

**FAYETTEVILLE CITY COUNCIL
WORK SESSION MINUTES
LAFAYETTE CONFERENCE ROOM and
COUNCIL CHAMBER
OCTOBER 30, 2017
5:00 P.M.**

Present: Mayor Nat Robertson

Council Members Katherine K. Jensen (District 1); Kirk deViere (District 2); H. Mitchell Colvin, Jr. (District 3); Chalmers McDougald (District 4) (arrived at 5:13 p.m.); Robert T. Hurst, Jr. (District 5); William J. L. Crisp (District 6); Larry O. Wright, Sr. (District 7); Theodore Mohn (District 8); James W. Arp (District 9) (arrived at 5:26 p.m.)

Others Present: Douglas Hewett, City Manager
Karen McDonald, City Attorney
Kristoff Bauer, Deputy City Manager
Jay Reinstein, Assistant City Manager
Telly Whitfield, Assistant City Manager
Gina Hawkins, Police Chief
Rob Stone, Public Services Director
Giselle Rodriguez, City Engineer
John Larch, Assistant City Engineer
Tracey Broyles, Budget and Evaluation Director
Michael Gibson, Fayetteville-Cumberland Parks and Recreation Director
Kevin Arata, Corporate Communications Director
Barbara Hill, Human Resource Development Director
Victor Sharpe, Economic and Community Development Director
Anthony Wade, Human Relations Director
Kecia Parker, Real Estate Manager
Robert Van Geons, President and CEO, FCEDC
Mark Brown, PWC Customer Services Director
Charles Archer, Account Director, Freese and Nichols
Pamela Megill, City Clerk
Members of the Press

1.0 CALL TO ORDER

Mayor Robertson called the meeting to order.

2.0 INVOCATION

The invocation was offered by Council Member Wright.

3.0 APPROVAL OF AGENDA

MOTION: Council Member Mohn moved to approve the agenda.

SECOND: Council Member Wright

FRIENDLY AMENDMENT:

Council Member deViere made a friendly amendment to add an item to the agenda; Item 4.08 - Shaw Heights Update.

Council Members Mohn and Wright accepted the friendly amendment.

VOTE: UNANIMOUS (8-0)

4.0 OTHER ITEMS OF BUSINESS

4.01 Update on Engineering Evaluation of Privately-Owned Dams Damaged During Hurricane Matthew

Mr. Rob Stone, Public Services Director, introduced Mr. Charles Archer, Account Director, Freese and Nichols Engineering, Inc., and

presented this item with the aid of a PowerPoint presentation. He stated in accordance with Council's direction, City staff held a series of public meetings in July 2017 with local Home Owners Associations (HOAs) with private dams damaged by Hurricane Matthew. The purpose of the meetings was to provide information as to how the City can assist with having the private dams repaired. HOAs representing four private dams, and a private corporation with a dam on a golf course, petitioned the City to conduct an engineering evaluation of their dams. After discussing this issue at the October 2, 2017, City Council work session, Council directed staff to conduct additional outreach to the residents and owners of all of the private dams damaged by Hurricane Matthew, including the ones that did not petition for assistance. He reviewed the following expected timetable for the next steps:

October 27, 2017 - Send letters to the nine private dam owners in the City with dams damaged during Hurricane Matthew, including the petition form, explanation of the petition process, and an explanation of the Army Corps of Engineers two-year time constraint, which may require additional environmental permitting.

November 30, 2017 - Receive petitions back from HOAs requesting the initial engineering evaluation for private dams.

January 2, 2018 - Present a summary at City Council's January work session of all of the HOAs petitioning for the initial engineering evaluation with an updated cost estimate to perform the evaluation.

The engineering evaluations of the private dams are expected to cost approximately \$55,000.00 per dam. These evaluations will develop an estimate of the repair costs, identify the benefited property owners, and determine potential tax assessment implications. Hurricane Matthew floodwaters damaged dams throughout the City. The Federal Emergency Management Agency (FEMA) agreed to provide public assistance to repair City-maintained dams; however, privately-owned dams were not eligible for FEMA reimbursement. In an effort to help rebuild the community following Hurricane Matthew, City staff researched state law for mechanisms to assist. City staff found that under North Carolina General Statute 160A-216, the City could potentially assist in the repair of private dams as long as there was a public benefit provided by the dam and/or lake. The City can fund the design and construction of dam repairs and recoup the funding through a special tax assessment levied on benefited property owners.

In July 2017, the City held a series of meetings to reach out to the neighborhoods affected by dams damaged from Hurricane Matthew. The City explained that helping repair private dams would be a multi-step process, beginning with an engineering evaluation of the dam and a determination of the repair costs. The City asked impacted HOAs to poll their members and see if there was support for moving forward with the process. If supported by their members, HOAs were instructed to submit a petition to the City by August 31, 2017.

Petitions were received from five private dams, including one from a private corporation with a dam on a golf course, requesting that the City perform an engineering evaluation of their dams, however, not all private dams that received damage responded. At the October 2, 2017, City Council work session, Council directed staff to conduct additional outreach efforts to ensure all private dam owners impacted by the hurricane were aware of their options to request City assistance. Per the information received from North Carolina Dam Safety, there were nine private dams within the City limits that were damaged by Hurricane Matthew. Letters are expected to be mailed October 27, 2017, to the owners of the nine private dams and the residents of the corresponding neighborhoods.

It is anticipated to require 90 to 120 days to complete these assessments. It is anticipated to require another 120 to 180 days for Council's deliberations and the financing and design process should Council direct the repair of a dam. Property acquisition would also be part of this process. Dam owners can restore their dams to the exact same footprint as prior to a breach without being subject to the environmental permitting process only if the work is completed within two years from the date of the breach. For dams that cannot be restored within a two-year period from the date of the breach, improvements may be subject to an environmental permitting process which may cause schedule and budget impacts to the restoration. Staff does not anticipate it being possible to follow Council's direction regarding additional process and to avoid going through the extensive environmental review process for any structure breached during Hurricane Matthew. The City does not anticipate being able to obtain FEMA or State reimbursement for the cost of the engineering evaluations. If, upon completion of the evaluations, the property owners decide not to move forward with the City's assistance, the City would have no way to recoup the initial engineering evaluation cost. A budget ordinance amendment will be necessary to appropriate funding to support any evaluations eventually supported by Council. The earliest that could occur is at the Council's regular meeting on January 22, 2018.

Discussion ensued.

Consensus of Council was to direct staff to move forward with the four assessments for Strickland Bridge Road Dam, Rayconda Upper Dam, Rayconda Lower Dam, and Arran Lakes Dam. Council Members McDougald, Crisp, and Mohn were not in favor of the consensus.

4.02 Stormwater Program Update

Mr. Rob Stone, Public Services Director, presented this item with the aid of a PowerPoint presentation and stated the City's stormwater program and utility was initiated in 1995 to comply with the Clean Water Act to manage pollution in stormwater runoff and improve water quality. This program was tied directly to water quality requirements until 2007, when the Council increased the stormwater fee recognizing the need for new and retrofitted drainage infrastructure to solve issues with local flooding and to make system repairs. An active capital improvement program was developed as a result. A spreadsheet with the updated status of the ongoing projects was presented to Council. In 2008, Council adopted a comprehensive stormwater management control ordinance (Chapter 23, Article III) to address drainage and flooding concerns in an effort to manage the adverse effects of increased stormwater runoff, while addressing water quality concerns resulting from newly developed and redeveloped properties. Based on input from stakeholders, ordinance changes have been made in the past to aid commercial and residential development.

Program Evaluation: At the May 18, 2017, City Council budget work session, staff informed Council of the early efforts to issue an RFQ to hire a consultant to conduct an independent evaluation of the City's stormwater ordinance and program utilizing a peer review of other programs in municipalities within the state and the nation to compare the development process review and develop results. The review may identify "quick action" program tweaks that may be implemented. Six non-local firms responded to the request. The scope of work for the selected firm and a sample report for a similar project completed for the City of Raleigh was presented to Council.

Contract Program Expansion: At the same meeting staff also informed Council of the efforts to issue a Request for Information (RFI) to test private sector capacity and interest in assisting in the future implementation of Watershed Master Planning Services throughout the City. This action responded to Council's interest in considering ways to increase the City's

capacity to develop and complete stormwater projects. The main objective of this RFI is to consider the ideas and recommendations provided based on industry standards and lessons learned and identify the approaches that will best suit the community. Ten firms responded to the request; one is local.

Based on the information received from the consultants, multiple highlights stand out. The firms have a capacity limit. The common number was three watersheds maximum per firm.

Current Initiatives: Staff identified and successfully implemented the following initiatives in an effort to pursue and transition into a more proactive path: Storm drain clean-up efforts, Stormwater Ambassador Pilot Program, Spot Repair Construction Crew, Standard Operating Procedure - Camera condition assessment.

The City of Fayetteville strives to maintain its NPDES Municipal Stormwater Discharge Permit to ensure that stormwater pollution and runoff quality are managed within Federal and State law, as noncompliance involves heavy penalties. The City must also continue to address the quantity of stormwater runoff as even normal rainfall events cause flooding in areas where stormwater infrastructure is nonexistent or not built to an appropriate standard. The design and construction of new and retrofitted drainage infrastructure is costly.

The current stormwater project list is primarily a result of two watershed evaluation projects. The remaining 13 watershed areas will also generate more projects that will need to be prioritized; however, current budgeting only proposes one watershed study every two years. City Council has asked for information related to developing a Stormwater Master Plan to determine comprehensive stormwater needs in a considerably shorter time period. The cost of the program evaluation is included in the FY 18 Budget. The current five-year plan does not include the cost of a watershed masterplan or any increase in project delivery beyond that already discussed with Council.

Discussion ensued.

Consensus of Council was to direct staff to bring this item back and place on the January 2, 2018, City Council work session agenda; the item to include staff recommendations.

Mayor Robertson recessed the meeting at 7:42 p.m. Mayor Robertson reconvened the meeting at 7:53 p.m.

4.03 Discuss Remaining Right-of-Way Needed for Ann Street Bridge Project

Ms. Kecia Parker, Real Estate Manager, presented this item and stated in August of 2012 there was a fire under the Ann Street Bridge which caused damage. After having the structural assessment completed, it was deemed safe for travel. Again in October of 2013 a fire damaged the bridge. At this point the bridge was deemed unsafe and was closed to traffic until further evaluation could be completed. The City contacted NCDOT at this time to request further evaluation and recommendations on how to proceed. In April of 2014 NCDOT recommended replacement of the bridge. At this time the City requested to be put on the NCDOT replacement list but was informed funding was limited and the City moved to permanently close the bridge until such time the bridge could be replaced. The City filed an insurance claim to have the bridge repaired but this claim was denied. In July of 2014 funding was allocated within the CIP process. After the RFQ and submittal process was completed, in September of 2015 the design was issued and design of the bridge began. The process for design has been long due to the number of agencies that have to be contacted due to the jurisdictional stream the bridge is over. This bridge was also deemed eligible for the National Register of Historic Places which made it necessary to have special design considerations

to preserve the aesthetics of the historic district. The estimated cost of replacement of the bridge is approximately \$895,000.00 which includes the demolition of the old bridge. At this point all but two of the needed rights-of-way have been obtained. The two rights-of-way that are left have title issues and have a total value of \$15,231.85. Staff has reviewed with the consultants and found they are necessary for the construction of the bridge. Staff has tried to reach several of the known owners to discuss the rights-of-way but have not been able to get a favorable response due to a lease that is in place with Branch Banking and Trust. The owners have suggested that they do not want to move forward due to the lease on record. The City has contacted the bank in the past in relation to a previous road widening project and they executed a release of their leasehold interest for most of the area needed. Unfortunately, the property owners did not execute a transfer at that time and remain unwilling to proceed. At this point the City is ready to move forward with the demolition and construction of the bridge but must acquire the right-of-way for that to occur. The Ann Street Bridge Replacement Project is nearing the construction phase and the City has two rights-of-way left that need to be acquired. Both parcels are owned by heirs of the original owners which were partners. As in most situations such as these, there is an heir that is deceased and has no estate filed in Cumberland County that would indicate who their heirs are. Staff has tried on several occasions to talk to the owners but they are not willing to negotiate. Due to this title issue there is no way for staff to obtain the property legally without instituting condemnation. The budget has been allotted for the Ann Street Bridge Replacement Project and therefore there will be no significant impact to the budget.

There was no discussion.

Consensus of Council was to direct staff to bring forth the needed resolution authorizing condemnation to a regular City Council meeting for approval.

4.04 Personnel Ordinance Proposed Revision

Ms. Barbara Hill, Human Resources Development Director, presented this item and stated our present Personnel Ordinance, Chapter 19, is outdated and difficult for employees to understand. Our Employee Handbook required updates and most of our existing policies were antiquated. An Employee Relations Manual has been developed, replacing the Employee Handbook and antiquated policies, resulting in a Manual easier for employees to understand while making information current and user friendly. The current ordinance speaks to details covered in federal and state law as well as the new manual. To facilitate remaining current with changing employment laws and practices, we ask that Council approve the proposed ordinance which regulates City of Fayetteville employment at a higher level. There is no budget impact involved in approval of the modifications to the Personnel Ordinance.

There was no discussion.

Consensus of Council was to direct staff to bring this item back as a consent item on the November 13, 2017, City Council regular meeting agenda for formal action.

4.05 Panhandling Ordinance

Ms. Karen McDonald, City Attorney, presented this item and stated the purpose of this item is to provide an update on Council's direction to staff to conduct a comprehensive review of the panhandling ordinance. Speech and other expressive activity which are protected by the United States Constitution can only be regulated by reasonable time, place, and manner restrictions. These restrictions must be content neutral and narrowly tailored to serve a significant governmental interest. The City's current panhandling ordinance,

Section 17-1, meets these requirements by regulating the time, place, and manner that individuals can beg/solicit in public areas and rights-of-way of the City pursuant to the City's general ordinance making powers (N.C.G.S. § 160A-174) and its abilities to regulate traffic (N.C.G.S. § 160A-300). Generally, the ordinance prohibits begging, soliciting, or panhandling by:

- (1) Forcing oneself upon the company of another by continuing to solicit after a person to whom they are soliciting from responds negatively, blocking the passage of a person or engaging in conduct that could reasonably be construed as forcing a person to accede to a solicitation;
- (2) In or near a thoroughfare or place open to the public;
- (3) In a public vehicle owned or operated by the City, or within 50 feet within any station or stop for such vehicle;
- (4) Within 50 feet of any entrance or exit of a financial institution;
- (5) On private property if asked to leave by the owner;
- (6) From a passenger or operator of motor vehicle while standing;
- (7) Within the core downtown area;
- (8) In a manner that impedes pedestrians;
- (9) In a city owned public park;
- (10) Within 50 feet of outdoor dining;
- (11) While a person is standing in line waiting to be admitted into a commercial establishment; or
- (12) After dark.

The penalty for violating the ordinance is a misdemeanor punishable by imprisonment, a fine of \$500.00, or both.

Other North Carolina cities have ordinances regulating the practice of begging and panhandling through time, place, and manner restrictions. Like Fayetteville, the cities prohibit begging within certain feet of financial establishments, ATMs, outdoor dining, entrances of commercial establishments and from interfering with pedestrian or vehicular traffic. Some cities also prohibit begging at transit stops, in school zones during the beginning and ending of school days, and on medians. Fayetteville's solicitation ordinance is most similar to Charlotte's, Wilmington's, and Durham's ordinances. Raleigh and Winston-Salem require permits and have additional restrictions. The penalties for violating the ordinances are the same.

Discussion ensued.

Consensus of Council was to direct staff to bring this item back for further discussion at the January 2, 2018, City Council work session.

4.06 Joint 911 and Emergency Operations Center Intergovernmental Agreement with Cumberland County

Mr. Kristoff Bauer, Deputy City Manager, presented this item and stated in March 2015 the Council authorized a partnership with Cumberland County to fund a study considering the co-location of City and County 911 Public Safety Answering Points (PSAP). That study was completed in February 2016 and presented to the City-County Joint Committee. The Needs Assessment and Programming studies recommended

consolidation and that the City and County formed an Executive Steering Committee to explore financing, governance, and other key issues in pursuing that objective. The Cumberland County Board of Commissioners had a follow-up presentation of the report findings provided by the report author, MCP. The County subsequently expressed an interest in pursuing full consolidation of PSAPs and brought the issue to the City-County Joint Committee and voted to move the issue forward by creating an Executive Steering Committee as recommended by the study. A joint resolution was adopted by both policy bodies in June 2016. The City and County have jointly funded continuing support by MCP for the effort of developing a grant application to the 911 Board to support the communications consolidation portion of the project. That grant application was submitted, but on August 25, 2017, the 911 Board announced its decision to reject all grants. They have reopened the grant application process with a submission deadline of December 15, 2017.

Feedback from the 911 Board was that uncertainty regarding governance, funding, and operational responsibility must be addressed for a resubmitted application to be successful. The 911 Consolidation Steering Committee, consisting of elected officials from each policy body, and a staff work group met on October 26, 2017, and the County provided a document describing a revised position on the consolidation. Staff has revised the proposed Intergovernmental Agreement (IGA). The information included for the CIP reflects contributions from all parties (City/County/PWC). For FY 18, the total projected is \$1,548,147.00, with \$465,371.00 to be funded from the City's General Fund, and the balance to be provided from the County (\$997,326.00) and PWC (\$85,450.00). The costs are allocated on a projected square footage basis based upon the preliminary study. This is likely to be revised based upon the proposed agreement which proposes an allocation based on incidents. The FY 19 costs of \$20,663,038.00 are for the entire construction project, with the City to issue debt (part of the first group of projects for the proposed public safety bond), with each of the three parties funding the debt service costs on the basis of the facility square footage allocation. Finally, there is also a TIP project for FY 19 for \$6,704,674.00, proposed to be funded primarily from E911 grants (\$5,996,385.00) with the balance rolled into the use of bond proceeds with the debt service costs shared by the City and County. This budget impact analysis was based on preliminary estimates of project costs and the City taking operational lead and supporting a majority of the capital and operating costs. The City would not have been able to use a General Obligation Bond to support this project had the County remained the lead agency. With this change, the City's CIP program utilizing a voted General Obligation Bond for public safety can be implemented. The City's share of the cost, however, is significantly reduced from in the area of 50 percent to 36.83 percent. The debt incurred, however, will be 100 percent of the capital cost not covered by grant proceeds.

Discussion ensued.

Consensus of Council was to direct staff to engage in further discussion and bring the item back to Council in the near future (specific meeting date not given).

4.07 City Council Agenda Item Request - Golf Cart Request - Mayor Pro Tem Mitch Colvin

Mayor Pro Tem Colvin presented this item and stated he is asking Council to consider a review of the current policy regarding ADA compliance with the Parks and Recreation Department. Dr. Anthony Wade, Human Relations Director, stated on September 11, 2017, an email was received from Mr. James McMillan of Parks and Recreation requesting guidance regarding the use of a motorized golf cart on City park fields while children and other patrons were on the field. According to Mr. McMillan, communication with Coach Abraham Washington has indicated that there are four coaches who are disabled and he

(Washington) and another coach will be providing those coaches with transportation to and from the parking lot to the field(s). The Human Relations Department has been designated as the office of primary responsibility for requests for accommodation coming from individuals who are not City employees. As Coach Washington is not claiming to be disabled and the accommodation requests are for other persons, the Department asked to receive the requests from the persons who had been identified by Coach Washington. Once received, the requests were individually evaluated. Since the City's ordinance prohibits the operations of motorized vehicles in City parks, a needs assessment was conducted to determine whether the suggested accommodation was appropriate. The assessment was based on an analysis of the information provided by the coaches and an October 3, 2017, on-site evaluation involving both the locations of games and mobility of the individuals requesting the accommodation. Of the four coaches, it was apparent that one coach had difficulty walking distances. However, the recommended accommodation (a motorized Golf Cart) had been modified with rims and tires that increased the vehicle's height from the ground. As a result, that coach had tremendous difficulty boarding the vehicle. From a mobility standpoint, it is asserted that the golf cart is not the best solution as a suggested accommodation for this individual, in addition to its operation being a violation of Section 18-5 of the City's Ordinance. Additionally, the only thoroughfare that the golf cart can travel on between fields is also the only thoroughfare for pedestrian foot traffic and is sometimes utilized by unsupervised children. As such, the operation of the golf cart during games may also raise safety concerns. Mr. McMillan and Human Relations attempted to find a reasonable solution to this matter. On October 4, 2017, it was agreed as follows:

- (a) The use of the motorized golf cart at City parks was a safety hazard to both the children and other patrons.
- (b) In order to accommodate the one coach with the demonstrated need, Parks and Recreation would add two additional handicap parking spaces in front of the secondary field where this coach's team plays with one of the spaces being identified as "For Disabled Coaches Only".

Dr. Wade further stated, in summary, based on the information received, the assessment surfaced that (1) only one of four coaches has a demonstrated need for an accommodation in support of their duties on the field; (2) the golf cart does not appear to be the best accommodation for that individual and its operation is a violation of the City's Ordinance; and (3) per consultation with Parks and Recreation staff, it is recommended that the reasonable accommodation for this one coach is to designate one of two additional handicap parking spaces as being "For Disabled Coaches Only" in front of the secondary field on which his team plays.

Mayor Pro Tem Colvin asked if motorized wheelchairs are permitted. Ms. Karen McDonald, City Attorney, responded that motorized wheelchairs are allowed.

Consensus of Council was to take no action.

4.08 Shaw Heights Update

Council Member deViere stated he added this item to receive an update on the proposed annexation of Shaw Heights.

Mr. Douglas Hewett, City Manager, stated the item was not brought back to Council because two requests made by Council pertaining to this item have not been completed; poll residents of Shaw Heights and engage in dialogue with County staff pertaining to shared services.

Mayor Robertson stated the City-County Liaison Committee has not met this year, and next year the City will lead the meetings; this may be an item for discussion at one of those meetings.

Council Member Crisp asked the City Manager to provide a definitive date of when to expect further discussion of this item.

Council Member deViere stated Council did not direct staff to petition the Shaw Heights residents. We have two other courses of action, (voluntary annexation or Memorandum of Understanding) now that the legislation action has failed, and provide recommendations to Council.

Consensus was to direct staff to bring this item back with a plan of action.

5.0 CLOSED SESSION

MOTION: Council Member Arp moved to go into closed session for an attorney-client privileged matter relating to economic development.

SECOND: Council Member Wright

VOTE: UNANIMOUS (10-0)

The regular session recessed at 8:50 p.m. The regular session reconvened at 8:58 p.m.

MOTION: Council Member Mohn moved to go into open session.

SECOND: Council Member Wright

VOTE: UNANIMOUS (10-0)

6.0 ADJOURNMENT

There being no further business, the meeting adjourned at 8:58 p.m.

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