

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

Present: Mayor William V. “Bill” Bell, Mayor Pro Tempore Cora Cole-McFadden and Council Members Eddie Davis, Jillian Johnson, Don Moffitt, Charlie Reece and Steve Schewel. Absent: None.

Also present: City Manager Thomas J. Bonfield, City Attorney Patrick Baker and City Clerk D. Ann Gray.

The meeting was called to order by Mayor Pro Tempore Cole-McFadden welcoming all in attendance.

The Mayor Pro Tempore asked if there were any announcements from the Council.

Council Member Moffitt acknowledged the positive customer service provided by the City staff to the citizens.

Mayor Pro Tempore Cole-McFadden asked the City Manager to schedule a “City Employees Day” in the near future.

The Mayor Pro Tempore asked for priority items from the City Manager, City Attorney and City Clerk. There were no priority items.

Mayor Pro Tempore Cole-McFadden announced each item on the printed agenda; and the following items were pulled for further comments and/or discussion.

SUBJECT: HUMAN RELATIONS COMMISSION APPOINTMENT

To appoint a citizen to fill one (1) vacancy on the Human Relations Commission representing a minority female with the term expiring on June 30, 2018.

The Council requested the item be referred back to the City Clerk for re-publicizing.

SUBJECT: DURHAM OPEN SPACE AND TRAILS COMMISSION APPOINTMENT

To appoint a citizen to fill one (1) vacancy on the Durham Open Space and Trails Commission representing At-Large with the term to expire on June 30, 2017.

The Council requested the item be referred back to the City Clerk for re-publicizing.

SUBJECT: ROBIN JACOBS

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To receive comments from Robin Jacobs regarding the 2016 Eno River Association calendars.

Robin Jacobs, representing Eno River Association, addressed the Council thanking them for their support with their sewer issues; noted the cost for total cleanup exceeded \$100,000 and stated they were still in the process of getting their classroom back up and running which was located in the basement; and stated they hoped they would receive a grant which would help them.

Ms. Jacobs distributed the 2016 Eno River Association calendars to the Council and staff; wished them a happy holiday; and stated next year the Eno River Association would be celebrating its 50th anniversary.

The Council thanked Ms. Jacobs for her continued work with the Eno River Association and the 2016 calendar.

SUBJECT: CONTRACT BETWEEN MUSCO SPORTS LIGHTING, LLC AND THE CITY OF DURHAM FOR SPORTS LIGHTING AT C. M. HERNDON ROAD PARK

The staff report noted that C. M. Herndon Park located at 511 Scott King Road, was built and completed in 2009. The park currently includes two natural turf soccer fields, one multi-purpose field, two baseball fields and one newly lit artificial turf soccer field. At the time of construction neither baseball field included lighting. Funding for lighting of the two baseball fields was approved through the City's FY2015-16 CIP. Installation of field lighting at the baseball fields will make the fields suitable for extended little league play and increase programming potential.

The staff recommended that the City Council:

- Approve the purchase and installation of new Musco Light-Structure Green Lighting System without competitive bidding on the basis of the following: (a) performance and price competition for critical elements of the patented lighting technology are not available; (b) The Musco Light-Structure Green Lighting System is available from only one source of supply; and (c) The integral remote monitoring system is compatible with systems already in place in over 37 City of Durham fields and facilities, which helps to standardize citywide remote monitoring systems.
- Authorize the City Manager to enter into a contract with Musco Sports Lighting, LLC, in the amount of \$216,000.00 for the Purchase and Installation of Sports Lighting for the C.M. Herndon Park softball fields which includes (7) new light poles with mounted fixtures, accompanying ballast boxes and providing electrical connections for the remote Control Link monitoring system.

Council Member Reece inquired about the project code; if it was specific for just lighting the ball fields; and asked if the City could obtain a bargain if they had a third field.

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Regarding the project code, Assistant Director of General Services Jina Propst stated it was a specific code that had been assigned to the CIP project; stated there were probably some efficiencies in adding additional ball fields; and stated they did not have anything programmed at the present.

Council Member Schewel referenced making the field more playable for a longer period of time; and spoke in support of the item.

Council Member Davis stated several of his neighbors were excited about the lighting that would be provided.

SUBJECT: LAND LEASE BETWEEN THE CITY OF DURHAM AND DURHAM REGIONAL ASSOCIATION OF REALTORS, INC.

The staff report noted that the Durham Regional Association of Realtors, Inc. proposes to enter into a five (5) year land lease with a five (5) year renewal, for the purpose of vehicle parking at their office headquarters location. The parking area is located on a portion of 4238 University Drive, Durham, NC 27707, Parcel ID # 195741.

The Durham Regional Association of Realtors' existing ten year land lease for this area will expire on January 5, 2016. G. S. 160A-272 requires that leases for terms of more than ten (10) years shall be treated as a sale of property, with the sum of all prior regular and renewal terms counting toward the 10 year limit before competitive procedures are required. The City proposes to lease the property pursuant to the Upset Bid Procedure of G.S. 160A-269.

General Services Department staff had negotiated a proposed new five (5) year lease with 5 year renewal period, subject to the upset bid procedure. If it is the highest responsible bidder, Durham Regional Association of Realtors will pay an initial annual rental of \$3,733.20 upon execution of the lease. The rental will increase by 2% annually for the remainder of the lease term.

The General Services Department recommended the following:

1. Propose to accept a land lease with the offer from the Durham Regional Association of Realtors, Inc. for to lease a portion of the property located at 4238 University Drive, and for the City to then advertise for upset bids pursuant to the Upset Bid Procedure (G.S. 160A-269);
2. Authorize the City Manager to accept the bid from the highest responsible bidder at the conclusion of the upset bid process, pursuant to Section 86.3 of the City Charter;
3. Authorize the City Manager to execute a land lease for the purpose of vehicle parking with Durham Regional Association of Realtors, Inc. the highest responsible bidder for a five (5) year term, with a possible five (5) year renewal option, for a portion of 4238 University Drive, Durham, NC 27707, Parcel ID #195741 (City Tract 1635, Lot 2); and;

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4. Authorize the City Manager to execute a Memorandum of Lease.

Council Member Moffitt inquired how would a lease on an upset bid work.

City Attorney Baker stated that the general statutes allowed the City to lease property for up to ten years through a private negotiation; stated they have done this with the entity once; and now they are returning for a second lease which would extend beyond the ten year lease; and noted the statute required them to go through the process that the City would normally use through the sale of property; he noted the City was not selling the property; but needed to follow the process.

Attorney Dan Milam, representing the Durham Regional Association of Realtors, stated they have had a ten year lease with the City that was very specific with a given dollar amount per year that they pay for parking necessary to allow their facility to function at the corner of University Drive and Martin Luther King, Jr. Parkway. He stated the existing lease had a specific provision envisioning the light rail and referenced a provision stating that the City at any time could provide a 90 day notice to terminate the lease for transportation or right-of-ways needs; for which they understood and accepted. Attorney Milam referenced the previous ten year lease; and voiced concern with the proposal being a five-year lease with a five-year option.

Attorney Milam asked that the lease be consistent with what had been done in the first agreement; referenced a phrase included in the new proposed lease which was not in the old lease; and stated if the lease was consistent as previously, they would not have to come back every five years renegotiating something they have done in good faith with a ten-year period.

Mayor Pro Tempore Cole-McFadden asked City Attorney Baker what was his recommendation.

City Attorney Baker stated he was in support of the recommendation provided by the administration as printed; the five year plus the five year renewable.

City Manager Bonfield referenced documentation received from Ms. Sheila Willis, CEO of Durham Regional Association of Realtors, indicating agreement with the recommendation; and stated if the administration would have known in advance that the realtors were not in agreement they would not have placed the item on the agenda.

City Manager Bonfield requested that the item be referred back to the administration.

Note: See additional discussion on the item later in the meeting.

**SUBJECT: JANITORIAL SERVICES CONTRACT FOR THE DURHAM ARMORY –
A & B CLEANING SERVICES, INC.**

The staff report noted that the General Services Department issued an RFP for janitorial services at the Durham Armory in early October. Five proposals were received by the October 30, 2015

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deadline. All five were found to be complete; the proposals were rated and also found to be compliant with EOE requirements.

The administration recommended that City Council authorize the City Manager to execute a three year contract with A & B Cleaning Services, Inc. for the cleaning of the Durham Armory at an approximate annual cost of \$30,000 per year.

At the request of Council Member Johnson, Gina Morais, of the Parks & Recreation Department, provided an overview of the process used to outsource a janitorial services contract vs. the City providing the services.

Council Member Johnson referenced the janitorial services for the public schools whereby the contractor went bankrupt and did not compensate the workers. Council Member Johnson wanted to make certain that the City was outsourcing only when it needed to occur to avoid situations like the public schools faced.

Council Member Moffitt inquired about the workforce statistics for the A & B Cleaning Service.

Annette Smith, of the Parks & Recreation Department, stated the workforce statistics were inadvertently omitted and were provided in the agenda packet on yesterday.

Council Member Schewel thanked the administration for providing the information on the workforce statistics and the background check procedure for contractors.

Mayor Pro Tempore Cole-McFadden referenced that A & B Cleaning Services was from Greenville, North Carolina; and inquired if any Durham companies responded.

Gina Morais stated they did receive a local response, but they were not the selected bidder. She stated they did not score as well as the company selected.

Mayor Pro Tempore Cole-McFadden stated she would like to know what the problem was with the local bidder in order for the local company to know and understand what needed to be done to be considered for future contracts.

The Parks and Recreation staff referenced the low score of the local bidder which pertained to past performance at the Durham Armory.

**SUBJECT: CARVER STREET EXTENSION CONTRACT ST-257 AWARD –
TRIANGLE GRADING & PAVING, INC.**

The staff report indicated that on September 10, 2015 bids were opened for Contract ST-257 extension construction. The project will construct a new extension to Carver Street from Danube Lane to the intersection of Old Oxford Highway and Hamlin Road. Improvements will also be made at each intersection. The lowest responsive bid was submitted by Triangle Grading & Paving, Inc. of Burlington, North Carolina.

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The administration recommended that the City Council adopt an Ordinance amending the General Capital Improvements Project Ordinance, Fiscal Year 2015-16, as amended, the same being Ordinance #14778; authorize the City Manager to execute a contract for Carver Street Extension Contract ST-257 with Triangle Grading & Paving, in the amount of \$5,869,345.49; establish a contingency fund the amount of \$586,934.55 (10%); and authorize change orders to the contract such that the total project cost does not exceed \$6,456,280.04.

Council Member Reece referenced the City not doing business with Triangle Paving & Grading since 2011; commented on the two workers employed by Triangle Paving & Grading that were killed in a June 2011 accident on the job; and inquired why the City was recommending approval of a contract with Triangle Paving & Grading.

Tasha Johnson, of the Public Works Department, stated that Triangle Paving & Grading was the lowest responsible bidder;

Council Member Reece inquired about other criteria the City used to determine doing business with a company other than submitting the lowest bid.

Ms. Johnson replied stated there was a risk management process whereby the company is vetted.

Glenn LeGrande, Risk Manager, referenced the safety questionnaire that the bidders complete; stated that Triangle Paving & Grading did complete the safety questionnaire which he reviewed; noted the company did provide detail regarding the changes they had made since 2011; stated they did receive references from other municipalities; counties; including NCDOT where Triangle Paving & Grading had done business within the past 18 months; stated the references came back with high marks and there were no safety issues with Triangle Paving. Mr. LeGrande stated from a risk management standpoint, Triangle Paving had provided everything which made him feel comfortable.

Council Member Reece inquired about the changes made by Triangle Paving.

Glenn LeGrande stated the company had hired a safety director; put in place a detailed comprehensive safety program which they did not have in 2011; and stated their incidence rate since then had been equal to or lower than the industry standard.

Council Member Reece inquired if the references were provided by Triangle Paving & Grading.

Glenn LeGrande replied yes; and stated the references were from municipalities; counties for which the company did business recently.

Tasha Johnson also commented on the City reaching out to people who had also done work with the company; and stated they received similar positive responses.

Council Member Reece asked if the staff contacted the N. C. Department of Labor to determine if any additional findings had been levied against Triangle Paving since 2011.

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Glenn LeGrande replied they did not contact OSHA or the Department of Labor; and stated that information could be obtained quickly. Mr. LeGrande noted Risk Management's purview was with safety of the work site; how the company operated from a safety standpoint.

Public Works Director Marvin Williams stated as part of the City's bid process, they do not normally ask contractors about the status of their workers; stated they look at the quality of the work; the submittal price; responsive or responsible in all aspects of the proposed contract. He stated as far as the legal status of the employees that is something they do not question.

Council Member Reece stated he had a real with problem with Triangle Paving & Grading; stated they were cited by the Department of Labor four years ago; noted last summer the company pled guilty in federal court to violating federal laws that related to the hiring of undocumented workers and referenced the \$1.5 million penalty they had to pay; stated he had read accounts from people in the immigrant rights community in North Carolina noting the reason why companies like Triangle Paving submit routinely the lowest bid for public work projects was because they hire a number of undocumented workers and do not pay them appropriately. He stated he had serious concerns about the vendor; and stated he appreciated the thorough job done by the City staff within the realm that they were authorized to review.

Council Member Schewel suggested the administration check with the Department of Labor; responding to the issues raised by Council Member Reece prior to the January 4th City Council Meeting.

City Manager Bonfield asked if it was the desire to have more information on the settlement.

Council Member Schewel stated he was interested in hearing more about the settlement and the undocumented workers issue.

Mayor Bell stated he appreciated Council Member Reece raising the questions and stated the staff needed to do all it could to respond to them.

City Manager Bonfield suggested placing the item on the General Business Agenda for the January 4th meeting; and if the information requested was not available at that time, Council could make a decision or ask staff to pursue something different at that time.

At the request of Council Member Davis, City Attorney Baker commented on the E-Verify clause which was a part of city contracts.

**SUBJECT: COMMERCIAL METER REPLACEMENT PROJECT PHASE III (MR-9) –
AWARD OF CONSTRUCTION TO VANGUARD UTILITY SERVICE, INC.**

The staff report indicated that in August 2015, the Department of Water Management issued an invitation to bid on the replacement of approximately 300 commercial water meters throughout the City's water service area. The proposed project consisted of upgrading manual-read

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commercial water meters to new remote-read meters and upgrading meter assemblies to current City standards.

The Department of Water Management recommended that the City Council authorize the City Manager to execute a contract with Vanguard Utility Service, Inc. for MR-9 commercial meter replacement project in an amount not to exceed \$2,140,109.34; and establish a contingency fund for the contract in an amount not to exceed \$213,890.66; and authorize the City Manager to negotiate change orders for the contract provided that the total project cost does not exceed \$2,354,000.00.

Water Management Director Don Greeley referenced the cost of the commercial meters; and stated in addition, they would be replacing meter vaults.

Regarding the MWBE requirements, Deborah Giles, EO/EA Director, commented on the provision in the ordinance that permitted the contract award even when a good faith effort was not demonstrated; referenced the proposed contract not meeting good faith effort; the appeal process held; and the information brought forth by the company during the appeal which demonstrated they could meet the goals.

At this time, City Clerk Gray announced that Emanuel Kearney received 5 votes; Tony Tosh received 6 votes for appointment to the Durham Homeless Services Advisory Committee; and Pernell W. Canaday received 7 votes for appointment to the Passenger Vehicle for Hire Commission.

SUBJECT: LAND LEASE BETWEEN THE CITY OF DURHAM AND DURHAM REGIONAL ASSOCIATION OF REALTORS, INC.

City Attorney Baker stated due to recent consultation with Attorney Milam, the lease agreement between the City of Durham and Durham Regional Association of Realtors could remain on the agenda as printed.

Attorney Dan Milam confirmed that he was in agreement with City Attorney Baker's comments.

Settling the Agenda – January 4, 2016 City Council Meeting

City Manager Bonfield announced the following items for the January 4, 2016 City Council Agenda meeting: Consent Agenda Items 1; 4 through 14; 16 and 17; and General Business Agenda Item 15. He stated that Items 2 and 3 were referred back to the City Clerk's Office.

MOTION by Council Member Schewel seconded by Council Member Moffitt to settle the agenda for the January 4, 2016 City Council Meeting as stated by the City Manager was approved at 1:50 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Davis, Johnson, Moffitt, Reece and Schewel. Noes: None. Absent: None.

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Happy Holidays and best wishes were extended by the Council Members.

There being no further business to come before the Council, the meeting was adjourned at 1:50 p.m.

D. Ann Gray, MMC, NCCMC
City Clerk