



City of Hampton, VA

Meeting Minutes

City Council

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

Anderson W. Clary, Jr.
Randall A. Gilliland
Angela Lee Leary

Charles N. Sapp
Joseph H. Spencer, II
Paige V. Washington, Jr.
Ross A. Kearney, II, Mayor

Staff:

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

Wednesday, March 12, 2008

7:30 PM

Council Chambers, 8th Floor, City Hall

CALL TO ORDER/ROLL CALL

Ross A. Kearney, II presided

Present: Randall A. Gilliland, Angela Lee Leary, Charles N. Sapp,
Joseph H. Spencer, II

Absent: Anderson W. Clary, Jr., Paige V. Washington, Jr.

INVOCATION - Councilman Joseph H. Spencer, II

PLEDGE OF ALLEGIANCE TO FLAG

MAYOR'S COMMENTS

Mayor Kearney stated that Councilman Clary is on vacation and Councilman Washington is recuperating from surgery.

Mayor Kearney asked Ms. Cynthia E. Hudson, City Attorney, if any vote taken by Council would still require a positive vote of four. In response, the City Attorney confirmed Mayor Kearney's statement.

Mayor Kearney reminded everyone that the construction of the Buckroe Pier is about to begin. He invited everyone to groundbreaking ceremony on Friday, March 14, 2008, at 2 pm. He noted that it is at the pier construction site at Buckroe and parking would be available on Resort Boulevard. Mayor Kearney thanked the City Manager and staff and stated that it has been a long process and Council is very excited that construction is starting.

CONSENT AGENDA

Consent Items - Second Reading

1. 08-0075 AN ORDINANCE TO AMEND CHAPTER 24, SECTION 24-13 OF THE CITY OF HAMPTON, VIRGINIA, ENTITLED "PUBLIC DRUNKENNESS."

APPROVED items 1 through 5 on the consent agenda.

Motion made by: Councilmember Angela Lee Leary

Seconded by: Councilmember Charles N. Sapp

Ayes: 5 - Randall A. Gilliland, Angela Lee Leary, Charles N. Sapp,
Joseph H. Spencer, II, Ross A. Kearney, II

Nays: 0

Absent: Anderson W. Clary, Jr., Paige V. Washington, Jr.

Consent Items - Other

2. 08-0081 Resolution Approving the City of Hampton, Virginia's Participation and Appropriation of the Law Enforcement Terrorism Prevention Program through the Department of Criminal Justice Services.

WHEREAS, the City of Hampton has been awarded the Law Enforcement Terrorism Prevention Program (LETPP), in the amount of \$5,000 in Federal funds with no match of local funds required.

WHEREAS, the grant award covers the period 01/01/08 through 03/31/08;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hampton accepts and appropriates the Program in the amount of \$5,000 awarded/ made by the Department of Criminal Justice Services 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 1 through 5 on the consent agenda.

Motion made by: Councilmember Angela Lee Leary

Seconded by: Councilmember Charles N. Sapp

Ayes: 5 - Randall A. Gilliland, Angela Lee Leary, Charles N. Sapp,
Joseph H. Spencer, II, Ross A. Kearney, II

Nays: 0

Absent: Anderson W. Clary, Jr., Paige V. Washington, Jr.

3. 08-0083 Approval of the Minutes from the Budget Meeting on February 20, 2008, and the Afternoon and Evening Minutes of City Council on February 27, 2008.

APPROVED items 1 through 5 on the consent agenda.

Motion made by: Councilmember Angela Lee Leary

Seconded by: Councilmember Charles N. Sapp

Ayes: 5 - Randall A. Gilliland, Angela Lee Leary, Charles N. Sapp,
Joseph H. Spencer, II, Ross A. Kearney, II

Nays: 0

Absent: Anderson W. Clary, Jr., Paige V. Washington, Jr.

4. 08-0090 Resolution Endorsing the General Concept of a Green Community Initiative for the City of Hampton

RESOLUTION

WHEREAS, the Hampton City Council was presented a briefing at their February 13, 2008, meeting outlining the rationale and key principles of a proposed **Green Community Initiative** for the City of Hampton; and

WHEREAS, the report and presentation were the result of work compiled by an interdepartmental committee exploring the feasibility, practicality and desirability of the City of Hampton moving forward with adoption of public policy aimed at improving our community's quality of life through enhanced environmental and community design initiatives; and

WHEREAS, the Hampton Community Plan (2006, as amended) includes numerous policies, goals, and strategies directed towards protecting our unique physical setting along the Chesapeake Bay; and

WHEREAS, as a community that has drawn much of its culture and history from its location on the Chesapeake Bay, Hampton is in a unique position to explore creative approaches for a more sustainable and healthy relationship between the man-made and natural environment; and

WHEREAS, a **Green Community Initiative** would have a number of benefits for the City including improving public health, stimulating economic development, and promoting environmental stewardship; and

WHEREAS, through the **Green Community Initiative** the City of Hampton will adopt goals and objectives which will exceed mandated minimums and as a result move one step closer to achieving its vision of becoming the most livable city in Virginia; and

WHEREAS, the **Green Community Initiative** will require partnerships with environmental agencies and groups, businesses, health organizations, the development community, academic institutions, Hampton neighborhood organizations, and many other partners; and

WHEREAS, investments made to increase efficiency in City operations and buildings can reduce operational costs and increase employee health and productivity while also reducing environmental impacts; and

WHEREAS, the **Green Community Initiative** has received the endorsement of the Hampton Planning Commission, Hampton Clean City Commission, Hampton Wetlands Board, and Hampton Neighborhood Commission.

NOW, THEREFORE BE IT RESOLVED that the Hampton City Council endorses the general concept of pursuing formulation and adoption of a **Green Community Initiative** for the City of Hampton; and

BE IT FURTHER RESOLVED that the Hampton City Council does direct the City Manager and staff to further refine this initiative and bring back to the City Council more specific goals, objectives, and strategies accompanied by research and analysis so that formal adoption of a ***Hampton Green Community Initiative*** may occur sometime in 2008.

APPROVED items 1 through 5 on the consent agenda.

Motion made by: Councilmember Angela Lee Leary

Seconded by: Councilmember Charles N. Sapp

Ayes: 5 - Randall A. Gilliland, Angela Lee Leary, Charles N. Sapp,
Joseph H. Spencer, II, Ross A. Kearney, II

Nays: 0

Absent: Anderson W. Clary, Jr., Paige V. Washington, Jr.

5. 08-0093 Resolution Designating Mid-Atlantic Waste Systems as the Only Source Practically Available for purchasing Automated Solid Waste Collection Trailers Manufactured by Heil.

RESOLUTION

WHEREAS, the Public Works Department, Solid Waste division strives to provide the residents of Hampton with an exceptional response to their waste removal needs by maintaining state-of-the-art Automated Solid Waste Collection Vehicles manufactured by Heil, and the department seeks to maintain these vehicles in good working order; and

WHEREAS, Mid-Atlantic Waste Systems is the only approved Heil dealer in Virginia and the only servicer of Heil vehicles and related systems in the state;

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

1. A contract for procurement of Heil vehicle maintenance services may be negotiated and awarded to Mid-Atlantic Waste Systems as the sole source without competitive sealed bidding or competitive negotiation as set in the Virginia Code Section 2.2-4303.E;
2. That the City Manager or his authorized designee is hereby authorized to negotiate and execute agreements as needed with Mid-Atlantic Waste Systems;
3. That the notice awarding the contract to Mid-Atlantic Waste Systems shall be posted in a public place pursuant to Virginia Code Section 2.2-4303.E.

APPROVED items 1 through 5 on the consent agenda.

Motion made by: Councilmember Angela Lee Leary

Seconded by: Councilmember Charles N. Sapp

Ayes: 5 - Randall A. Gilliland, Angela Lee Leary, Charles N. Sapp,
Joseph H. Spencer, II, Ross A. Kearney, II

Nays: 0

Absent: Anderson W. Clary, Jr., Paige V. Washington, Jr.

PRESENTATIONS, PROCLAMATIONS, AWARDS**REPORTS BY CITY MANAGER, CITY COUNCIL, STAFF, COMMITTEES**

6. 08-0095 Discussion of Mill Point Streetlights

Mr. Jesse T. Wallace, Jr., City Manager, stated that this item is a request by the Mill Point Home Owners Association for the City to pay their monthly electric bill associated with the street lights. He said that at the February 27, 2008, Council meeting he recommended that the City not do this because there is no legal obligation to do so. He said that Council posed several questions and requested staff to bring the answers back to the March 12, 2008, Council meeting. He said that during the research they have found nothing that would alter his original recommendation which is not to pay the electric bill for the Mill Point Street lights.

Mayor Kearney stated that several individuals have signed up to speak to this issue. He explained that there is a state-of-the-art timer which will register the speaker's three (3) minutes. He further explained that when the speaker has 30 seconds remaining a yellow light will come on and when the speaker's time is up, a red light will come on. Mayor Kearney said that after the three (3) minutes time period has lapsed and the speaker continues to talk a buzzer will sound. He said that the nicest thing about this timer is that if Council stops a speaker to ask a question, the Clerk has the ability to stop the timer so that the member of Council does not take time away from the speaker.

Mr. Perry Pilgrim, 202 Mill Point Drive, stated that the issue is not quite as simple as the brief introduction was. He said that he knows that Council has the history of what has taken place at Mill Point with the lights. He said that they are looking at more than 25 years of a utility bill that while no one seems to be able to determine who paid it, they know that Mill Point did not. He said that they also know that when you leave City Hall and walk around the four corners of the building, which was built by the City at the same time the development work was done at Mill Point, and as you walk along the river walk and through the right-of-ways, you will see, suspiciously, the same light fixtures.

Mr. Pilgrim said that Council received a letter from Mr. Leon O'Neill, Treasurer for the Mill Point Home Owners Association, who pointed out that the municipal lights are identified with serial numbers on the poles where the lights that Mill Point pays for are metered. He said that the lights in question are the lights that affect the right-of-way. He said that as Council knows from the history, Mill Point, even though it is a private neighborhood, it was one of the quasi-government-private developer projects and there was some new ground broken, which included right-of-ways that cut all the way through the Mill Point development. He said that they are public right-of-ways and are publicly lit and have been publicly lit for more than 25 years. He said that, as was pointed out by the City Manager, Council has the authority to authorize the continuing of paying of these bills which have been paid for 25 years. He requested that Council exercise that authority.

Mr. Garrick Blount, 101 Mill Point Drive, stated that he and his fiancée recently purchased 101 Mill Point Drive and was recently elected to the Board of Directors. He said that many times he is accused of over simplifying matters. He asked Council to take a moment and think about the term "utilities." He said that he is fairly confident to say that he is sure that gas, electricity, water, sanitary may be at the top of the list.

Mr Blount said that his background is in construction and development and he has been in site development many times and the term “utilities” doesn’t really change much in the commercial aspect or the residential aspect. He said that he believes who ever wrote the document, electricity was to be included in the utilities.

Mr. Blount requested that Council consider the fact that a meter has been installed on the lights have not been read for 25 years. He said that there is a remote possibility that they could have been installed in error. He thanked Council for their time and requested that they sincerely consider all these points in their evaluation.

Mr. Leon O’Neill, 205 Mill Point Drive, stated that he was the Treasurer for the Mill Point Home Owner’s Association.

Mr. O’Neill read the following letter that was sent to Council.

“The deed conveying the land in Mill Point from the city to the developer gave the city three easements. The first “easement shall be for the purpose of maintenance, upkeep, and repair of the Riverwalk,” The second “easement to be set forth in an appropriate instrument in recordable form for ingress, egress, and right-of-way on and over the private street system...for the purpose of access to the public parks and other facilities contained in the project and maintenance upkeep, and repair of the said private street system and the City maintained utilities located therein and maintenance of Riverwalk”. The third “easement shall be for the purpose of maintenance, upkeep, and repair of the underground storm drainage and sanitary sewer systems located within the private street system of the project.”

The deed itself defines the private street, the underground storm drainage and the sanitary sewer as three separate systems with the last two systems located within the first. The street lights are neither implicitly nor explicitly excluded from the private street system by the deed and it’s reasonable to say that the street lights are as much a part of the street system as the pavement, curbs, markings, signs and other components not specifically mentioned in the deed.

All of the sidewalks between the Riverwalk and Mill Point Drive were deeded to the city by the developer to give the public access to the Riverwalk from the street.

Part of Mill Point Drive is used for ingress and egress by the residents of the Towne Creek community and will be used by the residents of the Wilson’s Landing community when that project is completed. This would not have been allowed if Mill Point Drive were truly a private street. Part of the Wilson’s Landing complex faces Mill Point Drive.

The street lights on Mill Point Drive have never been metered and Mill Point has never been billed for their maintenance. The light poles have serial numbers just as other city street lights do. If it were intended for Mill Point to maintain the lights they would have been metered just as the lights in Towne Creek, Wilson’s Landing and other townhome communities were done.

Mill Point does have metered lights along the sidewalk in the courtyard in the common area of Mill Point. Mill Point had always paid for the electricity and maintenance of those lights.

The city staff says there are no private streets in Hampton with street lights maintained by the city. Mill Point Drive is a city-maintained street and is private in name only. We doubt there are any other city-maintained streets in Hampton with street lights not maintained by the city.

In closing we feel this is a major safety issue not only for Mill Point residents but also for many visitors who walk on Mill Point Drive during the various activities in downtown Hampton. The burden of providing lighting for the safety of these visitors and other members of the public is the responsibility of the city as was intended by the agreement between the city and the developer.

Thanks for your attention to this matter.”

Mill Point Community Association Board of Directors

Sam Massenberg, President
Bill Ward, Vice president
Leon O'Neal, Treasurer
Jo Ann Saville, Secretary
Spencer McNeil, Director
Weston Freuler, Director
Garrick Blount, Director

Mr. Wes Freuler, 144 Mill Point Drive, stated that he and his wife Jody have lived in Hampton for over a year and six months ago, purchased 144 Mill Point Drive. He said that his concern is basic public safety as Mr. O'Neal pointed out. He said that it is real concern because it is quick dark in Mill Point with all the lights that are burnt out and lights are currently in need of attention. He said that when they approached Dominion Virginia Power, when they first discovered it, and asked who was going to pay for it because the City doesn't pay for it and the residents of Mill Point doesn't pay for it. He said that Dominion Virginia Power didn't know if the City paid for it. He said that with all the research that has been done it makes sense that this is part of the street and if the City maintains the street and does with all the utilities included underneath the street, then they should obviously pay for the lights. He said that if something happens at night and the street has to be dug up, they are not going to be able to do that if they cannot see anything. He said that it seems to be a very basic issue. He requested that Council continue or from hereforth pay for the street lights.

Mayor Kearney thanked Mr. Freuler for choosing Hampton to live in.

Councilman Sapp said that he has heard that the lights are not metered and he has heard that the lights are metered, but the lights have not been read. He asked if there was a meter connected to the lights. In response, the City Manager stated that the only meters that he has been able to determine is the lights along the river are metered and they are City lights and the City pays for them. He said that the lights in Mill Point Park are metered and the City pays for those lights. He said that he has not heard of a meter on the other lights in Mill Point, but he is not 100 percent sure.

Councilman Sapp asked if the lights that are paid for by the Mill Point Association are metered. He asked how anyone would know what to pay if there is no meter. In response, the City Manager stated that the folks in Public Works received an audit

master billed and understand with Dominion Virginia Power as to how they account for that. He said that staff cannot determine where any of that is on the City circuitry and they cannot find any evidence in the Finance Department where the City has ever paid an electric bill for Mill Point. He said that they have contacted Dominion Virginia Power and they refuse to discuss the matter with City staff.

Councilman Sapp said that he finds that incredible because someone has to be paying the bill. He asked if lights bulbs have lasted for 25 years and no one has had to repair them.

Mr. Pilgrim said that there is a meter that Mill Point pays that does just the courtyard lights and the Association has always paid those. He said that they have never paid any of the other lights. Mr. Pilgrim said that he knows that the City Manager tried to coordinate with Dominion Virginia Power who pays what and hit a stone wall. He said that someone has paid for and the Association knows what they have paid for and they are different fixtures that the lights that are on the walkways and on the Riverwalk.

Councilman Sapp said that he can't believe there is not an invoice someplace that accounts for serial numbers. He said that Council is being asked to vote on something that there is incomplete information on. He said that there is a compelling question there and compelling arguments from some members of Council. He said the compelling arguments cancel each other out and he is sitting in a void with questions that can't be answered. He said that he believes it is such a small thing that Dominion Virginia Power has time to go out. He said that they don't want to fix the lights because they can't show that anyone has paid for them, but it is not worth enough for them to come out and fix the problem. He said that he is having difficulty because there is a precedent setting issue and Council is opening the door for other communities to come and ask the City to pay their light bill. He said that he would like to defer the matter until Council can get more information. He said that he believes Ms. Melanie Rapp works for Dominion Virginia Power. In response, the City Manager said that he knows that Ms. Rapp works for Dominion Virginia Power but doesn't know what her duties are.

Councilman Sapp said that he believes Council needs an answer to that question and someone from Dominion Virginia Power needs to contact the City.

Councilman Spencer said that he believes question #21 of the Council's questions answers the question regarding Mill Point street lighting. Councilman Spencer said that Dominion Virginia Power bills the City monthly for unmetered street lights on one master energy bill and the bill is not itemized by location and the bill details light fixtures by type and total quality. Dominion Virginia Power street mapping dated 2007 does not show Mill Point condo street lights as being on the City bill.

Councilwoman Leary asked if the question would be if there are any other maps prior to that date that do show the Mill Point lights on the street plan. She said that there has to be something that existed prior to 2007 that they could look back to as a point of reference to determine if at anytime these lights have been on the City's plan.

The City Manager stated that the lights have never been on the City's plans because they have researched the Finance records and there is no documentation anywhere that the City has ever paid this. He said that the development agreement for Mill Point does not address this and is silent on street lights. He said that there is really no authority to

pay this bill. He said that he can't imagine anyone would have done that and they cannot find any evidence that the City ever has.

The City Attorney stated that even more fundamental than the question of what the billing has been and what's metered or not metered, the general legal principle as to whether or not the City can spend public money on private property. She said that she understands that the City has retained an easement for public access to the park, but in exchange for that access, and there should have been some consideration granted for Mill Point residents to provide that public access, the City is maintaining the streets and it is maintaining the utilities under the streets. She said that they thought to include that in the agreement as a consideration for them granting the City the public easement to the extent they sought to grant further consideration by maintaining the street lights and paying the electricity for them, that should have been included in the agreement. She said that the City should have something more explicit than this agreement is to permit the expenditure of public funds on what is otherwise public property.

Councilman Spencer said that the City Attorney's statement sums it up.

Councilwoman Leary said that something was said during the presentation about areas being deeded to the City for the right-of-way and that type of thing. She said that many times in the past she has heard members of this Council state that they have a moral obligation to do this or that. She said that she believes Council has a moral obligation to provide lighting for public safety because they have been touting it for years that they need to follow CEPTED (Crime Prevention Through Environmental) principles throughout the City's neighborhoods and throughout the developments. She said that she is not willing to pay a \$500,000 light bill for anyone, but that becomes Dominion Virginia Power's problem. She said that this isn't the only neighborhood that this has turned up in the last couple of weeks. She said that she would like to see the City get out of the business of private streets. She said that it allows developers to get off the hook for putting streets up to state standards. She said that the streets in the City of Hampton need to be built to the same specification and the same rules need to apply for everyone. She said that if someone wants a private street maybe they need to go to York County or James City County. Councilwoman Leary said that in this instance, people bought homes in an area where, if they had a home owner's association, they are required by law, since 1989, to comply with the Property Association Owner's Act which was enacted by the General Assembly. She said that she knows about it because she helped write part of the legislation. She said that she believes that someone needs to go back to Dominion Virginia Power for a compromise to determine what can be done to resolve the issue and to conform to the other neighborhoods. She said that there needs to be uniformity to what is being done instead of a hodge-podge of what can be done for a developer. She said that she believes in crossing the t's and dotting the i's. She said that she would like to see the developers to bring their streets up to State Code.

Vice Mayor Gilliland stated that the development agreement speaks to maintenance upkeep, repair of said private system and the City maintained utilities, therein. He said that it doesn't break that out and it is silent as to what utilities means. He said that he believes it is certainly a point that could be argued that lights and electricity are utilities and sewer are utilities. He said that if there are serial numbers on the lights, City staff should be able to talk with someone at some level at Dominion Virginia Power who can track a bill to a serial number. He said that they have the data systems to do that.

Vice Mayor Gilliland said that this item is not on the agenda for a vote, but under reports by the City Manager for discussion. He said that there is still some lack of clarity and he agrees with Councilman Sapp that there are some compelling reasons on each side, but data needs to drive the decision.

The City Manager stated that when staff contacted Dominion Virginia Power and they refuse to speak with them on the subject, they hit a stone wall.

Mayor Kearney asked the City Manager to contact Dominion Virginia Power one more time.

Vice Mayor Gilliland said that they are a large organization and it hard to work our way through and we will try to do that.

The City Manager stated that the City Attorney reminded him that the bill is not in the City of Hampton's name so they are not going to talk to City staff about Mill Point's bill.

Vice Mayor Gilliland asked the City Manager whose name the bill is in. In response, the City Manager stated that the bill is in Mill Point's name.

Vice Mayor Gilliland asked if the serials numbers were tracked to those lights in Mill Point. In response, the City Manager said that he doesn't know because they will not discuss it with him.

Vice Mayor Gilliland said that he believes Mill Point would be happy to cooperate with the City in order to get the bottom of this matter. The City Manager stated that Mill Point may want to contact Dominion Virginia Power.

Vice Mayor Gilliland suggested working together to figure it out.

Mayor Kearney asked Mr. O'Neal if they would be willing to work wit the City on the matter.

Vice Mayor Gilliland said that the item doesn't need to be deferred but it can be placed back on the agenda at a later date.

Mayor Kearney said that he believes the biggest problem is when the site was created which was P.D. Point and the homes were torn down, that is where City Hall was supposed to have been built. He said that when the public learned that the land was taken for City Hall the uproar was unbelievable and it resulted in the City Hall being moved to its current location and eventually the private development was put in. He said that he has no doubt that the design of the lights in the area around Mill Point is the same design of the lights on City Hall and they are no where else in the City of Hampton. He said that for 23 years Dominion Virginia Power has not billed for those lights it is strange that they would forget or not know what is happening.

Mayor Kearney agreed with Councilman Sapp and stated that the development is not a gated community and the street is maintained by the City of Hampton. He said the grass is cut by the City of Hampton, the boardwalk is maintained by the City of Hampton, the pier was replaced by the City of Hampton and it is a walk through during all the festival events in downtown any time of the day or evening. A different bailiwick than is found

anywhere in the City of Hampton. He said that it has never been a gated community and every condominium that was built, people walked through the park area to get to the water and the pier.

Mayor Kearney said that if Council were to vote he would support the fact that the lights do belong to the City of Hampton because the City is maintaining the road. He said that since the City maintains the road and the same kind of lights on the other side, there is something strange, but the strangeness comes from the fact that the original deal and concept when the development was built, which he believes was messed up from the beginning. He requested that those who spoke in favor of this to work with the City Manager and Council to find a conclusion to this matter. He said that this is one of those things that Council is being burdened with even though they had not hand in developing. He said that the item will be rescheduled to another agenda and they will be notified. Mayor Kearney thanked everyone for speaking to the issue.

PUBLIC HEARINGS

Use Permit

7. 08-0091 Use Permit Application No. 1034 by New Mount Olive Baptist Church for a school at 66 Big Bethel Road. [LSRN: 3005819, 3005821, 3005822, 3005823, 3005824, 3005826 and 3005828]

Mr. Jesse T. Wallace, City Manager, stated that this property is a 6.43 acre parcel located at 56, 64, Big Bethel Road and an unnumbered property on Big Bethel Road and 195, 201 and 203 Joynes Road. He explained that the applicant is requesting to operate a school for 50 to 147 students between the ages of four and twelve years of age. He said that Planning Staff and the Planning Commission recommend approval of Use Permit Application No. 1034. He stated that Council is being ask to approve Use Permit Application No. 1034 on first reading subject to the following ten (10) conditions:

1. Proper Licensing with Applicable Agencies: The applicant shall present documentation to the City of Hampton Codes Compliance Department within one-hundred twenty (120) days of the issuance of a Certificate of Occupancy (C.O.). The document shall show that the applicant has complied with all licensing requirements.

The applicant is responsible to maintain all license requirements. The operation of this Use Permit may be suspended by the City of Hampton if it is determined that the applicant is not in compliance with any or all requirements for operation and licensing.

2. Enrollment Capacity: The school facility shall provide instruction to children between the ages four (4) and twelve (12) years old. The maximum enrollment capacity at any given time shall not exceed two hundred twenty (220) children. The applicant shall maintain a ledger containing the names and addresses of the children enrolled, and that list shall be made available for inspection without prior notice to authorized personnel of the City of Hampton. That number may be reduced if a lesser number of students are imposed by Fire Code

requirements. Any future increase in the number of students above 220 shall be subject to securing a new Use Permit.

3. Hours of Operation: The hours of the school shall be Monday through Friday 6:00am to 6:30pm. The school shall be closed on Saturdays, Sundays and evenings with the exception of occurrences related to parent, teacher and student activities.
4. Loading and Drop Off: Loading and unloading of passengers from any vehicles shall occur on the site and out of the public right-of-way. A minimum of eighty-five percent (85%) of the students shall be transported to and from the school by congregate transportation, such as buses or vans. The intent of this condition is to limit the number of students being transported individually to the school to a maximum of fifteen percent (15%).
5. Certificate of Occupancy: Applicant shall comply with all building codes prior to the issuance of a Certificate of Occupancy.
6. Spaces to be Occupied: The classrooms to be used for the new school are shown on the attached plan labeled "Floor Plan and Ground Floor Plan" and shall consist of fourteen (14) classrooms, as labeled. Students must also have access to the play ground area during the hours of operation for the temporary and new school. The proposed playground area shall be accessible to the existing church building only by crossing the rear parking lot via a crosswalk, until the new school is constructed. The play ground area shall be enclosed by a fence having a minimum height of four (4) feet.
7. Additions/Modifications to Building or Leased Space: A new Use Permit application shall require approval prior to any expansion of the spaces indicated in the attached application, or addition of structures for the purpose of expanding the uses of this approved application.
8. Inspections: This facility may be inspected by the City of Hampton at any time without prior notice to verify adherence to conditions set forth.
9. The site will be developed in substantial conformance with the submitted site plan entitled "Existing Site with Proposed Parking and Proposed Building for New Mount Olive Baptist Church" dated October 12, 2007 during construction of the school site. There will be no school classes held in the single family structures on the site with the exception of school support activities. School related activities including music classes shall be allowed in the existing church facility and multi-use buildings. Minor changes to accommodate site engineering requirements may be allowed with the approval of the Directors of Codes Compliance, Planning and Public Works as long as the site layout does not significantly deviate from the one submitted October 12, 2007.
10. The existing church facility will temporarily (will not exceed five years after the Certificate of Occupancy is issued) use the building for the proposed school until the new facility is constructed on site.

HELD PUBLIC HEARING - There were no speakers on this item.

APPROVED

Motion made by: Councilmember Angela Lee Leary

Seconded by: Councilmember Joseph H. Spencer, II

Aye: 4 - Angela Lee Leary, Charles N. Sapp, Joseph H. Spencer, II, Ross A. Kearney, II

Nay: 0

Absent: Anderson W. Clary, Jr., Paige V. Washington, Jr.

General Items

Ordinances

8. 08-0092 AN ORDINANCE TO AMEND AND REENACT CHAPTER 7, SECTION 7-31 OF THE CODE OF THE CITY OF HAMPTON, VIRGINIA ENTITLED "BOATING, SKIING, ETC., PROHIBITED NEAR CERTAIN FISHING PIERS".

Councilwoman Leary stated that on agenda item #8 will be withdrawn from the agenda.

Mayor Kearney stated that is the ordinance will remain as it was for the Buckroe Beach Fishing Pier which will have 350 feet at the end and 200 feet on the side.

The City Attorney stated that a motion is required to withdraw the item from the agenda.

MOVED TO remove this item from the agenda.

Motion made by: Councilmember Joseph H. Spencer, II

Seconded by: Councilmember Angela Lee Leary

Ayes: 5 - Randall A. Gilliland, Angela Lee Leary, Charles N. Sapp, Joseph H. Spencer, II, Ross A. Kearney, II

Nays: 0

Absent: Anderson W. Clary, Jr., Paige V. Washington, Jr.

REMOVED - This item was removed from the agenda.

9. 08-0094 AN ORDINANCE TO AMEND AND REENACT CHAPTER 38 OF THE CODE OF THE CITY OF HAMPTON, VIRGINIA ENTITLED "VEHICLES FOR HIRE", DIVISION 3 "DRIVER'S PERMIT", SECTIONS 38-76, 38-77, 38-78, 38-80, 38-81, 38-82, 38-83, 38-88, 38-89, 38-91, 38-92, 38-93, BY ADDING THERETO A NEW SECTION 38.77.1 ENTITLED "APPLICANT'S QUALIFICATIONS" AND REPEALING SECTION 38-90.

Mr. Jesse T. Wallace, City Manager, stated that in accordance with the recommendation of the Taxi Cab Study approved by Council, Chapter 38 of the Code relating to Vehicles for Hire is being amended. He said that Ms. Lesa Yeatts, Deputy City Attorney and Cpl. Thurman Williams are available for questions.

Councilwoman Leary said that on the final page under the revision it states that the City Manager or his designee's response must either grant the relief requested or schedule a hearing within ten (10) days and on the last page it states of the date of his response in order to afford the appellant an opportunity to be heard in the matter. She said that a decision by the City Manager or his designee shall be communicated to the appellant within ten (10) days. She said that she would like it to say in writing because it says in writing in the other portion of the statute and she would like to see this in writing as well.

Councilwoman Leary said that the other portion it says that the decision of the City Manager or his designee shall be final no further appeals are authorized or provided. She said that she understands that this was something that Council requested not to become involved in this. She asked if this means that someone can come back and say that they were denied access to Council. She said that she is trying to avoid any future litigation.

Ms. Yeatts stated that several other jurisdictions use that scheme of appeals and they cannot say what someone might claim at a later point, but she feels confident that this is defensible.

ADOPTED ON FIRST READING AS AMENDED

Motion made by: Councilmember Angela Lee Leary

Seconded by: Vice Mayor Randall A. Gilliland

Ayes: 5 - Randall A. Gilliland, Angela Lee Leary, Charles N. Sapp,
Joseph H. Spencer, II, Ross A. Kearney, II

Nays: 0

Absent: Anderson W. Clary, Jr., Paige V. Washington, Jr.

Appointments

10. 08-0082 to consider appointments to the Finance Committee.

REAPPOINTED Jesse W. Hughes and Robert A. Scott to two year terms which will expire on March 31, 2010.

Motion made by: Councilmember Angela Lee Leary

Ayes: 5 - Randall A. Gilliland, Angela Lee Leary, Charles N. Sapp,
Joseph H. Spencer, II, Ross A. Kearney, II

Nays: 0

Absent: Anderson W. Clary, Jr., Paige V. Washington, Jr.

11. 08-0087 to consider an appointment of an alternate to the Grievance Board.

APPOINTED Kim A. Humphrey.

Motion made by: Councilmember Angela Lee Leary

Ayes: 5 - Randall A. Gilliland, Angela Lee Leary, Charles N. Sapp,
Joseph H. Spencer, II, Ross A. Kearney, II

Nays: 0

Absent: Anderson W. Clary, Jr., Paige V. Washington, Jr.

12. 08-0096 to consider appointments to the Hampton Industrial Development Authority.

REAPPOINTED Anne Shuford Haggett to a four year term which will expire on April 1, 2012.

Motion made by: Councilmember Angela Lee Leary

Ayes: 5 - Randall A. Gilliland, Angela Lee Leary, Charles N. Sapp, Joseph H. Spencer, II, Ross A. Kearney, II

Nays: 0

Absent: Anderson W. Clary, Jr., Paige V. Washington, Jr.

DEFERRED (3/26/2008)

Motion made by: Councilmember Angela Lee Leary

Seconded by: Councilmember Charles N. Sapp

Aye: 5 - Randall A. Gilliland, Angela Lee Leary, Charles N. Sapp, Joseph H. Spencer, II, Ross A. Kearney, II

Nay: 0

Absent: Anderson W. Clary, Jr., Paige V. Washington, Jr.

13. 08-0097 to consider the appointment of a consumer representative to the Virginia Peninsula Disability Services Board.

REAPPOINTED Sam Tollett to a three year term expiring on March 31, 2011.

Motion made by: Councilmember Angela Lee Leary

Ayes: 5 - Randall A. Gilliland, Angela Lee Leary, Charles N. Sapp, Joseph H. Spencer, II, Ross A. Kearney, II

Nays: 0

Absent: Anderson W. Clary, Jr., Paige V. Washington, Jr.

14. 08-0098 to consider appointments to the Fort Monroe Federal Area Development Authority.

REAPPOINTED Dr. Alvin Bryant and Robert Scott for terms to expire on March 31, 2009 and Wayne Lett for a term to expire on March 31, 2010.

Motion made by: Councilmember Angela Lee Leary

Ayes: 5 - Randall A. Gilliland, Angela Lee Leary, Charles N. Sapp, Joseph H. Spencer, II, Ross A. Kearney, II

Nays: 0

Absent: Anderson W. Clary, Jr., Paige V. Washington, Jr.

15. 08-0101 to consider an appointment to the Hampton Arts Commission.

APPOINTED Regina Mays to fulfill the unexpired portion of a term which expires on June 30, 2010.

Motion made by: Councilmember Angela Lee Leary

Ayes: 5 - Randall A. Gilliland, Angela Lee Leary, Charles N. Sapp, Joseph H. Spencer, II, Ross A. Kearney, II

Nays: 0

Absent: Anderson W. Clary, Jr., Paige V. Washington, Jr.

16. 08-0102 to consider an appointment to the Hampton Redevelopment and Housing Authority.

DEFERRED (4/30/2008)

Motion made by: Councilmember Angela Lee Leary

Seconded by: Vice Mayor Randall A. Gilliland

Ayes: 5 - Randall A. Gilliland, Angela Lee Leary, Charles N. Sapp, Joseph H. Spencer, II, Ross A. Kearney, II

Nays: 0

Absent: Anderson W. Clary, Jr., Paige V. Washington, Jr.

17. 08-0103 to consider an appointment to the Clean City Commission.

APPOINTED Jamie Osso to fulfill the unexpired portion of a term which will expire on January 30, 2012.

Motion made by: Councilmember Angela Lee Leary

Audiences Granted to the General Public

Mr. Frank Ottofaro, 63 Wheatland Drive, spoke to Council regarding the taking of his property for the Power Plant. He said that this is the twelfth time he has appeared before Council.

Mr. Ottofaro respectfully request answers from his City government to the following questions:

1. Why was he treated differently?
2. Why was he taken out?
3. Why were the other nine (9) homes not taken out?
4. Why wasn't he paid 2 ½ times the assessment like everyone else?
5. Why wasn't he negotiated with the developer Dave Cordish?
6. Why didn't the City of Hampton negotiate with him?
7. Why was he lied to by the former City Manager, Mr. George Wallace?
8. Why is the City paying thousands of dollars to consultants?
9. Why is the City installing unnecessary traffic lights at \$200,000 each?
10. Why has the City been putting in driveways, sewerage hookups, cutting down trees and planting plants on private properties?
11. Why has the City been maintaining parking garages and lights in the City?
12. Why is the City in the real estate business?

13. Why does the City have a real estate manager operating in the City Attorney's Office with a salary approximately \$100,000?
14. Why has the City been buying and paying two, three and four time the assessment for property in the City?
15. Why does the City create jobs at the cost of \$120,000 each?
16. Why does the City negotiate four or five times...

Mayor Kearney stated that Mr. Ottofaro's time to speak had expired.

Mr. Hugh Bassett, 117, Rip Rap Road, stated that there was an article in the Daily Press on Tuesday, March 11, 2008, regarding the Radisson Hotel. He said that the article stated that Council hoped that the citizens would agree that the sale, purchase and contract of staff and attorneys working with a reputable broker negotiated a price that was sound and defensible. He said that he doesn't agree with that because when he looks at the numbers there is something that doesn't pencil out right. He said that the City sold the hotel for \$7.74 million and it was assessed at \$12.1 million two years ago. He said that assessment could be higher and it could be lower. He said the guy before Randeria offered the City \$12.3 million and he wanted to open it as a Crown Plaza. He said the same owner as the guy at MHI wanted Crown Plaza too. He said that a previous article in the Daily Press indicated that a note had been taken out for a \$10 million loan, so \$10 million out of the \$12.3 million was available. He said that looking at the MHI deal, a \$12.1 million for a two-year old assessment and the parking garage is \$3.09 million, it comes to \$15.19 million and the City sold it for \$7.74, which is a \$7.74 million loss. He said that if Mr. Randeria's proposal had been accepted, the City would still have the total of \$15.19 million and he would have paid the City \$12.3 million and the City would only have taken a \$2.89 million loss. He said that all of his information is coming from the Daily Press and he is sure that there is information that the public has not had access to. He said that it was a unanimous decision. He said that he doesn't understand that the City went up 85% on his tax assessment and he doesn't believe he will ever get over that. He said that he felt that he was mistreated by the tax assessor and the rubber stamp board that he was sent to. Mr. Bassett stated that he is now going to court and he has to pay court costs, so the City is getting him three times; once on his taxes, once on paying to go to court and court costs for him to exercise a right the City Code gives him to do. He said that he won't even discuss the \$100,000 historian that the City hired.

Mayor Kearney requested that the City Manager explain the plans for the hotel. In response, the City Manager stated that he will be contacted Mr. Ernie Gates, Editor of the Daily Press and there will be a press conference to explain all of the details of the Radisson deal in comparison with other potential sales and the financial data surrounding that as well as the community data and facts. He said that would be forthcoming in a few days.

Mayor Kearney stated that the \$12 million offer that was referred to in the article was an offer that was made between Randeria and the owners of the Radisson, not the City of Hampton. He said that they were told that this offer was being made and the City had to approve it. In response, the City Manager stated that in this particular deal, the City was in the position as a creditor.

Mayor Kearney said that the City was in the position as a creditor and owning a hotel again, but under a new owner and that was not acceptable by this Council. He said that there is a lot more that was not covered in the article and more information is needed. He said that the true statement was Mr. Bassett's reference to the 85% increase.

Mayor Kearney stated that the City Manager would be addressing those issues in a public forum with the news media, from a staff position, not a Council position.

Miscellaneous New Business

Adjournment

Ross A. Kearney, II
Mayor

Katherine K. Glass
Clerk of Council

Date approved by Council _____