cole-McFadden read each item on the printed agenda, the following items were pulled for comments; discussion and/or action by the Council.

Councilmember Catotti had a question on Item #2, Grant Agreement for Construction of Bicycle and Pedestrian Facilities on University Drive (TIP #EB-5514); relative to the actual construction completion date. Dale McKeel, Transportation Department, responded that he would provide the information via email.

Councilmember Schewel inquired about bike lanes currently existing west of Hope Valley Road.

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Mr. McKeel responded that there were bike lanes located east from Cornwallis extended toward Downtown.

Councilmember Catotti requested an area map be provided for Item #3, Barbee Road, Herndon Road, Massey Chapel Road Roundabout Sidewalk Agreement.

Councilmember Catotti requested Item #5, Lease between the City of Durham and Yarboro and Hesse Warehouses, LLC at 700 North Alston Avenue (Parcel ID 111319), be pulled for further discussion.

Councilmember Moffitt requested Item #7, Resolution Authorizing a Public Art Project on the NC 147 Retaining Wall on the South Side of Willard Street, be pulled for discussion.

Councilmember Catotti requested that Item #8, Public Hearing and Recommended Agreement for Economic Development Incentive with A&J Capital Corporation be pulled for further comments.

[CITIZENS' MATTERS]

SUBJECT: DELORES C. BYNUM

To receive comments from Delores Bynum regarding Parquet Street not being maintained by the City.

Ms. Delores Bynum, of Parquet Street, requested city maintenance for Parquet Street; noted that she puts gravel down on her end of street at her own expense; mentioned she was a widow; and explained that she contacted city staff for assistance in maintaining the street.

Tasha Johnson, Assistant Director of Public Works Department, stated there had been numerous conversations with the speaker; stated that the road was not a city maintained street and that a petition needed to be received in order for it to become city maintained; indicated that the property was within the city's limits; stated that no petition process had yet been received to add the street into the system; and stated that more fifty-percent of residents along the street would have to sign the petition, and that the residents would be accessed the full cost of construction to bring the street up to city standard.

Mayor Pro Tempore Cole-McFadden stated that Deputy City Manager Bo Ferguson indicated he would collect more history on the item and provide follow-up to the Ms. Bynum and Council.

SUBJECT: LAMONT SAMUEL

Mayor Pro Tempore Cole-McFadden called for the second speaker, Lamont Samuel, but was informed that Mr. Samuel was not in attendance at the meeting.

Mayor Pro Tempore Cole-McFadden stated that Council would now address the pulled items.

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SUBJECT: LEASE BETWEEN THE CITY OF DURHAM AND YARBORO AND HESSEE WAREHOUSES, LLC AT 700 NORTH ALSTON AVENUE (PARCEL ID 111319)

Councilmember Catotti inquired about the Broadway space; asking if the city would be keeping it or dropping it.

Joel Reitzer, Director of General Services Department, stated the Broadway property was overcapacity and would be utilized for some vehicular processing and stated the item before the Council was just the impound lot and not the processing. He stated the processing would remain at Broadway until the completion of the new headquarters; and stated that a permanent impound lot provision would be required; and the item was for a four year lease with options.

Councilmember Catotti inquired about the amount of the four year lease amount being closer to \$105,000.00 vs. \$125,000.00 referenced in the staff report.

Mr. Reitzer replied \$2600 per month for four years plus escalation. He stated they would provide an update on the grand total of the initial four year expense of the lease.

Councilmember Schewel expressed appreciation for Mr. Yarboro's providing of reasonable rent and up-fit across from the substation for a non-profit organization; and inquired about the impounding of vehicles on-site at the new police headquarters.

Mr. Reitzer stated that impounding would be conducted at either the current site with lease extensions or at a separate site; however, not at the headquarters.

SUBJECT: AMENDMENT TO CONTRACT WITH TERRACON CONSULTANTS, INC. FOR ADDITIONAL INVESTIGATION AND TESTING SERVICES FOR THE POLICE HEADQUARTERS COMPLEX PROJECT

City Manager Bonfield requested staff to present an update on the real estate transaction on the Carpenter's site for the new police headquarters; noted there had been preliminary environmental assessment work done at the site; stated that additional assessment work was required on contamination; that the real estate transaction was active; had requested an update on the environmental issues, remediation and schedule for moving forward on the real estate transaction.

Director of General Services Joel Reitzer provided a status report on the real estate transaction that was expected to close last Friday, January 16th but was extended by option through Friday, January 23rd; stated additional negotiation have been ongoing due to the fact they reviewed the initial Phase 1 report of investigation from Terracon; explained there was good news that the tested soil contained low-levels or no contamination and that the ground water, contained less than one-percent of any constituents; noted that the Phase I report recommended additional testing in some of the structures where some of the features where soil-water separators and hydraulic lifts might had been located; stated that Terracon had provided a cost estimate of up to

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approximately \$254,000 worth of cleanup associated with site preparation of the property. He stated based on the consultant's estimate, conversations were had with sellers, staff and respective attorneys, and in response, an escrow agreement, to be executed at closing, with a sum of \$500,000 provided in the escrow agreement; stated the additional testing would be completed within 30 to 45 day period; explained the escrow agreement allowed for a period of sixty-days to complete the process; indicated that the additional services to be provided and proposed by Terracon were reasonable and fair under the circumstances; and staff recommended approval.

City Manager Bonfield interjected that the purpose of the escrow agreement, depending on what was determined for remediation requirements, would be to designate the first funds used for remediation.

Councilmember Catotti inquired if there was an estimate done for anticipated remediation costs.

Mr. Reitzer stated that Terracon's remediation estimate was \$254,000; referenced the deviation from the preliminary estimate could be up to 100% to the plus or to 50% to the minus; stated the seller had their own environmental consultant who submitted a letter for Council's review (in the backup materials) who estimated the costs to be much lower for cleanup based on their opinion; and noted that the seller had conducted some work on the property in the past to remove tanks and cleanup of those areas.

Councilmember Catotti inquired if there was not enough funding in the escrow account for cleanup and what options would the City have legally not to pursue; requested a review of the sequence of timing about the analysis versus the sale; and inquired about the rationale by the City for not proceeding until the full extent and cost of remediation was known.

Mr. Reitzer responded that would be the extent of the seller's obligation the amount escrowed; stated the sale would occur according to schedule and agreement tomorrow (Jan 23rd); the environmental report would come in 30-45 days thereafter, up to 60 days, for the City to analyze the cost adjustment from Terracon per their recommendations. Mr. Reitzer noted if the City received an estimate of \$500,000 that is included in the escrow; if \$750,000, the City would be paying an amount of \$250,000; it was anticipated that the remediation would not exceed the amount in escrow; and mentioned the seller had another pending transaction and had concerns about another possible city extension due to a contingent liability on a pending executed property exchange.

Councilmember Catotti addressed Attorney Baker asking if there was any way to include additional default clause for protection.

Sherri Zann-Rosenthal, Senior Assistant City Attorney, responded they would try and negotiate for a default clause; stated that they had asked for and agreed to a \$220,000 escrow agreement; stated the seller voluntarily increased the escrow to \$500,000 with \$50,000 earmarked funds for tenant contamination; stated if it was the desire of Council they could go back and negotiate for some fail safe clause; and reminded Council that it was possible to go into closed session to discuss the details of negotiation and advise to their representatives.

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City Manager Bonfield stated he wanted Council to be aware of the situation prior to the real estate closing scheduled for the next morning; and deferred to the representative from Terracon, Ms. Lori Denton, to provide an update on the preliminary assessment on the property.

Lori Denton, representing Terracon Consultants, Inc., referenced the preliminary work completed in Phase I site assessment that identified numerous known environmental concerns and potential environmental concerns; referenced tank removals and 'no further action' notice by NCDENR; indicated there was contamination that remained at the site at levels they were comfortable with closing on the site based on the levels of low risk; stated there were other tanks that were pulled in 1988 before there were requirements for testing to be done; stated the prior tank locations had the potential for contamination to remain at those areas and also numerous areas within the building; spoke to old water separators and trench drains; stated four preliminary borings were done associated with the geotechnical investigation; noted petroleum was discovered in ground water which was not exceedingly high; stated the main concern was the numerous spots on site that could have contaminated soil which is a problem once you go to construction/once the opening of utilities trenches/foundation, which have to be dealt with through DENR; and has to be reported as an incidence, managed with the expectation that the soil comes out of the ground. Ms. Denton stated that is where they are being unsure of all the potential for the costs associated with disposing of the contaminated soil in addition to the lab work associated with getting closure through DENR.

City Manager Bonfield asked for a level of assurance of the consultant currently versus where it would be at the conclusion of the amendment of the contract considering what might be discovered during construction.

Ms. Denton stated that her firm had identified a potential for significant costs; and that after further investigation, that a more precise figure could be possibly arrived at; and added that it was a conservative figure.

Councilmember Schewel asked for clarification on the conservative aspect.

Ms. Denton stated that numerous locations had been identified and it was assumed that all were contaminated; however, she noted the likelihood that all were contaminated was unlikely, but her firm did not yet have the ability to judge the percentage of which areas were actually contaminated; and stated that was the conservation side.

Councilmember Catotti inquired about the \$245,000 being able to treat every one of the sites or if costs could be a lot more.

Ms. Denton stated they assumed that all sites were hot and contaminated; stated that they feel they had done a thorough job of identifying the hot spots; and spoke to the likelihood that the number would go down.

Councilmember Moffitt inquired as to what was the confidence level that \$500,000 was enough to cover all of the remediation required for the site; and if their comfort level was 50%; 60%; etc.

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Ms. Denton responded she was confident that would be a sufficient amount, greater than a 50% chance she stated.

Councilmember Moffitt referenced the high level of risk to the City.

Councilmember Brown asked for the number of hotspots on the site; spoke hypothetically if they were dealing with a lender for the site, and based upon his experience, the lender would not make the loan until the final assessment was completed and results of such reviewed; noted that the seller was asking the City to take a risk; and under normal circumstances in real estate transactions, this would not be allowed; and at this point he stated he could not agree to move forward with the closing on tomorrow.

Councilmember Catotti inquired if the \$245,000 amount included soil removal.

Mr. Reitzer responded that \$256,000 included consulting work as well as soil removal, but did not include asbestos; stated they were doing some additional asbestos testing on the roofing material; referenced numerous samples taken of lead paint/asbestos sampling with low levels; and stated the additional work by Terracon would include penetration testing on roofing areas.

Councilmember Catotti expressed her concerns about asbestos handling and the cost estimates.

Mr. Reitzer believed that could be covered in the \$500,000; and indicated that on-site scrapings and visual identification had been performed.

Richard Prentis, Attorney representing the GWC Properties, referenced Terracon's evaluation which they identified the worst case situation with its cost estimate of \$250,000; stated the sellers had anticipated that the matter would have closed by the end of the year; stated they have agreed to extend the option several times providing an environmental escrow to meet concerns; and said if the purchase price expired today they would have to renegotiate things such as purchase price and whether they would be willing to escrow anything.

Attorney Baker recommended against a public negotiation of a land transaction; noted the option expired tomorrow and that the issues could be discussed in closed session.

Councilmember Schewel suggested addressing the remaining pulled items from the agenda prior to entering into closed session.

**SUBJECT: RESOLUTION AUTHORIZING A PUBLIC ART PROJECT ON THE NC
147 RETAINING WALL ON THE SOUTH SIDE OF WILLARD STREET**

Councilmember Moffitt inquired about the inclusion of the Cultural Advisory Board or Public Art Committee into the formulation process.

Peter Coyle, Office of Economic and Workforce Development, stated the boards were mentioned in the memorandum; explained that American Tobacco made a presentation to the Public Art Committee who reviewed and discussed the presentation and committed to a public role before a

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final design was done. He noted the resolution was forwarded to the Cultural Advisory Board; the Cultural Advisory Board accepted the recommendation of the Public Art Committee to recommend approval of the resolution with the public engagement portion included in it; and stated the item would come before Council for a final vote.

Councilmember Schewel expressed concerns about the project being an advertisement for the Durham Bulls; and not a particular great role for public art.

Mr. Coyle spoke to Councilmember's Schewel concern and explained the process; commented on public input in the design process; and the design coming back before the Council for acceptance.

SUBJECT: PUBLIC HEARING AND RECOMMENDED AGREEMENT FOR ECONOMIC DEVELOPMENT INCENTIVE WITH A&J CAPITAL, CORPORATION

Councilmember Catotti inquired about the lending of funds with Premier Solutions, asking if the funds were not committed, would the project be feasible.

Chris Dickey, Office of Economic Development and Workforce Development, responded that the funds had not yet been committed by Premier; and that it was customary for the City to commit funds first prior to Premier's investment.

Councilmember Catotti stated that if the lender did not invest, then the project would not materialize. Mr. Dickey confirmed this fact.

City Attorney Baker recommended the Council discuss the police headquarters in closed session, return to open session to settle the agenda, and then return to closed session to discuss Developers' Surety.

[CLOSED SESSION]

MOTION by Council member Catotti, seconded by Councilmember Brown, to hold a closed session to discuss Amendment to Contract with Terracon Consultants, Inc. for Additional Investigation and Testing Services for the Police Headquarters Complex Project was approved at 1:44 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Councilmembers Brown, Catotti, Davis, Moffitt and Schewel. Noes: None. Excused Absence: Mayor Bell.

MOTION by Councilmember Catotti, seconded by Councilmember Moffitt, to return to open session was approved at 2:25 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Councilmembers Brown, Catotti, Davis, Moffitt and Schewel. Noes: None. Excused Absence: Mayor Bell.

The following action was taken by the Council in open session:

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**SUBJECT: AMENDMENT TO CONTRACT WITH TERRACON CONSULTANTS, INC.
FOR ADDITIONAL INVESTIGATION AND TESTING SERVICES FOR
THE POLICE HEADQUARTERS COMPLEX PROJECT**

MOTION by Councilmember Moffitt, seconded by Councilmember Catotti, to suspend the rules to take action on the amendment to contract with Terracon was approved at 2:27 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Councilmembers Brown, Catotti, Davis, Moffitt and Schewel. Noes: None. Excused Absence: Mayor Bell.

MOTION by Councilmember Catotti, seconded by Councilmember Moffitt, to authorize the City Manager to execute a contract amendment to the engineering services contract with Terracon Consultants, Inc. in an amount not to exceed \$40,000.00 so that the total contract amount will not exceed \$82,691.00 was approved at 2:27 p.m. by the following vote: Ayes: Mayor Pro-Tem Cole-McFadden and Councilmembers Brown, Catotti, Davis, Moffitt and Schewel. Noes: None. Excused Absence: Mayor Bell.

[SETTLING OF THE AGENDA – FEBRUARY 2, 2015 CITY COUNCIL MEETING]

City Manager Bonfield referenced the following items for the February 2, 2015 City Council meeting agenda: Consent Agenda Items 1 through 5; Item 7; GBA Public Hearing Item 8; and noted the Council had disposed of Items 6, 9 and 10.

MOTION by Councilmember Moffitt, seconded by Councilmember Schewel, to settle the agenda for the February 2, 2015 meeting as stated by City Manager Bonfield was approved at 2:30 p.m. by the following vote: Ayes: Mayor Pro-Tem Cole-McFadden and Councilmembers Brown, Catotti, Davis, Moffitt and Schewel. Noes: None. Excused Absence: Mayor Bell.

[CLOSED SESSION]

MOTION by Councilmember Moffitt, seconded by Councilmember Davis, to go into closed session to consider and give instructions concerning the handling of Developers' Surety and Indemnity Company and Selective Insurance Company of America v. Durham, pursuant to G.S. 143-318.11(a)(3) was approved at 2:31 p.m. by the following vote: Ayes: Mayor Pro-Tempore Cole-McFadden and Councilmembers Brown, Catotti, Davis, Moffitt and Schewel. Noes: None. Excused Absence: Mayor Bell.

MOTION by Councilmember Catotti, seconded by Councilmember Brown, to return to open session was approved at 3:06 p.m. by the following vote: Ayes: Mayor Pro-Tem Cole-McFadden and Councilmembers Brown, Catotti, Davis, Moffitt and Schewel. Noes: None. Excused Absence: Mayor Bell.

No action was taken in open session.

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There being no additional matters to come before the Council, the work session adjourned at 3:10 p.m.

Diana Schreiber, CMC, NCCMC
Deputy City Clerk