

LAW AND FINANCE MEETING
Wednesday, July 10, 2013
1:00 P.M. in Council Chambers

The Law and Finance Committee met on Wednesday, July 10, 2013 at 1:00 P.M. in the Council Chambers at City Hall. The following people were present:

Law and Finance Committee:

Mayor Cornelia Olive	Mayor Pro Tem Sam Gaskins
Council Member Rebecca Wyhof	Council Member Jimmy Haire
Council Member Walther H. McNeil, Jr	Council Member James Williams
Council Member L. I. (Poly) Cohen	Council Member Charles Taylor
City Manager Hal Hegwer	Deputy City Clerk Janice Cox
City Attorney Susan Patterson	

Absent:

City Clerk Bonnie D. White

Mayor Cornelia Olive called the meeting to order.

Council Member Rebecca Wyhof asked to add to the agenda a discussion of House Bill 94 and get an update on the Mining and Energy Commission and the chemical rules.

Consider Resolution Authorizing the Advertisement of an Electronic Auction to Sell Certain Personal Property of the City of Sanford – (Exhibit A)

Fleet Superintendent Randy Paschal explained that this auction would go online July 29, 2013 at 8:00 A.M. and run approximately two weeks. A list of items being offered for sale is included. City Manager Hegwer asked if there is any place for local people to view the sale items other than online. Mr. Paschal stated that everything is located in the shop and people who used to attend the live auctions do go by and look at it.

Consider Resolution in Support of the Temporary Closure of Portions of Several Streets for the Purpose of a 5K and 10K Fun Run and Fundraiser – (Exhibit B)

Traffic Services Supervisor Cedric Dalrymple explained that this resolution is for a temporary closure of parts of the following streets for a fun run and fund raiser: Chisholm Street, Vance Street, Bracken Street, Gulf Street, Sunset Drive, Cross Street, Green Street, and Summit Drive. The event will be occurring on Saturday, August 24, 2013 between the hours of 7:00 A.M. and 12:00 P.M.

Consider an Ordinance Establishing No-Parking Zones along a Portion of Cross Street of the City of Sanford – (Exhibit C)

Traffic Services Supervisor Cedric Dalrymple explained that this ordinance establishes a no-parking zone on the south side of Cross Street between Gulf Street and Horner Boulevard. He has met with all the property owners on the south side of Cross Street and all appear to be in favor of it. Mayor Olive asked the reason for making this change. Mr. Dalrymple explained that emergency vehicles are having difficulty getting down the street responding to emergency

situations. Council Member Taylor asked how often that was happening. Mr. Dalrymple did not have the information, but thought the Fire Department had requested the change. Mr. Taylor stated he was concerned about the home owners in the area. Mayor Pro Tem Gaskins stated that he uses Cross Street regularly and it is difficult enough for a small vehicle to get through both rows of cars, so he would agree that for an emergency vehicle to try to get through would be difficult.

Consider Discussion Regarding Watson Avenue Right of Way

Public Works Director Vic Czar stated that the city has been approached by the owners of some property on Watson Alley about putting up a fence on what, they believe, is their property line. Watson Alley is a fifteen-foot strip between Humber Street and East Main Street. The road is actually paved more than fifteen feet that the city has been maintaining for some time. A map of the area seems to indicate his fence would be in the right of way. It creates some concerns for the City as there is a water line in there. The road width is a problem for emergency services, the Fire Department, in particular. He stated he was informing council of the situation and asking for some direction in considering allowing the property owner to put a fence in there which would stick out into what they have been maintaining as a road for some time, leaving only a narrow path through there.

Mayor Olive asked if it were a dedicated street. Mr. Czar replied that according to the tax map, it is. It is a fifteen foot right of way, but the city has been maintaining it wider than that which gives them some rights to a portion wider than that. That is really the crux of the matter. Mayor Olive asked if he had a survey of his property. Mr. Czar stated that he can get one, but that street has been maintained as a street wider than fifteen feet for a period long enough that if we keep the width we have and keep using it in the same manner we have been using it, we have the right to keep what we have. Mayor Olive asked if they had been paying taxes on it. Mr. Czar replied that he had been paying taxes on the value of his assessment and he was not sure what that covered.

City Attorney Patterson stated that Watson Alley is a dedicated alley and shows on the maps at fifteen feet wide. However, by actual use, it has been somewhat larger than that. The property owner is asking the city if they have a concern about him putting a fence there. Some direction from council would be helpful as he is expecting a response. Council can say yes; they can say no; they can do nothing; or they can see what he does.

Council Member Cohen stated that he uses that street once or twice a week and he does not think council should do anything with it because a lot of people use it. Council Member Williams asked if the fence length would go from Humber to East Main. Mr. Czar assumed that to be true, as the property owner owns all that property. City Attorney Patterson stated that surveyors have had some difficulty locating every property line in those blocks between Buchanan Street and Lee Avenue. Council Member Haire agreed with Mr. Cohen as he uses it twice a day. Mayor Olive stated that it needed to be determined if he is paying tax on the property, and if the city extended the width of the street onto his property, he can't be faulted for that because he didn't do it and we have been taking advantage of his property for years. She stated that if he has been paying tax on that strip, then it is his. Mr. Hegwer stated that, technically, he is. The property line is inside the pavement. They had looked at whether or not

the road could be closed completely, but there are two other property owners with road frontage and if the alley were closed, they would be landlocked.

Council Member Wyhof asked how long the property owner had owned that property and what state the property was in when it was purchased. City Attorney Patterson stated that his deed was recorded in 2001. The resurfacing of the road occurred ten to fifteen years ago and was just resurfaced on what was there without making the street wider. Mayor Olive asked what precipitated the property owner's request. Mr. Hegwer stated that he commented that he wanted to claim his property because if he didn't claim it, he didn't think he would ever have it. Mr. Hegwer stated that he did not know if there was a possibility for him to put up the fence and there still be space for traffic. He stated he would like council to look at the street because it will be difficult to solve.

Council Member Charles Taylor inquired how it would affect emergency services in that area. Mr. Czar stated that by the fire code, the fire department would need twenty feet. Their outriggers go sixteen feet on the big truck. The city has been maintaining utilities in that space for some time.

Mayor Pro Tem Gaskins was interested in how much more was public easement because utility poles are there and how much a fence would infringe on other public easements. Mr. Czar stated there is a fire hydrant on the right hand side of the road by the utility pole. There is a sewer line that crosses the street. Mr. Gaskins thought that if council knew why he was making the request, there might be other avenues they can approach rather than having a fence put up, especially if it extends beyond what the other public easements require.

Mayor Olive stated that it is understandable that he wants to secure his property. She asked if the city just routinely widened streets on somebody's property without having an agreement. Mr. Czar stated that he is not certain how the street got to be the width that it is. There may have been some verbal agreement. He could only speak to how it has been maintained. There may or may not have been an agreement.

Council Member McNeil stated he thought it was precipitated by the appliance place putting old appliances on the side of the store. They put up a fence to hide the appliances and may have gone on the pavement which, in effect, moved the street over and that may have caused the pavement to go on this man's property.

Council Member Williams stated that when you put a fence on the line, the fence then belongs to you and the adjoining property owner. He wanted to know what the distance would be between where the fence is located for the appliance store and where this property owner's fence is proposed to be and if that distance is right for the street. Mr. Czar stated it would be close to fifteen feet.

Council Member Cohen stated that a survey has to be done. Mr. Czar stated that it appeared that a survey had been done. City Attorney Patterson explained that the legal aspects are part of the difficulty of this situation. There are some recorded surveys on record along with the deed; however, they indicate the Watson Alley at fifteen feet. They do not take into account

actual or prescriptive easements which may have been acquired by paving and use by the public. They do not indicate where the pavement stops. She explained that there can be ownership of the fee simple underneath and still have an easement by use or by dedication over the top. The fifteen foot is dedicated. The prescriptive easement may have been additional which is open for use by the public.

Mr. Czar stated that if Council wanted to let him put up a fence, one condition would be he would have to move the hydrant or move the fence around it. Mayor Olive stated that she has a problem with appropriating someone's land without an agreement. Mr. Hegwer stated that the fence around the appliances appears to be on a portion of the pavement. Council Member Cohen thought the smartest thing would be for Council not to do anything and tell the property owner not to put up the fence on the pavement. Mayor Olive stated that seems a little like injustice since someone right across the street has put up a fence.

Council Member McNeil asked how many feet were needed for a fire truck to get down that street. Mr. Czar stated that the fire code indicates twenty feet. Mayor Pro Tem Gaskins asked if there was a law about blocking public easements. With the fire hydrant, water lines, and utility poles there, putting up a fence and blocking access to those would be a tremendous problem and probably there is a law on the books about that. City Attorney Patterson stated there are several different aspects of the law that apply in this area, one of which is the nature of adverse public use. If a public agency has been maintaining a street for a necessary period, that fact would constitute public user and should indicate that the use is adverse. Case law has been a little inconsistent. One option for council is to do nothing and see what the requester wants to do. Then it would be up to him to take an action and council would have to determine whether to take any action against him. He could do nothing or he could say that you have already taken some of his property without just compensation and ask for some payment.

City Attorney Patterson has talked with his attorney, but not gotten to any resolution beyond what the maps show and what it is the client wants to do. When he got the property in 2001, it was already paved and had been for some time. He is making a claim against the use by the public. It is less clear as to whether that has already been acquired by the public or not. City could do away with the parking places and talk to him to be sure the utilities remain accessible. Looking at what is the real nature of what he wants, the city does not know beyond reclaiming his property, but it may have already been gone before he acquired the property.

City Manger Hegwer suggested talking with the property owner to see if there is a way his fence could go up and we would be able to meet the requirements that we need in terms of the safety for fire trucks, utilities, etc. and see if there is a compromise here. Mayor Olive stated that she hoped so because if he has been paying taxes on a certain amount of footage on Main Street, it is his land and he ought to be able to do with it what he wants to. Council Member McNeil asked if it were necessary for the fire truck to get down that alley or if the alley could be accessed from Humber Street and Main Street. Fire Chief Barber responded that they would not have as good access coming off of Humber Street to get to some of the properties in question. Council Member Williams stated he needed time to do research on his own. Mayor Olive stated she would like to look at it, too. Chief Barber stated that it might be in the Jonesboro Downtown Fire District with additional restrictions on it.

Consider Discussion Regarding Employee Non-Recurring Salary Bonus – (Exhibit D)

City Manager Hegwer explained that additional revenue became available from the ABC Board of about \$47,500 over what had been anticipated in the budget. He asked if it would be possible to add some additional revenue to that amount and consider a one-time payment of the same amount for every employee. This could help offset some of the increases seen in the health insurance for the last two years. Council Member Cohen stated it was a good idea. Council Member Taylor clarified that it was for non-elected employees. Mr. Hegwer stated that was his anticipation, but it would be up to council. Mayor Olive stated they had never gotten bonuses and wouldn't think they would start now. Mr. Hegwer stated that a budget amendment would be needed to put the funds in place. To provide employees with a \$500 payment, the total cost would be around \$159,000 so about \$110,000 to \$120,000 would need to be taken out of fund balance to add to the \$47,500.

Council Member Wyhof asked if it would be possible to get the ranges of money needed to be taken from Fund Balance for varying amounts of checks—such as, \$250, \$300, etc. so council could look at how much that equates to. Mr. Hegwer stated that he could get that to her quickly. Council Member Williams questioned the numbers. Mr. Hegwer stated that did not take into account the taxes, etc. but it will be spelled out on the sheet for council.

Mayor Olive asked that since the City handles all the ABC operations why the county gets money from us for that. City Attorney Patterson responded that the statute that created it divides the money. It would take a local bill to change that. Council Member Haire gave some historic background based on newspaper articles. Mayor Olive stated she would like to revisit the county getting ABC funds. Finance Director Melissa Cardinali stated that there is a law enforcement component that \$70,000 a year and another \$70,000 per year is anticipated. The county gets another \$140,000. Council Member Williams gave some background on how cities evolved after the counties.

Consider Update on House Bill 94

Council Member Wyhof stated she is concerned about the chemical disclosure rules that have come out that are being developed by the Mining and Energy Commission in regards to fracking are being taken away from the rule-making committee that they were being assigned to, and she would like to hear from Council Member Taylor an update from the commission about what has actually been going on and have a council discussion whether to pass a resolution or take any action regarding HB94, essentially putting our voices on record for having full disclosure of the chemicals available to the public.

Council Member Taylor stated it is troubling that the legislature had chartered this board to meet some deadlines by October 1 and they were on track to meet all three deadlines by October 1, and in the middle of that process tried to pass legislation that may be opposite of what they chartered the board to do. One organization has made a public record's request on Secretary of DEHNR as well as the assistant secretary for all of the board's emails regarding chemical disclosure. Since that time they have revised it to zone in on one commissioner. Mr. Taylor concurred with Ms. Whyof's remarks. He stated he did not need to know their formula or trade secrets, but, since we will be mitigating these chemicals, we need to know what is in the ground. His recommendation has been to draft a letter to the legislature vocalizing the charter

that the legislature gave the council and allowing the council to complete the task the council was given, and then if the council doesn't complete it to the legislature's satisfaction, to be held to task; and second, send a letter to explain where they are in the process and what the commission's thoughts were in the process. He recommended drafting a resolution of council supporting full disclosure of the chemicals put in the ground. Mayor Olive stated that she thought it was important to have some idea of the amount of carcinogens that are being used as part of the fracking chemicals. Mr. Taylor stated that would be getting into gray areas concerning trade secrets, but that they had to comply with Emergency Management, the Division of Water Quality, and the Division of Air Quality.

Council Member Williams asked if our staff will be charged with disposing of the waste or will the fracking company be in charge of that. Mr. Taylor stated that was still in committee. Right now they are looking at not having any return water going back into our facilities which would eliminate concerns about cross-contamination. They are also looking at technology which uses very little water which is in a committee now. There are three committees. One is the local study group for which Council Member Taylor is the chairman. They are not permitted to put setbacks in that would restrict them from coming here, but at the same time they have to protect the resources. Mr. Taylor stated that he tried to be in compliance with what the attitude/consensus is from the League of Municipalities and the North Carolina County Commissioner's Association. Mr. Taylor stated that council would see there will be a more aggressive approach to limiting or to not having any water treatment coming back to your wastewater treatment facilities.

Mr. Taylor stated that a lot of the activity had been around Blackstone Road. Council Member Wyhof stated that her concern is mainly about our water quality and making sure our public is protected and the chemical disclosure component not be left out. She would prefer a general resolution to that effect. Mayor Olive stated that time is an important factor and they needed to get something done before the Tuesday night council meeting. Mayor Pro Tem Gaskins agreed with Council Member Wyhof that a simple, short resolution stating that as a city council, full disclosure of the chemicals used is necessary to the local governments. Council Member Williams stated he wanted to hear from Public Works Director Vic Czar regarding what the sewer plant would need to treat the possible waste.

Public Works Director Vic Czar stated that he thinks the industry is moving to zero water if they could. If there was a waste stream, the closest thing we would have to address it would be a pretreatment program. They would have to meet certain permit limits of what they discharged to us. They would treat their wastewater to a certain level and give the remaining wastewater to us. They would not have a permit to discharge their waste to the river and the city does, but it would be highly treated before the city received it. Our treatment plant is a domestic wastewater plant which means that we can treat domestic wastewater, but not industrial wastewater. They would have to get their industrial wastewater to domestic limits before we would be able to take it.

Council Member Taylor stated that normal landfills will not be equipped to handle debris coming out of these facilities. There may be a regional landfill someplace that would be equipped to handle it. He added that it helps to have city officials at the meetings.

City Manager Hegwer clarified that there would be a resolution for the next council meeting, but asked if council wanted to send something before then. Mr. Taylor recommended sending a letter and backing it up with a resolution to follow stating that we are in favor of full disclosure of the chemicals going into the ground with hydraulic fracturing. Mr. Hegwer stated that he would touch base with County Manager Crumpton to see if they want to follow up with the same kind of letter and resolution.

Other Business

Community Development Director Bob Bridwell introduced Joseph Akinosho, an intern in the Community Development Department working on several projects, including a survey on the greenway. He is currently a student at Rice University in Houston. Mayor Olive welcomed Mr. Akinosho who stated it was good to see employees working together on projects.

Council Member Taylor congratulated David Montgomery and staff on the recent award received and looked forward to seeing how we could beautify downtown with the Benjamin Moore program. Mr. Taylor stated he had been bothered by Mayor Pro Tem Gaskins' sending a letter to the senators regarding House Bill 490. Mr. Taylor stated that he did not receive the letter originally because it was sent to an account he does not have, but found out about it through his relationships in Raleigh. Mr. Taylor stated he wanted to correct some parts including that it is a long session in which that bill is being heard, not a short session... He advised being careful when you are representing the city council in broad stroke statements on behalf of the board, especially when they are inappropriate or incorrect.

Mayor Pro Tem Gaskins stated that he was incorrect and that he had sent correction to the same senators over two weeks ago. He stated he would like for council to consider a way to get more people out to vote, certainly in the Primary on September 10 and hopes the bond referenda can be moved to the Primary. In doing so, the bond referenda would become the more important purpose of the Primary. He has learned that in the last municipal election, there were about 2,800 votes cast in total. He would expect more people to vote as they become familiar with the bond referenda and wants the item moved from the November ballot to the Primary in September.

Council Member Taylor stated that no Primary exists right now unless Mr. Cohen has registered to run. Mr. Cohen stated he would be in before next Tuesday night.

Council Member Haire gave credit to Public Works for dealing with the limbs down due to heavy recent rains.

Council Member Wyhof thanked the Secretary of the Department of Commerce for visiting Sanford for the Wicker School project of Brick Capital.

Council Member Cohen thanked the people who voted for Sanford to receive the Benjamin Moore award. It will do a lot of good for our city.

Law & Finance
7.10.13

Council Member McNeil thanked Public Information Officer Kelly Miller for her work on National Night Out and articles in the paper. He encouraged people to come out for the tour of the Police Department this weekend.

City Attorney Patterson advised that the MOU with the Sanford Housing Authority has been signed by all parties. They are proceeding to close and provided we get the check, the debt documents will be cancelled.

City Attorney Patterson stated that a copy of the marketing agreement with the Utility Service Partners Service Line Warranties of America program (Exhibit E) had been placed at council seats. Provided it is all right, it will be on the Consent Agenda for Tuesday night's council meeting. There is a draft letter of what will be sent out to the citizens from the service line warranty program stating that it is available.

Having no further business to come before council, the meeting was adjourned upon the motion of Council Member Walter McNeil; seconded by Council Member Poly Cohen, the vote was unanimous.

Respectfully Submitted,

CORNELIA P. OLIVE, MAYOR

ATTEST:

JANICE COX, DEPUTY CITY CLERK