



City of Hampton, VA Meeting Minutes City Council

22 Lincoln Street
Hampton, VA 23669
www.hampton.gov

*Randall A. Gilliland
Ross A. Kearney, II
Angela Lee Leary*

*Joseph H. Spencer, II
George E. Wallace
Paige V. Washington, Jr.
Molly Joseph Ward, Mayor*

Staff:

*Jesse T. Wallace Jr., City Manager
Cynthia Hudson, City Attorney
Katherine K. Glass, Clerk of Council
Brenda J. Vaccarelli, Deputy Clerk*

Wednesday, September 10, 2008

7:29 PM

Council Chambers, 8th Floor, City Hall

CALL TO ORDER/ROLL CALL

Molly Joseph Ward presided

Present: Randall A. Gilliland, Ross A. Kearney, II, Angela Lee Leary,
Joseph H. Spencer, II, George E. Wallace

Absent: Paige V. Washington, Jr.

INVOCATION - Councilwoman Leary

PLEDGE OF ALLEGIANCE TO FLAG

CONSENT AGENDA

Consent Items

- 08-0366 Resolution Appropriating Funds for Uncompleted Capital Projects funded with General Funds, Stormwater Funds, and Economic Development Funds.

Be it resolved by the Council of the City of Hampton, Virginia that \$12,223,818.63 from the Designated General Fund Balance, \$673,826.90 from Stormwater Fund Balance and \$602,898.25 from the Economic Development Fund Balance be appropriated to the Capital Projects Fund to complete the following projects for fiscal year 2009:

General Fund Projects	Amount
Fleet Management Construction	222,232.24
Reengineering Technology	211,773.45
Strategic Property Acquisition	425,686.35
Upgrades to Council Chambers	2,537.69
Enterprise Architecture	68,621.98
Shopping Center Revitalization	1,030,478.93

Contingent Reserve	97,419.11
Radio Equipment-Lease Purchase	6,007.51
Automated Financial Information System	184,912.37
Police Firing Range	19,750.00
Homeland Security Building	170,000.00
Police Vehicle Technology	1,623.00
PS Radio Upgrade	278,996.23
Weapons Range Cleaning	21,230.00
Pre-Wiring Generators	389,375.00
Drainage Program (Budget Savings)	947,372.00
Arterial Road Resurfacing	763,761.24
Mercury Central Infrastructure Maintenance	84,852.20
VDOT-Matching Funds	85,686.19
Bridge Street Replacement	199,953.00
Dredging Gosnold's Hope	120,900.00
Back River Flooding	2,224.00
Drainage Flood Plan	463,119.03
Lincoln/Queen Street Connector	180,000.00
Fort Monroe North Access Road	100,000.00
Sewer Construction-Crossroads	980,155.86
Farmington Ditch Improvement	276,299.48
Building Maintenance	209,481.56
Circuit Court Elevator	164,749.35
TV-47 Studio Construction	38,883.69
Maintenance Srvy/Public Building	218,152.00
School Maintenance	285,054.77
Soccer Fields at Dixon	619,250.69
Parks and Recreation Maintenance	991.03
Hampton's Club House	302,240.53
Landscape Upgrade City Wide	173,885.00
Downtown Parking Garage	1,000,000.00
Kecoughtan-Sunset Park	550,000.00
Neighborhood Improvement Program	535,543.15
Blighted Property Acquisition	785,359.00
River Street Park	5,261.00
Total General Fund Projects	\$12,223,818.63
Stormwater Fund Projects	
Stormwater Improvements	636,024.01
Storm Drain Outfalls-Pembroke Ave	32,295.29
Northhampton Drainage	5,507.60
Total Stormwater Fund	\$673,826.90
Economic Development Fund Projects	
HRC South Access to HRC Parkway	84,912.60
E Street	174,706.22
Blighted Property Acquisition	343,279.43
Total Economic Development Fund	\$602,898.25

Total to be Re-Appropriated	\$13,500,543.78
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Councilwoman Leary stated that she wanted the opportunity to vote no on item #1, the resolution appropriating funds from uncompleted capital projects to be funded with general funds, stormwater funds and economic development because there were some things that she did not recognize and she needed additional time to do the research on. She explained that is her reason for voting no and she wanted to explain that.

APPROVED

Motion made by: Councilmember Joseph H. Spencer, II

Seconded by: Councilmember Randall A. Gilliland

Ayes: 5 - Randall A. Gilliland, Ross A. Kearney, II, Joseph H. Spencer, II, George E. Wallace, Molly Joseph Ward

Nays: 1 - Angela Lee Leary

Absent: Paige V. Washington, Jr.

2. 08-0372 Resolution Approving Fourth Quarter Budget Adjustments for FY08

BE IT RESOLVED by the City Council of the City of Hampton, Virginia that the attached fourth quarter budget adjustments pertaining to fiscal year 2008 be approved.

Emergency 911

Personal Services	0.00	Transfer from IT to cover half the costs of battery replacement
Operating Expenses	0.00	the uninterrupted power source.
Capital Outlay	<u>6,881.50</u>	
Total	6,881.50	

Coalition for Youth

Personal Services	8,500.00	Transfer from Retirement & Benefits to cover salary needs
Operating Expenses	(1,000.00)	thru the end of the fiscal year. Transfer to Recreation for the
Capital Outlay	<u>0.00</u>	"Mother/Daughter Team" at Northampton Community Center.
Total	7,500.00	

Codes Compliance

Personal Services	55,000.00	Transfer from Retirement & Benefits to cover salary needs thru
Operating Expenses	0.00	fiscal year.
Capital Outlay	<u>0.00</u>	
Total	55,000.00	

Comprehensive Services Act

Personal Services	0.00	Transfer from SS/Administration, SS/Employment, SS/Food S
Operating Expenses	655,340.99	SS/Purchase of Services, SS/Public Assistance and Retirement
Capital Outlay	<u>0.00</u>	Benefits to match local share of CSA funding.

Total 655,340.99

Department Support-Contractual

Personal Services	0.00
Operating Expenses	697,000.00
Capital Outlay	<u>0.00</u>
Total	697,000.00

Transfer from Retirement and Employee Benefits to cover year-end expenses to Hampton Roads Regional Jail.

Fire

Personal Services	11,815.54
Operating Expenses	91,241.00
Capital Outlay	<u>0.00</u>
Total	103,056.54

Transfer from Retirement & Employee benefits to cover year-end shortage. Transfer from Contingency to cover year end fuel and depreciation expenses.

Information Technology

Personal Services	0.00
Operating Expenses	(6,881.50)
Capital Outlay	<u>0.00</u>
Total	(6,881.50)

Transfer to Emergency 911 to cover half the costs of battery replacement for the uninterrupted power source.

Municipal Council

Personal Services	0.00
Operating Expenses	10,000.00
Capital Outlay	<u>10,000.00</u>
Total	20,000.00

Transfer from Contingency to fund the purchase of computers for Council Members and staff and to cover year-end expenses.

Non-Departmental

Personal Services	10,000.00
Operating Expenses	300,000.00
Capital Outlay	<u>0.00</u>
Total	310,000.00

Transfer from Retirement and Employee benefits to cover year-end salary shortages, accounts receivable write offs and other expenses. Transfer from Contingency to cover expenditures through end of year.

Public Works-Administration

Personal Services	13,057.00
Operating Expenses	0.00
Capital Outlay	<u>0.00</u>
Total	13,057.00

Transfer from Retirement & Benefits to cover salary needs through fiscal year.

Public Works-Engineering

Personal Services	10,120.00	Transfer from Retirement & Benefits to cover salary needs the
Operating Expenses	0.00	fiscal year.
Capital Outlay	<u>0.00</u>	
Total	10,120.00	
Public Works-Facilities		
Personal Services	45,000.00	Transfer from Retirement & Benefits to cover salary needs the
Operating Expenses	40,000.00	fiscal year. Transfer from Contingency to Operating to fund ye
Capital Outlay	<u>0.00</u>	costs.
Total	85,000.00	
Recreation		
Personal Services	456,128.00	Transfer from Contingency to fund expenses associated with
Operating Expenses	1,000.00	Programs; excess revenues were collected to support this tra
Capital Outlay	<u>0.00</u>	Transfer from Coalition for Youth for grant project "Mother/Da
Total	457,128.00	
Sheriff		
Personal Services	25,000.00	Transfer from Retirement & Benefits to cover salary needs the
Operating Expenses	0.00	fiscal year.
Capital Outlay	<u>0.00</u>	
Total	25,000.00	
Social Services-Administration		
Personal Services	4,163.00	Year-end transfer from SS-VISTA, SS-Emergency Fuel Requ
Operating Expenses	131,598.00	and SS-Employment Services to balance fiscal year 2008 exp
Capital Outlay	<u>5,361.00</u>	appropriations. Transfer to Comprehensive Services Act to m
Total	141,122.00	share.
Social Services-Employment		
Personal Services	(196,184.00)	Transfer to SS-Administration and SS-VISTA to match curren
Operating Expenses	(217,171.00)	in accordance with State funding. Transfer to Comprehensive
Capital Outlay	<u>0.00</u>	to cover local match.
Total	(413,355.00)	
Social Services-Emergency Fuel Requirements		
Personal Services	(4,000.00)	Transfer to operating to clear credit balance. Transfer to SS-
Operating Expenses	967.00	to match current level of spending in accordance with State fu
Capital Outlay	<u>0.00</u>	

Total	(3,033.00)	
Social Services-Food Stamps		
Personal Services	(12,528.00)	Transfer to CSA to cover local match.
Operating Expenses	(20,053.99)	
Capital Outlay	0.00	
Total	(32,581.99)	
Social Services-Public Assistance		
Personal Services	0.00	Year-end transfer from SS-Purchase of Service to balance fiscal
Operating Expenses	102,895.71	2008 expenditures vs. appropriations. Transfer to CSA to cover
Capital Outlay	0.00	shortage.
Total	102,895.71	
Social Services-Purchase of Services		
Personal Services	0.00	Transfer to SS-Public Assistance to match current level of spending
Operating Expenses	(209,027.71)	accordance with State funding. Transfer year-end balances to
Capital Outlay	0.00	shortage.
Total	(209,027.71)	
Social Services - VISTA		
Personal Services	0.00	Transfer to SS-Administration to match current level of spending
Operating Expenses	(111,361.00)	accordance with State funding. Year-end transfer from SS-Admin
Capital Outlay	0.00	to balance fiscal year 2008 expenditures vs. appropriations.
Total	(111,361.00)	
Retirement and Benefits		
Personal Services	(1,255,492.54)	Transfer excess merit funds & separation leave pay funds to
Operating Expenses	0.00	Compliance, PW-Engineering, PW-Administration, Facilities,
Capital Outlay	0.00	Youth and Fire to cover salary needs through year-end. Trans
Total	(1,255,492.54)	Non-Departmental to cover salary needs, accounts receivable
		and other expenses through year-end and to Departmental S
		end
		of year payments to Hampton Roads Regional Jail. Transfer
		for CSA local match.
Contingency Reserve		
Personal Services	0.00	Transfer to Fire to cover year-end fuel and depreciation exper
Operating Expenses	(657,369.00)	to Facilities to fund utility costs through year-end. Transfer to
Capital Outlay	0.00	Council to fund purchase of computers for new Council Mem

Total	(657,369.00)	to cover year-end expenses. Transfer to Recreation to fund S
Grand Total	<u>0.00</u>	from excess revenues collected. Transfer to Non-Departmen cover year-end expenditures.

APPROVED items 2 through 7 and 9 on the consent agenda.

Motion made by: Councilmember Joseph H. Spencer, II

Seconded by: Councilmember George E. Wallace

Ayes: 6 - Randall A. Gilliland, Ross A. Kearney, II, Angela Lee Leary,
Joseph H. Spencer, II, George E. Wallace, Molly Joseph Ward

Nays: 0

Absent: Paige V. Washington, Jr.

3. 08-0374 Approval of the minutes from the City Council retreat of August 18, 2008, and the afternoon and evening sessions of August 20, 2008.

APPROVED items 2 through 7 and 9 on the consent agenda.

Motion made by: Councilmember Joseph H. Spencer, II

Seconded by: Councilmember George E. Wallace

Ayes: 6 - Randall A. Gilliland, Ross A. Kearney, II, Angela Lee Leary,
Joseph H. Spencer, II, George E. Wallace, Molly Joseph Ward

Nays: 0

Absent: Paige V. Washington, Jr.

4. 08-0376 Request for Refund of Erroneous Tax Abatements for 2005, 2006, 2007, and 2008.

APPROVED items 2 through 7 and 9 on the consent agenda.

Motion made by: Councilmember Joseph H. Spencer, II

Seconded by: Councilmember George E. Wallace

Ayes: 6 - Randall A. Gilliland, Ross A. Kearney, II, Angela Lee Leary,
Joseph H. Spencer, II, George E. Wallace, Molly Joseph Ward

Nays: 0

Absent: Paige V. Washington, Jr.

5. 08-0379 Resolution Approving the City of Hampton, Virginia's Participation and Appropriation of the Highway Safety Grant Program through the Commonwealth of Virginia Division of Motor Vehicles.

WHEREAS, the City of Hampton has been awarded the Highway safety Grant in the amount of \$38,500 in Federal funds with \$7,700 as an in-kind match from the Hampton Police Division's budget for a total of \$46,200; and

WHEREAS, the grant award covers the period 10/01/2008 through 09/30/2009;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hampton accepts and appropriates the Highway Safety Grant in the amount of \$46,200 awarded/ made by the Commonwealth of Virginia, Division of Motor Vehicles Department of in accordance with the grant agreement;

BE IT FURTHER RESOLVED that the City Council authorizes the City Manager or his designee to take the necessary steps to implement this grant award.

APPROVED items 2 through 7 and 9 on the consent agenda.

Motion made by: Councilmember Joseph H. Spencer, II

Seconded by: Councilmember George E. Wallace

Ayes: 6 - Randall A. Gilliland, Ross A. Kearney, II, Angela Lee Leary, Joseph H. Spencer, II, George E. Wallace, Molly Joseph Ward

Nays: 0

Absent: Paige V. Washington, Jr.

6. 08-0383 Resolution Designating New World Systems Corporation to be the Only Source Practicably Available from which to Procure an Upgrade to the City Financial System and Authorizing the Execution of a Contract with New World Systems Corporation for the Purchase of the System Upgrade.

WHEREAS, Hampton City Council recognizes the public interest in providing through its Finance and Information Technology Department the most efficient means reasonably available and affordable to efficiently administer City financial operations;

WHEREAS, New World Systems Corporation ("New World") is the exclusive developer of the .NET upgrade to the Logos system, a financial operating system that provides real time financial reporting tools for analysis and assist with City operation planning;

WHEREAS, New World is the sole owner and holder of all copyrights and licenses for New World System Logos.NET software which is essential to the upgrade of the City's current financial system; and

WHEREAS, New World has presented a proposal for the purchase of this software the terms and conditions of which have been determined to be fair and reasonable for technology of this nature and of this level of sophistication.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Hampton, Virginia as follows:

1. That in accordance with Virginia Code §2.2-4303.E, New World Systems Corporation is designated and determined to be the only source practically available for the purchase of an upgrade to the City's financial

system for the reasons stated in this Resolution, and notice thereof shall be posted, and

2. That the City Manager or his designee is hereby authorized and directed to negotiate and execute a Purchase Contract New World Systems Corporation for the purchase of the Logos.NET system described in this Resolution with such modifications as the City Manager or his designee, on the advice of the City Attorney, believes to be in the interest of the City.

APPROVED items 2 through 7 and 9 on the consent agenda.

Motion made by: Councilmember Joseph H. Spencer, II

Seconded by: Councilmember George E. Wallace

Ayes: 6 - Randall A. Gilliland, Ross A. Kearney, II, Angela Lee Leary, Joseph H. Spencer, II, George E. Wallace, Molly Joseph Ward

Nays: 0

Absent: Paige V. Washington, Jr.

7. 08-0387 AN ORDINANCE TO AMEND CHAPTER 5 OF THE CODE OF THE CITY OF HAMPTON, VIRGINIA, ENTITLED "ANIMALS" TO UPDATE THE CITATION TO THIS VIRGINIA CODE.

APPROVED items 2 through 7 and 9 on the consent agenda.

Motion made by: Councilmember Joseph H. Spencer, II

Seconded by: Councilmember George E. Wallace

Ayes: 6 - Randall A. Gilliland, Ross A. Kearney, II, Angela Lee Leary, Joseph H. Spencer, II, George E. Wallace, Molly Joseph Ward

Nays: 0

Absent: Paige V. Washington, Jr.

8. 08-0390 Resolution of the City Council of the City of Hampton, Virginia Authorizing the Creation of the Hampton E-Commerce Grant Program and Appropriating \$30,000 from the Uncommitted Funds Allocated to the VECTEC Grant Program to Fund the Hampton E-Commerce Grant Program

WHEREAS, the City Council of the City of Hampton, Virginia (the "Council") approved a Resolution on February 11, 2004 creating the Virginia Electronic Commerce Technology Center (VECTEC) Grant Program;

WHEREAS, the City Council appropriated funds to the Industrial Development Authority of the City of Hampton, Virginia (the "Authority") specifically to administer the VECTEC Grant Program;

WHEREAS, the Authority has explored an alternative to allow other qualified e-commerce service providers, including VECTEC, to participate in a grant program targeted to assisting Hampton small businesses with e-commerce solutions; and

WHEREAS, the Authority, by a duly adopted resolution, requests the Council to authorize the creation of a new grant program to be called the Hampton E-Commerce Grant Program and to appropriate \$30,000 from uncommitted funds allocated to the

VECTEC Grant Program to the Hampton E-Commerce Grant Program to fund the new program.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hampton, Virginia as follows:

1. That the Hampton E-Commerce Grant Program be created and administered by the Authority; and
2. That \$30,000.00 of uncommitted funds allocated to the VECTEC Grant Program be appropriated to fund the Hampton eCommerce Grant Program.

Councilwoman Leary stated that the notes stating “the reallocation of \$30,000 of uncommitted funds from VECTEC Grant Program to the Hampton eCommerce Grant Program, and on page 2, the City is setting up a new fund. She asked who was going to track the fund and administer it. She said that the new program will continue to be administered by the Authority. She said that the Departments of Economic Development and Information Technology will devise an application process to certify. She said that she would like to add that the Industrial Development Authority (IDA) will review and approve the application process before it is actually implemented by staff. She said that she would like to know that this is something that the IDA board approves of.

Mayor Ward asked Councilwoman Leary if she wanted to amend the resolution. In response, Vice Mayor Spencer stated that Mr. Jesse T. Wallace, Jr., City Manager, should speak to that issue.

The City Manager stated that Mr. Dan Girouard, Asset Manager, Economic Development, will respond to Councilwoman Leary’s question.

Mr. Girouard stated that if Council approves the resolution it is part of the IDA agenda on September 16, 2008, to accept the funds and to approve the process, the administrative guidelines, the application for the grant recipient and the vendors, as well as semi-annual reporting to the Board.

Councilwoman Leary thanked Mr. Girouard. She stated that she didn’t see the exact language to review and approve the application process and she did not want staff instituting a process for the IDA unless the IDA has approved the process.

APPROVED At the request of Councilwoman Leary, Dan Girouard, Asset Manager, provided additional information.

Motion made by: Councilmember Randall A. Gilliland

Seconded by: Councilmember Joseph H. Spencer, II

Ayes: 6 - Randall A. Gilliland, Ross A. Kearney, II, Angela Lee Leary, Joseph H. Spencer, II, George E. Wallace, Molly Joseph Ward

Nays: 0

Absent: Paige V. Washington, Jr.

9. 08-0395 Resolution Concurring that the Hampton Roads Regional Jail May Provide Enhanced VRS Benefits for Hazardous Duty Positions

WHEREAS, the Hampton Roads Regional Jail is now the only jail or correctional facility in our region that does not provide the VRS enhanced benefits for hazardous duty positions or equivalent retirement benefits to employees in eligible hazardous duty positions; and

WHEREAS, there is a competitive need to offer these benefits to recruit and retain the best qualified individuals; and,

WHEREAS, the Hampton Roads Regional Jail Authority has developed a sound financial plan for covering the estimated actuarial costs of adding these benefits to its eligible positions through the increased revenue associated with housing federal inmates; and,

WHEREAS, the Board of the Hampton Roads Regional Jail Authority did pass a resolution electing to provide these enhanced benefits at its August 20, 2008 meeting

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF HAMPTON, VIRGINIA:

That the City of Hampton, Virginia, a political subdivision participating with the Hampton Roads Regional Jail, acting by and through its City Council, does hereby concur that the Jail, participating in the Virginia Retirement System under Title 51.1, Chapter 1, Article 5 of the Code of Virginia, as amended, may elect to have such employees of the Jail who are employees in position as full time salaried Jail Superintendents and Jail Officers and who tenure is not restricted as to temporary or provisional appointment, to become eligible, effective October 1, 2008, to be provided benefits in the Virginia Retirement System equivalent to those provided for State police officers of the Department of State Police, as set out in Section 51,1-138 of the Code of Virginia, in lieu of the benefits that would otherwise be provided as such code has benefits or may be amended from time to time.

APPROVED items 2 through 7 and 9 on the consent agenda.

Motion made by: Councilmember Joseph H. Spencer, II

Seconded by: Councilmember George E. Wallace

Ayes: 6 - Randall A. Gilliland, Ross A. Kearney, II, Angela Lee Leary, Joseph H. Spencer, II, George E. Wallace, Molly Joseph Ward

Nays: 0

Absent: Paige V. Washington, Jr.

PRESENTATIONS, PROCLAMATIONS, AWARDS

10. 08-0367 Proclamation Proclaiming September 2008 as Recovery Month

Councilman Wallace read and presented a proclamation proclaiming September as Recovery Month in the City of Hampton to Mr. John Haywood, Administrator of the Newport News Drug Court and Mr. Kenneth McCallum, President.

Mr. Haywood thanked Council and stated that on September 24, 2008, at 6 p.m. at the Main Street Library in Newport News, there will be a Recovery Month event. He said

that he will be narrating a panel of individuals who are in recovery; some professionals and some still in treatment. Mr. Haywood noted that the event was open to the public.

11. 08-0401 Proclaiming September 11, 2008 as A Day of Remembrance and Hope.

Councilwoman Leary read and presented a proclamation proclaiming September 11, 2008, as A Day of Remembrance and Hope to Lee A. Lewis, Sr., Lt. Col, United States Army, Retired, and Ms. Nia Childs, Civil Servant, Accessions Command, United States Army, Fort Monroe.

Councilwoman Leary stated that Mr. Lewis's son gave his life in battle for our country. Private First Class Lee A. Lewis, Jr., Medic, 28 years old and a Kecoughtan High School graduate, died in Sadr City, Iraq when his patrol was attacked by enemy small arms fire. He was assigned to the Third Battalion, 15th Infantry Regiment, 3rd Infantry Division, Fort Stewart, Georgia and died on March 18, 2005.

Councilwoman Leary stated that the days of remembrance and hope are designed to recognize the sacrifice of heroes, such as Lee Lewis, Jr. and the loss and the sacrifice of their families as well.

Mr. Lewis said that he was especially proud and privileged and humbled that the Military Affairs Committee (MAC) selected him and Ms. Childs to come before Council to accept the proclamation. Mr. Lewis said that as he listened to the invocation and as he was walking in to the Council Chambers, he thought that the thoughts that people have in different ways and that is that greater love has no man than to lay down his life for his friend. He said that he can't speak for everyone who died on September 11, but he can tell you that he knows without a doubt, that when his son died he was among friends. Mr. Lewis said that he talked with his son a few days before he left and a few days before he died. He said that he knows that his son was at peace in his situation and he was prepared to accept whatever came, but he was not alone. All of the men and women who were with him were likewise dedicated, and therefore he is proud to have had the opportunity to make this expression before Council and to thank them.

PUBLIC HEARINGS

Rezoning - First Readings

12. 08-0391 Rezoning Application No. 1272 by Oxford Hampton Partners, LLC To Amend Proffers from the Rezoning Application #1189 to Change the For-Sale Units to For-Rent Uses Within the Second Phase of Oxford Trail Development, to Proffer a New Site Plan layout Prepared by Corcoran/Ota Dated August 27, 2007 and to Proffer New Elevations Prepared by Corcoran/Ota . [LRSN # 13001406]

Councilman Gilliland said that item #12 will be deferred to the September 24, 2008, Council meeting.

Ms. Cynthia E. Hudson, City Attorney, stated that the Planning Department recommended that the item be deferred to the October 8, 2008.

DEFERRED (10/8/2008)

Motion made by: Councilmember Randall A. Gilliland

Seconded by: Councilmember George E. Wallace

Ayes: 6 - Randall A. Gilliland, Ross A. Kearney, II, Angela Lee Leary, Joseph H. Spencer, II, George E. Wallace, Molly Joseph Ward

Nays: 0

Absent: Paige V. Washington, Jr.

13. 08-0392 Rezoning Application No. 1268 by City of Hampton to rezone 2.67± acres located along Reed Street and Harrison Street from General Commercial District (C-3) to One Family Residence District (R-9).

Mr. Jesse T. Wallace, Jr., City Manager, stated that the property covered by Rezoning Application No. 1268 has a high proportion of homeownership and vacant lots and currently, existing single family homes in the area are legal non-conforming structures. He said that a non-conforming structure in an R-9 district which is destroyed or damaged in excess of 75% of its replacement cost, cannot be rebuilt. Rezoning this area R-9 will allow property owners to invest in their properties. The City Manager stated that the Planning Department and the Planning Commission recommend approval of Rezoning Application No. 1268. He noted that Ms. Caroline Butler, Chief Planner, will provide a brief presentation to Council.

Ms. Butler stated that this neighborhood of single family houses is bounded on the south by West Pembroke Avenue, on the east by the Hampton Roads Transit Bus Station, on the north by Bassett Cemetery and on the east, an automobile repair business. She said that multiple property owners who live in this area have requested that the City their houses and their vacant lots from commercial to residential. Ms. Butler explained that, at the time their houses were built, single family uses were permitted in the commercial districts, however in 1989, the City Zoning Ordinance was amended to no longer allow single family in commercial. Ms. Butler further explained that today, these houses are legal non-conforming uses which mean that the owners enjoy the privileges of living there, but if they cease to use them as residences, or if the houses are destroyed, they cannot be rebuilt. She stated that it also means that the properties that are vacant lots cannot have houses built on them.

Ms. Butler stated that Council rezoned the four properties on several different occasions going back as far as 1991 and as recently as 2007. She said the owners requested the rezoning because they became of the non-conforming status of their property when they went to obtain loans on their properties or to refinance their mortgages. Ms. Butler noted that in reviewing the applications, the Planning Commission and Council encouraged staff to come back with comprehensive rezoning of the entire area to residential.

Ms. Butler stated that she was happy to present the rezoning to Council on behalf of the owners. Ms. Butler stated that there have been 24 rezonings that have taken place from commercial to residential to permit either existing single family houses or to build houses on lots. She said that there are more properties included and some were area wide including such areas as Greenbriar Avenue and Park Place; some took place in Fox Hill along Beach Road and in other areas throughout the City.

Ms. Butler provided Council with the names of following property owners who are requesting the rezoning:

- Mr. Thomas came all the way to Hampton from California in August to attend a family reunion and while he was here he attended the Planning Commission meeting and spoke in favor of this rezoning. Mr. Thomas would like to build a house on his vacant lot because their existing single family house, where the family grew up, was destroyed by fire and it cannot be rebuilt. He would like to rebuild the house for his sister, Celestine Johnson, who is going blind.
- Toni and Jason Williams are a young military family and they have been reassigned to another area. They have had two contracts on their house both of which have fallen through because the purchasers cannot get a mortgage on the property.
- Mr. and Mrs. Lewis were unaware that their house was a non-conforming use and of those implications until they attended a community meeting in 2007 for several other properties on Reed Street. At that time they requested that staff include their property in any future rezoning. The Hampton Redevelopment and Housing Authority (HRHA) owns a number of properties in the area but they are unable to construct single family houses because the zoning is not correct.
- Nathaniel Royster attended the community meeting in April 2008, where this rezoning was discussed. He was frustrated with staff because he thought he rezoning had already taken place. He remembered the first single family that rezoned in 1991 and the one that took place in 2007.

Ms. Butler stated that there are 31 properties including the owner's requests and the only written response they have received that is in opposition to this is from Mr. Eric Johnson who owns several properties along West Pembroke Avenue that are not included in the rezoning and he is also a partial owner at 409 Harrison Street. Ms. Butler said that the property is owned by several owners, one of whom is Jean Johnson, who has submitted a written statement indicating that she favors the rezoning. Ms. Butler noted that they are not in a position to settle a domestic dispute and requested that the owners sort that out themselves.

Ms. Butler provided Council with the names of the following owners who attended the community meeting in April 2008: Mr. Royster, Mr. and Mrs. Williams, Representatives from HRHA and Mr. and Mrs. Lewis.

Ms. Butler said that are two people who do not own properties, but have an interest in the area, also attended: Ms. Johnson, and Ms. Virginia Lyeth who was representing her client, Mr. Eric Johnson.

Ms. Butler said there are ten lots on West Pembroke Avenue that are not included in the rezoning. She said that Mr. Johnson owns three contiguous properties and he requested that those properties be deleted and staff agreed to do that.

Ms. Butler noted the following comments from long-time residents that were shared with staff:

- Completely surrounded by commercial uses, automobile repair, vehicle storage
- Hampton Roads Transit which has a constant stream of buses and passengers at all hours of the day
- Didn't object when the uses were located there because they knew the zoning was correct although many people might find them not the most neighborly of uses
- Next to Bassett Cemetery, a use that some people might find disturbing.
- Neighborhood is their home and they want to sleep easily with the assurance that they can continue to live there without fear of zoning restrictions that put their homes in jeopardy.

Ms. Butler stated that, since 1991 Council has approved 24 rezonings many of which contain multiple properties from commercial to residential to ensure that the people who live there and who have invested there, can continue to use their homes as residential. She said that the residents of Reed and Harrison Street asked only for that same right and privilege.

Ms. Butler requested approval of this rezoning on behalf of the residents.

Ms. Celestine Johnson, 21 Huffman Drive, requested that Council approve the Rezoning Application so that a residence can be built before her sister, Lillian Fobs becomes totally blind. Ms. Johnson stated that her mother is buried in Bassett Cemetery as well as other family members. She said that the cemetery holds a great sentiment to them.

Ms. Virginia Lyeth, stated that the issue is not necessarily against the people who are in problem situations, a lot is the manner in business. Ms. Lyeth said that she was representing herself, of Cardinal Realty and her client, Mr. Eric Johnson. She said that she is always upset when there is an issue of down zoning. She said that when a property of higher value is taken from C-3 to R-9 the City is setting a dangerous precedent in the City and it is a version of eminent domain. Ms Lyeth said that in recent years the City of Hampton has moved towards using this procedure which is an unhealthy pattern that is occurring in the City. She said that it is a motion that has been going on much longer than the past two years. Ms. Lyeth said that she has been working with Mr. Johnson of San Antonio, Texas, the current owner of three parcels of property at Pembroke Avenue, and owner of half of Harrison Street. Ms. Lyeth stated that at the August 7, 2008, Planning Commission meeting she specifically asked if the rezoning sign had been placed on the property and she was told that it had, but they did not know where. She said that as of September 10, 2008, there has been no rezoning sign on those properties. Ms. Lyeth asked if the owners had been notified that their property lies in a business enterprise zone. She said that she was informed that it was not a requirement of the City. Ms. Lyeth said that she knows that people have not been informed.

Ms. Lyeth noted that the taxpayers of the City of Hampton pay the salaries of the City employees and the City employees have a responsibility to those citizens. She said that the members of Council were elected to protect the interests of the citizens also have a moral and ethical responsibility to ensure that the citizens have been properly informed of anything that materially affects the value of their property. She said that Council has an obligation, by their oaths and by their employment status to ensure that the citizens are informed of anything that is not readily known to the average person. She said that

Council is not obligated, but it would be the decent thing to do. Ms. Lyeth said that \$1.5 million was spent to purchase properties in the Buckroe area that were down zoned in September 2007. She said that the properties were zoned from RM in order to better control the redevelopment of that area. She said that some of the owners have received offers from the City two to three weeks prior to the vote to spend the \$1.5 million. Ms. Lyeth said that she wonders about the original intent. She said that to down zone the very property the City is looking to purchase and what is the legality of unfunded contracts that were written. Ms. Lyeth said that her biggest issue is the fact that the City employees have not followed proper protocol.

Ms. Toni Williams, 417 Reed Street, stated that she put her property on the market in March 2008. She explained that her husband left on Monday, September 8, for a seven month deployment and she was hoping to move home to be near family. She said that the zoning issue did not allow her to do that. She said that she loves Hampton but it is a problem because she is stuck with the home and if they need to leave she would like to have that opportunity as well.

Councilwoman Leary asked how the 24 properties are compared to Pembroke Avenue when Pembroke Avenue is a large street. She said that it has a different design capacity and there is a difference in its structure. She asked if Mr. Johnson's property fronts Pembroke Avenue. In response, Ms. Lyeth said that Mr. Johnson owns three properties that front on Pembroke Avenue and those properties are not included in the Rezoning Application. She said that Mr. Johnson and Jean Johnson and Tonya Johnson are co-owners of another property that is within the proposed rezoning area.

Councilwoman Leary asked if the co-owned property is part of Ms. Lyeth's request. In response, Ms. Lyeth stated that she has a written statement from Jean Johnson stating that she supports the rezoning. Mr. Eric Johnson, another owner, does not support the rezoning.

Councilwoman Leary said that she understands that there are multiple owners of the property. In response, Ms. Lyeth said that there are three owners involved; one is in favor, one is against and one has been silent.

Councilwoman Leary said that she doesn't understand why the City would include that property in the mix with those properties that could be approved. Councilwoman Leary said that she doesn't know why the City would become involved in something that could be a civil matter so she will vote no on this request.

Councilman Kearney thanked Ms. Lyeth for her comments but he doesn't believe the rezoning is down zoning. He said that he knows many of the people who have lived on the streets of Harrison and Reed and he believes the quality of life for those people will be better. He said that the frontal streets on Pembroke are commercial and there is commercial from one end to the other. He said that Ms. Williams is facing the problem that a lot of young people are facing. Councilman Kearney said that he wasn't being critical, but the research is not done to determine how the zoning is, when the owner tries to sell the house, they find that they are strapped with a home that other buyers will not buy because of the zoning. He said that this rezoning would make it right for the people who live there and for the young buyers. He said that it is a neighborhood with a rich history and he doesn't believe that this rezoning is down zoning.

HELD PUBLIC HEARING

APPROVED ON FIRST READING

Motion made by: Councilmember Ross A. Kearney, II

Seconded by: Councilmember Joseph H. Spencer, II

Aye: 5 - Randall A. Gilliland, Ross A. Kearney, II, Joseph H. Spencer, II,
George E. Wallace, Molly Joseph Ward

Nay: 1 - Angela Lee Leary

Absent: Paige V. Washington, Jr.

Conditional Privilege

14. 08-0377 Conditional Privilege Application No. 93 by Wilbur and Brenda Hendrix to allow live entertainment at Mallory's Restaurant located at 1565 Briarfield Road (LRSN # 3005371). The 0.5450± acre property is zoned Neighborhood Commercial District (C-1).

Mr. Jesse T. Wallace, Jr., stated that Conditional Privilege Application No. 93 by Wilbur and Brenda Hendrix would allow live entertainment at Mallory's Restaurant located at 1565 Briarfield Road. He said that the property is zoned neighborhood commercial district C-1 and a Conditional Privilege is needed for live entertainment in conjunction with the restaurant in the district. The City Manager stated that a Use Permit was granted in March, 1971 for live entertainment but it expired due to a continuous 24 month period without live entertainment. He said that the applicant's proposal would increase hours of operation and add live entertainment. The City Manager stated that Planning Staff and the Planning Commission recommended denial of Conditional Privilege Application No. 93.

Mr. Chris Dyer, City Planner, stated the applicant was requesting entertainment in the form of a DJ, band and karaoke in conjunction with the existing restaurant. Mr. Dyer noted that the site is located at the intersection of Briarfield Road and Butler Drive and some of the surrounding uses include single family homes to the west, apartments adjacent to the site and Briarfield Park to the North.

Mr. Dyer said that a Use Permit was granted in 1971 for live entertainment but expired due to non continuous use at the site. He explained that the currently the property is zoned C1 and some of the surrounding zoning districts include RM to the east and west and R 11 to the north.

Mr. Dyer stated that the Hampton Community Plan 2006, as amended, designates this site for commercial use. Mr. Dyer stated that some of the police incidents that have occurred at the site within the past year have been fighting in the parking lot, public intoxication, larceny and domestic dispute.

Mr. Dyer provided Council with the following information from a community meeting was held on June 3, 2008, with 18 people attending:

- Noise, impacted preparation/rest for work
- Public nuisance
- Building up of trash in parking lot near apartments

- Public drunkenness
- Late hours of operation
- Parking
- Potential for increased crowd with additional use

Mr. Dyser noted that the applicant informed the residents at the meeting that they would be willing to address some of their concerns, including adding parking security to the site.

Mr. Dyser stated that staff recommended denial of Conditional Privilege Application No. 93 because it is not a designated commercial node, the parking concerns and the past incidents.

Councilwoman Leary asked Mr. Dyser if he any statistics on the number of calls made to public safety over a certain period of time. In response, the City Manager stated that from March 30, 2007, there have been 27 calls for police assistance at this address.

Councilwoman Leary thanked the City Manager for making the information part of the record.

Ms. Brenda Hendrix, 225 Martha Lee Drive, stated that she and her husband purchased Mallory's Restaurant in March, 2007, with the hopes to make it a good place to eat, visit with old friends, listen to music and have a good time. She explained that at the time of their purchase they were not aware of the permit they are requesting. She further explained that a few months after they purchased the restaurant, they started having a friend, who is a DJ, come by and he did karaoke and the patrons thoroughly enjoyed it. She said that some of their friends knew people who were in small, two and three piece bands and they were asked to come and play until they were notified in March, 2008, that they could not have a band and that a use permit was required. Ms. Hendrix stated that the music was stopped and they applied for the permit. She said that they were shocked to realize that their neighbors didn't want them to have the permit because two or three of the people that opposed the permit were the first ones to come in and listen.

Ms. Hendrix noted that the first encounter with the neighbors came after they applied for the permit and no one complained about the noise or the music for the first eight or nine months that they had the live music. She said that at the community meeting they addressed several items that they agreed to negotiate such as hiring security to patrol the parking lot, park motorcycles on the other side of the building away from the apartments, and to create additional parking spaces. Ms. Hendrix stated that they instated a rule to not allow anyone under 21 years of age there after 9 p.m. unless they are with their parents. She said that they have customers at the restaurant who live at Mallory Apartments and some of them have been there for many years.

Ms. Hendrix said that they want the restaurant to be a great place for family and friends to enjoy. She said that since they have opened the restaurant they have made some new friends and they would appreciate Council's consideration in approving the permit. Ms Hendrix provided Council with a petition of 250 signatures of people who are in support of the use permit.

Mr. Greg Harmon, 1561 Briarfield Road, stated that he is a firm believer that there is a consequence for everything that is done in life. He asked that if he was to drive his car without a license, or built an addition on his home without the proper permits, what would happen to him. Mr. Harmon said that the Planning Commission voted against the permit because they broke the law; they already had a DJ without a permit. He said that he hopes that is not the only reason that the Planning Commission voted against the permit. He said that Mallory Apartments consists of a lot of elderly people and young children. He said the world is scary enough and they don't need that type of element behind the apartments. Mr. Harmon said that the DJ was not a bad idea, but it is not a good location because they are 25 feet from a residential area.

Mr. William Siefers, 1561 Briarfield Road, said that Mr. Dyer failed to note that the August 7, 2008, Planning Commission meeting indicated that Mr. Glen Brown, Land Use Inspector for Codes and Compliance, stated that Mr. Brown visited Mallory Restaurant on August 6, 2008, and arrived approximately 6:30 p.m. and observed DJ setting up his equipment. He said that the DJ stayed approximately 45 minutes to an hour. Mr. Siefers stated that this happened the day before the Planning Commission meeting. He said that the first Planning Commission meeting was on July 3, 2008. He said that this was total disregard for the law and for the people who live in the neighborhood.

Mr. Al Etheridge, 3 Phyllis Lane, stated that Wilbur and Brenda Hendrix are family oriented people and he has always felt welcomed. He noted that the restaurant was very clean and he has seen Brenda police the parking lot. He spoke in support of Conditional Use Permit Application No. 93.

Mr. Larry Cumming, 2236 Cunningham Drive, stated that he represents the adjoining property owners at Mallory Apartments. Mr. Cumming said that he doesn't believe anyone objects to the Mallory Restaurant itself. He said that many people in the neighborhood have enjoyed going there for many years and they want the restaurant to be successful. He said the problem is the music, the different hours and the conduct of the individuals who patronize a location that has music and DJs. Mr. Cumming said that this is a commercial use surrounded by residential and if it were a commercial use in Downtown Hampton it would be great and there would be no problem. He said that it is very close to the residential property and there is no way to insulate this commercial use from the intense residential use immediately adjoining. Mr. Cumming also noted that the residential community is the not typical apartment residential community. He said that many of the residents have lived there for many years and a substantial portion of the community is mature citizens who enjoy the quite life that they have historically enjoyed. Mr. Cumming said that the owners have demonstrated a lack of responsibility and respect for the law because even after they were told they needed a permit they continued to conduct themselves in violation and continued to have music in the facility. Mr. Cumming said that he hopes that Council denies the application.

Councilman Kearney asked Mr. Cumming who he was representing. In response, Mr. Cumming stated that he is representing Mallory Apartments and Mrs. Edith Mallory and the owners of the adjoining apartment complex.

Councilman Wallace asked Mr. Cummings if the Mallorys were the previous owners of the restaurant. In response, Mr. Cumming stated that they are a related family. He said that Mrs. Edith Mallory is related to the former owners of the property, the original

Mallory family that owned the property. He said that she is not related to the Hendrix family who is currently operating the restaurant.

Ms. Sharon Mallory, 5 Quarterpath Lane, stated that she is the manager of Mallory Apartments and the daughter of the owner, Mrs. Edith S. Mallory. Ms. Mallory stated that the apartments have been owned by her immediate family since they were built in 1968. She said that they try very hard to have a safe, quiet and clean apartment community and many of the residents are senior citizens and have lived in the community for many years. She said that several of the residents have complained that they have been disturbed by the activities of Mallory's Restaurant and she feels that if the Conditional Use Privilege Application is approved these complaints will escalate. She said that if it does happen she is concerned that they may lose some of the residents. She requested that Council deny this Conditional Privilege Application.

Ms. Barbara Rucker, 1553 Briarfield Road, stated that in addition to the noise, she is concerned about a group of young teenagers between Mercury Boulevard and Briarfield Road who are allowed to be out late in the evenings. She said that they congregate in the streets and she has had some confrontations with them late at night between the hours of 11 p.m. and 12 a.m. Ms. Rucker said that she believes this kind of music and the alcoholic beverages is an open invitation for this group of young people to come closer. She said that there has been vandalism in the apartment complex parking lot. Ms. Rucker requested that Council consider that as well. She said that they don't need more confrontation between the young people and an older age group.

Councilwoman Leary said that she is voting against the request. She asked Ms. Cynthia E. Hudson, City Attorney, if the City's applications for permits for restaurants include any language that should they desire live entertainment they must make an application for that particular use. In response, the City Attorney stated that is what the owner is doing now. She explained that the use permit allows them to play live music.

Councilwoman Leary said that since it was in their permit to operate a restaurant that they should come back for a permit then she said the owners should have looked at the prevailing documents that they were granted by the permitting department.

The City Attorney stated that she wasn't sure what Councilwoman Leary meant. She said that the underlying zoning permits the operation of a restaurant there, the added privilege to have live music performances or music play is something they would have to come back for or ask for at the same time. The City Attorney explained that the use had been permitted before under previous ownership and expired due to lack of use of it for two years and the owner had to reapply.

Councilwoman Leary asked if there is anything in the permitting process that indicates that an owner has to come back for an additional permit. In response, the City Attorney stated that she doesn't believe it is actually a part of the application form, but the owner would be free to consult with the Planning Department about what uses the owner would like to pursue at the location and be informed that a special use permit is required for music performance.

Councilwoman Leary thanked the City Attorney and stated her answer was a tremendous help because she believes it appears that the applicant has operated

knowingly that they needed a permit for entertainment and therefore she has to vote against the request because she believes it is ignoring the law.

Councilman Gilliland requested that the applicant speak to that issue because he believes there is some misunderstanding or miscommunication.

Ms. Hendrix explained that at the last Planning Commission meeting they were not aware of the DJ being there. She said that they found out later, that while they were at the meeting a friend of their son was showing him some new musical equipment and he brought the equipment and set it up and he was there for about an hour. She said that he was not set up for entertaining.

Councilman Gilliland asked if it was an attempt to violate the law or be in opposition to the permitting issue. In response, Ms. Hendrix said that it was not.

Councilman Gilliland asked Ms. Hendrix if she was aware of a requirement for live entertainment permit prior to 2008. In response, Ms. Hendrix said that they were never told by the Alcohol Beverage Control Board (ABC) or anyone else that there was a requirement for a use permit. She said that they have a friend in the City of Newport News but they do not have to have a permit. She said that when she was told that a permit was required, the music was stopped.

Mr. Hendrix said that he was under the impression that when they purchased the restaurant from the Mallory family that the use permit was granted with the purchase of the restaurant. He said that they did not know that they expired after two years.

Councilman Gilliland stated that historically there had been entertainment at Mallory's Restaurant. He said that the restaurant predates the apartment complex and the restaurant has been there since 1968 and during that time period when there was live entertainment, everyone seemed to be able to get along and co-locate and live in harmony. He said that he believes that there was entertainment there well after 1971 because he remembers being there when there was. Councilman Gilliland said that in two years the City will be 400 years old and in two years Mallory's Restaurant will be 65 years old and he will be fifty. He said that he his mother and father took him to Mallory's Restaurant since he was a child and it is an iconic piece of Hampton history to him. He said that it is a slice of Americana and if nothing else, in what is a hugely competitive environment for any family owned small business of any kind, to compete and survive for 65 years when most fail within five years is nothing short of remarkable. Councilman Gilliland said that one of the slices of Americana has been mixed use communities, something that they are trying to do with urban renewal with mixed use communities. He said that the argument that it is not a commercial node flies into the face of the argument for all the master plans through the City. Councilman Gilliland said that he doesn't see why Mallory's Restaurant and the apartments can't co-locate and live in harmony. He said that he looked at staff's recommendation if Council approves the permit and it limits hours to Wednesday, Friday and Saturday and it has very specific regulations about 60 decibels from outside and sufficient staff to monitor the facility which are all the things that would be required of any venue that would have live entertainment. He noted that it would also have a re-evaluation of use at the end of six months.

Councilman Gilliland stated that staff provided Council with a list of restaurants and the number of calls for police. He asked if all the venues have entertainment. In response, Mr. Dyser stated that all the restaurants have been approved with live entertainment.

Councilman Gilliland stated that Spare Times has six times the number of incidents as Mallory's Restaurant. He said that his point gives a range of magnitude.

Mayor Ward said that she believes the report is being viewed incorrectly. In response, Ms. Mary Bunting, Assistant City Manager, stated that the criteria was not necessarily that they have live entertainment but that they be a place where there is a lot of activity either a bar or restaurant, or in the case of Spare Times, it is an example of a venue that hosts entertainment. She said that she was not aware that all of the venues on the list have live entertainment. She said that the list was from January 1, 2007, to present.

Councilman Gilliland said that it makes his point more firmly that there is not a venue much more family oriented than a bowling alley and it has six times the number of calls as Mallory's Restaurant. He said that he is sensitive to the neighbors concerns but he believes that the Council needs to support existing businesses. He said that he has been to Mallory's many times since the Hendrix family has purchased it and if anything he will say that they have honored the Mallory family name. He said that the restaurant is as clean and well-run as when Fuzzy Mallory was behind the bar himself.

Mayor Ward said that there are two different exhibits. In response, Mr. Dyser explained that there was a list within the staff report which are similar restaurants with entertainment which was used as a comparison to show the impact that is located near residential uses.

Vice Mayor Spencer said that this is a difficult decision for him to make because he has been a patron of Mallory's Restaurant for years. He said that their most notable claim is that it is as clean as any place that anyone would ever want to eat. He said the restrooms are as clean as any and the entire area is clean. He said that he has stopped by and has had lunch and a tour of the restaurant. Vice Mayor Spencer said that he is very sympathetic to what they want to do. He said that it is difficult for him, personally not to go ahead and vote for them to have the entertainment. He said the issue is the neighborhood and when he hears of the disturbances that are being created and the quality of life that is being disturbed, he has to support the neighborhood. He asked that they please understand that it is a difficult decision for him to make.

Councilman Wallace said that some of the issues that were discussed at the Planning Commission meeting that led to unanimous vote by the Planning Commission not to support the Conditional Privilege Application included other issues. He said that it is right up against the apartments. He said that they were led to believe that one of the reasons that they co-existed so harmoniously was that there was a two family ownership that was able to mitigate issues and problems that occurred. He said that the situation does not exist at this time. He said that he doesn't doubt that the Hendrix's are great people, but they have a restaurant that is located in the wrong place for the kind of activities that they would like to occur. He said that Council cannot gloss over the complaints and the issues that are germane to the people that live in the area. He said that he will be voting to deny.

Councilman Kearney said that Wilbur and Brenda Hendrix have a tremendous reputation and he hopes that it was not soiled by the comments made during the Council meeting. He said that they are great members of the Northampton Community. He said that he has a difficult time because the Mallory family started with the restaurant and that gave the money in order to do other things and purchase land in that area. He said that it is a fine establishment that fell into the same category as Evelyn's in Wythe and the White Oak Lodge and Clyde's in Phoebus and Fuller's and Nelson Groom's place in Buckroe. He said that that he agrees with the Hendrix's and he needs people to understand because he had a restaurant for a number of years and there are times when they have live entertainment and no one ever knew that a permit was required. He said that the few times they did folk music at his restaurant in 1976 they never had a permit. Councilman Kearney said there are bars today that operate and will have music for a few days and they do not have permits. He said that he doesn't want the citizens to think that that the Hendrix's are out of tune because he thought that once the permit was given it was still in use. Councilman Kearney said that the neighborhood has to be respected and he will stay with the neighborhood and support the denial of the application. He said that he doesn't want anyone to think that this has anything to do with the Hendrix family or the way the restaurant is being operated today because is it a key thing to understand. Councilman Kearney said that it may be that the demographics or times have changed and an apartment next to a restaurant is not the thing to do today. He thanked Wilbur and Brenda Hendrix for the work they have done in the community over the years.

Mayor Ward concurred with Councilman Kearney, Councilman Wallace, Councilwoman Leary and Vice Mayor Spencer's concerns about the neighborhood. She said that she has been in Mallory's Restaurant and it is the cleanest place she has ever been in and she is sorry but they have to support the neighborhood.

HELD PUBLIC HEARING

DENIED

Motion made by: Councilmember Angela Lee Leary

Seconded by: Councilmember George E. Wallace

Aye: 5 - Ross A. Kearney, II, Angela Lee Leary, Joseph H. Spencer, II, George E. Wallace, Molly Joseph Ward

Nay: 1 - Randall A. Gilliland

Absent: Paige V. Washington, Jr.

Ordinances - First Readings

15. 08-0375 Zoning Ordinance Amendment by the City of Hampton to allow nursing homes, with a Use Permit, in the Multiple Dwelling Districts (MD-2, MD-3 and MD-4).

Mr. Jesse T. Wallace, Jr. City Manager, stated that this Zoning Ordinance amendment is to allow nursing homes with a use permit in a multiple-dwelling district MD-2, MD-3 and MD-4. He said that in this case, it is a continuous care retirement facility that combines a variety of uses with a range of support services to allow residents to age in place in a single community. He said that the Planning Department and the Planning Commission recommend approval.

Ms. Caroline Butler, Senior City Planner, stated that the purpose of this is to allow continuing care retirement centers within the City of Hampton. She said that they are facilities that provide a range of services to adult population with special needs and health needs. She explained that continuing care retirement centers allow the elderly population to age in place by staying in one development that provides a range of facilities including such things as skilled nursing care, daycare, offices and support services for the staff and they often provide opportunities for families and relatives to stay overnight or for a few days in order to visit their family members. Ms. Butler said that nursing homes are residential facilities that are, in most cases, permanent residences for the people who are there or who are there for very long periods of time. She said that the requirements of continuing care retirement facilities for seniors it appeared to seem that the multiple dwelling districts already permitted by right most of the uses that they require. She explained that the single use of the multiple dwelling districts does not already permit is nursing homes and since that is such a critical component of the continuing care retirement center, they felt it would be appropriate to allow them in the multiple dwelling districts with a use permit. She said that the use permit would be required because it would provide Council with an opportunity to attach conditions to the use and also for public review of the proposal.

Ms. Butler stated that staff is requesting that Council approve this Zoning Ordinance amendment to allow nursing homes as a permitted use with a use permit in the multiple dwelling districts.

Councilman Kearney asked if agenda items # 15, #16, #17, and #18 related and in fact are housekeeping items. In response, the City Attorney stated that items #16, #17 and #18 are substantively the same housekeeping change.

Councilman Kearney asked if they were to conform with State law. In response, the City Attorney stated that it is a correction to a citation in a statute.

HELD PUBLIC HEARING

APPROVED

Motion made by: Councilmember Ross A. Kearney, II

Seconded by: Councilmember Joseph H. Spencer, II

Aye: 6 - Randall A. Gilliland, Ross A. Kearney, II, Angela Lee Leary,
Joseph H. Spencer, II, George E. Wallace, Molly Joseph Ward

Nay: 0

Absent: Paige V. Washington, Jr.

16. 08-0378 Zoning Ordinance Amendment by the City of Hampton to amend Chapter 17.3 Article X (Special Public Interest - Chesapeake Bay Preservation District, SPI-CBPD) of the Zoning Ordinance to correct a citation.

Councilwoman Leary asked if any input was given by the advisory body, the Wetland Boards, on item #16. In response, the City Attorney stated that because it was just a citation change and not at all substantive, she feels confident saying that the Wetlands Board was not consulted.

HELD PUBLIC HEARING

ADOPTED ON FIRST READING

Motion made by: Councilmember Joseph H. Spencer, II

Seconded by: Councilmember Ross A. Kearney, II

Aye: 6 - Randall A. Gilliland, Ross A. Kearney, II, Angela Lee Leary,
Joseph H. Spencer, II, George E. Wallace, Molly Joseph Ward

Nay: 0

Absent: Paige V. Washington, Jr.

17. 08-0384 AN ORDINANCE TO AMEND CHAPTER 9, ARTICLE IV, SECTION 9-131 OF THE CODE OF THE CITY OF HAMPTON, VIRGINIA, ENTITLED "BUILDING AND DEVELOPMENT REGULATIONS" TO CORRECT A CITATION.

HELD PUBLIC HEARING

ADOPTED ON FIRST READING

Motion made by: Councilmember Joseph H. Spencer, II

Seconded by: Councilmember Ross A. Kearney, II

Aye: 6 - Randall A. Gilliland, Ross A. Kearney, II, Angela Lee Leary,
Joseph H. Spencer, II, George E. Wallace, Molly Joseph Ward

Nay: 0

Absent: Paige V. Washington, Jr.

18. 08-0385 AN ORDINANCE TO AMEND CHAPTER 35, 35-1, OF THE CODE OF THE CITY OF HAMPTON, VIRGINIA, ENTITLED "SUBDIVISIONS" TO CORRECT A CITATION.

HELD PUBLIC HEARING

ADOPTED ON FIRST READING

Motion made by: Councilmember Joseph H. Spencer, II

Seconded by: Councilmember Ross A. Kearney, II

Aye: 6 - Randall A. Gilliland, Ross A. Kearney, II, Angela Lee Leary,
Joseph H. Spencer, II, George E. Wallace, Molly Joseph Ward

Nay: 0

Absent: Paige V. Washington, Jr.

19. 08-0386 AN ORDINANCE TO AMEND CHAPTER 33.1-4 (5) OF THE CODE OF THE CITY OF HAMPTON, VIRGINIA, ENTITLED "STORMWATER MANAGEMENT" TO CORRECT A CITATION.

Mr. Jesse T. Wallace, Jr., City Manager, stated that this is an ordinance authorizing the transfer from the City of Hampton to Hampton Redevelopment and Housing Authority (HRHA) three parcels of land. One parcel, a parking lot consists of 6,682 square feet located on Queens Way and two parcels consisting of 2,912 square feet and 6,719

square feet respectively, located on West Queens Way. He said that Council is being asked to approve this transfer on second and final reading.

HELD PUBLIC HEARING

ADOPTED ON FIRST READING

Motion made by: Councilmember Joseph H. Spencer, II

Seconded by: Councilmember Ross A. Kearney, II

Aye: 6 - Randall A. Gilliland, Ross A. Kearney, II, Angela Lee Leary,
Joseph H. Spencer, II, George E. Wallace, Molly Joseph Ward

Nay: 0

Absent: Paige V. Washington, Jr.

General Items

Ordinances - Second Reading

20. 08-0337 Ordinance authorizing the transfer from the City of Hampton to the Hampton Redevelopment and Housing Authority ("HRHA") three parcels of land: 1) one parcel (a parking lot) consisting of 6,682 square feet located on Kings Way and 2) two parcels consisting of 2,912 square feet and 6,719 square feet respectively, located on West Queens Way.

Mr. Jesse T. Wallace, Jr., City Manager, stated that this is an ordinance authorizing the transfer from the City of Hampton to Hampton Redevelopment and Housing Authority (HRHA) three parcels of land. One parcel, a parking lot consists of 6,682 square feet located on Queens Way and two parcels consisting of 2,912 square feet and 6,719 square feet respectively, located on West Queens Way. He said that Council is being asked to approve this transfer on second and final reading.

ADOPTED ON SECOND AND FINAL READING

Motion made by: Councilmember Joseph H. Spencer, II

Seconded by: Councilmember Ross A. Kearney, II

Ayes: 6 - Randall A. Gilliland, Ross A. Kearney, II, Angela Lee Leary,
Joseph H. Spencer, II, George E. Wallace, Molly Joseph Ward

Nays: 0

Absent: Paige V. Washington, Jr.

21. 08-0353 Zoning Ordinance Amendment by the City of Hampton to amend Chapter 11 (Neighborhood Commercial District, C-1) of the Zoning Ordinance to allow outdoor dining at restaurants with an approved Use Permit.

Mr. Jesse T. Wallace, Jr., City Manager, stated that this is a Zoning Ordinance amendment by the City of Hampton to amend Chapter 11 which is neighborhood commercial district C-1 of the zoning ordinance to allow outdoor dining at restaurants with approved use permits. He said that Council is being asked to approve this amendment on second and final reading.

Mr. Jesse T. Wallace, Jr., City Manager, stated that this is a Zoning Ordinance amendment by the City of Hampton to amend Chapter 17.2 Langley Flight Approach Mixed Use District M-5A, 2-3H, of the Zoning Ordinance to change ownership types of recreational centers that are permitted in this district. He said that Council is being asked to approve this amendment on second and final reading.

ADOPTED ON SECOND AND FINAL READING

Motion made by: Councilmember Joseph H. Spencer, II

Seconded by: Councilmember Ross A. Kearney, II

Ayes: 6 - Randall A. Gilliland, Ross A. Kearney, II, Angela Lee Leary, Joseph H. Spencer, II, George E. Wallace, Molly Joseph Ward

Nays: 0

Absent: Paige V. Washington, Jr.

22. 08-0354 Zoning Ordinance Amendment by the City of Hampton to amend Chapter 17.2 (Langley Flight Approach-Mixed-Use District M-5A) § 2-3 (h) of the Zoning Ordinance to change the ownership types of recreational centers, a permitted use in this District.

Mr. Jesse T. Wallace, Jr., City Manager, stated that this Item is a Zoning Ordinance amendment by the City of Hampton to amend Chapter 17.2 Langley Flight Approach Mixed Use District M-5A, 2-3H, of the Zoning Ordinance to change ownership types of recreational centers that are permitted in this district. He said that Council is being asked to approve this amendment on second and final reading.

ADOPTED ON SECOND AND FINAL READING

Motion made by: Councilmember Joseph H. Spencer, II

Seconded by: Councilmember Ross A. Kearney, II

Ayes: 5 - Randall A. Gilliland, Ross A. Kearney, II, Joseph H. Spencer, II, George E. Wallace, Molly Joseph Ward

Nays: 1 - Angela Lee Leary

Absent: Paige V. Washington, Jr.

23. 08-0355 Amendment of Zoning Ordinance, Chesapeake Bay Preservation District 17.3-64 2 b (iii) (3)

Mr. Jesse T. Wallace, Jr., City Manager, stated that this Agenda item is an amendment of Zoning Ordinance Chesapeake Bay Preservation District 17.3-642B. He said that Council is being asked to approve this amendment on second and final reading.

ADOPTED ON SECOND AND FINAL READING

Motion made by: Councilmember Joseph H. Spencer, II

Seconded by: Councilmember George E. Wallace

Ayes: 6 - Randall A. Gilliland, Ross A. Kearney, II, Angela Lee Leary, Joseph H. Spencer, II, George E. Wallace, Molly Joseph Ward

Nays: 0

Absent: Paige V. Washington, Jr.

Ordinances - First Reading

24. 08-0388 AN ORDINANCE TO AMEND CHAPTER 5 OF THE CODE OF THE CITY OF HAMPTON, VIRGINIA, ENTITLED "ANIMALS" BY ADDING THERETO A NEW ARTICLE VII ENTITLED "CANINE HYBRIDS."

Mr. Jesse T. Wallace, Jr., City Manager, stated that this Agenda Item is an ordinance to amend Chapter 5 of Code of the City of Hampton, Virginia entitled "Animals" by adding thereto a new article 7 entitled "Canine Hybrids."

ADOPTED ON FIRST READING

Motion made by: Councilmember Ross A. Kearney, II

Seconded by: Councilmember Randall A. Gilliland

Ayes: 6 - Randall A. Gilliland, Ross A. Kearney, II, Angela Lee Leary, Joseph H. Spencer, II, George E. Wallace, Molly Joseph Ward

Nays: 0

Absent: Paige V. Washington, Jr.

Appointments

25. 08-0371 to consider the appointment of a Council liaison to the Military Affairs Committee.

APPOINTED Councilwoman Angela Leary.

Motion made by: Councilmember Angela Lee Leary

Ayes: 6 - Randall A. Gilliland, Ross A. Kearney, II, Angela Lee Leary, Joseph H. Spencer, II, George E. Wallace, Molly Joseph Ward

Nays: 0

Absent: Paige V. Washington, Jr.

26. 08-0373 to consider an appointment to the Board of Directors of the Peninsula Agency on Aging, Inc.

REAPPOINTED William C. Baker for a term from October 1, 2008, through September 30, 2011.

Motion made by: Councilmember Angela Lee Leary

Ayes: 6 - Randall A. Gilliland, Ross A. Kearney, II, Angela Lee Leary, Joseph H. Spencer, II, George E. Wallace, Molly Joseph Ward

Nays: 0

Absent: Paige V. Washington, Jr.

27. 08-0381 Appointment of the City Manager to serve on the Hampton Roads Planning District Commission.

REAPPOINTED Jesse T. Wallace, Jr. to the Hampton Roads Planning District Commission. Councilman Randy Gilliland will serve as Hampton's

designee to the Executive Committee and Metropolitan Planning Organization.

Motion made by: Councilmember Angela Lee Leary

Ayes: 6 - Randall A. Gilliland, Ross A. Kearney, II, Angela Lee Leary, Joseph H. Spencer, II, George E. Wallace, Molly Joseph Ward

Nays: 0

Absent: Paige V. Washington, Jr.

28. 08-0382 to consider the appointment of an alternate to the Hampton Roads Tunnel Advisory Committee.

APPOINTED Mayor Molly Joseph Ward.

Motion made by: Councilmember Angela Lee Leary

Ayes: 6 - Randall A. Gilliland, Ross A. Kearney, II, Angela Lee Leary, Joseph H. Spencer, II, George E. Wallace, Molly Joseph Ward

Nays: 0

Absent: Paige V. Washington, Jr.

Other Items

29. 08-0398 Resolution Of The Council Of The City Of Hampton, Virginia, Confirming The Declaration Of A Local Emergency Made Necessary By Tropical Storm Hanna, Which Was Declared By The City Manager/Hampton Director Of Emergency Management On September 5, 2008.

WHEREAS, Section 44-146.21 of the Code of Virginia, 1950, as amended, prescribes necessary actions precedent to a declaration of a local emergency; and

WHEREAS, the Section 44-146.21 prescribes two methods for declaring an emergency: the first is accomplished by the local director of emergency management with the consent of the governing body; the second is accomplished by the director of emergency management without the initial consent of the governing body, but such declaration must be confirmed by the governing body at its next regularly scheduled meeting or at a special meeting within fourteen days of the declaration, whichever is first to occur; and

WHEREAS, it was necessary and proper for the Hampton, Virginia, Director of Emergency Management to declare a local emergency in Hampton, Virginia, without first obtaining the consent of the Council of the City of Hampton, Virginia (the "Council") and confirmation by the Council is now required by law; and

WHEREAS, the Council is satisfied that the size, strength and immediate projected path of Tropical Storm Hanna constituted a real and substantial threat to health and safety of persons and property in the City of Hampton, Virginia, and that it necessitated a declaration of local emergency.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Hampton, Virginia:

1. That it hereby confirms the Declaration of Local Emergency made on September 5, 2008, by the Director of Emergency Management, and terminated by him on September 8, 2008, when the emergency occasioned by Tropical Storm Hanna ended.
2. That it understands and confirms that the Declaration of Local Emergency empowered the Director of Emergency Management with special authority and duties, said authority and duties being defined by the laws, rules, regulations and plans of the United States of America, the Commonwealth of Virginia and the City of Hampton.

Mr. Jesse T. Wallace, Jr., City Manager, stated that this Agenda Item is a resolution of the Council of the City of Hampton, Virginia, confirming the declaration of a local emergency made necessary by Tropical Storm Hannah, which was declared by the City Manager as the Hampton Director of Emergency Management on September 5, 2008. He explained that that Mayor Ward indicated that Council's declaration of emergency made by the City Manager on Friday, September 5, 2008, arising from the threat of Tropical Storm Hannah for all the reasons described in the resolution. He requested that the resolution be approved with an amendment acknowledging that he terminated the state of emergency by order at 6 p.m. on Monday, September 8, 2008.

Ms. Cynthia E. Hudson, City Attorney, explained that two motions are required. One is to formally add it to the agenda and then for the vote.

MOVED TO to add a resolution concerning the recent declaration of a local emergency to the agenda.

Motion made by: Councilmember Ross A. Kearney, II

Seconded by: Councilmember Randall A. Gilliland

Ayes: 6 - Randall A. Gilliland, Ross A. Kearney, II, Angela Lee Leary, Joseph H. Spencer, II, George E. Wallace, Molly Joseph Ward

Nays: 0

Absent: Paige V. Washington, Jr.

APPROVED AS AMENDED - language was added amending the Resolution to add a termination of the state of emergency as of 6 p.m. on September 8, 2008.

Motion made by: Councilmember Ross A. Kearney, II

Seconded by: Councilmember Angela Lee Leary

Aye: 6 - Randall A. Gilliland, Ross A. Kearney, II, Angela Lee Leary, Joseph H. Spencer, II, George E. Wallace, Molly Joseph Ward

Nay: 0

Absent: Paige V. Washington, Jr.

Audiences Granted to the General Public

Ms. B. K. Allen, 1047 Port Harbor Arch, said that she has watched the City appropriate tax dollars for many things that she doesn't necessarily agree with. She said that she encourages the City to be realistic and consider the youngest residents of the City as their future. She said that the Buckroe area's need for a new elementary school is long overdue. She asked how the City is going to convince the new workforce coming in with the new installation at Langley Air Force Base and other new employers with young children, that they should live in Hampton rather than in Newport News, York County or other close areas. She said that schools take top priority with young families, whether present residents or prospective residents and unfortunately it makes very little difference to newcomers what is happening within the walls of old schools. She said that their sense is that if the school basically is new or a new school is being built, then the educational system is going to be progressive and the best for their children. Ms. Allen urged Council's support for a new school now in Buckroe.

Mr. Bob Nuckles, 17 Whitaker Avenue, said that he is continuing his presentation from the August 20, 2008, Council meeting, and any plan to tax international commerce might wind up in Federal court in violation of interstate commerce clause. He said the way to get around the problem is to put tolls back on the roads. He mentioned a letter from the Secretary of Transportation explaining that the Governor had no intent of putting a gas tax increase at the second session which is exactly what he did and it is exactly why it got blocked. He said that the General Assembly blocked it so it wouldn't get passed so there has to be a way around it without raising taxes. He said that the privatization of roads will come if you put the tolls on. Mr. Nuckles said that a letter from Mr. Professor Gilmour of the College of William and Mary addresses this and he stated that the roads should not be privatized because it would give an infusion of cash to solve the problems, the fees would be two or three percent of several billion dollars. He said that while the attorneys, banks, and the mortgage companies would make a lot of money, the taxpayers are going to spend twenty or thirty years paying for it and they shouldn't have to do it. Mr. Nuckles noted that there are some states like Indiana that are doing it but it hides the ability of the politicians not to solve the problem. It washes their hands of it and that shouldn't be tolerated. He said that whoever gets involved in it should know about it and read the article.

Mr. Nuckles stated that former Governor Baliles had picked out 38 places where tolls could be placed to make the money. He said that a billion dollars a year is needed. He said that if you don't have the money the Hampton Roads Bridge Tunnel (HRBT) problem will not be solved or the problem on the Monitor Merrimac Bridge Tunnel. He said that time is of the essence and, as long as this is not in place, a million dollars a day is being lost.

Mr. Nuckles said that an article in the Daily Press on August 26, 2008, stated that the tolls should be placed back on the roads in order to get around the blockage of all tax increases of the gasoline level by the General Assembly and it will avoid going into Federal court to solve any constitutional problems that may arise. He said that once this is done, if money has to be borrowed, build the infrastructure with it and take the money and reinvest it in the system and let the State do it and avoid the big fees and costs. He said that money could be put into a special fund for the educational system and no one else in the State can get their hands on it and then there will be enough money to build the new bridges and tunnels. He said that when you build a better mouse trap the

businesses will come in and things will get better, if you don't the things will fail and stagnate and the business will go somewhere else.

Mr. Frank Ottofaro, 63 Wheatland Drive, addressed Council about the taking of his property at 11 Pine Chapel Road for the Power Plant. He said that he came before Council on Wednesday, August 20, 2008, asking Council in good faith to correct the injustice that has been done to him and his family. He said that this is the 19th time he has been before Council asking questions about how his property was taken and he is not getting any of the right answers.

Mr. Ottofaro asked Council the following questions:

1. Why was his property taken for the \$12 million road?
2. Why were the nine other homes not taken out?
3. Why was he lied to by the former City Manager George Wallace?
4. Why was he lied to by the former City Attorney, A. Paul Burton?
5. Why wasn't he paid two and a half times of the \$164,000 assessed appraisal of his property that was ordered by the former City Attorney A. Paul Burton.
6. Why did the City of Hampton pay the other property owners two and a half, three and four times of their assess appraisal?

Mr. Ottofaro asked all Council members to ask the City Attorney, Cynthia E. Hudson, for legal advice on how they can take care of his problem with the City. He said that the City bought the homes of the other 15 property owners after asking the former City Attorney A. Paul Burton if the City was obligated to purchase the homes and he replied to Council "No." However, Mayor Locke said that since the City created the problem it is the right thing to do and the City should buy the homes and they did. He said that the City created his problem also. He asked why he was not treated equally. He said that Council can do the same thing for him if they believe in fairness. Mr. Ottofaro requested that Council do the City a favor and straighten out the injustice. He said that he was discriminated against and his constitutional rights were violated and he holds the City of Hampton responsible for the way in which he was treated. He said that his case should never have been heard in the City or Supreme Court. He said that he feels that a conflict of interest took place in both courts. Mr. Ottofaro said that his motto is to not treat him better or worse but to treat him fairly and equally.

Mr. Ottofaro said that he is the City's safety consultant. He thanked Mr. Wallace for taking a piece of concrete out on Convention Parkway that was sticking out about 18 inches in the roadway.

Dr. Theodore Reiff, said that he would like to bring to Council's attention a request that he makes for better handicapped accommodations to the needs of the disabled and painfully handicapped people. He said that those who would like to address Council as it stands now are supposed to come before the Council meeting and sign a list and then they wait through the Council meeting and then are allowed to speak at the end. He said that for disabled people may find it difficult to sit through a Council meeting. He suggested that they be allowed to register their names by phone or by fax or by letter with the Clerk of Council and that they could come towards the end of the meeting. He said that he doesn't believe that there are many but he believes the accommodations could easily be made. Mr. Reiff said on entering the building, we went to the handicapped entrance where there is a door that states it is handicapped access. He

said that he walked up to it only to find that it was locked and he had to come in through the revolving door with a great deal of difficulty. He requested that Council address better accommodations for the needs of handicapped and disabled people.

Dr. Reiff thanked Council and the Mayor because he suspects they played a role in providing him information that he has been requesting for over 14 months regarding the square footage of his house. He said that he faxed a letter to the Council members which was distributed prior to the meeting. He said that providing the list that was supplied to him by the City Assessors Office and perhaps this is the reason it took him over 14 months to get the information because there are gross errors in the square footage of his house ranging from 4,700 square feet to 4,082 square feet. Dr. Reiff said that his house is no where near that size. Dr. Reiff said that there were also years that were missing and he requested that the information from the missing years be provided to him so he can appropriately request appeal of the excess assessments to his home.

Mayor Ward thanked Dr. Reiff and stated that staff will look into the issues with regard to accessibility and making accommodations.

Councilman Wallace asked if the City Manager is going to respond to Dr. Reiff's requests. In response, Mr. Jesse T. Wallace, Jr., City Manager, stated that he wasn't sure exactly about the missing data or the changes.

Councilman Wallace asked if the City Manager could direct staff to talk with Dr. Reiff at the end of the Council meeting to determine exactly what his issues are and to determine whether or not he can be accommodated. In response, the City Manager stated that staff has already done that and it is his understanding that Dr. Reiff has the proper paperwork filed with the Board of Assessment Appeals.

Mr. James A. "Pete" Peterson, Assistant City Manager, stated that he was prepared for Dr. Reiff's questions by the City Assessor's Office. The lists only showed the changes that were made in the record. He said that if it shows 1993 but doesn't show 1994, 1995, or 1996 and shows 1997, that meant that in 1994 and 1995 and 1996 was the same as 1993 and it showed the years of change. He said that staff can provide Dr. Reiff with a list that puts it in writing but the list shows only the years of changes.

Councilman Wallace asked Dr. Reiff if that was his only issue. In response, Dr. Reiff said that was one of his issues. He said that he would like to know why it took over 14 months to get the information. He said that it denied him the ability to appeal last year.

Councilman Wallace asked Dr. Reiff if he had the information he needed now. In response, Dr. Reiff said that he did not have all the information that he has requested. He said that he needs the information from the missing years.

Councilman Wallace said that the explanation for the missing years is about the gaps between the years of information that he has. In response, Dr. Reiff said that he would like the information in writing and he would like to know the reason why it took 14 months to provide it to him.

Councilman Wallace told Dr. Reiff that he could address that question to staff and they can try and accommodate him. In response, Dr. Reiff said that staff has not replied to him and the City Manager has not provided the information despite multiple letters.

Mr. Peterson stated that staff has supplied answers to just about every question Dr. Reiff has asked of staff. He said that once you write an answer to a question Dr. Reiff asks another question or says that the question has not been addressed. Mr. Peterson said that he doesn't know what else they have not given them that he has requested.

Dr. Reiff said that he would like to know the reason why it took over 14 months.

Mr. Peterson said that is the first time that question has been asked.

Mayor Ward requested that this be discussed privately with Mr. Peterson. In response, Dr. Reiff requested a written reply.

Councilman Wallace requested that Dr. Reiff provide all of his questions to Council so that they can be answered definitely.

Dr. Reiff requested a written reply as to why it took over 14 months to provide him some of the information. He said that he would like to be promptly provided with the rest of the information in writing.

Councilman Wallace asked Dr. Reiff what the rest of the information was. In response, Dr. Reiff said that he would like the information on the square footage because there were years missing from the list. He said that he understood the explanation but he would like to have it in writing. In response, Councilman Wallace said that it would be provided to him.

Dr. Reiff requested the information for all the years.

Miscellaneous New Business

Councilwoman Leary thanked her husband for the pendant which is engraved on the back with "learn from yesterday, live for today and hope for tomorrow." She said that she hopes that citizens will turnout for the Day of Remembrance and Hope on September 11, 2008, to read the names of over 7,000 people who have lost their lives on September 11, 2001, and in the War on Terror. She said that the ceremony begins at 8 a.m. at Gosnolds Hope Park.

Adjournment

Molly Joseph Ward
Mayor

Katherine K. Glass, CMC
Clerk of Council

Date approved by Council _____