

**WILLIAMSBURG CITY COUNCIL
MINUTES
SEPTEMBER 9, 2010**

The Williamsburg City Council held its regular monthly meeting September 9, 2010, at 2:00 p.m., in the Council Chambers of the Stryker Building, 412 N. Boundary Street, Williamsburg, Virginia.

CALL TO ORDER

Mayor Clyde A. Haulman called the meeting to order.

ATTENDANCE

Present in addition to Mayor Haulman were Vice-Mayor Paul T. Freiling, and Council members Ms. Judith N. Knudson, and Messrs. D. Scott Foster, Jr. and Douglas G. Pons. Also present were City Manager Jack Tuttle, City Attorney Christina Shelton and Council Clerk Donna Scott.

Staff Attending: Assistant City Manager Jodi Miller, Economic Development Director Michele DeWitt, Communications Specialist Kate Hoving, Planning Director Reed Nester, Finance Director Phil Serra, Parks and Recreation Director Lori Rierson, Police Chief Dave Sloggie, Fire Chief Pat Dent and Chris Powell representing Human Services Director Peter Walentisch.

COUNCIL MINUTES

Councilman Pons asked that amendments to the August 9 Work Session and the August 12 Regular Meeting minutes be made.

Mr. Freiling moved that the August 9 Work Session and the August 12 Regular Meeting minutes be approved as amended and that the minutes for the August 21 Council Retreat be approved as submitted. Ms. Knudson seconded the motion which carried by roll call vote of 5-0.

Recorded Vote on the Motion:

Aye: Knudson, Pons, Haulman, Freiling, Foster
No: None
Absent: None

MATTERS OF SPECIAL PRIVILEGE

Governor's Technology Award Presentation

Mr. Tuttle introduced Mark Barham, IT Director and Phil Serra, Finance Director, who presented the Governor's Technology Award to City Council.

Mr. Barham noted that each year the Commonwealth's Information Technology Symposium recognizes innovative use of technology to enable the business of government by Virginia entities. This year, City staff with the help of Communications Specialist Kate Hoving's excellent writing and communication skills, applied for the Governor's Technology Award with the City's Performance Management System as the City's entry.

At the award ceremony it was announced that there were a record number of entries this year which included local government, state agencies, K-12 schools and colleges and universities. The category for the City's entry was "IT as an Efficiency Driver" and included entries from Chesterfield County, the Virginia Department of Social Services and the Virginia Department of Juvenile Justice all winning honorable mention. The three winners were the Virginia Department of General Services, the Virginia Department of Corrections and the City of Williamsburg, which was, by far, the smallest locality winning an award this year.

Mr. Serra noted that Council has seen the data from the Performance Management System for over a year in monthly packets, budget documents, and the Goals and Initiatives. Council has also recently seen the initial work with the "Dashboards" project, and there will continue to be improvements to the system for a long time to come. This is another tool to help us make good decisions and gives us options for displaying the operating results internally and more importantly, externally to the public.

Mr. Serra concluded his comments by saying they feel they are headed in the right direction with the System, and thanked City Council for their continued support of the project, especially Mr. Tuttle for his overall vision of performance measurement to improve our service delivery to our citizens. Mr. Serra presented the Governor's Technology Award 2010 to Mayor Haulman and Council members.

Mayor Haulman thanked Messrs. Barham and Serra and Ms. Hoving and noted that this is really an award to everyone in the City and everyone on City staff, from the City Manager down; he thanked them for the terrific job they do. Mayor Haulman added that the award will be displayed very prominently; it is another jewel in the City's crown.

PUBLIC HEARINGS

There were no cases for Public Hearings this month.

REPORTS

Monthly Financial Statement

Mr. Pons noted delinquent real estate property taxes are much, much higher than we'd budgeted for and certainly much higher than in 2009, and asked if this is just a factor of the economy. Mr. Tuttle responded that we are not seeing anything dramatically different; it's just a matter of the timing when they come in and which side of the month they fell.

Monthly Departmental Operating Reports

Mr. Tuttle noted the large increase in the number of cases for SNAP (Food Stamps) as well as Medicaid. He said last year we saw a large increase, but even more of a significant increase from this time last year. In the Food Stamp program we are currently at 411 cases versus 334 last year and in the case of Medicaid, we currently have 474 cases and 421 cases at this time last year. It's just one more indication of what we are seeing with the recession and the effects on the people in our community.

In response to Mayor Haulman's question about the level of water in the Waller Mill Reservoir, Mr. Tuttle reported we have not had to buy water from Newport News yet and currently the level is 10" below the spillway, which for this time of year is not bad. Although we had a very dry summer, we went into the summer in very good shape.

Planning Report

PCR #10-006: Request of Mahone Family Partnership, LLP, to subdivide property on Capitol Landing Road into 42 single-family residential lots.

Mr. Nester stated that the Mahone Subdivision, a single-family cluster subdivision of 42 single-family houses is proposed on 28.16 acres on the west side of Capitol Landing Road at Queen's Creek. There are presently three single-family houses on the property, and separate lots are created for each of these houses.

The development is proposed as an RS-1 cluster subdivision, which is a use permitted by right. Because this development is more than 25 lots, the subdivision requires the Preliminary Plat be approved by City Council, but a public hearing is not required. Following approval of the Preliminary Plat, the developer has two years to file a Development Plan, which is the detailed plan for constructing the infrastructure for the subdivision.

Forty of the proposed subdivision lots will front on interior public streets, while the existing houses at 1011 (lot 36) and 1039 (lot 5) Capitol Landing Road will continue to have direct access to Capitol Landing Road using the existing driveways. The entrance street is located as recommended by the Comprehensive Plan, and will serve the proposed subdivision and the adjacent property owned by Thomas Mahone, which is not proposed to be developed at this time. A left turn lane into the subdivision will be constructed as part of the intersection improvements. The Capitol Landing Road intersection can be expanded in the future to serve the property directly across the street, so that all future development in this area can be served by this single intersection.

A cluster subdivision requires at least 25% of the gross land area be dedicated as common open space. This proposal designates 13.3 acres as open space, which is 47% of the gross land area. A nature trail and a "neighborhood dock" are proposed within the common open space along Queen's Creek.

The public water system for the development will connect to an existing 6-inch water line in Capitol Landing Road that provides adequate water pressure and fire flow for the proposed subdivision. The sanitary sewer and stormwater plans were reviewed. The capacity of the pump station will be able to be expanded in the future as more land in the services area is developed. The pump station and force main will be a City-owned facility upon completion.

The property is located in an Architectural Preservation District requiring Architectural Review Board (ARB) approval of the designs for all houses in the subdivision. The request to demolish the two existing buildings at 1011 Capitol Landing Road built in 1919, and 1039 Capitol Landing Road built in 1920, was denied by the ARB. When appealed, City Council upheld the ARB's denial decision. The owner has the option of offering the existing buildings at 1011 and 1039 Capitol Landing Road for sale at a price reasonable related to fair market value to someone who gives reasonable assurance that the houses will be preserved and restored. If there are no takers within a one-year period, the owner may demolish the houses.

The Archaeological Resource Management Plan approved by Planning Commission sets specific requirements:

- Land disturbing activities within Components 4 and 5 should be kept to a minimum, and any construction work should be preceded by Phase III data recovery excavation, following a data recovery plan approved by the City.
- Efforts should be made to preserve the “Possible Middle Plantation Palisade” whenever possible, and any sections that will be disturbed by construction should be documented by data recovery.
- Areas of substantial ground disturbance, such as roads and building footprints, that are outside the limits of Components 4 and 5 but within 150 feet of these components, should be monitored by a professional archaeologist, with any features uncovered and associated with Components 4 and 5 documented by data recovery.

Critical slopes and wetlands around Queen’s and Palace Creeks are preserved as part of the proposed Common Open Space, with a nature trail proposed to take advantage of this natural resource. A large greenbelt/open space area is proposed adjacent to Capitol Landing Road, which also preserves important archaeological sites associated with Capitol Landing, also known as Queen Mary’s Port, one of the two Colonial ports serving Williamsburg.

Mr. Nester said the applicant has been very responsive and cooperative in addressing areas of concern, especially environmental and viewshed issues. As the design was refined, six lots were moved completely out of the Resource Protection area and lots were reconfigured to provide better building sites. The initial formal submittal had 45 lots which has been reduced to 42 lots as changes were made to better fit the design of the subdivision to the land.

Route 132 is a critical, and beautiful, entrance to the City and to Colonial Williamsburg, and it is very important that the undeveloped character of this corridor be preserved. The most significant change that was made concerned the buffer area adjacent to Queen’s Creek, preserving the pristine viewshed from Route 132 across Queen’s Creek. Another recent change in the plans is a very substantial and important change that specifically addresses concerns expressed by the City, the Colonial Williamsburg Foundation, and the Williamsburg Land Conservancy. This change eliminated a loop road and one lot, which has allowed lots 8, 10 and 11 to be pulled further back from the creek. Mr. Nester said Tom McDaniel, representing the Mahone Family Limited Partnership, and Jason Grimes with AES, Consulting Engineers, should be recognized and thanked for their willingness to work with City staff to satisfactorily address the concerns about maintaining the buffer area along Queen’s Creek.

Mayor Haulman thanked Mr. Nester and staff for the presentation as well as the Planning Commission, the Mahone family, Tom McDaniel and others who were involved in the extensive work that has brought this project to the point where it is a “win” for everybody.

Mr. Freiling noted the Preliminary Plat is valid for two years at which time a Development Plan must be submitted. He asked what happens if after that two-year period there is no Development Plan submitted. Mr. Nester responded the applicant would have to go back through the Preliminary Plat process. In response to Mr. Freiling’s question about the impact demolition of the two existing buildings would have on the Preliminary Plat, Mr. Nester said that as long as the number of lots was not increased, the Preliminary Plat could be amended with Planning Commission approval necessary, but not a return to City Council.

In answer to Mr. Freiling's concern about the house at 1039 Capitol Landing Road having difficult access and if it would be worsened by the traffic in and out, Mr. Nester explained the thinking on the issue concluding it is not seen as a major problem. Mr. Foster asked for an explanation of the purchase of stormwater credits and Mr. Nester answered that with the Chesapeake Bay Act there are certain treatment levels required for stormwater. Sometimes it's handled by retention basins on the property and sometimes it can be handled by buying credits from the City. In this case, to avoid additional clearing of land for a retention basin, credits will be sold to the developer.

Ms. Knudson said she'd like to echo the Mayor's comments about how much work has gone into this project and how appreciative Council is for that effort.

Mr. Freiling moved that City Council approve the Preliminary Plat as recommended by Planning Commission with the following contingencies:

1. This action approves the plan set titled Preliminary Plat for Mahone Subdivision, prepared by AES Consulting Engineers, dated 7/30/10.
2. Waivers to allow construction on 30% slopes for three small areas totaling 0.10 acre, as outlined in a letter from Jason Grimes, P.E. dated August 10, 2010, are approved.
3. Prior to the approval of the development plan, the applicant shall prepare a conservation easement for the purpose of protecting the viewshed across Queen's Creek. The location of the easement shall be as shown on the Preliminary Plat approved by the City of Williamsburg, which incorporates common open space adjacent to Queen's Creek both within and landward of the Chesapeake Bay Resource Protection Area. The easement shall be granted to the Williamsburg Land Conservancy or similar responsible organization, and the details of the conservation easement shall be approved by the grantor, grantee and the City of Williamsburg prior to the approval of the development plan. The conservation easement shall prohibit all activities that remove or damage any vegetation or disturb any soil except:
 - a. As required to remove dead, damaged, diseased, or invasive vegetation (as designated by the list of Invasive Alien Plant Species of Virginia maintained by the Virginia Department of Conservation & Recreation) and windfalls or deadfalls;
 - b. As required to clean up any trash, refuse, or junk disposed of in the conservation easement;
 - c. As required to plant native vegetation to: (i) hide existing visual intrusions, or (ii) restore or replace such vegetation damaged by fire, flood, wind, or disease;
 - d. As required to construct and maintain walking trails, and appurtenant elements such as bridges and docks, as shown on the Development Plan approved by the City of Williamsburg; and
 - e. As required to construct and maintain stormwater management facilities and outfalls, as shown on the Development Plan approved by the City of Williamsburg.

Prior to the recordation of the final subdivision plat, the applicant shall dedicate the conservation easement to the Williamsburg Land Conservancy or similar responsible organization.

Mr. Foster seconded the motion which carried by roll call vote of 5-0.

Recorded Vote on the Motion:

Aye: Knudson, Pons, Haulman, Freiling, Foster
No: None
Absent: None

City Manager Reports

General Obligation Refunding Bonds, Series 2010, Proposed Resolution #10-11

Mr. Tuttle introduced *Proposed Resolution #10-11* which authorizes the issuance and sale, through a negotiated process with Davenport & Company as underwriter, of refunding bonds. This refunding will pay off the principal balances of the Series 2002 General Fund bond of \$1,375,000, and the Series 2009 Utility Fund bond of \$9,508,700. Approval of the Resolution is the next step in pursuing a significant reduction in future interest costs while current market conditions remain favorable.

Mr. Tuttle introduced Kevin White with Kaufman and Canoles, bond counsel for the City who noted this would be a public offering and sale of the bonds through a negotiated underwriting. He said that with such an underwriting and sale it is required that consideration be made of an official statement, a bond purchase agreement with the underwriter, and a continuing disclosure agreement, drafts of which are provided in Council's information packets. The bonds, approved with certain perimeters as set forth in the Resolution, that the final maturity would be no later than December 1, 2029, that true interest cost would not exceed 4.5%, be sold at a price not less than 98% of the principal amount, and that the aggregate principal amount would not exceed \$11,250,000.

David Rose with Davenport & Company, LLC, underwriter; noted that details of the refunding process were presented at Council's August 9 work session and the credit package has been assembled. Assuming Council approves *Proposed Resolution #10-11* today, they estimate that about October 7 it will be in the marketplace with market conditions dictating that final date. Financing will be put on hold in the case the market dictates. He added that at the very least we will get solid credit ratings that hold and stay with us for a good period of time. The important thing is that on October 7 when the financing is done and the pricing is set and stays so even if closing occurs two or three weeks later, the interest rate and savings will be known and locked in on October 7. The credit package will be submitted to the credit agencies with conference calls to them next week. Ratings should be back about September 24 and very strong investment grade ratings are expected. He noted the AAA rating is the highest possible and they expect a AA rating for the City, the second highest grade. This rating is anticipated since this will be the City's first time to be rated and the relative modest size of the City's population. The rating agencies look at not only a jurisdiction's willingness to pay them back but also the ability to pay them back, which is based on the number of people that can pay them back.

In the unlikely occurrence that interest rates should get materially better after the financing is completed, there will be another opportunity to finance part of it down the road. He added that we're talking about locking in fixed rates at about 3 to 3.5%.

Mayor Haulman thanked Messrs. White and Rose for their explanations and asked Council members for questions.

Mr. Freiling stated that there was ample opportunity at the work session to get any questions

answered, and he appreciates all the work that has gone into the proposal and staff for moving forward on it.

Ms. Knudson moved that City Council approve *Proposed Resolution #10-11* to authorize the issuance and sale of general obligation refunding bonds, Series 2010, for the purpose of refunding the City's general obligation bonds, Series 2002 and 2009. Mr. Freiling seconded the motion which carried by roll call vote of 5-0. Mayor Haulman echoed the Vice-Mayor's comments thanking staff members, Kaufman and Canoles, and Davenport Company for the work done for the City over many years.

Recorded Vote on the Motion:

Aye: Knudson, Pons, Haulman, Freiling, Foster

No: None

Absent: None

{Adopted Resolution #10-11}

Proposed Legislative Issues for the 2011 General Assembly

Assistant City Manager Jodi Miller presented thirteen prospective items compiled by the Mayor, City Manager and Assistant City Manager for Williamsburg's 2011 Legislative Agenda. A draft Legislative Agenda will be presented for action at the October Council meeting. Prospective items:

- Amend City Charter
- Financial Impact on City Government
- Restriction on Local Government Prerogatives
- Transportation Funding
- Passenger Rail on the Virginia Peninsula
- I-64
- Tourism Promotion
- Computation of Tax on Internet Sale of Hotel Rooms
- College of William and Mary
- Pay Day Lending Reform
- VSBFA (Virginia Small Business Finance Authority)
- State Deferment of VRS Payments
- Limitation on Disclosure of Criminal Records

"Limitation on Disclosure of Criminal Records"

Mr. Freiling asked for additional information about the item "Limitation on Disclosure of Criminal Records." City Attorney Shelton responded that last year the General Assembly considered and submitted to committee a change in the existing Freedom of Information Act (FOIA). Currently the police chief has discretion; we have to provide criminal incident investigation reports which are fairly limited information. The change that was suggested would require us to provide all the information for closed criminal records, whether the information is sensitive, could invade someone's privacy, or contains witness information that generally should not be disclosed to the public. Currently the police chief has the discretion to release the entire file, but he is not obligated to release it if by law there is reason to withhold it. This change would take that discretion away from the police chief and require us to go to Circuit Court and ask the Judge to allow us to withhold that information should we request him to do so.

"Passenger Rail on the Virginia Peninsula"

Mr. Freiling suggested that most people would interpret the item “Passenger Rail on the Virginia Peninsula” as referring to infrastructure, and what the state really needs to be looking at is providing a dedicated source of funding for additional rail service. He added that if we don’t get that we will never get the rail improvements that we need. The Federal Rail Administration will look at this and say the Commonwealth is not behind rail, so we will devote our limited dollars elsewhere. Mr. Tuttle responded that although funding for additional rail service was the intent of this item, he agreed it could be stated better.

“College of William and Mary”

Regarding the item “College of William and Mary,” Mr. Freiling asked if we are asking for anything specific or are we just requesting that they do more. Mr. Tuttle answered that it is general right now, but as the College gets further along in their plans and gives us something, we can certainly add it to this item. In response to Mayor Haulman’s question, Mr. Tuttle said as part of preparing the issues for the list, Assistant City Manager Miller has a discussion every year with the College and asks if there is anything specific we can help them with in our submittal. Ms. Miller added that that will be part of the first draft Council will see in October.

“State Deferment of VRS Payments”

Mr. Foster said that his understanding is that this issue is that deferment of VRS payments is a poor tactic for balancing budgets. Ms. Miller confirmed that the statement is about how the state went about balancing its current budget and that it is the City’s perspective that we don’t feel that’s a good approach. She added that more importantly, the statement is not to use that as a longer-term strategy for balancing the budget. Mr. Tuttle noted that it is the future we’re concerned about because if the employer’s payments to VRS are deferred, that means that much less VRS has to invest in the future. It’s like deferring your mortgage payment; you will have to pay it later and it will have to be paid at an additional interest charge. We don’t think it’s a good idea and we don’t think they should do it again. Mr. Pons asked if it’s true that the state has deferred a lot of expenses, and should we incorporate everything that the state has deferred, not just the VRS payments. Mr. Tuttle answered that would be more in the category of “cuts” rather than “deferrals” of an obligation, and although he doesn’t know of anything that would fit into the deferral category, it could be looked at. Mayor Haulman said this review might be worthwhile, and because City employees are all a part of VRS, this has potential direct impact on our employees that other deferrals might not. Ms. Miller responded this will be reviewed.

In response to Mr. Foster’s question about prioritizing the items on the list, Mr. Tuttle said in the past they have not been prioritized. He added that there may be items on the list that may be good things, but not necessarily things the City needs to endorse; every time another item is added, the existing items on the list are weakened. The best way to prioritize, may simply be to limit the number of items included. Mayor Haulman noted that what has been done in the past is to group the items in more general categories. He said it is incumbent upon Council to consider whether an issue is important enough to be on the list and where best to group the items. In response to Mr. Foster’s question, Ms. Miller said once adopted, the list of legislative issues will be sent to Senator Norment and Delegate Barlow to be sure they are aware of the City’s legislative issues. In early December Council will meet with Senator Norment and Delegate Barlow to review the issues and then when the General Assembly meets beginning in January, the issues will be tracked. Ms. Miller added that this is the starting point to having those conversations with our elected officials.

“Restriction of Local Government Prerogatives” – BPOL Tax

Mr. Pons noted that this morning City Council met with the members of the Economic Development Authority (EDA) and discussion included ways to encourage businesses to come here and to make investments in the City. One of the proposed items on the list of legislative issues is opposing reductions in or elimination of Business, Professional and Occupational (BPOL) taxes. However, Mr. Pons said he thinks Council ought to support the General Assembly's proposal to eliminate the BPOL tax because it's an impediment to business; it impedes the ability of businesses to reinvest in themselves. If there was no BPOL tax in the Commonwealth, it might make us a better target for business relocation or business reinvestment. He added that we could replace the revenue from the BPOL tax with increased sales because new businesses are relocating here and because businesses have the opportunity to reinvest in themselves. Mr. Pons suggested that Council reverse the position from what is stated on the proposed list and work to eliminate the BPOL tax.

Mayor Haulman asked what percent of the City revenue comes from the BPOL tax and Finance Director Serra answered about \$1.6 million out of \$31 million. Mr. Tuttle noted that the BPOL tax is a significant revenue source for Williamsburg as it is for most localities. Mr. Pons said \$1.6 million sounds like a lot, but [what is the opportunity cost associated with collecting this tax is the question](#). Mayor Haulman asked that staff return to Council with more information regarding the consequences of the reduction in or elimination of the BPOL tax; what the benefits and costs would be. He said another question would be what percentage increase there would need to be in other taxes like sales tax in order to cover the elimination of the BPOL tax. Mr. Freiling asked if Council also could be provided with what other similar tax structure might exist in surrounding states. Mr. Tuttle noted that most of what you hear in opposition to the BPOL tax is the manner in which it is assessed and collected; on gross receipts rather than on net receipts; a valid point. Mr. Tuttle said research will be done and provided to Council.

"Computation of Tax on Internet Sale of Hotel Rooms"

Mr. Pons asked that Advanced Reservation Systems be included on the list of samples of internet service online booking engines that keep that portion of the tax not allowing collection by the City.

Mayor Haulman said anyone who would like to have input on the list of legislative issues can do so at Council's October 11 work session. Mr. Tuttle added that any communication received in the City Manager's office will be forwarded to Council members.

United States Joint Forces Command (JFCOM), Proposed Resolution #10-10

Mr. Tuttle presented *Proposed Resolution #10-10* objecting to the proposed closure of the United States Joint Forces Command and calling for a continuation of the current level of JFCOM activity. He said the cities of Norfolk and Suffolk, the two Hampton Roads communities most directly impacted by the proposed closure of JFCOM, and the Hampton Roads Military and Federal Facilities Alliance have requested all jurisdictions in Hampton Roads adopt a resolution with common working as in *Proposed Resolution #10-10*.

Mr. Freiling said that after Mr. Dickens' presentation at Council's work session, the one thing that seemingly has not been emphasized is the impact of the proposed closure on the safety and well-being of our soldiers in the field. It's not just an economic issue. There is a real potential impact on our fighting forces and one of the most compelling reasons to support this Resolution, in addition to the regional cooperation. Mr. Foster agreed as did Mr. Pons who

added it is the number one reason Council should support it. Another reason is the desire to bring businesses to the state and the City, and since we have these businesses here now, we should do everything we can to keep them here.

Ms. Knudson said she has quite a lot of trouble with the Resolution. Number one, it's the federal government, it's not a business. She said it bothers her a lot that everybody complains about federal spending, but every time there is an idea to reduce federal spending it needs to happen somewhere else. Ms. Knudson added that when she first read about Secretary Gates' proposal, she supported it. Everything needs to be considered and it brings a lot of jobs to the area. She noted an article in the Daily Press this morning that both Senator Webb and Senator Warner are very unhappy with it; they met with people at the Pentagon and the word "fuzzy" was used. She said she's not happy with the Resolution; it's much too rigid by saying don't change anything. There has got to be some compromise. However, because we need to support regional cooperation, she will vote in favor of the Resolution. She added that we need to remember that if every city council in the country says we're not cutting federal spending here, we'll never cut federal spending anywhere.

Mayor Haulman said he also has some reservations about the Resolution, but the support of our regional partners is important and this provides a beginning for negotiating strategy. He said that ultimately, the question may be what part of the joint forces command really needs to continue to provide for our troops. He concluded by saying he is willing to support our fellow cities in this and pass the Resolution.

Mr. Freiling moved that City Council adopt *Proposed Resolution #10-10* objecting to the proposed closure of the United States Joint Forces Command and calling for a continuation of the current level of JFCOM activity. Mr. Foster seconded the motion which carried by roll call vote of 5-0.

Recorded Vote on the Motion:

Aye: Knudson, Pons, Haulman, Freiling, Foster

No: None

Absent: None

{Adopted Resolution #10-10}

Amendment of City Code regarding Building Code Civil Penalties, Proposed Ordinance #10-15

Mr. Tuttle presented the proposed amendment to the Building Code increasing the civil penalties for violation of the Virginia Uniform Statewide Building Code. The Virginia General Assembly increased the amount of civil penalties authorized by the Code of Virginia during their 2010 Legislative Session. Because the City's civil penalties for violations of the USBC have not been increased in several years, and in order to increase the effectiveness of enforcement, City staff recommends increasing the civil penalties to the full amount allowed by law. In addition to the current penalties and those proposed, it was noted that the maximum total civil penalty arising out of the same violation has been increased to \$4,000.00.

Mr. Foster said that it is his understanding that the proposed increases are closer to the actual costs to staff, but Mr. Tuttle responded that is the case for administrative fees, which is the next item on the agenda.

In response to Mr. Freiling's question, Ms. Shelton clarified that the "Failure to obtain any required inspection" applies to rental inspections and if the four year certificate ends and the owner fails to schedule an inspection and the individual is taken to court, the fine is \$50.00.

Mr. Pons asked how many violations there are annually and Ms. Shelton responded that just with property maintenance there are about 1200 citations a year and about 30 of those are taken to court. Mr. Pons asked if the supposition is that if the penalty is increased the number of violations that must go to court will be reduced, that they would come into compliance sooner to avoid a bigger penalty. Ms. Shelton responded for the first offense there is a \$25.00 difference between the old penalty and new penalty so she doesn't think it would have that effect. She added that the City has not increased the civil penalties for about five years, and she gave an example of how costly taking a case to court can be with the attorney fee being \$165 an hour.

Mr. Pons moved that City Council adopt *Proposed Ordinance #10-15*, amending Chapter 5, Article II, Sections 5-24 and 5-25 of the City Code, increasing the civil penalties for violations of the Virginia Uniform Statewide Building Code. Ms. Knudson seconded the motion which carried by roll call vote of 5-0.

Recorded Vote on the Motion:

Aye: Knudson, Pons, Haulman, Freiling, Foster
No: None
Absent: None

{Adopted Ordinance #10-15}

Amendment of City Code Regarding Administrative Fees for Nuisance Abatement, Proposed Ordinance #10-16

Mr. Tuttle introduced *Proposed Ordinance #10-16* amending Chapter 12, Section 12-10, Article I, of the Williamsburg City Code, increasing the administrative fees for the abatement of nuisances. Stanley Skinner, Codes Compliance Administrator, has calculated the cost of the many steps required before the City cleans a property itself and then collects from the property owner. Currently the administrative fee is \$40.00, but recent calculations reflect a more realistic cost of \$150.00. Mr. Tuttle confirmed Mr. Freiling's understanding that if a property owner is notified of an issue and they resolve the issue without further City action, there is no fee assessed.

Ms. Knudson moved that City Council adopt *Proposed Ordinance #10-16*, amending Chapter 12, Section 12-10, Article I, of the Williamsburg City Code, increasing the administrative fees for the abatement of such nuisances as excessively high weeds and grass, or litter and debris. Mr. Freiling seconded the motion which carried by roll call vote of 5-0.

Recorded Vote on the Motion:

Aye: Knudson, Pons, Haulman, Freiling, Foster
No: None
Absent: None

{Adopted Ordinance #10-16}

City Attorney Report --None

UNFINISHED BUSINESS -- None

NEW BUSINESS

Cypress Creek

Mr. Foster said the Army Corp of Engineers is required to do an environmental impact statement under the National Environmental Policy Act. This is an opportunity for individuals and local governments to comment on the environmental impact of a proposed plant, and the impact on surrounding areas is one of the issues they will be exploring. Because this is an opportunity for us as a city to weigh in on the issue, he asked that staff look into how best to proceed, particularly regarding air quality, and report to Council at the October meeting. Mr. Tuttle responded that could be done for the October meeting, and there is an update as well that can be given today, particularly on the question of when the best time is to weigh in.

Mr. Nester noted a press release yesterday by Old Dominion Electric Cooperative (ODEC) and they would delay the process by 18-24 months, which relates to the necessary air permits. There are two related permit processes, the air permits handled by the Virginia Department of Environmental Quality (DEQ), and the environmental impact statement as well as the issuance of permits to impact wetlands for the facility, the water pipeline, the railroads spurs, and the intake and outfall from the James River, is handled by the Corp of Engineers. The Corp is not directly involved with the air permit issued by DEQ, but that will be one of the areas that will be looked at as part of the Environmental Impact Statement (EIS).

Mr. Nester said he has talked with Melissa Nash with the Corp of Engineers and she said as of this point, the draft EIS is due to be issued in fall 2011, although it's possible that could be pushed out. When the draft EIS is issued, there will be a 45 day comment period where comments can be entered into the official record. There may be a public hearing, and if there is, it would probably be held in the middle of the 45 day comment period. This would be an advertised comment period and there may be some advanced notice of when that comment period is going to begin. When asked when the best time to comment would be, Ms. Nash said the best time would be when the draft EIS is issued. She said that although it is not a decision document and no recommendations are made in it, any comments made when the draft EIS is issued are responded to in the final EIS.

Following the issuance of the final EIS, the next step is a record of decision and if the record of decision is positive, then there could be the issuance of permits. She said that comments that are received would be put in the file, but the comments would not be part of the official draft EIS record that are responded to. Mr. Tuttle added that the issues that the Corp will be looking at are a water pipeline from the James River and wetlands issues on the site in Surry. He said if Council is going to speak to those issues, they need to address those specific issues, not just a general pro or con position. He added that we have felt all along that the issue important to Williamsburg is primarily the air quality issue.

Mayor Haulman stated that since staff has prepared a document that laid out possible procedures for the DEQ, a paragraph or two could be added about the Corp of Engineers' process with anticipated dates and that there will be 45 day comment period. This would put everything in one document so a future Council can look back and see that this Council thought this issue through. Mr. Tuttle responded that the prior memorandum will be amended with the addition of those points.

OPEN FORUM

Mayor Haulman opened the Open Forum portion of the meeting for comments on any topic.

There being no comment the Open Forum was closed.

ADJOURNMENT

There being no additional business before the Council, at 3:30 p.m. Mr. Freiling moved and Ms. Knudson seconded the motion to adjourn the City Council meeting of September 9, 2010. The motion carried by unanimous roll call vote.

Approved: October 14, 2010

Clyde A. Haulman, Mayor

Donna Scott, City Council Clerk