



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:

Mary Bunting, City Manager
Cynthia Hudson, City Attorney
Katherine K. Glass, Clerk of Council
Brenda J. Vaccarelli, Deputy Clerk

Wednesday, January 27, 2010

12:59 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,
Paige V. Washington, Jr.

Agenda

1. 10-0038 City of Hampton Credit Profile Review

Mayor Ward welcomed the City's new financial advisors.

Ms. Mary Bunting, City Manager, said staff wants to introduce the newly hired financial advisors to City Council and the community. She said they will share a brief summary of the City's rating factors as staff prepares for the upcoming rating agency meeting for the March 2010 bond issues.

The City Manager explained that cities hire independent financial advisors to help gauge and assess the City's financial strength. She further explained that for well over 20 years Hampton was excellently served by the same financial advisory team and last year during the City's required public procurement process, the City opted to change firms. She noted that the change was done for many reasons, none of which related to the quality of service received from the former agency. She said it was unanimous that these difficult financial times demanded a new set of eyes and only to be sure that a new set of eyes looking anew at the City would reach the same conclusions about the City's financial strengths and weaknesses. The City Manager stated that Public Financial Management, Inc. (PFM) was ultimately selected because of their strong factor record in advising local government clients. She said additionally, they brought to the table something other firms did not. PFM has an arm to its operation that looks at localities operating budgets as well as their capital and bonding budgets. She said they felt the additional debt would serve the City well in this present economic environment.

The City Manager introduced Ms. JoAnne Carter, Lead Advisor and Managing Director of PFM's practice in Virginia. The City Manager noted that Ms. Carter is a homegrown product of the City of Hampton having graduated from Kecoughtan High School. The City Manager said Ms. Carter will introduce other members of her team and provide a briefing that presents a glimpse of the City's credit profile as staff prepares for the meetings with the bond rating agencies later this week.

Ms. Carter introduced Ms. Karin DeMoors, Senior Managing Consultant. Ms. Carter said she is also a product of Hampton City Schools and there is a special sort of personal feeling in being able to serve the City in this way. She thanked Council on behalf of PFM for showing its confidence in selecting PFM and they will work hard to maintain that confidence over the years.

Ms. Carter said she would provide Council with background about PFM and how changes in the credit markets and the way the rating agencies are evaluating municipal credits impact the cities. She said she will also provide Council with an overview of some credit analyses that PFM was appointed in October 2009.

Ms. Carter noted that PFM was founded in 1975 by their partners and they are an independent firm. She said their goal is simply to provide advice to their clients and those clients are all cities, states, local governments, and non-profit agencies. She said they have a very singular focus in their client base. Ms. Carter provided Council with information indicating that PFM has offices all across the country and the offices are located so they can be in close proximity to their client base. Ms. Carter said she is responsible for managing PFM in Virginia and the offices she, her team and the core team that will serve Hampton, are based in Arlington County. Ms. Carter provided Council with the following list of various clients that PFM has served over the years:

- Arlington County
- Fairfax County
- Fairfax County Water Authority
- City of Hampton
- Hampton Roads Planning District Commission
- Hampton Roads Sanitation District
- City of Newport News
- City of Norfolk
- Prince William County
- City of Roanoke
- Stafford County
- Virginia Port Authority
- Virginia Treasury Board State Non-Arbitrage Program

Ms. Carter noted the list includes other First Virginia Cities and some of Hampton's neighbors as well as state and other entities in the Commonwealth.

Councilman Kearney asked Ms. Carter if she currently worked with these cities. In response, Ms. Carter replied yes.

Ms. Carter said one of the ways they keep score in their business is by a measure of how much debt they advise upon. She explained one of the charts provided to Council indicated that nationally PFM was the leading firm in advising at the close of 2009 on

debt issues in excess of \$51.5 billion. She explained what this means for Hampton is that she has access to all of her over 400 colleagues across the firm and can stay on top of the cutting edge financing techniques and other ideas that are being used in other places that maybe haven't yet made their way to Virginia, or practices they want to avoid in Virginia, based on how they have played out in other places.

Ms. Carter said because they are so singularly focused on provided advice, PFM is able to organize their firm and focus that advice into multiple different areas. She stated the area she focuses in, and what she refers to as their financial advisory business, is all about helping the City access the capital market and borrow funds at the most effective interest cost possible. She said PFM also has a group who looks at helping communities such as Hampton to optimize safely the investment of the public dollar. Ms. Carter said PFM has a core group that is headquartered in their Philadelphia, Pennsylvania office which is called Strategic Consulting. She explained that group focuses on helping governments with approaches aimed at maintaining fiscal balance or for governments who fall into a case of fiscal stress and helping them regain firm financial footing through both operating and capital budget strategies.

Ms. Carter brought Council up to date on some changes that have occurred in the market and she believes they are important and are viewed as important as PFM provides advice to Council on a going forward basis. She said one of the groups they have to deal with in order to access the bond market is the bond rating agencies. She said these rating agency companies have faced a lot of change as has everyone in the last two years of this financial crisis. Ms. Carter noted that in the spring of 2008, they heard from Moodys and from Fitch that they were going to change the methodology by which they rate municipal bonds, which would include the City's debt. She stated this methodology change was aimed at putting on parity or equal footing the way that they rate corporate bonds and the way that they rate municipal bonds. She said the effect of changing that methodology would mean that municipal bond ratings should all go up. She said many welcomed this change as something they have long awaited in the market, however, in the fall 2008, when the most severe impacts of the global financial crisis became very well known, the rating agencies, specifically, Moodys and Fitch, decided to put those plans on hold. She noted, the third rating agency Standard and Poors (S&P) maintains that they have always looked at all ratings, both corporate and municipal parity. She said S&P upgraded a number of municipalities after making this statement. Ms. Carter stated that process is currently on hold and continues to be on hold and in spring 2009, Moodys assigned a negative outlook to the entire United States (US) local government sector. She explained that it doesn't mean the individual cities negative ratings, but it means they looked at the whole basket of local governments they rate and said to the market place that they have a very concerned outlook as to their fiscal stability over the next 18 to 24 months.

Councilman Kearney asked Ms. Carter what was that based on. In response, Ms. Carter said it is based on declining tax values and declining economic activity which impacts sales tax revenues and those sorts of things. She said it is the general slow down of the economy and how it trickles across to the financial stability of the cities and counties.

Councilman Kearney asked if Ms. Carter if their look at the local governments was based on the loss of their income, not their spending. In response, Ms. Carter said it is absolutely an important part of the picture but what led them to publish this global concern was they saw revenue trends slowing and what they are now waiting to see in

the aftermath, is how governments respond and if they rein in spending or if they make choices to reprioritize capital projects or reduce borrowing. She said the first wave of their concern came from seeing the revenue fall off and they indicated that over time they would be watching that expenditure side very closely.

Councilman Kearney said in your role as consultant and advisor, will it be your job to meet with City Manager, staff and Mayor to offer suggestions to curtail spending or capital improvements until the market rebounds. In response, Ms. Carter said they have already been working with the Department of Finance on looking at the City's debt burden so that is obviously a very important part of the City's budget. She said she would expect that over time they would continue looking at targeted areas. She said PFM has an entire group who works with governments across the country and PFM would certainly make those resources available to talk about what is being done in other places, or initiatives the City might consider. Ms. Carter said she sees their role of as one of providing advice, input and ideas and they leave it to Council, the decision makers, to choose which are appropriate for the City.

Councilman Kearney said he wants the public to know that when decisions are made to do something in the City of Hampton, they aren't done because the City Manager woke up one morning with an idea and the majority of Council voted for it. He said it is based on a lot of research and input which actually goes to bond market. He said he believes that it is very important for the general public to know that it is based on the information Council receives and the information they seek.

The City Manager stated in response to Councilman Kearney's comments, she reminded the public that staff came to Council last month with a proposal to scale back what had been in excess of \$30 million of borrowing for the March 2010 issue to under \$20 million and some change. She said that was reflective of what staff felt they should be doing locally anyway, but they believe they will also be responsive to the rating agencies' perspective to see if the City is prioritizing tiers of requirements and what is most necessary and core to the City's essential governmental function. She said she believes the rating agencies will respond well to this when staff meets with them next week.

Councilwoman Leary said she would like to add to Councilman Kearney's comments. She said this is one of the reasons why they are active participants in the Virginia Municipal League (VML), as well as the National League of Cities (NLC). She said it gives them an opportunity to see best practices from other jurisdictions.

Councilman Wallace referenced Moody's negative outlook and asked if they listed defaults in the municipal bond market sector that precipitated this. In response, Ms. Carter said that was an excellent question and the answer is no. She said, in fact, they have certainly seen municipal credits deteriorating in quality. She said she is sure many saw the State of California was taken down by Moodys in their rating recently. She said the states are seeing that first wave of actual downgrades first and other places which maybe came into this recession from less strong conditions are struggling mightily versus communities like Hampton who have a long tradition of very prudent financial management that has allowed the City to build strong financial margins, meaning the City is in a better position to move into tougher times than those who didn't build up those margins over time. She said they have not seen mass downgrades but there is an

expectation that if things don't start to turn around or if they turn around slowly that we could start to see that happen.

Councilman Wallace asked Ms. Carter if she meant all three rating agencies or just Moodys. In response, Ms. Carter said that it would just be Moodys.

Ms. Carter said the important thing for everyone to know is given the changes the rating agencies are facing it is more difficult than ever to gaze in a crystal ball and predict how they will react to various things; however, one thing is clear. Hampton needs to remain as diligent and as committed as it has over time to managing its financial affairs. She said it is clear that communities who are engaged in a continued practice of strong financial management will be better positioned to weather this storm, regardless of what the rating agencies do with their methodologies, than those who choose not to. She said the other take away from this is that they are not finished. She explained that Congress has placed a lot of scrutiny over the rating agencies and they are now more heavily regulated than they have been in the past and this isn't the end. Ms. Carter noted that one of their jobs, as the City's financial advisor, is to stay on top of these changes and advise the City so it can position itself favorably with the rating agencies regardless of what changes are going on in their methodologies or practices. Ms. Carter said their goal is to help the City to maintain the strongest possible ratings.

Councilman Wallace asked how much have the issues associated with AIG because they were basically the insurers. In response, Ms. Carter said that has been a major impact in their market and she didn't mention it because the City has such strong ratings and hasn't needed bond insurance in the past. She said they have seen the absolute collapse and demise of what used to be a very strong part of our market, which is the bond insurance market. She said there was something on the order of seven firms who had Triple A ratings from all three bond insurers which today, many of which have non-investment grade ratings. She said that industry has gone away as the result of this crisis. Ms. Carter said the fact that the rating agencies rated those firms as Triple A for many years and didn't catch the investment those firms such as AIG had made in mortgage backed securities is one of the reasons why the US Congress is so focused on the rating agencies and what they are doing.

Councilman Wallace said Councilman Kearney's point is there are so many factors that impact the way Hampton does business that it is not widely known in any general community that impact what and how they do it.

Councilman Washington said they are finding that Community Development Authorities (CDAs) are now playing a tremendous part in the municipalities. He asked how it weighs comparatively to the bond market and is that injurious to the municipality when they have CDAs of any magnitude in their areas. In response, Ms. Carter said when CDAs, which are bonds that have already been issued, are structured properly and you have good performance such as the Peninsula Town Center, those are not net negatives to the host community. She said it is very important when those transactions are put together that there is separation between that developer and his or her financing and the host government. She stated that to the extent a number of CDAs right now are experiencing trouble throughout the Commonwealth, those in and of themselves aren't necessarily triggers for downgrades of the host community's credit. She said it is certainly a concern because it means that you have someone in your tax base who is

experiencing some difficulty and you ultimately want that to improve, but as a single trigger, they don't see it as creating mass problems throughout the Commonwealth.

Councilman Washington asked when CDA is experiencing difficulties does the impact they have at that point count against the municipality for borrowing purposes. In response, Ms. Carter said not directly. She said if the CDA was the City's entire tax base and the entire tax base was feeling the stress, then that certainly would be the case. She stated that generally the rating agencies focus their analysis on four very broad areas, the tax base being one of them. She said CDAs would be just a smaller subset of that and it would be a factor, but not one that would necessarily trigger rating action one way or the other.

Councilman Kearney said there have been some articles and letters to the editor dealing with the CDAs at the Peninsula Town Center and the owners of the Town Center. He said if he says anything that is incorrect, please correct him. He said the owners of the Town Center decided to pass on the cost of the CDA to the consumer. He said he had not seen that in his study of CDAs before because that had always been passed off in the real estate when they were renting, so that Five Guys would pay a little bit more and so forth, to pay for the CDA. He said that was very unusual. Councilman Kearney said the one thing that bothered him in going to the bond market and dealing with Moodys, S&P and Fitch, was that all of them agreed that CDAs were not part of the municipal debt but they still counted it towards municipal debt, though we are not obligated in any way if that CDA fails. He asked if there was any new light on that subject because they felt that in the future they might take that out. In response, Ms. Carter said that methodology has not changed and she is with Councilman Kearney 100% on being perplexed. She said they do look at the entire range of debt and they have their categories. She stated that what Councilman Kearney was referring to was the infamous overlapping debt and it is part of their analysis but she said it is not a central part of their analysis. She said their analysis covers a wide range of things and that is only a piece of the debt picture. Ms. Carter said their real focus is the tax supported debt, the general obligation bonds and that is really the focus of their analysis in the debt category.

Councilman Kearney thanked Ms. Carter for her comments.

Ms. Carter said another change in the market is interest rates and the good news on interest rates is that on a relative basis they are very low and attractive. She said if the City were to sell its general obligation bonds today, it would probably have an interest rate of less than 3.5% for 20 year money which is very attractive. She said the bad news about interest rates is that the rate you pay today is more closely correlated to what your credit rating is, which is another way of saying the City's credit rating is far more important today in terms of raw dollars and cents than it was the last time the City sold general obligation bonds. Ms. Carter provided a chart to Council indicating that if the City has a Double A Credit Rating, which is what the City of Hampton has, the City would pay an additional 19 basis points in interest over what a Triple A bond would pay. A Triple A bond, risk free, Hampton is slightly lower than Triple A, but not by much, would pay an extra 19 basis points. Ms. Carter explained on an all end cost basis that would be an interest rate of 323 and embedded in that, if you were to take the 19 basis points and convert it to dollars, and borrowed \$10 million over 20 years, that 19 basis points would cost the City \$380,000. She said if that is compared to the last time the City sold its general obligation bonds, that \$380,000 was \$100,000 which is a very

different penalty for credit in interest rates. Ms. Carter said as the City's bond rating goes down, that penalty goes up precipitously. She said if the City goes from a Double A rating to a Single A rating, the \$380,000 becomes \$1.6 million. She said if the City is at a Triple B rating, that \$1.6 million becomes \$4.1 million. Ms. Carter explained that now, more than ever, and especially in light of the comments that you cannot buy bond insurance from Triple A rated companies any more, maintaining strong credit ratings translates into real dollars over time.

Councilman Kearney asked Ms. Carter if this is replacing the bond insurance. In response, Ms. Carter stated there really haven't been many replacements for the bond insurance. She said there have been a few companies who have tried to break into that market and they are not getting much traction and they are very, very expensive. She said it is simply not an option that is cost effective for many folks these days.

Ms. Carter said the City maintains a strong band of credit ratings. She said when PFM does their credit analysis they start with what the rating agencies said last about the City in its review in October 2007. She said some of the key things that each of the agencies said about the City of Hampton are similar. She pointed out that all three agencies commented that the City's debt burden was manageable but a little bit high and indicated that would be something they would be paying attention to on a going forward basis. Ms. Carter said Moodys, in particular, is the firm, above all other things that focus on reserves. She said Moodys indicated that they would continue to monitor the City's use of reserves over time. Ms. Carter said S&P and Fitch have very similar themes in their reports and one she believes is really important, and especially now during these kinds of financial times, they rate the City's financial management practices as strong and part of S&P's report stated that they find the City of Hampton as strong. She said it is those kinds of practices and commitment to those practices which she believes will be important on a going forward basis. Ms. Carter noted that S&P and Fitch also note the strength of the local economy and the City's connection to that as credit factors.

Ms. Carter said they went through five years of financial data and charted out numerous financial trends in PFM's fresh eyes look at the City. She said they find favorable trends and these are the trends the rating agencies will see when they meet with them, but obviously economic conditions are slowing things down. She said they will see growth in the tax base since the last review they made which would have been based on FY06 results. She said they will also see the General Fund Balance has increased, however that is decelerating particularly if you look at the results in 2009 versus 2008. She said there is a clear deceleration there. Ms. Carter said the City's debt burden and the way they measure it is relative to what she refers to as the City's ability to pay, the tax base and the City's overall expenditures which have increased a little bit.

Ms. Carter said those are the trends that PFM believes the rating agencies will see. She said they don't believe the City is in any danger of having its ratings downgraded or changed and they are comfortable that the trends the rating agencies will see will result in a favorable outcome in terms of an affirmation of the City's ratings.

Vice Mayor Spencer asked if the high debt burden in 2007 was attributed to the rating agencies taking into account the CDAs as well. In response, Ms. Carter said that is a measure of what they refer to as tax supported debt. She said it does not include the CDAs.

Vice Mayor Spencer requested Ms. Carter to explain what tax supported debt is. In response, Ms. Carter said tax supported debt in the rating agencies definition are the general obligation bonds as well as more moral obligation or subject to appropriation bonds.

Vice Mayor Spencer asked if that takes into account the Hampton Roads Convention Center (HRCC) which has a funding mechanism in place to take care of that dedicated source. He said that was also grouped in with this. In response, Ms. Carter said that is the way they perform their analysis and what happens with that type of debt is once you reach self-sufficiency, then the agencies will pull that debt out of their calculations. She said they just like to see a long ramp up period before they are willing to do that in their analysis.

Vice Mayor Spencer asked Ms. Carter how long does it generally take. In response, Ms. Carter said it can take as many as ten years.

The City Manager stated that one of the things the rating agencies find really difficult about Virginia localities is that Virginia has independent cities and independent cities take on what in other states' counties might take on in the way of debt. She said Virginia cities, as a rule, tend to find us carrying higher debt burden because the cities are doing what cities and counties are doing in other locations. The City Manager said Virginia is the only state that is like that even though they have analysts that focus on Virginia and understand that, they have to compare them across the nation and they just have that aberration in our structure. She said what they typically find is a lot of the communities that are First Cities and that have some of those county functions make the same comment. She said this comment is not unique to Hampton. She said you would find the rating agencies making the same comment about Roanoke, Norfolk, Newport News, Arlington, Fairfax and all those communities that have that responsibility because they are rating Hampton like they are other states even though the other states have a city and country structure.

Councilman Washington asked if Hampton was different because they are under the Dillon Rule. In response, the City Manager said that is a function but it is also a function of the inability of localities to annex and to grow their boundaries. She explained that on top of it, the fact that Virginia has independent cities. She said in other states the counties typically do jails, social services and parks and recreation and those kinds of activities and the cities focus more on local law enforcement, not that larger jail function. She said cities have to take on the debt for the jails in Virginia where in other states cities would not be taking on that jail debt. The City Manager said there is many things about the Virginia governance that make it unique and more challenging for cities and so it looks like cities are carrying a higher debt burden in part because they are having to carry things that counties carry elsewhere.

Ms. Carter agreed with the City Manager.

Councilman Kearney said the point he wanted to make when Vice Mayor Spencer spoke was when they talked to the rating agencies before, they were concerned when you talked about using the General Fund Balance was the fact they realized though they didn't want the City to spend the money, they realized that Hampton had not built any schools in 30 years and there were two the City had to build. He said he remembers the

Moodys, which seemed to be very tough, turned around and said the City would be downgraded if they never built a school. He said they expect you to go out and do these public improvements that have to be done and are not very popular, but they are needed for infrastructure to do them. He said they get into a shoving match even though they listed the trends of using the General Fund to match it that time, when you start doing the bonding, they expect you to go out and build, especially the schools.

Mayor Ward said they are working on the Capital Improvement Plan (CIP) for next year and it is a very painful process because of the downturn in the economy and the lack of money the City is getting from the State and obviously the downturn in the real estate values and assessments. She asked what kind of projects, like the schools, do the rating agencies look favorably on. In response, Ms. Carter said the rating agencies have always had a general sense of "essentiality" and they have their own opinion of what is essential. She said that key infrastructure, schools, roads and things that are the backbone of the community are reviewed as being more highly essential than investments in things that are nice to have. She said every community has to make that judgment call but from the rating agencies perspectives they have a very specific traditional view that government function, when it comes to capital improvement is about laying the skeleton down. She said one of the things is about laying the skeleton down. One of the things that is part of their role is to play defense for the City with the rating agencies so the City can maintain as much of its prerogative in making those decisions as you should. Ms. Carter stated Mayor Ward's point was very good because the key for the rating agencies is that they want to see that the City is responding to the economic downturn and the City is making choices and making priorities so the numbers work. She said generally they won't go so far as to question a line item of the CIP if the overall number is affordable, generally they will not impose that kind of essentiality standard as a second order analysis.

Councilman Wallace said since the ultimate backstop or worse case scenario for local debt is the State, what happens if the State loses its Triple A rating and how would that impact the City of Hampton. In response, Ms. Carter they have been on the verge of that in the past and the State was on negative outlook with Moodys in 2005 and for many of the same reasons, many of the same financial conditions of the State finds itself in today. She said she believes that the damage that the State could potentially do in the way of cuts, in terms of funding cuts, is where the City of Hampton would see the impact. Ms. Carter said to the extent that the State aid contribution just continues to shrink and shrink and shrink, that is where the City will see the impact more so than in an absolute downgrade of the Commonwealth. She said she believes even if the Commonwealth were to lose its Triple A rating all across the Commonwealth, there are very strong fiscally responsible managers and they will figure out how to get that budget in balance if they need to. Ms. Carter said at that point the financial management point is where you can create some separation and you can have less impact of State issues and the City needs to react to understand that. Ms. Carter said she believes there is some distance there and she doesn't know that it would trickle down as directly as Council might expect.

Councilwoman Leary said she hates to ask this, but she feels compelled to. She asked if the rating agencies look at the City's contractual capabilities. She said it is a broad question. In response, Ms. Carter said she was not sure what Councilwoman Leary meant by contractual capabilities.

Councilwoman Leary asked if they looked to see if the projects that you have, such as the schools, are completed on time or were they under budget, that type of thing. In response, Ms. Carter said they tend to not dig quite that deep. She said the one exception she would add is if the City is bond funding a project that is very significant and it is being done over multiple years, and you can't complete it for some reason, because the City cannot access financing or the financing is more expensive than anticipated, that would be the situation the rating agencies would be concerned about. She said although it does feel like the rating agencies are inside of our pockets, but they are not quite that deep.

Councilwoman Leary said she wondered if they read the newspapers. In response, Ms. Carter said sometimes they do and sometimes they don't.

Councilwoman Leary thanked Ms. Carter.

Ms. Carter said the last piece of the analysis that PFM does is sort of a benchmarking piece where they take the multi-year trends they have performed on the City's financial data and they compare those trends, mostly in the form of ratios, to a peer group. She said all the data they pull is pulled from the Moodys data base. She said PFM has access to all the data they collect on their journeys around the Commonwealth. Ms. Carter referred to the peer list of communities and noted that there are many Virginia First Cities as well as others in the region. She said the bottom line is when they look at Hampton in terms of its General Fund reserves, it out performs the peer group. She said Hampton is positioned with very strong financial margins to weather this current economic climate. Ms. Carter referenced the point the City Manager made regarding debt burden. She said comparing Hampton to a comparable group of cities with similar governmental responsibilities the debt burden is consistent with the debt burden of the other cities. She said when you broaden the net beyond Virginia you would begin to see some discrepancies there. Ms. Carter said based on all the metrics PFM looked at, they couldn't find any financial metrics where Hampton under performed their peer group.

Councilman Kearney said one thing he discovered in the past and was very impressed with was the Finance Department invites representatives from Moodys and S&P to come to Hampton and actually do a walk through. He said the Mayor and staff meet with them to show them the community. He asked if PFM will continue this practice. In response, Ms. Carter said they will.

Councilman Kearney said Mr. David Rose, Financial Advisor with Davenport and Associates, did and seemed to be very successful. He said they began to see what the HRCC was and what the City's goals and dreams were.

Ms. Carter said there is an element of kicking the tires, if you will, that cannot be conveyed over a conference call or in a bond document. She said that is an important part of the overall rating strategy.

The City Manager said representatives from all three rating agencies will be in town this week and as part of their visit staff is going to take them on a tour of the community to let them see the visible changes that are occurring in the City.

2. 10-0035 Zoning Ordinance Amendment: Chapter 7.1, R-4 District - One Family Residence District.

Ms. Mary Bunting, City Manager, stated that Agenda Items #2, #3 and #4 are all briefings on proposed changes to the Zoning Ordinance. She explained that the proposed changes would provide new zoning options designed to implement and support the implementation of the Hampton Community Plan and various Master Plans. The City Manager stated that Ms. Caroline Butler, Chief Planner, will brief Council on all three proposed changes which have been reviewed by a Zoning Ordinance Advisory Committee (ZOAC) which is a group of citizens representing a wide range of neighborhood, professional, organizational and business interests. She noted that the changes were also previewed by approximately 30 different community groups to include a wide variety of neighborhood, civic associations, the faith community, the business community and others. The City Manager said the proposed changes have been available for public review on the City's website and were reviewed and approved by the Planning Commission at the January 2010 meeting. The City Manager said the presentation today is only a briefing with no action contemplated by Council until February 2010. She noted that staff is available to provide Council ample time to understand the proposed changes and to address any questions or concerns Council may have when the matter comes to Council for action in February 2010.

Ms. Butler thanked Council for the opportunity to provide the briefing. She said staff is happy to meet with Council and talk with them about some of the changes that they have been working on with citizens to implement the rewrite of the City's Zoning Ordinance. She said Council's first question might be, why are they rewriting the Zoning Ordinance. She explained that the ordinance is over 50 years old, it is redundant, repetitive and in many cases it is ambiguous. She said it also doesn't allow the City to do the current development that the City and other localities are seeing, and it doesn't address a lot of development trends. Ms. Butler said many of the existing chapters will remain as they are now but staff is suggesting that some additional chapters are included as options for development. She noted that they are in the process of revising the existing Zoning Ordinance and creating new chapters and are bringing them to the Planning Commission and to Council for review and adoption. Ms. Butler stated the Parking Ordinance that went through almost a year's worth of community involvement and Planning Commission public hearings before it came to Council in April 2009, for adoption. Ms. Butler stated that this briefing is Council's first look at some of the changes staff is proposing. She explained that they are following the protocol that has been established with the Planning Commission of presenting the information in work sessions and staff will be glad to do that with Council as many times as needed to provide a forum for Council discussion with staff and to remove any pressure from Council to conduct any public hearings until Council is comfortable with the information staff is suggesting. Ms. Butler noted that Council is not being asked to take any action today and staff would like Council to continue to read and digest the information and ask staff questions in this forum today. Ms. Butler noted that staff would be happy to respond to any questions from Council via e-mail and/or meet with any member of Council individually.

Ms. Butler provided Council a brief overview of three new and revised Districts; the R-4 Single-Family District, the MD-4 Multiple Dwelling District, and the MU-CO Mixed Use Commercial Overlay District. Ms. Butler said the purpose of zoning is basically a land

use tool that applies uses and development standards to property on the ground. She explained it is a tool that helps Council to implement the recommendations of the Community Plan and the adopted Master Plans that set forth the adopted policies and land use for the City of Hampton. Ms. Butler stated currently, the City doesn't have zoning districts that enable them to implement some of the recommendations of the Community Plan. She said there are quite a few recommendations for things such as Mixed Use or a mixture of Single- and Multi-Family development or mixtures of Residential and Commercial development. Ms. Butler said Hampton doesn't have zoning districts that allow that. She said they have been able, in some projects, such as Bailey Park and Peninsula Town Center to cobble together through other mechanisms enough land use controls to make them happen but it is certainly a lot easier and smoother to have Zoning Districts on the books that permit that by right. Ms. Butler reiterated that staff is not asking Council to take any action today. Ms. Butler said adopting these districts into the Zoning Ordinance does not apply them anywhere on the ground. She explained that any one of these districts for property to be applied to a property would have to go through a rezoning process that involves staff review, community input and public hearings before the Planning Commission and Council. She said Council has the ultimate authority and responsibility to decide if one of these districts is applicable to a particular property.

Ms. Butler said the Planning Commission established a ZOAC that has been working with staff for just about a year to create these new districts. She said the ZOAC is composed of professional, neighborhood and civic organization representatives and staff has been meeting with them to try out new ideas, to get their input and to their feedback on whether these districts will work in real life situations. Ms. Butler said staff has also alerted community groups to the rewrite of the Zoning Ordinance and some groups have asked staff for just a very brief overview and others have asked us to come out and go over the fine details in more detail and staff has been happy to do that. Ms. Butler said they have a dedicated website for this project where anyone can go on the web and see where all the community meetings have occurred and are scheduled and look at the current drafts of all the proposed ordinances. She said there is also an area where citizens can leave comments or ask questions. In addition, the Planning Commission has conducted five public meetings and has had work sessions, and public hearings. She said the Planning Commission recommends approval of the Districts that are being presented to Council today.

Councilwoman Leary asked Ms. Butler if minutes were kept of the meetings held. In response, Ms. Butler said minutes were taken at the meetings.

Councilwoman Leary requested an electronic copy of the minutes from the meetings. She said that would bring her up to date on what the group is doing.

Ms. Butler said she would be happy to provide the minutes to Councilwoman Leary.

Ms. Butler said the first district being proposed is the Single-Family Residence District, named the R-4 District. She explained this would allow all the uses that are currently allowed in all of the other Single-Family Districts, so there are no changes whatsoever proposed to the uses. She said the difference between this District and the other Single-Family Zoning Districts is the lot size and the dwelling unit size. She said staff is proposing the lot size be allowed by right at 4,000 square feet or it could be reduced to 3,000 square feet with a Use Permit. She said the Use Permit option was something

that was encouraged and suggested by the ZOAC. She said the Committee felt that a lot that size might need an extra level of review by the public in order to determine if it is appropriate or not. She said staff felt that was a good idea. Ms. Butler said the dwelling unit size proposed for the R-4 District is 1,300 square feet. She said this is really not a small dwelling unit size in comparison to some of the other Single-Family Districts on the books. The R-9 District which is currently the City's smallest Zoning District requires a minimum dwelling unit size of 1,500 square feet. She said that can be reduced by right to 1,300 square feet if the house has an attached enclosed garage or porch. She said staff is suggesting that there are no provisions to reduce the size in the R-4 District and the minimum size would be 1,300 square feet under any circumstances. Ms. Butler said the City's current Duplex District which allows Single-Family requires a 1,300 square foot Single-Family house but that again can be reduced to 1,100 square feet. She said the proposal for what is in the R-4 District is actually a little bit larger than what can be done by right in some of the other Districts.

Vice Mayor Spencer asked how many 3,000 square foot lots have to be approved. In response, Ms. Butler said she has a map showing that information.

Vice Mayor Spencer said he just wants to know the number. In response, Ms. Butler said there are approximately 10,000 platted lots in the City of Hampton that are below 6,000 square feet. She said she has that information broken out, not off the top of her head but she has maps to provide Council that will have those numbers on it.

Vice Mayor Spencer said his reason for asking the question is because the Use Permit comes before Council and he shudders to think that the City might have three or four thousand Use Permits for that minimum 3,000 square foot. He said he would be really interested as this process moves forward.

Mayor Ward asked if all 10,000 lots are eligible for this Use Permit.

Ms. Butler said the R-4 District is recommended for specific circumstances and those are contiguous areas in the City that have these legal non-conforming lots that are of sufficient land use to justify a rezoning to R-4. She said it is very unlikely Council would do this lot by lot, but if there are areas in the City that are already platted and developed, there is sufficient land use that it makes sense to do that and the recommendation of the Community Plan or the Master Plans recommends that they be small lots, then she believes that is an appropriate condition under which Council would review them. Ms. Butler said if it doesn't meet that criteria, then they are really not eligible for it.

Vice Mayor Spencer said Council needs to know, when they get into the meat of this, how many of the lots would potentially meet this criteria. He said he would assume that staff went through that when they did the study, so he is sure it is available. In response, Ms. Butler said they did.

Vice Mayor Spencer apologized for not asking for the information earlier.

The City Manager said staff would take care of it.

Ms. Butler said the other scenario in which Council would look to apply the R-4 District would be when there are geographic areas of the City within adopted Master Plans where their recommendations to rezone to these small lots and they have an adopted

Pattern Book. She said there is only one area that has an adopted Pattern Book but there are others that are proposed for that. She reminded Council that adopting the R-4 District into the text of the Zoning Ordinance does not apply it to any property. She explained that any application of the R-4 District would have to go through the rezoning process. She further explained that it is evaluated by staff and the community and there are public hearings that are conducted by the Planning Commission and Council and ultimately Council has the authority on where and when to apply this District.

Councilman Kearney said some time ago, he sent a list of questions to Ms. Butler and to Ms. Bunting. He thanked Ms. Butler and her staff and to Mr. Terry O'Neill, Director of Planning, for the response he received. He said so much of what he was asked was redundant type questions and have all been answered. He thanked Ms. Butler. Councilman Kearney asked what this permits a future Council to be able to do. In response, Ms. Butler said it permits a future Council to do what this Council can do right now, which is to approve or deny a rezoning application to the R-4 District based on the criteria Council uses which is its conformance with the Community Plan.

Mr. Neill said he wanted to add to Ms. Butler's comments because he believes this is really an important point. He explained all of these lots are out there right now and the owners of those lots can build on them right now. He said all they have to do is get a permit that meets all the setback requirements. He explained that if it is a 3,000 square foot lot and it is a legal non-conforming lot, the owner has the right to come in and build a house right now as long as they meet the minimum setback requirements. Mr. O'Neill said that Council has no purview or review over that. He said it is an important base to get to Councilman Kearney's question of what does this provision do for the City. He explained what it does is that it builds in an incentive for the property owner and prospective builder to seek a rezoning to turn these lots in the appropriate locations into conforming lots rather than legal non-conforming lots. He further explained in exchange for going through that process which comes before the Planning Commission and Council, Council can then review those proposals for qualitative standards and other kinds of things versus now, the owner can get a permit on those lots and Council never sees them. Mr. O'Neill said if they come before this process, which is an optional process as Ms. Butler indicated, Council can look at what is being proposed and render some judgment as to whether it meets all of the Community standards, etc.

Councilman Kearney asked if this is where the Pattern Book comes in. In response, Mr. O'Neill said that was correct and noted that it is a positive option that grants the community groups, the Planning Commission and ultimately Council some greater review over these proposals on the small lots. He said that is essentially the advantage it provides in addition to the others that Ms. Butler mentioned.

Mayor Ward said the owner can get a permit on a legal non-conforming lot but what if the same entity or person owns adjoining lots. In response, Mr. O'Neill said Mayor Ward was correct and there is a provision in the Ordinance that says if you have two adjoining lots that don't meet the standards then they have to join those lots together if it is under single ownership to meet certain provisions and percentage requirements of what the underlying zoning is.

Mayor Ward asked what would happen to those owners and would it remain the same. In response, Mr. O'Neill said they would still have that provision or they can come before Council and ask for this additional provision in which case then Council gets to look at it

and say it fits in with the neighborhood or say that it is not appropriate. He said it provides an 'a' or 'b' track that the owners of those properties can pursue and what they have tried to do in this proposal is build in enough incentive and this is where the feedback from the ZOAC has really been helpful. He said they believe people will actually come in, in certain situations and apply for this, in which case then Council gets the ability to look at it and pass some judgment on it.

Mayor Ward asked if the same person owns two adjoining lots that are non-conforming but otherwise would be legally nonconforming if different people owned them, can they come in and appeal now. She said if they came in to get a build permit they cannot get one to build two houses.

Mr. Steve Shapiro, Director of Codes and Compliance, said the key date is in 1989 because if there was common ownership at any point from 1989 forward, then you have to merge them as Mr. O'Neill described. He said if they were in common ownership back in the 1960s, then they were sold later on and they could build separate houses. He said he believes it was January 12, 1989, when the non-conforming ordinance was on the books and that point forward they have to merge them if it is large enough to build a second house.

Mayor Ward said her question is if the person has what would otherwise be two legal non-conforming lots if they were owned by different people, but it is considered one lot by the Zoning Ordinance can appeal it and build two houses. In response, Mr. Shapiro said they can appeal his decision as to why he says it is a substandard lot that has to be merged.

Mayor Ward said that is not really an appeal because it is a matter of fact.

Mr. Shapiro said it is pretty straightforward in the Ordinance that you have to merge the lots.

Mayor Ward said the point she is trying to clarify is that somebody might be able to build two houses on what would now be considered one lot under the new law. She said they can come in and say they have two legal non-conforming lots. In response, Mr. Shapiro said if they rezone to the R-4 District, then they would be able to if Council granted the Use Permit.

Mayor Ward said she is trying to clarify that because somebody will be able to build two houses on a lot that now they can only build one on, under the new R-4 District that is what Mr. Shapiro said.

Mr. Shapiro said if the R-4 District is in place that's now a 4,000 square foot lot. He said there are two 4,000 square foot lots for example, and they are in common ownership. He said the owner has to merge those if it is large enough to build more than one house. He explained in the new scenario if it is rezoned to the R-4 District then they would be able to build a house on each one of those lots.

Mayor Ward said that is what she was trying to say.

Councilman Kearney said it would come before Council for approval. In response, Mr. Shapiro said if Council approves the ordinance change.

Mayor Ward said as a matter of law they can't.

Councilwoman Leary asked Mr. O'Neill to explain the difference between what the City is doing and form based codes. In response, Mr. O'Neill said the provisions you will see in a lot of these written ordinance amendments and new ordinances, such as the one they are talking about, are in effect a transition that they are trying to make to move closer to form base code provisions. He said he knows all the Council members know right now, the City's Zoning Ordinance is a traditional text given ordinance that talks about minimums and restrictions and so forth. He said form base codes tend to be generally more open about the variety of uses permitted on a piece of land as long as the way the development occurs meets the desired physical form and layout of the neighborhood or the district. He explained that in order to get to truly a form based code they have to go through a number of transitional steps and this is one of those. He further explained to make it a little simpler, where they hope to go at the end of this entire process is that they will have text associated with adopted Pattern Books for specific districts much like the Pattern Book in the Buckroe District that Council is a little bit familiar with. He said there will be drawings and pictures and forms that go with the text. Mr. O'Neill said the short version is that they are moving in that direction and this is a first step toward that but he would say they can completely get to a form based Zoning Ordinance that they hope to be able to get to right away. He said it takes certain steps to get there to transition from the old to the new.

Councilwoman Leary thanked Mr. O'Neill and said that is what she wanted the public to know.

Vice Mayor Spencer said he thought Mayor Ward brought up a good point about the two adjoining lots by the same owner that would have to build one house today and it could change to where they could build two. He said he would like to know how many of those lots meet that profile today. He said he doesn't believe it is a positive thing in this scenario as he understands it.

Mr. O'Neill said a lot depends on Council's ultimate decision making as to whether it ends up being a positive or a negative. He said he hated to put it that way but it does place a lot of emphasis on whether or not the Planning Commission and ultimately the Council review these proposals and decide whether they are appropriate. He said it does place that ultimate decision making in the way it is crafted now in the Council as the authority. Mr. O'Neill said he hears the point Vice Mayor Spencer is making and they will go back and try and look at it to determine if there aren't ways they can tighten it or figure out another way that perhaps not so much of that gets thrown in front of Council to make that decision. He said this is the beauty of having this conversation because they can go back and try to see where they can tighten it up.

Vice Mayor Spencer said this is a work session and it is designed to have some give and take and questions and answers.

Mr. O'Neill said perhaps Ms. Vanessa Valdejuli, Deputy City Attorney, has a solution already.

Ms. Valdejuli reminded Council that the positives of this are that, number one it is an optional thing and number two, it puts it in the context of a rezoning and from a land use

perspective and for Council, the rezoning is the most powerful tool that Planning Commissions and City Councils have because you have the ultimate control over the particular development on that lot. What it is going to look like, how it is going to be developed and whether it implements Council's comprehensive plan or not. She said that is why the ZOAC, and the people who have reviewed this, were viewing it as a very positive step.

Vice Mayor Spencer said he appreciates and understands that and Ms. Valldejuli's point is well taken, but you say it is optional. In response, Ms. Valldejuli said it is optional.

Vice Mayor Spencer asked if that was as far as the land owner is concerned. In response, Ms. Valldejuli replied that was correct.

Vice Mayor Spencer said the people have the legal non-conforming use that could come and build a house tomorrow without anything other than permitting and planning and they could choose not to do this and they would still be in that position tomorrow. In response, Ms. Valldejuli said that is correct, whether Council adopts this or not.

Vice Mayor Spencer asked what the incentive is for those who are in that category to take something that is going to be more restrictive, more control than the Pattern Book and then could divide a lot today that requires two lots to be combined, but tomorrow could have two homes in place.

Mr. O'Neill said part of the incentive, and probably the biggest incentive in today's world, is that unlike ten or fifteen years ago, the financial institutions, the mortgage and insurance institutions have really gotten much more diligent about whether they are loaning money to someone to build on a piece of property that is not zoned properly. He said Mr. Shapiro, as the Zoning Administrator, has to write letters all the time to lending institutions that say as part of their loan package the property is zoned properly. Mr. O'Neill said there is an advantage from that perspective to owners who own non-conforming lots that they may be required in many instances if they are financing construction of a building or a home, it is an advantage for them to actually go through that process. He said the other potential advantage is simply an economic one. He said in certain situations you may be able to get more units in exchange for a higher degree of qualitative review. He said both of those are the incentives.

Vice Mayor Spencer asked if this process is being driven by the land owners because they want to have legal conforming use and the proper zoning so they can get financing. In response, Mr. O'Neill said he doesn't think it is fair to say it is being driven by them.

Vice Mayor Spencer asked if the land owners are looking for this to be done. In response, Mr. O'Neill said he believes there are property owners out there and many of them have come before Council and said they bought the property 20 years ago and it was zoned this way and they want to build a home on it because they can't get a clear loan on it or a title, or those kinds of things.

Vice Mayor Spencer apologized for interrupting Mr. O'Neill and said he understands what he is saying but people who really want to build a good quality product and want to have some standards in play they are going to take this option.

Mr. O'Neill said legally it makes their investment safer because it is in a legally zoned piece of property that is verified by the Ordinance itself. He said in today's world that is becoming more and more of a difficult situation for properties that are non-conforming.

Mr. Shapiro said if there are two lots side by side and they are in separate ownership, then they are going to build two separate houses on the non-conforming lot. He said even with the passage of this ordinance it is not going to change their set of circumstances. He said the ones that are in common ownership, they would have to merge and they could only build one house. He said it is to their advantage to apply for the R-4 District if this is passed to be able to build two houses but Council gets to apply conditions to that rezoning. He said that is the advantage to the person out there that now gets two houses, where in the past only one could be built in the past. He said it is the extra layer of scrutiny but he gets to build two houses instead of one.

Ms. Butler said staff has made note of Council's questions and will provide Council with additional information. She asked Council if there were additional questions about other districts.

Councilman Kearney thanked Ms. Butler for her assistance over the last few days. He said his concern, like everyone else, was the creation of shotgun houses reappearing and you know what they end up leading to – absentee landlords and so forth.

Councilman Kearney said he would like to get a copy of the list of people who served on the ZOAC. He said the entire document started off as if this had been a preamble as this had been the reason for it and he had no idea who they were. He said he is not really concerned after the discussion about when they met and so forth, but he would like to know who they are because he may have to call them for advice and counsel. He said he understands that Ms. Butler will provide Council a map of Hampton which will show those 10,000 property locations. He said obviously that is going to affect certain parts of the older communities like Phoebus, East Hampton and Buckroe. He said they may be affected greatly by this than going into Riverdale and Northampton. He said Ms. Butler answered what civic uses were under the MU-CO and he understands that. Councilman Kearney said he would like to know if the ordinance will in any way either encourage or will it disavow the use of the old retail stores with living areas above. He asked if it would still be permitted like they have in the Phoebus community. He said they are referred to as Mom and Pop stores, they worked downstairs and actually lived upstairs. In response, Ms. Butler said Council has only heard the discussion about the R-4 District. She said they are ready to move into the other two, but to briefly answer Councilman Kearney's question, yes, the new district will allow that to happen.

Councilman Kearney said there were some problems with people wanting to renovate buildings in the Phoebus community and found they can't and people are living over stores already.

Ms. Butler said the City doesn't currently have a District that permits that but they will.

Councilman Kearney said there two other things that Council has talked about before and he would like to address them in the future. He said he would like to know if Council can talk about the parking regulations. He explained that someone if allowed to build on a town lot and the requirement is a 15 foot pad has to be in front of the house. He said he doesn't know of many cars that fit on a 15 foot pad, but he doesn't know when

reading the statistical information, the average home usually has two and one-half cars and there is not room for cars to park and problems are created throughout the community. He said two cars parking on a 15 foot pad block the sidewalk. He said there are many areas in the community that do not have streets and gutters and some have open ditches and people are asked to park on the street. He said a fire truck cannot get down those streets much less an ambulance or if two cars have to pass en route from one corner to the other. Councilman Kearney said he believes Council needs to address this in some way but he doesn't have an answer. He said what he read in the City's ordinance, they are not solving the problem. He said when you start saying zero setback and there is no distance from the curb, he saw the creation of more problems occurring with parking.

Councilman Kearney said Council needs to address the issue of holding ponds. He said he got some information from one of the agencies in the past year or two that indicated the City has over 40 holding ponds, and only seven were owned by the City. He said he knows the Department of Environmental Quality (DEQ) is getting ready to start putting out some measures about cleaning these holding ponds. He asked who is going to clean the holding ponds, what the standard is for cleaning holding ponds and who is going to pay for it. He said there are some communities, like Fairfield off of Old Fox Hill Road, there are holding ponds that are common property and now as they get filled in over the past 40 years, they need to be cleaned out and there is no way to get to them. Councilman Kearney said if there are going to be requirements by DEQ that they are cleaned out, Council needs to know who is going to pay for them and where the liability rests. He said he would like Council to address that to get ahead of the curve.

The City Manager said staff will bring that information back to Council.

Councilman Wallace referenced the two questions Councilman Kearney raised about the membership of the ZOAC and the current lots. He said Ms. Butler sent the information to Council in an e-mail yesterday (January 26, 2010).

Councilman Kearney said he received the newly printed one and thanked Ms. Butler.

Ms. Butler asked the Council members if they briefly wanted to go over the two other districts, MD-4 and Mixed Use-Commercial Overlay, that staff is proposing.

Councilman Kearney said he has gone through the information himself, but others may want to hear it.

Councilwoman Leary said she was fine not going over them because she noticed 5 minutes was scheduled for this briefing. She said she wanted to add something to Councilman Kearney's comments about the 2.5 cars in driveways. She said she doesn't know that they are looking into grades of adjacent property owners but if people put in concrete driveways the next thing you know the people next to them are having their basement flooded, or if they are down towards Buckroe, then they get flooded under their houses. She said she would like Council to look at pervious versus impervious. She said if they could start going a little more green and have driveways that meet the standards like we have at the Buckroe Fishing Pier. She said she believes it is a great example of being proactive.

Councilwoman Leary said in the little meetings she has been having with the citizens, holding ponds have come up quite frequently and what she has been asked for, but has not finished preparing the questions for the City Manager. She said one of the main questions has been how much the City has collected in stormwater and what exact projects have been completed with those stormwater fees. Councilwoman Leary said she would send the information to the City Manager. She said the public is very aware of that and they are looking for remedies too.

Mayor Ward asked the City Manager if Agenda Item #5 was next on the agenda. In response, the City Manager said if Council is prepared to move on, that would bring them to Agenda Item #5 because Agenda Items #2, #3 and #4 were covered at one time.

3. 10-0036 Zoning Ordinance Amendment, Chapter 10.2, MU-CO: Mixed Use: Commercial Overlay District.
4. 10-0037 Zoning Ordinance Amendment, Chapter 10, MD-4: Mixed Dwelling District.
5. 10-0040 Resolution Approving a Deed of Easement Dedicating a Conservation Easement to the Virginia Outdoors Foundation for the Perpetual Preservation of the Buckroe Fishing Pier, Pier One, the public beach at Salt Ponds, Buckroe Beach and Buckroe Bayfront Park Lots for Public Use, and Authorizing the City Manager to Execute same.

WHEREAS, on August 12, 2009 the Council of the City of Hampton ("City Council") adopted a resolution authorizing and directing the City Manager and the City Attorney to prepare a conservation easement in cooperation with the Virginia Outdoors Foundation ("VOF");

WHEREAS, the City Manager, the City Attorney and the COF staff have prepared a deed of easement which shall be presented for acceptance by the VOF at its meeting on February 4th, 2010 as authorized by Sections 10.1-1700 through 10.1-1705 of the Code of Virginia, as amended (the "Open-Space land Act");

WHEREAS, the conservation easement granted to the VOF in the deed of easement ensures that the Buckroe Fishing Pier, Pier One, Buckroe Beach, the public beach at Salt Ponds and the Buckroe Bayfront Park lots shall be preserved in perpetuity for public use by prohibiting residential, industrial and commercial development thereon; and

WHEREAS, the City Council has determined that the conveyance to the VOF of a perpetual conservation easement over the Buckroe Fishing Pier, Pier One, the public beach at Salt Ponds, Buckroe Beach and the Buckroe Bayfront Park lots is in the best interest of the City, its citizens and visitors to Buckroe Beach and that the terms of the deed of easement are acceptable.

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

1. That the Deed of Easement to the Virginia Outdoors Foundation is hereby approved:
2. That the City manager is authorized to execute and deliver the Deed of Easement to the Virginia Outdoors Foundation upon its acceptance thereof; and
3. That this Resolution shall be effective upon adoption.

Ms. Mary Bunting, City Manager, said Agenda Item #5 is the resolution approving a Deed of Easement dedicating a Conservation Easement to the Virginia Outdoors Foundation (VOF) for the perpetual preservation of the Buckroe Fishing Pier, Pier One, the public beach at Salt Ponds, Buckroe Beach and the Buckroe Bayfront Park Lots for public use and authorizing the City Manager to execute the same. The City Manager stated for the public's benefit and to remind Council, the Council adopted a resolution on August 12, 2009, authorizing and directing the City Manager and the City Attorney to prepare a Conservation Easement in cooperation with the VOF. She noted that since that time, staff has worked with the VOF to prepare the Deed of Easement which shall be accepted by that Board at its February 4, 2010, meeting. The City Manager said the VOF is requiring an additional resolution by Council through which the Council would make clear that the City Manager is authorized to execute the relevant documents on behalf of the City. The City Manager noted that this is needed prior to the February 4, 2010, meeting. She reminded the public that the easement covers over 25 acres of shoreline to include the Buckroe Fishing Pier, Pier One, public beach to include the Salt Ponds Beach and the Buckroe Bayfront parcels. She said easement is to ensure the property perpetually is available for open space and recreation for use by the public. She said staff is working with the VOF to plan a dedication ceremony for this easement so the community can come together and celebrate the perpetual dedication of open space for public use. She said the dedication ceremony will be in the near future. She also noted that the City Attorney's Office is available if there are any technical or legal questions from Council.

Councilman Wallace said they have received quite a bit of correspondence and heard this from a couple of sources in the community asking questions about Tappan Avenue and a couple of other streets not being incorporated in this. He said it was his understanding that staff and/or someone would speak to that particular issue in terms of why it isn't incorporated in this particular process.

The City Manager said Mr. Terry O'Neill, Director of Planning, and Ms. Vanessa Valldejuli, Deputy City Attorney, can address that in more specificity. She said those particular areas did not meet the standards for the type of access VOF looked for. She said that doesn't preclude the City from doing their own City and Hampton dedications around those areas but typically what they are looking for is larger areas of open space dedicated to public use. She said Mr. O'Neill and Ms. Valldejuli can add their comments if she has not appropriately done justice to the question.

Councilman Wallace asked what do they do and how do they do it in order to get them incorporated when they cut the ribbon or whatever they do in reference to the VOF entity accepting the City's Conservation Easement to do them at the same time or at least make some public overtures about the use and continuity of them publicly.

Mr. O'Neill said the recommendation staff would have to Council is if it is the sentiment of Council that you want to put some kind of additional restriction on those pedestrian walkway areas that are referenced then the City Manager's staff, working with the City Attorney's Office, can look at and come back to Council with options on how to do that. He said Ms. Valdejuli can speak to the issue better than he can, but they did explore, as the City Manager noted, incorporating that into the VOF easement and it didn't mesh or qualify. He said it doesn't prevent Council from putting another kind of restriction on those properties that ensures there will be pedestrian access areas to the beach, etc. Mr. O'Neill said staff can explore those options and bring back some choices to Council if that is Council's pleasure.

Councilman Kearney said he would like to recommend looking into that exploration. He said there are two of them and one of them has a large grass area and at one time the intent was there was going to be some sort of activity area for children that could be in that area like a little park walk-through. He said he knows at the end there, where the lifeguard station is located is a detriment. He said it is really not attractive at all. He said there is no reason that the lifeguard area couldn't be moved to another piece of property the City owns somewhere away from the waterfront itself. Councilman Kearney said if Council agrees he hopes the City Manager would look into upgrading that because it really is an eyesore. He said protecting it in the future is going to be important.

Mayor Ward said she believes it would be great to look into that.

Vice Mayor Spencer asked for clarification. He said this is in response to VOF's request for the City to do something. He said Council took the action in August 2009. In response, the City Manager said that is what she was trying to make clear at the beginning.

Vice Mayor Spencer said he believes they need to ensure they really understand what it was they were having to deal with on the agenda today.

Mayor Ward said all they are doing today is adding a sentence that the VOF needs to the resolution that Council passed in August 2009, to make it so the City Manager can execute a Deed. She said Council has already visited the issue about whether or not they wanted to place a Conservation Easement and what they wanted to place it on. She said that is not really what is on the agenda today, it is whether or not Council wants to authorize the City Manager and the resolution to execute the Deed.

Ms. Valdejuli said that was correct although the resolution always reads that Council does approve and authorize the City Manager. She said it is like a corporate resolution when anybody would ask when they are doing transactions with private parties, they ask corporations to have their Board of Directors submit a resolution saying this particular person is authorized to sign the document.

Councilman Kearney moved for approval.

Mayor Ward said as a matter of procedure, Council already approved it.

Vice Mayor Spencer asked if they could vote on it now.

Mayor Ward stated yes they can.

Vice Mayor Spencer seconded.

Councilwoman Leary said she would like to know, because she received an e-mail about something that the City had entered into a lease with Kerwin Abbot for some of this beachfront. She asked if that was south of the Pier or in front of the pier or by the pier. In response, Ms. Valldejuli said the City has no lease with Kerwin Abbot.

Councilwoman Leary asked if there was a beach lease with Kerwin Abbot. In response, Ms. Valldejuli said there is a bathing lease that has to do with Frank Huff's property and it was entered into with the Virginia Marine Resources Commission (VMRC). She said it has been in effect for over 50 years.

Councilwoman Leary asked if that was for Mr. Huff's hotel. In response, Ms. Valldejuli said it is out in the water but it has nothing to do with the City of Hampton.

Councilwoman Leary asked if the City is in a lease with anybody on the public beach area. In response, Ms. Valldejuli replied no.

Mayor Ward said that is what Ms. Valldejuli is saying.

Councilwoman Leary said on page two is there is an item that says "neither a supermajority nor a public hearing is required since this is an easement granted to a governmental agency of the Commonwealth of Virginia". Ms. Valldejuli stated that was correct.

Councilwoman Leary said since Council has talked about transparency and open government so much, she believes that a public hearing should be done. She said she doesn't believe when the meeting was held in August 2009, and she could be wrong, but she didn't believe they had the public speak to it. Councilwoman Leary said she believes that the process is flawed and the public has not been included and five months can change this so she is going to be voting no.

Ms. Valldejuli said the Code of Virginia specifically says that the supermajority only applies to sale of property. She said they are not selling anything, this is an easement.

Councilwoman Leary told Ms. Valldejuli that she understands completely.

Ms. Valldejuli said she wants the public to understand that too.

APPROVED

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, Paige V. Washington, Jr.

Nay: 1 - Angela Lee Leary

Abstain: Mayor Ward

Vice Mayor Spencer asked the City Manager to explain what Council just voted on for the public's information purposes because he doesn't know that it is really clear the

reason Council took this action today. He said it is just some housekeeping basically from a legal standpoint to convey the land and nothing more than that.

The City Manager said Council gave the City Manager the authority to sign the documents. She said Council took action in August 2009 but the City Manager had to be legally authorized to sign the documentation.

Councilman Wallace said for public consumption what this does is reserve that particular property for public use under this particular entity for timely memorial unless it is changed in a public meeting through a legal process that is defined and outlined.

Mayor Ward said actually what will happen is anything that got changed would have to be done pursuant to the State Code that applies to the VOF's rules regarding easements. She said there is a third party watchdog organization with the stewardship division that will be monitoring this.

Councilman Kearney noted that where people started to get confused is when Mr. O'Neill said they would add those two areas and those are the walkthroughs to get to the beach. He said he asked if they could have the City Manager look into upgrading those and making them what they were intended to be and Council seemed to agree with that. Councilman Kearney said that is where it started to get confusing. He said it had nothing to do with the motion Council just voted on. He said that is the answer to C. B. King's inquiry earlier about wanting to protect that area.

6. 10-0039 Budget Work Session I

Ms. Mary Bunting, City Manager, said this item is regarding ongoing conversations regarding the budget and this month we want to continue those conversations by providing the first in depth look at the budgetary outlook for 2011. She said for several months staff has been talking about the likelihood of a \$20 to \$25 million difference between revenues the City would receive and expenditure expectations. She said the goal is to help Council and the community understand what makes up that \$20 to \$25 million difference between revenue and expenditure expectations. She said it is likely to get worse before it gets better due to the States budget situation. As everyone knows the State is struggling with its budget as we speak and some of the preliminary news out of Richmond is that the City should expect more cuts to come. The City Manager said the session is based upon the information staff has today and it references the \$20 to \$25 million figure and the presentation is going to be done to stimulate conversation with Council and not to require any sort of action, but to continue dialogue with Council and the community. She said the presentation will be done by Ms. Chris Snead, Director of Budget and Management Analysis, and Mr. Karl Daughtrey, Director of Finance.

Ms. Snead stated that today's presentation is to provide Council with an overview of the 2010 preliminary budget scenario. She noted that the \$20 to \$25 million shortfall has been published in the press and staff wants to start at that point in time and it is going to get worse before it gets better. Ms. Snead said staff will provide Council with an overview of where they started and Council will know exactly how staff got to the \$20 to \$25 million. She stated in addition, they want to review the State's proposed budget and its impact on Hampton if it is passed. She said staff also wants to talk about their enhanced public engagement strategy in dealing with this budget. Ms. Snead said they

have some very difficult decisions that have to be made and they want to keep the public engaged in that conversation and in those decisions.

Ms. Snead said when they first developed the preliminary budget scenario there were two major revenue issues that were impacting budget shortfall. The first was real estate assessments. She said the Assessor goes out annually and reassesses the real estate. She said the result of that is a 4% reduction in assessments overall in residential and commercial combined. She noted that this is reflective of what has happened to real estate across the region in the last couple of years. Ms. Snead noted that last year they were flat while across the country a lot of localities were having a downturn. Ms. Snead said the second major revenue issue is the State budget cuts and the last time they looked at this estimate they were looking at \$1.3 million in revenue shortfall. She said that number has changed and it will continue to change. Ms. Snead said Mr. Daughtrey would discuss that further in the presentation.

Ms. Snead said the 4% reduction in real estate is resulting in a \$4.6 million loss in revenue for the City. She said that, combined with the State budget cuts gives the City \$5.9 million as an impact in revenue. She explained that is where they started to get to the \$20 to \$25 million. Ms. Snead further explained, just like everybody's household budget, even though the City may have a loss in revenue there are still some increases in expenditures that the City has to deal with. Ms. Snead said staff put the expenditures in ranges because some of them are known and some are still unknown and at this time some of these numbers are her take on what she expects to happen but they know in February 2010, they will have more finalized and definitive numbers for Council. She said when staff gave this presentation in December 2009, when they had the symposium on defining the new normal, they wanted to give a range instead of trying to give definitive numbers because staff didn't want to put just one number out there. She said they wanted to provide Council with what they thought would be the least impact to the most impact.

Ms. Snead said one of the first expenditure drivers that will be affecting this budget involves employee compensation and benefits. She said they know that the Virginia Retirement System (VRS) retirement rate is expected to increase from 18.45% to 20.34%. She explained that based on the City's payroll basis now they have permanent full time positions and they are looking at an increase of \$1.5 million in the City's budget. She said she has been informed by Mr. Daughtrey that they can expect some increase in HERS as well as they are expecting an increase in health insurance and Workman's Compensation. She said that range of 2.5% to 4.5% represents those anticipated increases.

Ms. Snead said the next item involves the committed contributions that they have built into this budget scenario. She said they know the City is in its 5th year of contributions to the Food Bank and that is built in here. She explained that the reasons she was showing it is because last year they used a one-time funding source for the Food Bank. She further explained that doesn't mean they will not do it again this year, but she has to put it back into the budget scenario so that expenditure can be captured in the budget. She said a contribution to the Industrial Development Authority (IDA) to deal with some technology incentives is built into the budget. She said staff is guesstimating it is going to be about \$300,000 to a half million dollars for fixed costs which are things such as the telephone system, insurance, general liability insurance, insurance on City vehicles, and

equipment, auto depreciation and repairs. Ms. Snead said the only reduction built in the budget so far deals with the schools and that is because the City has a funding formula with the schools. She said the funding formula states that the City will share with the Schools any increase or decrease in real estate, personal property and utility taxes. Ms. Snead said they are projecting a reduction in some of those revenues so we have a range in place of \$1.2 to \$2.7 million and once they get finalized numbers staff can hone in on what the exact number is. She noted that the schools are expected to lose \$1.2 to \$2.7 million

Ms. Snead said that debt service is like our mortgage, it is the money we borrow for major capital projects and staff is projecting \$4.9 to \$5.7 million. She explained there is a range because they are in the process of building our Capital Improvement Plan (CIP) and they are trying to flush all of that out and make our borrowing as limited as possible.

Ms. Snead said the next major item impacting this budget scenario is the Capital Budget. She explained the Capital Budget is the General Fund portion of the Capital Budget and the majority of this funding covers the City's maintenance program for building maintenance, Parks and Recreation as well as some support to our neighborhood improvements and the like. Ms. Snead noted that last year they used one time fund balance to fund the capital budget and they have to put it back in as identified in the CIP. She said they are working to streamline this number as well but for right now.

Ms. Snead said the contractual support are those items the City has with the programs for the outside entities such as support for the Regional Jail, the City's share of Business Improvement Districts (BID), Hampton Roads Transit (HRT). She said these are the types of contractual support items that staff have built into the budget. Ms. Snead said they have received \$5 or \$6 million of new requests from the City's department heads. She said there is a likelihood that something has to be funded that is new because it is based on something that we have done in the past that now they have to fund. She gave the example of the Buckroe Fishing Pier. It was opened last year and the City didn't fund a full year and the City has to pick up the rest of the Fishing Pier. She said the City funded the Teen Center and because it was not opened for a full year the City has to pick up some of the additional costs. Ms. Snead said staff has tried to anticipate what some of these are. She said there are tough decisions ahead and staff is going to have to make some choices.

Ms. Snead said the City is at a shortfall of \$20 to \$25 million and the revenue shortfall is \$5.9 million and expenditures range from \$14.1 to \$19.1 million. She said these are very preliminary numbers and are likely to increase and they can expect some definite numbers in February 2010. Ms. Snead said staff knows they already have some changes to the State budget that will increase this budget shortfall. Ms. Snead said Mr. Daughtrey will provide Council with an update on the State budget numbers and how they will impact the City.

Mr. Daughtrey said he will provide Council a brief update on the proposed impact on former Governor Timothy Kaine's 2011 budget on City revenues. He noted the State budget was submitted to the General Assembly on December 18, 2009, and staff prepared this analysis based on information provided by the Virginia Department of Planning and Budget and the Virginia Municipal League (VML).

Mr. Daughtrey said the overall impact of the State budget cuts for the City is approximately \$2.9 million for FY2011 and these cuts represent about 1% of the City's FY2010 General Fund Revenue Budget.

Mayor Ward stated this is Governor Kaine's proposed budget and they have no idea what the General Assembly is going to do because it is not a done deal.

Mr. Daughtrey said it is real preliminary.

Mr. Daughtrey provided Council with information taking the revised State budget cuts of \$2.9 million and it shows in the 2011 budget the City set aside a contingency in anticipation of future budget cuts. He said this contingency should roll into the 2011 base budget.

Councilman Wallace asked if this was part of the City's Fund Balance. In response, Mr. Daughtrey, said it is in the budget.

Councilman Wallace asked if this impacted the rating agencies. In response, Mr. Daughtrey said it doesn't impact the rating agencies.

Mr. Daughtrey said the information is designed to show that the net impact on the base budget is approximately \$1.9 million. He said the State budget cuts for the City are based on the budget submitted by former Governor Kaine and the State budget is preliminary and likely to be changed by the General Assembly. He said one of the major policy changes in the State budget is the proposed elimination of \$950 million in reimbursement to localities for personal property tax on qualifying vehicles.

Mr. Daughtrey said separate legislation from the budget provides for a 1% income tax surcharge on personal income to replace the personal tax reimbursement. He explained the surcharge was designed to completely eliminate the car tax for citizens starting January 1, 2011. He said last week, the House of Delegates defeated the legislation for the 1% income tax surcharge, so staff knows that it is not likely to pass. He said if the General Assembly does not restore the \$950 million in personal property reimbursement to localities the citizens will have to pay 100 % of the personal property tax bill.

Mr. Daughtrey said they have received approximately \$15.4 million in personal property reimbursements from the State now which provides about 62% in tax relief for our citizens. He said if they don't get the \$15.4 million from the State, the citizens will be picking up that additional 62%.

Mayor Ward said that is the unfinished Gilmore no car tax initiative. She said they got to a certain percentage and now they are sliding back because of the set reimbursement of \$15.4 million.

Mr. Daughtrey stated that in 2004 it was capped at \$950 million which was 70%.

Mayor Ward said they are now down to 62% reimbursement because the car tax keeps going up a little bit in value. She said that is what the State agreed to pay in part of the no car tax initiative. She said the City of Hampton would not be raising taxes, the tax rate stayed the same and the bills have stayed the same, the State would just quit reimbursing the City. Mayor Ward said she wanted to make that clear.

Mr. Daughtrey said the budget process proposes some policy changes for State employees, retirement and fringe benefits. He said State employees will now be required to contribute to the Virginia Retirement System (VRS). He noted that for FY2011, State employees will pay 1% of their compensation and in FY2012 State employees will pay 2%. He said this legislation gives local employees, like the City and schools, the authority to require employees to contribute any amount up to 5% for FY2011. Mr. Daughtrey explained that the City has the option to impose contribution requirements to City employees. He said this would be one of the policy issues for the City's budget that staff will be seeking Council's input on during the budget process. Mr. Daughtrey said the retirement age for full retirement will increase from 50 to 55 with 30 years of service for new non-public safety employees starting July 1, 2010. He said public safety is not impacted by this new requirement for retirement age.

Ms. Mary Bunting, City Manager, said she wanted to clarify that this is assuming the Governor's proposal is passed. She said there is some debate about whether this would be applied to existing employees or only future hires going on in the General Assembly right now. She said they have to wait to see what that determination is before they can decide how to apply that authority should the City get that authority to employees. The City Manager said that is in debate as well.

Councilman Wallace asked if that was for the employees to contribute to those particular issues. In response, the City Manager said currently the City doesn't have the authority to pass on the employee share of VRS to employees. She said there was a one time election made by localities many years ago and the City has researched that over the years to see if they could change that, either for existing or new employees and the State law currently doesn't allow the City to do that, they have to cover the full expense because of that one time election. The City Manager said the legislation before the General Assembly that is being debated is to change that policy so localities can have that authority moving forward.

Councilman Wallace asked if that was for both new and existing employees. In response, the City Manager said different bills would allow different things and that is what she is trying to say, it is not clear yet how that is going to get passed and if it is going to get passed at all. She said there are some members of the General Assembly who appear poised to allow that to apply to all employees, both future and existing and others who seem willing to be allowed to apply it to only future employees. The City Manager said what the City will be able to do, because it is a Dillon Rule State, will ultimately depend upon the authority the General Assembly grants.

Councilman Wallace said that is not to be confused with what Hampton's sister City is doing which has its own retirement program that is now opting to put new employees in VRS as opposed to continuing their existing program thereby cutting their costs. He said the City doesn't have that option by virtue of the fact all of the City's employees are already in VRS.

The City Manager said Councilman Wallace was absolutely correct.

Mr. Daughtrey said there are number of proposed changes for Constitutional Officers. He said the State budget eliminates the funding of total support for the Treasurer and the Commissioner of Revenue and maintains the salary of the elected officials only. He said for the Sheriff, the budget reduces staffing ratio for deputies resulting in a loss of about

18 deputy positions. He said the proposed budget eliminates State reimbursements to local governments for VRS, retirement and group life for all Constitutional Officers and their employees. In addition, the local rate paid to local jails for housing inmates is reduced from \$8 per day per inmate to \$4 per day per inmate. Mr. Daughtrey noted that the City assists in a jail cost report and it costs the City of Hampton \$60 per day to house an inmate, so the City is getting \$4 reimbursement from the State.

Vice Mayor Spencer said they are inmates that are supposed to be in the State Correctional facilities but they don't take them to the State Correctional facilities they leave them in the local facilities and only reimburse the \$4. He said they are now looking at taking prisoners from other states to bring to our correction facilities to make money on them.

Mr. Daughtrey said for the State responsible inmates it is going from \$14 to \$12 per day. He said they reimburse the City \$4 for the local inmates that the City is responsible for.

Councilman Wallace said it is another unfunded mandate.

Councilman Kearney said and nobody cares.

Vice Mayor Spencer thanked Mr. Daughtrey for the correction and stated the point he was trying to make was how much it costs a day to house the State prisoners. In response, Mr. Daughtrey said it is about \$60 per day.

Councilman Kearney said unless they are in the medical care and then it is \$120 per day.

Vice Mayor Spencer asked what the State gives the locality back. In response, Mr. Daughtrey said starting in FY2010 it will be \$12 per day.

Vice Mayor Spencer said there is bed space available in the State correctional facilities and they are trying to encourage out of state prisoners to be housed in State prisons.

Mr. Daughtrey said the magnitude of these proposed State budget cuts for Constitutional Officers' staff will be developing options for Council's consideration. He said obviously staff will not bring Council any options until the budget gets closer to looking at some of the changes the General Assembly will make. He said they will be looking at options and how to deal with the changes.

Mr. Daughtrey said this is a brief overview of the changes for the State budget cuts and there are some additional ones that he recently learned about. He said there will be a 10% cut for Healthy Family's funding which will translate to about \$63,000 and he believes there will be a 1% cut for local Social Services operations. He said staff would be coming back to Council with those details later.

Councilman Wallace asked what percentage of the City's budget is related to people. In response, Mr. Daughtrey said he believes it is about 65%.

Councilman Wallace said one of the things he is concerned about is not losing people if they can possibly help it and that may or may not be possible in virtue of the fact that sixty some cents of every dollar the City gets goes to pay people. He said he would like

to have in consideration with staff comes back to Council is information relative to furloughs and what that gets the City in terms of cost. He said all the communities in the region are talking about that. He said the City Manager informed him that the City doesn't have the option to pass on contributive costs to health insurance or retirement to employees because the State doesn't allow it. He said that wouldn't be an option unless the legislation changes.

The City Manager said if the legislation changes it will be an option and that will be considered.

Councilman Wallace asked what happens if we defer payment into HERS. My presumption is that it is a cash contribution that the City has to make. In response, Mr. Daughtrey said from a rating agency perspective that would not be a good thing to do because they are figuring that the City is deferring the City's current obligations into the future and that would not be looked upon favorably by the rating agencies.

Councilman Wallace said the other is probably in the same context, but if we are not fund free depreciation in cash in some context, he knows there is a deferral process that doesn't necessarily look well. He said he would like to have some numbers on those things so Council will know what the implications are and some judgment can be made.

Councilman Kearney said in the 1990s when the City went through this when the General Assembly was cutting a lot of programs and money and the localities were being asked to make up the difference. Council adopted a policy and the policy was that the City was not going to make up the difference in these cuts. He asked if he was correct. In response, the City Manager stated Councilman Kearney was correct.

Councilman Kearney asked if that policy was going to hold true at this time too. He asked if that policy needed to be revisited. In response, the City Manager said she believes it is a little early to say. She said if, as an example, the 100% cut to Commissioner of Revenues and Treasurers holds, the City would not be able to function without restoring some of that cut. She explained that it wouldn't necessarily have to be 100%. She said there is some legislation that talks about leaving those responsibilities to the City, but if we gave the responsibilities to the City they would need to add staff to do that. She said that is why she said it is hard to tell right now.

Councilman Kearney said relative to the Treasurer and the Commissioner of Revenue, and he is not advocating this because this issue was discussed in the late 1960s when Otis Johnson was Treasurer; there was some turmoil occurring and then the City Manager, who didn't care for Otis Johnson very much, proposed to do away with the Treasurer's position and the Commissioner of Revenue and incorporate that into the Department of Finance and there would be only one entity to handle it all. He asked if that was an option. In response, The City Manager said it depends on the legislation that gets approved by the State in the end. She said the City cannot eliminate the offices, nor can the State, which is why they are funding the office. She said the Constitutional Officer cannot be eliminated without going through a Constitutional amendment process. The City Manager said the City cannot eliminate those offices altogether but what some legislation before the General Assembly contemplates is allowing cities more flexibility in terms of what they fund out of their Department of Finance instead of the Treasurer and Commissioner Offices. She said there is some legal debate about this which is if the Constitution requires the office the State has to

provide for an office. The officer him or herself is not providing for the function, but there has to be a staff. The City Manager said all of this has yet to be debated and potentially litigated. She said she believes the City would be wise to be looking at the pros and cons of all options but they should not forget that the Treasurer and Commissioner have some powers that a Director of Finance would not have.

Councilman Kearney said he understands all of that.

The City Manager said the City would have to weigh all of that and they may not even be able to make that choice in the end if that legislation is defeated.

Councilman Kearney said if they were to continue in the vein in which former Governor Kaine left us, and that was that the City had a Treasurer Bob Williams with no staff and a Commissioner of Revenue with no staff, and they were to come over here to occupy a room here each, or share a room. He said then in fact, he doesn't see how they could carry on their duties and functions as prescribed by law. In response, the City Manager, said they could not. She said they would either have to make up funding to them or assume the functions in which case they would have to add to the City's budget.

Councilman Kearney said if the City starts to assume the functions, then the only functions we assume are those which deal with the City of Hampton, not the State. In response, the City Manager agreed.

Councilman Kearney said somebody is going to have to come down here from the State to do the State work. He asked if they received something some years ago that said when you took the Constitutional Officers, what percentage was State work and what percentage was local? He asked Mayor Ward if she remembered what those figures were.

Mayor Ward said she didn't remember what the figures were.

Councilman Kearney asked if it was 60/40. In response, the City Manager said it was a little bit higher locally.

Mayor Ward said it was much higher than that. She said that is part of the problem, as time has gone on, the State has funded less and less as you know. She said they used to fund part of the operating budgets of those offices and now they don't do that anymore. She said they have quit adding positions commensurate with the work load. She said every single Treasurer's office and every single Commissioner's office in the State has work load reports that show they are all short several employees. Mayor Ward said the percentages have gotten out of whack as time has gone on. She said this has been the first time she has been happy she wasn't the Treasurer.

Mayor Ward said one of the things they need to think about is Mr. Bob Williams, Treasurer and Mr. Ross Mugler, Commissioner of the Revenue are doing incredible jobs and the City has an incredibly high collection rate and the City cannot afford to lose a half percentage of that collection rate or to lose any of the penalty or the parking tickets that they are collecting. She said they have become an essential part of the budget.

Mr. Daughtrey agreed with Mayor Ward and stated that for real estate taxes, he budgets 98.4% for a collection rate and over the last five years that has been very consistent. He said the budget process depends on that collection rate staying in place.

Mayor Ward said it used to be in the 80s or something.

Mr. Daughtrey said for personal property the collection rate with Personal Property Tax Relief Act (PPTRA) is 96%.

Mayor Ward said her point is that when you have an independent elected official make decisions on the day to day basis about how to assess a vehicle, when to take it off the books or put it back on the books, when to decide to waive penalty or not to waive penalty, as was her policy, unless there was a provision in the Virginia State Code that allowed you to, when you shove that off on us, or on the Director of Finance it puts the decisions ultimately in Council's lap and you don't want to go there. She said this would take away the authority from an independent elected official that can follow the Code and is responsible to the voters and instead make it a subjective case by case decision for Council and she really believes that is a road they don't want to go down.

Councilman Kearney said the point of him starting this conversation is this has some far reaching policy developments that are going to occur in the City of Hampton.

The City Manager said she believes Councilman Kearney's point about the prior policy not to make up cuts, at times were a couple of percentage points, not 100%, is going to need to be revisited on some level. She said you could say, theoretically, and she is not taking that position because she appreciates Mayor Ward's point, but as a hypothetical situation, the City wouldn't make up any of that cut and the City wouldn't nonetheless have to staff those responsibilities if they picked them up. She said they would have to fund staff positions because they are not staffed today to do that additional work. The City Manager said that it is not as if you can say take the simplistic approach and not make up any of that money. She said they are going to have to make up a fair amount of that money, not all because some of it is State functions and they won't pick up State functions. She said maybe they could do things in a different fashion through work redesign, but even with that, they are going to have to pick up money, either in those offices, or on the City level, but it is money they are going to have to budget. She said they cannot say that they will not pick up any of that expense. She said as they do that they will do it with a mind towards what is best from an organizational and community perspective and look at the powers those offices have and the issues the Mayor raises and other issues that we have not gotten into and make recommendations to Council as to which way to go. The City Manager said they can't avoid having to pick up some of that expense because it will need to be picked up one way or the other.

Mayor Ward said the real shame is that the State Income Tax Services that Mr. Mugler provides will have a detriment on the community if they are taken away. She said the Treasurer's Office is getting ready to open up a DMV Select.

Mr. Daughtrey said he was talking to the Treasurer the other day and that is going to happen any day now.

Mayor Ward said they are going to have some sort of a ceremony to announce. She said that is a great service for the citizens that you don't have to go down on Mercury

Boulevard and the citizens will be able to get a lot of things done at the Treasurer's Office. Mayor Ward noted that they have taken on this without any additional staff or funding from the City and it is actually a revenue creator. She said they are actually going to generate revenue by doing this additional work. It would be a shame once it is opened to all of sudden stop it because it is a State function. She said this is going to have to be looked at on a case by case basis.

Councilman Washington said several years ago the City was in somewhat of the same kind of pinch relative to funding, especially when they were talking about the Sheriff's Department. He said at that time, a recommendation was made to the Sheriff's Department to have his employees come under the auspices of the City of Hampton. He said they refused that because they were not getting the raises that they were anticipating. He said at some point it appears now that that is where we are headed. He said the City is headed to the point where it may very well end up that the City will take the responsibility of the employees, not only the Treasurer's Department, but all of the Constitutional Officers. He said if that is the case that is a major impact on the City's budgeting process as far as the City of Hampton is concerned. Councilman Washington said he wonders if that has any real opportunity or chance to occur. In response, the City Manager said in regard to the Sheriff's Office, that is a really challenging situation of course, because if it cost you \$60 per day to run a jail per inmate and that number is in line or lower with what other localities are providing jail service for, and the fact that the State takes its money away doesn't mean all of a sudden you can run a jail cheaper. The City Manager said the City is left with the responsibility to cover those inmates in a responsible fashion. She said it is another example of what she believes Councilman Kearney was talking about, the City would have to pick it up. She said whether they come on the City's payroll or not is another question. She said the City offered to all Constitutional Officers the opportunity to come on the City's payroll. She explained the deal they were offered was if they came on to the City's payroll for pay increase purposes, they also had to accept all the responsibilities of the pay system which would include everything from leave, administration, holiday administration and also grievance rights for employees. She said several of the officers decided to come on the plan and several opted not to. She said the Sheriff was one of the offices, not the only one that opted not to come on. She said there were many reasons but one of them was he was not prepared, as were the other officers who elected to come on, to accept all of those rules. She said that was a self election on their part and it was offered as a one-time deal. She said Council could certainly reconsider that if they wish, but currently the Commissioner of the Revenue and the Treasurer Offices are on the City's payroll system. She said the Commonwealth Attorney's Office came on as well, but the Circuit Court and the Sheriff's Office are not. The City Manager said she believes those are two independent decisions as to how the City ends up doing that.

Councilman Washington said the Registrar's Office would probably be included as well. He said in those six categories or areas it would be \$2 million plus cut that they are going to experience in this coming budget if that budget goes forward and the City is going to have to step up and absorb as much as we can to provide the services they are generating at this point.

The City Manager said she has talked with each of the Constitutional Officers and they are committed to streamline their budget and do not expect the City to pick up 100% of that. She said the City just can't say they won't pick up any of it because the responsibility for inmates for instance, remains and the City will have to look to pick up

some of it. The City Manager said they are in very fruitful dialogue about each of those officers doing something to try to contribute to the budget dilemma the City faces.

Councilman Washington said it is another unfunded mandate.

Councilman Wallace said on top of the Regional Jail situation because they are proposing a per diem increase on top of the cuts they are going to experience. He asked if the staff could prepare something for Council if they have some type of induced early retirement program and what the implications are for that and if there are any pluses or minuses associated with those factors.

Mr. Daughtrey said staff can prepare that information for Council.

Councilwoman Leary said she didn't want to add to the length of the meeting but when you start talking about the 1960s, she remembers doing everything by paper and there were no such things as computers using collections. She said she would think the speed with which the City could accomplish things could include some new software that the City needs to purchase to help with this type of situation. She said she is not necessarily talking about a reduction in staff but she would like to ask when was the last time the City had a staffing study made. She said she would like to know if the City has ever had one made.

The City Manager asked Councilwoman Leary if she meant for all City departments. She said each year they look at the City's per capita manning compared to other locality manning and that is done internally. She said if Councilwoman Leary is asking about an external staffing study that has been done, she would have to go back and see when the last time it was done. She said every year, as part of the budget process, they look at per capita manning compared to other localities in the region and they provide that as a supplement of information to the Council adopted budget book.

Councilwoman Leary said that was an issue that was raised out at the Main Library and she believes Councilman Wallace was there when it was made. She said if there is an internal staffing study she would like a copy of it. In response, the City Manager said she would provide the information to all Council members in the Friday memo.

Ms. Snead said in her 33 years with the City of Hampton, and she has spent about thirty of them in the budget office, this is probably the worse budget they have ever had to deal with. She said they have some real challenges ahead of them. She said the City Manager has made a commitment to keep the public engaged in that process and to keep them informed and to ascertain their take on certain services to get a sense of their priorities and preferences regarding certain priorities. She said in order to do that she has a hi-tech approach to communicating with the citizens and she has been invited to many community groups and she will take that opportunity to talk to those groups about the budget process and the budget situation the City is facing and at the same time, to gauge their input. Ms. Snead said there will be a follow-up meeting on the budget symposium regarding defining the new normal and they are going to get those participants to look at the City services and to provide feedback on that and to gauge their tolerance about what level of services they would like to see or they could live with. Ms. Snead said staff is going to do some enhanced communications through E-news and the website, Channel 47 and the City Page. She said staff is going to do numerous press releases and they are going to put narrative back in the budget document. She

said in the past they have focused more or less on the numbers but they think it is important to tell the story of the departments and what they do and what the citizens can expect. Ms. Snead said the City Manager's Recommended Budget will have a different look to it this year and the narrative will be in there. She said while they are focusing on communicating with the public, they also have the workforce and the City Manager has already started that with this week's memo focusing solely on the budget and the challenges that are facing the City. She said the City Manager plans to keep them informed. She said the City Manager has offered the employees to e-mail her their ideas and suggestions regarding how to balance the budget or any concerns they have. She said the commitment is out there and they are all committed to doing this. Ms. Snead said they plan to have surveys that will be used to gauge the public's opinion for the changes. She said they will also have a budget week and it is going to be in late February. She said the first meeting will be February 20, 2010, through February 27, 2010, and it is similar to the budget charettes in the past. Ms. Snead said citizens will have an opportunity to do some key pad voting and online opportunities as well for those citizens who cannot participate in the public forums. She said they are hoping to put together several mini-online videos that talk about the budget and issues that are facing the budget. She said they are really excited about this opportunity to get the information out to the citizens because this is really a challenge for staff. Ms. Snead said in the end they want to ensure they have a budget that meets the needs of the citizens, but that is also fiscally responsible.

Councilman Kearney said one thing they learned last year was the Saturday meetings seemed to work very well. He said the last one was on a Saturday and so many people showed up and said Saturday was the only day they could attend.

Ms. Snead said two Saturdays have been scheduled.

The City Manager said they wanted to focus on more media attention on it which is why they are repackaging it and calling it budget week for citizens. She said they are going to focus it as a community dialogue about the budget and really get people to try to tune in. She said the electronic voting key pads will be very exciting to folks because they can see the real time results of their votes as well as other people in the audience as opposed to just the dots. She said for the budget purposes and in order to see what their peers are thinking about and to be able to see the real time results will make it exciting and hopefully they will get more people to turn out to those great opportunities that Council has been offering for several years.

Regional Issues

Councilwoman Leary said she believes all of them received an invitation to this particular organization, but she went to it last Friday, January 22, 2010, it is called the Hampton Roads Military Civilian Family Violence Prevention Council. She said it was held in Portsmouth and it was one of their two meetings of the year. Councilwoman Leary said Mayor Joe Frank, of Newport News, was the moderator of the meeting. She said Judge Massey, Juvenile Domestic Relations Court Judge, was there and he was excellent in his presentation and it really helped those who are working with the military as well as the civilian sector to learn a little bit more about the Hampton Roads Military and Civilian Family Violence Prevention Council. Councilwoman Leary said they have committee meetings every month but they were talking about having benefit from having quarterly meetings and she wants to talk to the City Manager about using the Rupert Sargent

Building because she offered to host those since they are on this side of the water. She said it is a great organization, a great collaboration and a great opportunity to meet.

Mayor Ward said she saw Joe Frank at the Hampton Roads Mayors and Chairs meeting and he told her he is the co-chair and there is a co-chair from Langley Air Force Base. She said Mr. Frank asked her to become the co-chair and take his place. She said they can talk later about where they go from here.

Councilwoman Leary said that would be great. She said it is another opportunity for the City to partner with other areas regarding these issues.

New Business

National League of Cities

Councilwoman Leary said she received a phone call this morning from the National League of Cities. She said she was notified by staff that she was selected to serve at the National level on Human Development and Education and she wanted Council to be aware of that. She said it is an honor and a great opportunity for her and hopefully for the City of Hampton to be able to participate in this because of the many issues the City has with schools and the military. Councilwoman Leary said she looks forward to the opportunity.

Parade of Homes 2010, LLC

Ms. Mary Bunting, City Manager, said she was pleased to inform Council that late yesterday (January 27, 2010), the City and the Parade of Homes (POH) 2010, LLC closed on the land that was formerly Todd's Cottages site. She said that property is about 3.821 acres and this is the ability to start to move forward on that project that has been long anticipated as a redevelopment of the former Todd's Cottages site. The City Manager said upon closing, the developer obtained a full land disturbing permit and it will take 60 to 90 days to complete site work and once the site work is completed for Phase 1 POH the builders will begin construction. She noted that under the development agreement, POH 2010 will complete Phase 1 improvements on or before September 16, 2010, but no later than October 3, 2010. The City Manager said the first phase of the Buckroe POH is going to feature seven single-family homes and two mansion-style homes. She said there are really four residential units in one package that look like beach cottages and two similar mansion-style homes that each contain three residential units. The City Manager said the second phase of the project will consist of five additional single-family homes, two additional four unit mansion-style or beach cottage style homes and two additional three unit mansion style homes for a total of 40 units; 12 single-family and 28 multi-family.

The City Manager said she wanted to share with Council and the public some of the preliminary views of what the units may look like and remind you that all of the elevations and looks and features of the homes that will be built will be suggestive of the beach environment they want to reflect and will be consistent with the Pattern Book. She said the developers propose estimated single-family homes will be in the range of \$350,000 to \$500,000 and the units that are a part of the multi-family units are estimated to sell for \$250,000 to \$400,000. She said these estimated price points have not changed since Council was given the proposal. She reiterated that the project is moving forward and

the City has closed and they believe the community will ultimately be proud of the product offered when the project is completed.

Councilman Wallace asked the City Manager what the anticipated start date is for Phase II. In response, the City Manager said she would have to go back to the legal agreement for that information. The City Manager said she would provide that information to Council in the Friday memo.

Councilwoman Leary requested a copy of the agreement so she can look at the requirements of their homeowners association. In response, the City Manager said she would provide that information to Councilwoman Leary.

Closed Meeting

7. 10-0030 Closed session as provided in Virginia Code Section 22.1-3711A.3 and .7

APPROVED

Motion made by: Councilmember Paige V. Washington, Jr.

Seconded by: Councilmember Ross A. Kearney, II

Ayes: 7 - Randall A. Gilliland, Ross A. Kearney, II, Angela Lee Leary, Joseph H. Spencer, II, George E. Wallace, Paige V. Washington, Jr., Molly Joseph Ward

Nays: 0

- . 10-0032 to consult with legal counsel employed by the city regarding specific legal matters pertaining to City Code administrative matters, Salt Ponds, and federal regulatory changes requiring the provision of legal advice by such counsel

NO ACTION REQUIRED

- . 10-0033 to discuss the disposition of publicly held real property in the Downtown Hampton and Buckroe areas, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the City.

NO ACTION REQUIRED

Certification

8. 10-0031 Resolution Certifying Closed Session

WHEREAS, the City Council of the City of Hampton, Virginia, has convened a closed session on this date pursuant to an affirmative recorded vote made in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3712D of the Code of Virginia requires a certification by the City Council of the City of Hampton, Virginia, that such closed meeting was conducted in conformity with Virginia Law;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hampton, Virginia, hereby certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed session to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed, or considered by the city council of the city of Hampton, Virginia.

ADOPTED

Motion made by: Councilmember Joseph H. Spencer, II

Seconded by: Councilmember Ross A. Kearney, II

Ayes: 6 - Randall A. Gilliland, Ross A. Kearney, II,
Joseph H. Spencer, II, George E. Wallace
Paige V. Washington, Jr., Molly Joseph Ward

Nays: 1 - Angela Lee Leary

Molly Joseph Ward
Mayor

Katherine K. Glass, CMC
Clerk of Council

Date approved by Council _____

