

LAW AND FINANCE MEETING

Wednesday, January 9, 2008

1:00 P.M.

The Law and Finance Committee met on Wednesday, January 9, 2008, 1:00 P.M., in the Council Chambers at City Hall. The following people were present:

Present:

Law and Finance Committee:

Mayor Cornelia P. Olive

Mayor Pro Tem Joseph E. Martin

Council Member Charles Taylor

Council Member Steve Brewer

Council Member Mike Stone.

Council Member James G. Williams

Council Member Walter H. McNeil, Jr.

Council Member Linwood S. Mann, Sr.

City Manager Hal Hegwer

City Attorney Susan C. Patterson

City Clerk Bonnie D. White

City Staff

Consider Comments by McGladrey Pullen Regarding FYE June 30, 2007. Audit - (Exhibit A)

Financial Services Director Melissa Cardinali introduced John Gilberto from McGladrey Pullen, who is a partner in the company. Mr. Gilberto explained there are three types of opinions, and the only one you would ever want to have is an unqualified opinion. He summarized the audit procedures and said it was a very clean audit this year.

Mr. Gilberto explained that a new accounting standard came out last year on communicating with the Council on control deficiencies. He explained the three levels of control issues listed in Exhibit A and found only two control deficiencies in their audit. The first deficiency being the evaluation method of contributed capital for things that were coming into the city. They recommended adopting a policy to assist employees on valuing contributed assets. The policy should include a description of the types of assets in which the policy applies, the valuation method and related information used to value the asset, and how often these assets need to be valued. They did not notice any issue with evaluations that were done but suggested strengthening the policies. The second deficiency was the Powell Bill for the roads. They noticed that the estimated hours used to maintain the labor rates were old hours and they recommended those hours used and the dollars used for the allocation of that money be updated on a yearly basis for the current rates of labor that the city has. This did not affect the Powell Bill, because the city has spent so much more money than it is reimbursed by the Powell Bill, that there was no effect on the grant itself.

Financial Services Director Melissa Cardinali advised that steps have been taken to correct the two items pointed out, and they will be implemented as of our next fiscal report at June 30, 2008.

Consider Report on Recent IRS Audit

Financial Services Director Melissa Cardinali advised that this item and the next item - Ordinance Amending the Annual Operating Budget of the City of Sanford FY 2007-2008 be combined. She explained that in October 2007, the City was notified that the IRS would be conducting a routine audit for tax year 2005. Since the IRS is now located in an office in Durham, North Carolina, this audit is something that all local governments across the state are experiencing and will now continue to experience on a semi-rotating basis. She stated that overall, the city received extremely positive comments from the IRS auditor especially staffs handling of potential taxable situations.

Mrs. Cardinali gave a summary of the audit results. She explained that the city has several employees who drive city vehicles home since they are on-call for after hour's emergencies. Since these employees are using city vehicles and not their own gas, oil, or maintaining their own vehicle, the IRS considers this to be a taxable benefit. Because the city did not tax the use of these vehicles, the tax is now owed in the amount of \$2,010.74. She explained that the ordinance amending the annual operating budget (listed in the agenda) would allow staff to make that tax payment. Staff will correct anything that needs to be corrected going forward.

Mrs. Cardinali advised that staff would like to make the recommendation that we will have to issue amended W2's for the effected employees; they are going to have to amend their tax returns for the year in question as well as for year 2006. She stated that staff recommends that the city pay for the preparation of those amended returns and any tax penalties involved if there are any. She said that she did not have a budget amendment to that effect because she has no idea what the dollar amount would be. Mrs. Cardinali felt it would be a minimal impact and would like permission to go forward with this request. She asked for the consensus of the council for permission to pay for the preparation of the employees' amended tax returns and any tax penalties involved, if there are any.

Mrs. Cardinali explained that during the audit they discovered that meals paid by employees, council members, and anyone doing business with the city, are taxable if you are not staying overnight. Therefore, the travel policy has been amended to reflect that no meals will be reimbursed without overnight stay. In addition, all the boards and commissions members that are paid will have to be paid through payroll. The only boards and commissions that are not paid through the payroll system are the Board of Adjustment, Planning Board and those members will now receive a payroll check versus a vendor check.

Mrs. Cardinali also stated that the use of city-issued cell phones is a potential taxable situation. While we have a policy regarding the use of city equipment in place, staff is implementing a cell phone policy that clearly defines the acceptable use and gives the employees an option of receiving an allowance or using a city phone. Mrs. Cardinali said that after everything the IRS went through, she was very pleased with the results and the minimal adjustments and taxes that are owed.

Council Member Stone asked when is the last time the city's policies were updated regarding travel and the cars. Mrs. Cardinali replied that they are updated continually; every time staff sees that a change or amendment is needed, they update it. Mr. Stone said that currently, we

are charging an employee \$3 per day for a car and with that circumstance, it is a good time to review our policy of where we are at versus what reality should be because there is no one that would not take a car for \$3 per day; however, it is for emergency personnel only. Mrs. Cardinali replied that the \$3 is set by the IRS and we have no control over that rate. City Manager Hal Hegwer stated they are not paying \$3 per day; it is the benefit that is incurred upon the employee that it is a \$3 per day benefit. Mrs. Cardinali explained that the \$3 is broken down as \$1.50 to work and \$1.50 from work; it is considered a \$3 per day value and that value is what is taxed. Mr. Hegwer stated that the only employees that take vehicles home are the ones that are on-call for emergency situations. Mrs. Cardinali advised that there are about six to seven people who drive vehicles home that are non-emergency vehicles, such as non-fire and non-police vehicles. Mr. Hegwer advised that it is a benefit for the city because the employee can leave from their home and go directly to the scene.

Council Member Steve Brewer asked Mrs. Cardinali how this affected the Council as far as in-town meals. Mrs. Cardinali replied that it applies to council members in the same way. Mr. Brewer stated that the mayor has to meet people a couple of times during the week and maybe we need to review our policies on expense accounts and set aside some monies regarding cell phones, and not only the city employees who are on-call, but for the mayor and the mayor pro tem have duties they have to perform also. Mrs. Cardinali replied that she felt that in the future, organizations are going to push to have the registration fee to include the meal so you do not have to pay for the meal. Mayor Pro Tem Martin echoed Mr. Brewer's feelings regarding an expense account for Mayor Olive for her meetings in town.

Council Member Charles Taylor asked about the possibility of getting the proposed cell phone policy that will be introduced to the employees and the existing policies that may exist regarding automobiles. City Manager Hegwer clarified if Mr. Taylor was requesting a copy of the city's internal policy we have now on cell phones and the proposed policy, and the vehicle policy regarding who is driving vehicles home. Mr. Taylor replied yes, and travel as a whole as far as reimbursements are concerned.

Mrs. Cardinali asked for a consensus of Council if they agree with the city paying for the preparation of the amended returns and any tax owed, including penalties involved, if there are any. After a roll call survey of Council, Mayor Olive said it was the consensus of Council to do this.

Consider Ordinance Amending the Annual Operating Budget of the City of Sanford FY 2007-2008 - (Exhibit B)

Financial Services Director Melissa Cardinali advised that the ordinance amends the budget to pay for the FICA expense for IRS Audit of 2005.

Consider Amendment to System Plast Contract - (Exhibit C)

Lee County Economic Director Bob Heuts explained that the Lee County Economic Development Corporation voted unanimously to recommend and request amendments to the incentive agreement for System Plast/Solus Company. In 2006, the City Council and Lee County went through a public hearing process and voted to enter into an agreement with System Plast for incentives for a \$3.8 million project they were proposing at that time. The location at

that time was off of Wilson Road. As System Plast started the process of retrofitting and adding to that building, two Parkdale buildings became available in the county off of Boone Trail Road. It has taken a long time for this company. The Lee County Economic Development Corporation was scheduled to make its first payment to System Plast on January 15, 2008, for improvements to the property at Wilson Road; however, the location has changed. They are asking to amend the contract from Wilson Road to Boone Trail Road; the threshold for completion of the project is amended from January 1, 2007, to January 1, 2009; the payments dates have been amended from January 15, 2008, to January 15, 2010. He stated that it pushes the date up a couple of years from the original contract.

Mr. Heuts explained that this contract is no different than the first contract. They look at what is actually going on the books and pay accordingly. If the project does not come up to the \$3.8 million, then they will pay less; however, if it exceeds this amount, they will not exceed the payment.

Consider Request from Bost Distributing Company to Delay the Requirement to Petition for Annexation - (Exhibit D)

City Manager Hal Hegwer advised that the City Council has received a request from Bost Distributing Company to consider delaying the requirement that they seek annexation in order to connect to city utilities. When property owners reside outside the city limits and request water or sewer services, the ordinance requires that staff investigate the economics of the annexation and forward this issue to City Council for review to determine if it is in the best interest of the City to annex this property. It is important to note that Bost Distributing Company is seeking a delay, but commits to requesting annexation in the future. He is spending approximately \$110,000 to extend the waterline to his property. There are various other properties that do benefit by this extension. They voluntarily participated in the Purgatory Creek sewer line outfall spending approximately \$90,000. The Purgatory Creek sewer line project is very beneficial to the City. There were lift stations that were eliminated as part of this project that would have been the City's responsibility to maintain in the future and this will save the City money. They are a victim of the drought and have installed a temporary waterline at this point to provide service. They employ approximately eighty employees, and the tax revenue that would be generated if this property were located inside the city would be approximately \$2,300. If they were located outside, they would pay water rates that are two times the city's water rate and a sewer rate of approximately one and one-half times the city's sewer rate.

Mr. Hegwer explained that staff's position on this matter would be that annexation would be favorable to the City. We would not be in favor of the annexation being postponed indefinitely and request, if a delay is considered by this Council, that a specific time frame for subsequent petition into the city limits be considered as part of the delay. Mayor Olive stated that Mr. Hegwer said there was a savings to the city and asked what kind of savings was there? Mr. Hegwer replied there were two lift stations being proposed for that property if gravity sewer was not installed. It would cost the City \$30,000 to \$35,000 per lift station per year to maintain. Mr. Hegwer added that from being involved in engineering over the years, this was a good project and it certainly benefited the City. There was a lot of commitment out of several property owners and Bost Distributing was one of the participants. He said that gravity sewer is a much better way to serve because you do not have force mains, odor issues in the future, and lift stations to

maintain. Albert Adcock, Bost Distributing, Terry Slate, and the City were the participants involved with contributing toward the gravity sewer known as Purgatory Creek Sewer Outfall Project.

Mayor Pro Tern Martin asked if we have done this before. Mr. Hegwer replied that we have done this before. Pioneer Cotton Mills asked for a four-year delay in petitioning for annexation in 1993 and it was granted.

Jim Bost, owner of Bost Distributing Company, stated that he agreed to participate in the Purgatory Creek project because he realized the considerable expense to the City to maintain lift stations and that it is good for everybody involved. He informed Council that Bost Distributing generates their own water, and treats and disposes of their own water just as the City does. They fall under the Department of Environmental Health regulations for the water and the sewer. He was under the process of upgrading his facility to generate more waste and water when he was approached with the Purgatory Creek project, because he knew down the road he would need it. At that time when he agreed to participate, he ran out of water. It will cost him approximately \$120,000 by the time he connects to the water line he is having extended. He drilled two additional wells prior to requesting city water. The largest use of his water is non-contact cooling water; when the cans are cooked in the cookers, the first thing they do is flood the cookers to cool the cans down so they won't explode when they come out. The water they use to do this comes out of the wells, and then it goes to their wastewater treatment facility for processing and on out into the creek. There are two separate systems in the plant; one is for processing and one is for cooking. The processing water is the water that goes into the product and is used for general cleanup. They do not know what the water usage will be at this time. They anticipate using approximately 3,500 gallons of water.

Mr. Bost requested to delay the voluntary annexation petition for seven years. Mayor Olive asked Mr. Bost what would the additional cost be to him if were annexed. Mr. Hegwer replied approximately \$2,300 per year.

Public Works Director Larry Thomas explained the savings for the Purgatory Creek project. He advised that two lift stations would have to be constructed for the project if gravity sewer was not run; therefore, saving the City \$70,000 each year in maintenance of the lift stations. The way they would get rid of those lift stations in the future if we decided it was a problem, is to run the line that was put in from Mr. Albert Adcock's property down to the Big Buffalo Creek. That would cost \$1 million, so in the future we would have to spend \$1 million to eliminate the lift stations. So, what staff decided to do was if Mr. Adcock, Mr. Bost, and Mr. Slate would put in the money that it would cost them to build the lift stations and the City participated, then we could get the million dollar sewer line constructed now. The City contributed approximately \$250,000, one-fourth of the cost to run the million dollar sewer line. This is a win-win situation for everybody. There are a lot of other benefits for the area because the whole area can be served with sewer if they choose to in the future. Mr. Thomas added that if the City chose to annex this area in the future, the City would be required to install that line. Mr. Thomas said there is an acreage fee for people who would like to connect on to sewer that were not part of the original deal.

Council Member Mike Stone raised the question about allowing someone to receive water and sewer services without being annexed. He said he has had homebuilders to ask what they have to do to get water and sewer. Mr. Thomas explained that the Council approved this policy that if you tie onto water and sewer, you would be required to be annex. He said it came about because there were places where there were individual lots in a subdivision that wanted to be annexed and the subdivision was not. You have a problem with serving individual lots; you would not know who was annexed. Council determined that they were not going to annex any lot that wanted to connect to water and sewer. Council wanted staff to look at it and if they thought it was reasonable for us to annex them and the City would benefit, then bring it to Council for its consideration. Council Member Brewer said commercial is a different item and he used Wyeth for an example and the money the City loses because they are not in the city; however, they use a lot of water and sewer. Council Member McNeil added that if the lift stations were constructed, the City would be paying \$70,000 each year for maintenance forever.

Mr. Bost said he was requesting a seven year delay before he was annexed. Mr. Bost stated that he was told that he could not tie onto the line until he was annexed and that is the reason for the urgency. Mr. Bost said that he has been providing water to J & G Machinery from his system for 22 years and he does not charge them for water. They are out of water also and they are willing to participate in paying for the water line. J & G Machinery was approached that they have to be annexed also. J & G Machinery cannot get the sewer services because they have to cross the Patterson property. Mr. Bost stated that he is representing J & G Machinery also and he asked they be excluded from annexation for seven years also. Council Members discussed the issue at length. Mr. Hegwer asked for direction from Council because staff needs to prepare an agreement for the delay. Mayor Pro Tern Martin said he was fine with a four-year delay and agreed with Mr. Stone that we need to adopt a policy for consistency purposes. Mr. Martin added that Mr. Bost has made a strong commitment to the City to help with the extension of the sewer line. Mr. Martin felt that seven years was too long. Mr. McNeil said we already have a policy. Wyeth is served with city water and sewer, and they are not in the city limits. Mr. Bost is running a business and he is asking for the same. Mr. Hegwer said this is a gray area. Council Member Williams said City Manager Hegwer is suggesting a five-year delay and Mr. Bost is requesting seven years; he stated that we need to meet in the middle. Mr. Martin, Mr. Williams, Mr. Brewer, and Mr. McNeil agreed to go five years for delaying annexation. Mr. Bost agreed to five years.

Mr. Bost thanked Public Works Director Larry Thomas and City Engineer Vic Czar for their help in getting Mr. Bost water across U. S. Highway 421. Bost Distributing was down for only 24 hours. Mayor Pro Tern Martin thanked Mr. Bost for his participation in the Purgatory Creek sewer project. Mr. Bost said that J. & G. Machinery will agree to five years also.

City Manager to Address Six-Month Observation of Operations

City Manager Hal Hegwer said that after serving six months as city manager, he would like to address some concerns. He stated that his role and staffs role is to provide reliable information, independent judgment, and professional advice so that this Council has the best information to make the decisions regarding the safety, health, and welfare of the citizens of this City. He continued that it is imperative that they make these decisions without undue influence, or political interference. The recommendations, the discretion, and advice that this staff gives Council have definitively shaped the City into what it is today. He stated that we have a very

professional organization and qualified staff who take their jobs seriously. The City is in good financial shape with vast infrastructure in place, access to abundant water, growing businesses and industries, and a vibrant, beautiful downtown. This did not happen overnight; it was through hard work and dedication of a qualified staff who have researched, studied, and made good recommendations that the Council followed. He said it has been a team work approach between staff and Council which he feels fosters good communication, which leads to good decisions being made ultimately to serve the citizens of this City. Mr. Hegwer stated that he has witnessed recently, through his six-month tenure, that when staff makes recommendations or seeks a decision from Council, sometimes they are simply ignored and criticized. Also, sometimes it is implied that decisions staff makes that involve any judgment or discretion, that we are incapable of doing so because we might act inappropriately, or unethically. This type of atmosphere is not conducive to a healthy exchange of information. He felt we are in jeopardy of losing valuable information from being disseminated due to this type of atmosphere. Mr. Hegwer felt it is important for Council to remember that Council has invested greatly in the resources in the training and educating the workforce so that we have competent advice.

City Manager Hegwer stated that he felt that staff and he should be questioned about recommendations so that there is a transparent, responsive, and accountable government to all the citizens and it should be done in a professional manner. Mr. Hegwer said he plans to intervene whenever necessary when he feels that staff is treated in an unprofessional manner. He continued that staff is responsible to him and he is responsible to this Council. Mr. Hegwer advised that if Council has an issue with staff, they should communicate to him and he will address it with staff. He is charged to do this by the City Charter and in a Council/Manager form of government. He asked that we all consider our perceptions carefully before we jump to conclusions. There are many perceptions that abound in this City every day about many things and we cannot let those perceptions drive our decisions. Mr. Hegwer stated that we are here to make the best decisions that are in the best interest of all the citizens. He wanted Council to think about all the meetings in the last six months and if Council felt it was in the best interest of the City. He said these are his observations and none of what he is saying is directed to anyone.

Council Member Mann told Mr. Hegwer that he is right on track, and he has his cooperation. It is something that needed to be said and Council needs to analyze what he has just said. Mayor Olive stated that perhaps Council should have copies of all his comments.

Consider Closeout of Revitalization Strategies Program Year 5 (06-C-1559) - (Exhibit E)
Planner II Karen Kennedy advised that we are at the end of the five-year revitalization strategies project that was surrounding the W. B. Wicker School. It was a five-year project initiated in 2002 for a total of \$1,750,000. A public hearing will be held Tuesday night which is part of the grant requirements, and Patt Crissman from The Wooten Company will be discussing what was performed in Year 5. As part of this, the mayor needs authorization to execute the paperwork after the public hearing. It was one of ten in the state and of that ten, only five have turned out well. Mayor Olive thanked Mrs. Kennedy for a job well done.

Consider Ordinance Amending the Annual Operating Budget of the City of Sanford FY 2007. 2008 - (Exhibit F)

City Manager Hal Hegwer advised that the budget ordinance amendment is for the purchase of a portable radar unit. He said that the Police Department has received considerable requests about speeding and felt it would be a valuable tool to provide for law enforcement. One of the benefits of this piece of equipment is that it does not tie up officers and it can collect radar information. The data can be used to determine whenever people are exceeding the speed limit in the area and that can be used to determine if enforcement in the area is necessary. It is a deterrent for speed. It can be moved around and would be a good asset for the community. The total cost is \$4,815.

Other Business

Council Member Charles Taylor thanked Karen Kennedy for the work on the W. B. School project. He said they have not gotten an update on the New Orleans trip and four of our officials attend the trip in November. He would like to hear some of the ideas from the trip. Mr. Taylor stated that he would like to know about the status of the noise ordinance. Mr. Taylor advised Scott Knuth from the Fire Department has been sent to the Middle East and asked to keep him in everyone's' thoughts and prayers, along with others that have been sent.

Council Member Steve Brewer explained that a lot of new subdivisions are coming on line and he was talking to Operations Manager Tim Shaw about street lighting. He has had a lot of requests about street lighting since improvements were done on Carbonton Road. Mr. Brewer said now is the time to make street lighting improvements in subdivisions while they are in the process. The difference in making the improvements from the standard process is \$2,000. Tax revenue generated for city taxes in that neighborhood will be about \$80,000 each year. He said that is a small amount of money to pay to do it right in those neighborhoods while they are trying to enhance the others. They can talk about how to enhance other neighborhoods at the retreat, but we need to look at the policy now while they are in the designing and building stage so they know which way to go now. It will cost us \$180 for every pole if they wait; if we do it now it will not cost us anything.

Council Member Mike Stone said he wanted to give some update on some information; several months ago City Council and staff looked at the garbage pickup. He said the more he looked into this trash pickup he wanted to make the information available that what controls the trash pickup price is who owns the transfer station. In our bidding, that is something staff needs to look at; only 30 percent that goes through the transfer station belongs to the City of Sanford. Who owns the transfer station is who is going to dictate who picks the trash up. He said we are not bidding out the whole deal. Mr. Stone wanted to make everyone aware of this information and that it is the transfer station and trash pick up in the City as a whole is what you need to look at bidding. He advised that only three people have picked the City's trash up - the City, American Refuse and American Refuse was bought out by our current Waste Management. It is going to be hard for any company to come in and give us a bid to beat anybody's price if they are not holding the golden shovel.

Mayor Pro Tem Joe Martin said that he was proud to announce that the ABC Board will be giving back to the City and to the County \$20,000 to \$25,000 to be used on projects such as

the greenway, etc. Mr. Martin told Mr. Hegwer that he offers a new and exciting view to this City and where they need to go. He has worked hard and extremely well with the public and staff. He said that he felt everyone on the Council has the best interest of the City at heart but he feels that they need to channel their comments to where they are constructive and positive. Mr. Martin felt Mr. Hegwer's comments were very well spoken.

Mayor Olive asked Community Development Director Bob Bridwell to speak on the grant they are finishing up Downtown. Bob Bridwell said they are finishing up a project that they have been working on in Downtown - the crossroads at Depot Park, which was a multi-year project. When they got to the end of the project, they saved some money. One of the ways they saved money was where Charlotte A venue crossed the railroad tracks. He said they were unable to get the railroad to talk with us and come to an agreement on how they wanted to do this so this is part of the money they saved. They are trying to figure out how to use the money because they do not want to give that money back. Mr. Bridwell said that Mayor Olive advised him yesterday that she had been in discussion with the railroad representatives and that we might have a possibility of revisiting that crossing. Mayor Olive reported that she was told today that in a couple of weeks, A & W should have their whole plan for how they are going to redo the Charlotte Avenue, Wicker Street, and McIver Street crossings. CSX is going to begin to redo its share in March, so the whole railroad crossing is going to be changed. It was a concern to her because there are three restaurants that are suffering because the trains have been stopping there at the noon hour. They are going to move their switching station so that it will not be stopping and blocking anything. They did want some financial help from the City and they are turning to the Department of Transportation for help also to accomplish this project. She stated that they are going to take some of the side tracks out, so it will eliminate any temptation to do any switching there. Near the Depot, some of the side tracks will be removed. They are going to remove four of the tracks on Wicker Street, three on McIver Street, and three on Charlotte Avenue. They are going to do this in two segments and they assured her they would be through by March.

City Manager Hal Hegwer said in response to Mr. Taylor's request, the noise ordinance is a work in progress and hope to move forward with it. Regarding Mr. Stone's comments about the trash pickup, Mr. Hegwer replied that Mr. Stone is correct. Bids are going out for garbage pickup on January 22. A full report will be given at that time.

Adjournment

Council Member Mike Stone made the motion to adjourn. Seconded by Council Member James Williams, the motion carried unanimously.

Respectfully submitted,

Cornelia P. Olive, Mayor

Bonnie D. White, City Clerk