

MINUTES OF MEETING OF THE  
CITY COUNCIL OF THE CITY OF SANFORD  
SANFORD, NORTH CAROLINA

The City Council met at the Sanford Municipal Center, 225 E. Weatherspoon Street, on Tuesday, October 7, 2008, at 7:00 P.M. The following people were present:

Mayor Cornelia P. Olive	Council Member Linwood S. Mann, Sr.
Mayor Pro Tem Joseph Martin	Council Member James G. Williams
Council Member Charles Taylor	Council Member Walter H. McNeil, Jr.
Council Member Mike Stone	Council Member Steve Brewer
City Manager Hal Hegwer	City Attorney Susan C. Patterson
City Clerk Bonnie D. White	

Mayor Olive called the meeting to order. Council Member Mike Stone delivered the invocation.

**APPROVAL OF AGENDA**

Council Member Steve Brewer requested to move Item F (Approval of Ordinance Amending the Annual Operating Budget of the City of Sanford FY 2008-2009 – Police) from the Consent Agenda to the Regular Agenda as Item 4. Council Member Stone requested to move Items E (Approval of Ordinance Amending the Annual Operating Budget of the City of Sanford FY 2008-2009 – Public Works Administration) and H (Approval of Resolution Exempting the City of Sanford from the Mini Brooks Act for the Clear Well Rehabilitation and Upgrade Project) from the Consent Agenda to the Regular Agenda as Items 5 and 6. City Manager Hal Hegwer requested to add a Brownfield Application Agreement to the regular agenda and to add a closed session for attorney-client privilege.

Council Member Mike Stone made the motion to approve the amended agenda; seconded by Council Member Steve Brewer, the motion passed unanimously.

**CONSENT AGENDA**

Approval of September 10, 2008 Law and Finance Committee Meeting Minutes—(Filed in the City Clerk’s Office)

Approval of September 16, 2008 City Council Minutes – (Filed in Minute Book No. 70)

Approval of New Taxicab Name and Color- (Exhibit A)

Approval was given to Lois Fleming for a new taxi which will be blue with black and white lettering. The new cab, Pronto Cab, along with American Yellow Cab and Service Cab, will operate under Fleming Transportation Inc.

Approval of Ordinance Amending the Annual Operating Budget of the City of Sanford FY 2008-2009 (Police) - (Exhibit B)

Ordinance was approved amending the Annual Operating Budget of the City of Sanford FY 2008-2009 (Police) to appropriate \$5,600 received from the insurance company for a wrecked vehicle.

Approval of Ordinance Amending the Annual Operating Budget of the City of Sanford FY 2008-2009 (Public Works Administration)

This item was moved to the Regular Agenda.

Approval of Ordinance Amending the Annual Operating Budget of the City of Sanford FY 2008-2009 (Old Whitin Roberts Building)

This item was moved to the Regular Agenda.

Approval of Ordinance Amending the Annual Operating Budget of the City of Sanford FY 2008-2009 (Public Building) - (Exhibit C)

An Ordinance Amending the Annual Operating Budget of the City of Sanford FY 2008-2009 (Public Building) was approved to budget proceeds of \$9.723 received from our insurance company for a public works repeater radio that was struck by lightning.

Approval of Resolution Exempting the City of Sanford from the Mini Brooks Act for the Clear Well Rehabilitation and Upgrade Project

This item was moved to the Regular Agenda.

Approval of Policies, Procedures, Plans, and Resolutions for the Capacity Building Community Development Block Grant Project Grant #07-C-1743- (Exhibit D)

Policies, Procedures, Plans, and Resolutions for the Capacity Building Community Development Block Grant Project Grant #07-C-1743 were approved.

Approval of Resolution To Temporarily Close a Portion of Chatham Street in Support of Artoberfest- (Exhibit E)

A Resolution To Temporarily Close a Portion of Chatham Street in Support of Artoberfest was approved. The resolution closes Chatham Street between Charlotte Avenue and McIver Street between the hours of 7:00 A.M. – 9:00 P.M. on Saturday, October 18, in support of the Second Annual Artoberfest.

Approval of Resolution Designating the City Manager as the Person To Hold a Hearing Under the Debt Setoff Program- (Exhibit F)

A Resolution designating the City Manager as the Person To Hold a Hearing Under the Debt Setoff Program was approved.

Approval of Resolution Authorizing the Lee County Ordinance Restricting the Use of Smoking of Tobacco Products in County Government Buildings and in County Owned Vehicles to be Applicable Within the City of Sanford- (Exhibit G)

A Resolution Authorizing the Lee County Ordinance Restricting the Use of Smoking of Tobacco Products in County Government Buildings and in County Owned Vehicles to be Applicable Within the City of Sanford was approved.

Approval of Ordinance Directing the Code Enforcement Officer To Demolish the Residential Structure Located at 329 School Street and Award of Contract to Elvis Faircloth Grading for Demolition and Site Clearance- (Exhibit H)

An Ordinance Directing the Code Enforcement Officer To Demolish the Residential Structure Located at 329 School Street and Award of Contract to Elvis Faircloth Grading for Demolition and Site Clearance was approved.

Council Member Steve Brewer made the motion to approve the items on the amended Consent Agenda; seconded by Council Member Charles Taylor, the motion passed unanimously.

**DECISIONS ON PUBLIC HEARING**

Consider Amendment to the Unified Development Ordinance (UDO) Regarding Group Homes/Residential Care Facilities.

Assistant Community Development Director Marshall Downey explained that this is a decision on the public hearing which was held on September 16, 2008, for a proposed amendment to the Unified Development Ordinance pertaining to more stringent regulations for group homes and residential care facilities. This proposal was presented to council in detail during the public hearing. The Planning Board made a unanimous recommendation that council approve this amendment. This item is also going to the Lee County and Town of Broadway governing bodies for consideration.

- Consider Ordinance Amending the City of Sanford Unified Development Ordinance Regarding Group Homes/Residential Care Facilities- (Exhibit I)

Council Member Steve Brewer made the motion to approve the amendment to the Unified Development Ordinance (UDO) Regarding Group Homes/Residential Care Facilities; seconded by Council Member James Williams, the motion passed unanimously.

Consider Barrington Park Voluntary Contiguous Annexation Petition Submitted by Carolyn and Coy Broadwell and CRD Investors, LLC. for Property Located Approximately 423 Linear Feet South of the Intersection of Commerce Drive and Hwy. 87 Encompassing Approximately 145.05 Acres.

Community Development Director Bob Bridwell explained that this petition was tabled at the petitioners' request at the last meeting because they had not received all their permits at that time. They would now like to proceed with the annexation and have the item placed back on the table for consideration.

- Consider Motion to Take from the Table Discussion Regarding Barrington Park Voluntary Contiguous Annexation Petition  
Mayor Pro Tem Joe Martin made the Motion to Take from the Table Discussion Regarding Barrington Park Voluntary Contiguous Annexation Petition; seconded by Council Member Walter McNeil, the motion carried unanimously.
- Consider Ordinance to Extend the Corporate Limits of the City of Sanford, North Carolina- (Exhibit J)  
Council Member James Williams made the motion to approve the Ordinance to Extend the Corporate Limits of the City of Sanford, North Carolina; seconded by Council Member Steve Brewer, the motion passed unanimously.

**PUBLIC COMMENT-(Exhibit K)**

Randall Yow spoke regarding the Whitin Roberts building. He said he knows it is a bad situation on 202 Maple Avenue, and he understands the city has no choice but to have to purchase the building because no one will claim it. He just wished the taxpayers didn't have to pay for it. He said he understood that there is no other option available. He said that in the future, this should not become a habit, and that we should not let robber barons or casino capitalists come in here and make their money and then leave the burden on us and our city.

Mayor Olive commented that she believed everybody on the council agrees with Mr. Yow 100 percent; it is a blighted area and it is going to continue to cause that neighborhood to deteriorate if it is not cleaned up, as odious as it is for us to have to pay for it.

**REGULAR AGENDA**

**Consider Voluntary Contiguous Annexation Petition of Approximately 2.33 Acres of Property Owned by Roy E. Mashburn Located in the Northwest Quadrant of Pendergrass Road and US 1/15/501**

Planner II Elizabeth Whitmore said that before the council for consideration, there is a resolution directing the clerk to investigate the petition, to receive the certificate of sufficiency, and a resolution fixing date of the public hearing for the voluntary contiguous annexation petition by Roy E. Mashburn for 2.33 acres of property located in the northwest quadrant of Pendergrass Road and US 1/15/501. She called their attention to a map in their packets showing the location of the proposed annexation. She explained that of the 2.33 acres petitioned for annexation, 1.07 acres are located in the right of way. We are annexing Pendergrass Road and that intersection to make it such that our emergency services, fire, and police can respond much easier.

- Consider Resolution Directing the Clerk to Investigate the Petition- (Exhibit L)  
Council Member Steve Brewer made the motion to approve the Resolution Directing the Clerk to Investigate the Petition, and it was seconded by Council Member Walter McNeil.

Council Member Charles Taylor expressed that he wanted to get more clear distinction and asked if this is essentially where the apartments are. Ms. Whitmore replied that it is not; this is the corner of Pendergrass Road and US 1. The apartments

are farther up Pendergrass Road. City Attorney Patterson explained that this connects two sections of the city because there are city limits on both sides.

Following the clarification, Council voted unanimously to approve the Resolution Directing the Clerk to Investigate the Petition.

- Receive the Certificate of Sufficiency- (Exhibit M)  
Council members received the Certificate of Sufficiency verifying that the petition is sufficient.
- Consider Resolution Fixing the Date of the Public Hearing- (Exhibit N)  
Mayor Pro Tem Martin made the motion to pass the Resolution Fixing the Date of October 21, 2008, at 7:00 P.M., for the Public Hearing; seconded by Council Member Linwood Mann, the motion passed unanimously.

#### Consider Brownfield Application Agreement

Regarding the Whitin Roberts property, Community Development Director Bob Bridwell said our consultants have advised him to proceed with the application for a Brownfield Agreement which would substantially limit the city's liability and any future developer of the property so the property would not carry with it that cause for concern. The application is almost completed. Part of that process is an affidavit that the city manager has to execute. Mr. Bridwell is asking council to authorize the city manager to execute the affidavit and to file the application on behalf of the city. The primary intent is to limit the liability on environmental contamination. He expected to be able to file the application within a week.

Mayor Pro Tem Martin commented that this will help market this area a lot more by the liability being removed; once we clean it, hopefully, we can put it back and somebody will buy it and we can recoup our money. That is our goal. He said he appreciated the work Mr. Bridwell and staff had done on this.

Mr. Hegwer reminded everyone that the city did receive a Brownfield grant to identify and assess multiple properties in this area so that we can counteract or dispel any myths that may be out there about these properties. Mr. Bridwell said that 149 properties had been identified already. There will be several properties that will come close to rising to this level of attention that we will study very carefully. Mayor Pro Tem Martin asked Mr. Bridwell to try to find out if there is anything that governmental agencies can put into place (maybe requiring the plants to put up a surety bond or something in case the property gets into a state of disrepair) that would protect the taxpayers from having to go in and do a bailout like we are doing now.

Mr. Bridwell explained that what the Brownfield program is intending to do is to take properties that have been contaminated and to find ways to put them back into productive use (adaptive reuse) while containing and eliminating the contamination. Getting folks that still hold that liability or might come into your community and contribute to contamination has probably diminished in importance somewhat because of all the environmental regulations that exist before you can develop a piece of property. Mr. Bridwell said that as they move forward in this process, they may learn ways to do what Mayor Pro Tem Martin is asking.

Mayor Olive pointed out that it could be tempting just to put a wall around the property and say no trespassing; but we are throwing good money after bad in that regard, and the property is still not upgraded to the point that it can be sold and then used, and hopefully get our money back.

Mr. Bridwell said this is a piece of property that is creating an adverse environment for adjacent residential neighborhoods and impacting our downtown. Mr. Bridwell says that by doing this, the city is protecting its investment.

Mayor Olive asked Mr. Bridwell what is the most likely way the city can ever get reimbursed for this work. Mr. Bridwell responded that our best bet is to be able to sell the property. The tax value now is \$205,000. Without the building, he believes the property value is about \$100,000. Council Member Stone asked about proceeding with the Brownfield application. Mr. Bridwell said that all they were being asked to do at this time is submit the application. Cleanup costs can be gauged once we know all that is on the site, after everything is torn down. The assessment will be done at that point, not the cleanup. The strategy in the Brownfield program is to get the assessment grant, identify these properties, and do assessments so that we will be eligible for the cleanup grants—loans to private developers who can borrow money for cleanup activities. The city is being positioned to be in a good spot to identify, not only Whitin Roberts, but other properties that might be in similar circumstances that we can get other places cleaned up. That was the long-term strategy.

City Manager Hegwer said there has been a little change from the state in suggesting we get the Brownfield application in place before we do anything. We originally thought we would do the application after the demolition was completed. Mr. Hegwer said that we are talking about cleaning up the debris, concrete, and asbestos. Mr. Bridwell stated they are looking at ways to reduce costs wherever they can. He said the quote he received for the demolition plus the asbestos is still substantially below everybody else who came in just for the debris removal.

Council Member James Williams said the property is an old property that started out as a foundry. The city benefited from that plant for years. It used to be one of the largest employers in the city. The original owners are all dead and gone and it has moved from hand to hand. Mr. Bridwell said his research showed the foundry was first there in 1908.

Consider Ordinance Amending the Annual Operating Budget of the City of Sanford FY 2008-2009- (Whitin Roberts Building)—(Exhibit O)

Council Member Steve Brewer made the motion to adopt the Ordinance Amending the Annual Operating Budget of the City of Sanford FY 2008-2009; seconded by Council Member James Williams, the motion passed unanimously.

Consider Brownfield Agreement Application and Affidavit (Old Whitin-Roberts Building)-(Exhibit P)

Council Member Steve Brewer made the motion to approve the clean up affidavit for the old Whitin-Roberts Building; seconded by Council Member Walter McNeil, the motion passed unanimously.

Consider Resolution Exempting the City of Sanford from the Mini Brooks Act for the Clear Well Rehabilitation and Upgrade Project- (Exhibit Q)

Mayor Olive asked Public Works Director Vic Czar if council can know the amount any time an application to this effect is made. Her understanding had been that it was \$30,000 or less. She also asked if Hazen & Sawyer often hired subcontractors to do this. Mr. Czar said that we did not have an amount for the design services at this point. That is what they are asking for—the authority to negotiate a fee for the design services. His understanding is that there are two exemptions you can have to the Mini Brooks Act. One is strictly the price; if the design service fee is less than \$30,000, which is an exemption by itself that can be taken. The second is for any reasons that are to the benefit of the city; this is the exemption they are going for. Mr. Czar says they do not feel that there is anyone more qualified than Hazen & Sawyer to do this work. They are very familiar with our water plant, and they have always done a good job for us. Once the fee is negotiated with them, it will be brought back to council. They may use subcontractors depending on the scope of the project. Mr. Czar didn't think they would in this case.

Council Member Mike Stone said he had reservations about this. He was used to the Mini Brooks being \$30,000 or less and now has learned that this project is going to exceed \$100,000 for architectural designs. He said that at \$100,000, he finds it hard not to bid the job out. He is not disclaiming the expertise of Hazen & Sawyer. He wants to qualify that price, and says he can not do that unless someone bids against them. Mayor Olive asked if they had a ballpark idea of how much something is going to cost when we have an overview of a total project. Mr. Czar replied that it depends on the complexity of the job. In this case, he thinks we are running somewhere in the neighborhood of 10 percent of the construction. He said they would compare our price with what other entities with similar projects have paid to be sure ours is reasonable. Our typical form of engineering contract is an “hourly rate, not to exceed.” We just pay for the hours they work up to a maximum. If they go beyond the maximum, that's on them; it's a little protection.

Council Member Charles Taylor asked Mr. Czar how many other firms like this one would be ideal candidates to bid this project out to. Mr. Czar repeated that he did not think anyone was more qualified, but said that there are others—he could not name them off hand. Mr. Taylor said he is with Mr. Stone as far as putting it out for bid. He says bidding gives accountability, if it doesn't do anything else. He said that if a firm knows it is the lone bidder, we would not get the best price. Mr. Czar explained that the whole purpose of the Mini Brooks Act is to acquire engineering services based on qualifications and then negotiate a fee. It is not to bid engineering, architectural, or surveying services. The idea is that you are in the field doing a project that has to do with public health; you want to be sure you are dealing with the qualifications, and then you negotiate a fee. You do not want to go get the “low bidder.” You want to make sure you have the scope of services defined. You are not supposed to go bid for engineering services.

Council Member Brewer restated that this is a way to verify that you get the best person for the job and then decide if you can afford them. This is the same company we chose to do our \$70 million sewer plant. Mr. Stone explained that he never said you had to take the low bidder, but that you needed to qualify the price. If there are no other bidders, you don't know what the price should or shouldn't be. You could still take the higher price, knowing he was in the ball

park. Mayor Pro Tem Martin verified that staff calls around and researches enough to be sure they are comfortable with the prices they are receiving. City Manager Hegwer pointed out that one of the reasons the state has created this legislation is to bring clear attention to the fact that they don't want you to just go down the road of hiring the least expensive person. The statute was put in place to protect the health, safety, and welfare. Mr. Martin mentioned a time when council had to hire a second firm after one had messed up a sewer plant project and gone bankrupt. Mr. Brewer said we are not talking about brick and mortar; we are talking about design. Mr. Hegwer said you are talking about key infrastructure—clear well which houses all the water before it is pumped into the city. You are paying for expertise and experience. Some firms are known to work with certain cities exclusively. Mr. Czar said you always keep an eye on the price. He said that you get to the ethics of the engineers in bidding work. Engineers are not technically supposed to do that. Mr. Stone said that we have commented that the government wanted us to do that, but it is a lot of money. The Mini Brooks makes it easier, when it should make it harder. That is why he is on the other side of the Mini Brooks Act. Council Member Williams said that Hazen & Sawyer would be liable for the entire job from start to finish. If we bid it out and get a different design team and something goes wrong, Hazen & Sawyer will come in and do the work on the back end, it is easier to “shift the blame” when two groups are involved than if one worked it through. Mr. Czar says there are advantages of continuity with keeping Hazen & Sawyer for the whole thing. Mr. Hegwer reminded everyone that we've used this procedure before—one example was the Jonesboro project. For firms that we don't have a history on, we do research qualifications.

Mayor Olive said the reason we bring things up is because we represent the taxpayers. Council Member Charles Taylor said that with the state of the economy, we need to go on price alert. We realize how vital the quality of the work is; however, there is nothing to gauge this company by with this methodology. We have no benchmark; no accountability. He said he is voting no because Hazen & Sawyer has no one competing against them. Mr. Brewer said being that we are just going out to look and negotiate and no money is involved, he would like to make the motion to pass the resolution exempting the City of Sanford from the Mini Brooks Act for the Clear Well Rehabilitation and Upgrade Project. Council Member Linwood Mann seconded the motion which passed 5 to 2 with Council Members Charles Taylor and Mike Stone casting the dissenting votes.

Consider Ordinance Amending the Annual Operating Budget of the City of Sanford FY 2008-2009—(Public Works Administration)- (Exhibit R)

Director of Financial Services Melissa Cardinali explained that this ordinance basically creates a Public Works Administration Department within the Utility Fund. It had previously been housed in the General Fund, and now that department would move over to the Utility Fund which is more in line with the responsibilities for that public works director. That is the purpose of this amendment. Mayor Olive asked if that would change the number of employees in that department or the budget. Ms. Cardinali said not that she knew of; basically the Utility Fund pays the General Fund back. So, the Utility Fund will just take those expenses; it is basically a wash and does not affect the General Fund at all.

Council Member Mike Stone confirmed that this would not take more personnel. He asked why we had not done this in the past. Ms. Cardinali said that previously we had one

person in charge of a lot of different functions in both funds. That position could have easily been in either fund. Mr. Stone asked if next year when we do the budget if this would increase the budget on either side. Ms. Cardinali said it would depend on what those two departments ask council for, but the basis is what you've got right now. Mr. Hegwer added that it is hard to see inter-fund transfers when you look at budgets alone. One fund has been paying the other fund back when one person has duties covered by both funds. Ms. Cardinali added that this change reflects our actual structure.

Mayor Pro Tem Martin made the motion to approve the Ordinance Amending the Annual Budget of the City of Sanford FY 2009-2009 – Public Works Administration; seconded by Council Member Stone, the motion passed unanimously.

### **OTHER BUSINESS**

Council Member Stone thanked the Lions' Club for a terrific fair. Council Member Taylor said there was another accident on Steele Street—the sixth one. We are getting some data. Mayor Olive asked about getting the towns of Clinton and Smithfield to come to talk to council about the All American City honors they have received. She asked about a consensus to do something like a “lunch and learn” session with them. It would be an open meeting. By a roll call, Mayor Olive received consensus.

**ALL EXHIBITS CONTAINED HEREIN ARE HEREBY INCORPORATED BY REFERENCE AND MADE A PART OF THESE MINUTES.**

### **CLOSED SESSION**

City Attorney Susan Patterson read the motion needed to go into closed session in accordance with North Carolina General Statutes 143-318.11a(3) to consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege. Council Member Steve Brewer made the motion to approve going into closed session; seconded by Council Member James Williams, the motion passed unanimously.

### **RETURN TO REGULAR SESSION AND ADJOURNMENT**

With no further business to come before the council, the meeting was adjourned on motion of Council Member Walter McNeil; seconded by Council Member James Williams, the motion carried unanimously.

Respectfully submitted,

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CORNELIA P. OLIVE, MAYOR

ATTEST:

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BONNIE D. WHITE, CITY CLERK

