

## SUMMARY OF MINUTES

### PUBLIC WORKS COMMITTEE

5:30 P.M., TUESDAY, JUNE 9, 2009

COMMITTEE ROOM

ROOM 239, CITY HALL

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*MEMBERS PRESENT:*            *Council Member Joycelyn V. Johnson, Chair*  
   *Council Member Evelyn A. Terry, Vice Chair*  
   *Council Member Dan Besse*  
   *Council Member Robert C. Clark (in at 5:34 p.m.)*

*OTHERS PRESENT:*            *Council Member Molly Leight*

Chair Johnson called the meeting to order and stated that, without objection, the Committee would first consider the Consent Agenda and asked if any items needed to be removed for discussion. Council Member Besse requested to pull Items C-2 and C-3. No other items were removed for discussion. Council Member Terry made a motion to approve the balance of the Consent Agenda. The motion was duly seconded by Council Member Besse and carried unanimously.

#### CONSENT AGENDA

- C-1.    CONSIDERATION OF CANDIDATES FOR RECOGNITION ON THE CITIZEN'S MEMORIAL WALL BY THE PUBLIC WORKS COMMITTEE - *George H. Black.*
  
- C-4.    CONSIDERATION OF ITEMS RELATING TO SUPPLEMENTAL MUNICIPAL AGREEMENTS WITH THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION:
  - a.      RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A SUPPLEMENTAL MUNICIPAL AGREEMENT WITH THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION TO ASSUME ALL MAINTENANCE RESPONSIBILITIES OF CLEMMONSVILLE ROAD FROM SOUTH MAIN STREET TO OLD SALISBURY ROAD.
  
  - b.      RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A SUPPLEMENTAL AGREEMENT WITH THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION FOR THE CONSTRUCTION OF BRUSHY FORK GREENWAY FROM OLD GREENSBORO ROAD TO LOWERY STREET.

- C-5. MONTHLY REPORT ON ECONOMIC STIMULUS PROJECTS UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT.
- C-6. CITY/COUNTY UTILITY COMMISSION EXECUTIVE SUMMARY.
- C-7. APPROVAL OF PUBLIC WORKS COMMITTEE SUMMARY OF MINUTES - *May 12, 2009*.
- C-2. REPORT ON STORMWATER MANAGEMENT PLAN APPROVAL TIMEFRAMES FOR BEESON ENGINEERING PROJECT.

Mr. Gregory M. Turner, Assistant City Manager/Public Works, stated that Beeson Engineering has recently submitted one project that was reviewed within the appropriate timeframe for stormwater management plans. Any delays with the project were associated with the plan preparers, rather than the City's reviewers.

In response to Council Member Besse's question about what was wrong with the plan, Mr. Keith Huff, Stormwater Director, stated that there was a general lack of information provided. A checklist is provided to engineers and developers when submitting a plan, and there was missing or inadequate information as was specified in the checklist, so suggestions were made and the plan was resubmitted.

*Council Member Clark in at 5:34 p.m.*

In response to Council Member Leight's question, Mr. Huff stated that the Operation and Maintenance Agreement sets the terms and conditions for the owner to maintain the stormwater device and provisions to ensure long-term maintenance. He also stated that there is a recording that goes along with easements for access and maintenance around the facility on a platted document.

Ms. Marilena Guthold, Assistant City Attorney, noted that the property across which the easement was to be granted was held under an assumed name and there was a need to obtain a trustee signature on the deed of trust attached to the property.

In response to Council Member Clark's question, Mr. Turner stated that staff considered this to be a reasonable timeframe for the work that needed to be done. He also stated that staff recognized the change in the economy and is reviewing options for bonds that can be obtained in this financial environment. The City Attorney's office is reviewing options that will comply with the ordinance and still be trusted in today's financial environment. They have also consulted with financial institutions about the types of bonds available and are reviewing a five year bond as opposed to a perpetual renewable bond.

Ms. Guthold noted that the initial bond would have a cancellation provision that the assured would have to provide 60 days written notice before cancelling and if the applicant could not provide the request, then the City would be able to draw down the bond for the full amount. She also noted that the bond companies had indicated concern that they could not get out of the obligation without initiating a claim.

Mr. Turner noted that staff tried to obtain the maximum length bond available, which was a five year bond with at least one renewal.

In response to Council Member Clark, Ms. Guthold stated that if a developer does not obtain a bond, they could potentially build a structure and walk away. A bond will protect the City for at least five years, but bond companies will not underwrite what they cannot rid themselves of. A Letter of credit would tie up the entire capital, where as a bond allows payment of a certain percentage every year.

In response to Council Member Clark's question about holding a deposit in perpetuity, Mr. Huff stated that other communities will use escrow or hold funds in residential construction where a homeowner's association is present, but that it was uncommon in commercial development.

In response to Council Member Clark's statement of ensuring there is funding to maintain the structure, Ms. Guthold stated that staff is reviewing a line of financing at the outset of the project but the issue is that the amount of money required is more than developers are willing to provide.

Chair Johnson requested that this information be attached to the May 12 Committee minutes as a reference.

C-3. FOLLOW UP ON ISSUES WITH STREAM EROSION AT 995 SOMERSET DRIVE.  
*[Item continued from the May 12, 2009 Public Works Committee meeting.]*

In response to Council Member Besse's request, Mr. Turner described what would trigger the City's participation in a 70/30 cost-share project, whereby the City will cover 70% of the cost to repair and the property owner will be responsible for 30% of the cost to repair. He also noted that the City does not own the drainage way or stream that runs across the property and will only maintain what is in the public right-of-way. He further noted that a bridge was constructed over a culvert using North Carolina Department of Transportation (NCDOT) design and funding.

Mrs. George Walin, 995 Somerset Drive, stated that she bought her home in 1967 and never had a problem with erosion until the bridge was built in 1997. She was told the culvert was set in backward and was told a curve in the stream would be taken out and it has not. She also stated that she only paid \$17,000 for her house in 1967 and she is not willing to pay more than the cost of her house to repair her yard. She noted that the yard should be stabilized from erosion and she is unwilling to pay for a problem she did not cause.

Council Member Besse noted that State law for private property is that the City can not pay to protect the property from erosion unless there is a voluntary local policy that changes that protection. The law does not require that the City help pay for stabilization but the City has agreed to help. Staff's evaluation is that construction of the bridge did not cause the erosion, rather it was caused by an increased flow in the stream.

Mr. Huff noted that staff reviewed aerial photography and stream patterns from the 1970s, which demonstrate that the stream has always bent in the direction of Mrs. Walin's property. From the 1970s to present day, the channel of the stream enlarged and erosion began to occur in the 1990s

prior to the bridge installation. Once the bridge was installed, erosion effects became more evident. In reviewing the Watershed Masterplan the Little Creek Watershed was developed. This plan indicated increased runoff and indicated stream channels were being enlarged to accommodate the additional flow. In reviewing the in-stream erosion, it was found that downstream properties are suffering the most erosion. In reviewing the construction drawings, staff did not find that the culverts were installed backward, but did find that where before there was a bridge, there was now a 300 foot section of straight pipe that the stream can not bend through, which could have exacerbated an already difficult situation.

In response to Mrs. Walin's question, Mr. Turner stated that one barrel of a culvert will carry the baseflow and the flow of water will remove any remaining sand. He also stated that staff would review with NCDOT why the bridge was replaced, but noted that staff already confirmed that the culverts were not placed backward.

Mrs. Walin questioned why the curve in the stream was never removed.

Council Member Besse noted that a culvert is the same width all the way through, so there is no way it could be installed backward as it has no specified front or back. The original plan of the NCDOT called for what is in place now.

Council Member Besse noted that based upon the report, it appears that the installation of the culvert contributed to the stream erosion. Due to that circumstance, he questioned whether or not there was a City policy that would cover 100% of the repair cost.

Mr. Turner stated that there is no provision for correcting an issue off of the City's right-of-way and that this project is limited to a 70/30 cost-share repair plan.

Council Member Besse indicated that there would have to be a City Code amendment to cover 100% of the repair costs of this project.

In response to Council Member Terry's question, Mr. Turner stated that staff would need to obtain an assessment from NCDOT as to the necessity for replacing the bridge.

Mrs. Walin stated that she was told the bridge was replaced because it did not meet state standards and questioned if dirt or chunks of rip-rap would alleviate the problem.

Mr. Turner stated that the erosion is so severe that it is on a vertical incline and rip-rap would not give stable support to the stream bank.

Mr. Huff noted that with the back angle of the stream wall being vertical, the tow where the water meets the soil is eroding as well so if the tow dropped another two feet, then rock would end up in the creek and will not stabilize the bank.

Council Member Clark requested that staff contact the NCDOT to determine why the bridge and culverts were constructed as they were and to determine if the NCDOT will offer any financial assistance to the homeowners 30% portion of the cost-share. He also noted that there are hundreds

of homes within Winston-Salem located in flood plains and Mrs. Walin's situation is not unique. In response to Mrs. Walin's question, Council Member Clark noted they may not have been considered flood plains when the homes were originally constructed.

Council Member Terry requested that staff contact Federal Emergency Management Assistance to determine if there are any discretionary funds to help address the problem.

In response to Council Member Leight's question regarding whether or not diverters had been built into an existing culvert to shift the direction of waterflow, Mr. Huff stated that he had seen an NCDOT plan that set a structure and angled the outlet of a culvert. There still has to be a method of dissipating the energy, so boulders and vegetation are more commonly used to direct the flow.

Council Member Besse summarized that the erosion is probably the result of increased runoff from the development of the Hanes Mall Boulevard, which also resulted in the bridge construction. He also noted that there is no existing funding to support the full cost of the project, and the Committee was asking staff to review other funding sources.

Mr. Turner noted that repair options presented are consistent with the stormwater ordinance.

Chair Johnson requested that staff consult NCDOT regarding the areas mentioned, to seek ways to mitigate the problem and opportunities for 100% cost coverage. She also questioned if there was any stimulus funding that would aid in repair costs.

Mr. Turner noted that there may be some grant funding available, but those funds are mostly reserved for the Army Corp of Engineers and due to the local economy, State Revolving Loan funding is limited.

Chair Johnson stated that this item will remain in Committee until a solution is reached.

Council Member Besse noted that the Cleanwater Management Trust Fund may be able to provide some funding for stream restoration projects.

#### GENERAL AGENDA

- G-1. PETITION TO CLOSE AND ABANDON A PORTION OF THE RIGHT-OF-WAY ON BOWEN BOULEVARD IN THE NORTHEAST WARD (Council Member Burke) – *Petition of the City of Winston-Salem. Public Hearing: July 20, 2009.*

Mr. Turner described the process for dividing the property left after a road closure and noted that there is a strip of property left over from the Bowen Boulevard reconstruction, near New Walkertown Road. Mr. Jim Conrad, 3088 New Walkertown Road, would like to take responsibility for the entire piece of property left over, but both adjoining property owners will have to sign for the plat. City staff has approached the additional property owner, but it is a non-city resident who has been unresponsive.

In response to Council Member Clark's suggestion, Mr. Chuck Green, Assistant City Attorney,

stated that the City cannot sell the property to Mr. Conrad because the statute says that once the road is closed, that land belongs to the adjoining property owners and is to be split equally between them, unless all adjoining property owners agree to sign a plat showing a different provision.

Council Member Clark questioned where the other property owners live.

Mr. Conrad expressed his concerns that the area is not kept up as he feels it should be and would like for the Council to make a provision for him to gain ownership of the entire property. If not, he would like to be provided the measurements for the portion of the property that will be his and he will maintain only that property. He also stated that it was unfair for the adjoining property owner to receive a new driveway and sidewalk when they do not maintain the property that they have.

Council Member Besse noted that the City has not said that Mr. Conrad could not maintain a portion of the property or the entirety of it.

In response to Council Member Terry's question, Mr. Turner noted that the situation could be monitored and if the property is not maintained to City standards, the Code Enforcement Division will take appropriate action.

In response to Chair Johnson's question, Mr. Turner stated that he would verify with Mr. Ritchie Brooks, Neighborhood Services Director, to see how much time would have to pass before the City would take action on failure to maintain the property.

In response to Council Member Leight's question, Mr. Turner noted that the City could maintain the property if the property owner fails to do so and send a bill to the owner, and if it goes unpaid, a lien will be placed on the property.

Chair Johnson requested to know at what time the property owner would be considered a chronic violator if they did not maintain the property.

Mr. Green stated that the County will view the closed street property as a separate tax lot and the lien would apply to the lot, which could be foreclosed and put up for sale, at which time, Mr. Conrad would be free to purchase it.

Chair Johnson requested that staff review how many attempts were made to reach the adjoining property owner and method of delivery, with the understanding that the next notification will be hand delivered. She also questioned if there was a method to recoup the cost of sidewalk installation now that the street is closed.

Mr. Turner stated that he is not aware of any provision that will allow for deviation from the 50/50 split but that staff is supportive of allowing Mr. Conrad to obtain the entire portion of the lot, excepting the driveway which is necessary to access the house on the other side. He also stated that although Mr. Conrad was required to install the sidewalk, if it is removed, there is no compensation plan for a project removing an improvement made by a developer as a condition of site plan approval.

Council Member Clark made a motion for approval. The motion was duly seconded by Council Member Terry and carried unanimously.

G-2. DISCUSSION OF PROPOSED REVISIONS TO THE UNIFIED DEVELOPMENT ORDINANCES AMENDING REGULATIONS LIMITING DEVELOPMENT IN THE FLOODWAY FRINGE.

Mr. Paul Norby, City/County Planning Director, presented a map outlining floodway fringe areas within the city based upon a public hearing whereby citizens described flooding issues around their homes. Council's deliberation of these areas led to the creation of a stormwater ordinance and Planning staff is reviewing whether flood plain regulations should be changed to prohibit fill and development in the one half of the floodway fringe that currently is allowed to be filled. Staff met with Mr. Jeff Kopf, Flood Plain Administrator, to determine practical ways of applying the intent of the Council's request to restrict development in floodway fringes.

Mr. Kirk Ericson, Principal Planner, gave the presentation.

Mr. Norby stated that the Planning Board had three questions when the proposed revisions were presented to them: would the cumulative effect of the already tight flood plain plus stormwater regulations and two foot freeboard requirement, prevent future problems knowing it was not going to solve existing problems; would an engineered solution, such as regional detention ponds upstream from the flooding problems be more effective; and if there are documented flooding problems in certain streams and not others, would it be appropriate to apply a more stringent fill solution to problem streams and not to others.

In response to Council Member Clark's question, Mr. Norby stated that Mr. Kopf would provide an answer to how often the floodway fringe has been filled in since 1995.

In response to Council Member Terry's question, Mr. Norby stated that Council asked for a total prohibition of filling a flood plain and upon reviewing flood maps, 15% would preserve the intent of the Council, but otherwise could make a tract of land unbuildable.

In response to Council Member Besse's question, Mr. Norby provided definitions for the following terms: a flood plain is the entirety of a flood prone area, including both the floodway and floodway fringe; the floodway is the area most immediately adjacent to the stream itself which most frequently fills with flood water and the floodway fringe is the second tier. Prior to 1995, a developer could fill an entire floodway fringe area and build on it as long as construction was built one foot above the base flood elevation. From 1995 to current, a developer could only fill half of the floodway fringe.

In response to Council Member Besse's question, Mr. Ericson stated that if an area plan includes an area of a flood plain as unusable for development, that would only pertain to the portion that is prohibited, rather than the entirety of the flood plain.

In response to Council Member Besse's question, Mr. Norby stated that under current stormwater standards, stream buffers are measured from the top of the stream bank, but are also dependent upon

the size of the stream and whether or not it is located within a floodway.

In response to Council Member Leight's question, Mr. Turner stated that a 100 year storm will typically fill a floodway and larger than a 100 year storm will typically spill into the floodway fringe. Council Member Leight noted that the floodway fringe is at risk of flooding too, so the more it is filled in, the more downstream flooding is likely to occur. Rather than classifying a site as unbuildable, a developer should build a facility differently. She questioned how much a 15% fill area restriction would really help in the ability of building on a site.

Mr. Ericson noted that floodplains are very site specific so it is hard to anticipate the size and shape of a site's features. He also noted that this ordinance is meant to show that a 15% restriction could make the difference for a site being feasible for a large footprint building or limit a developer's capacity in terms of what can be constructed on the property.

In response to Council Member Leight's concern that the 15% restriction may be excessive, Mr. Ericson stated that Mr. Kopf felt that percentage would have limited effect on carrying capacity, but felt it provided a happy medium to allow flexibility in the development of a property.

Council Member Clark requested specific examples on how far back the floodway fringe goes.

Chair Johnson requested this item come back to Committee in July for updates.

Council Member Clark requested to know what percentage of the Southeast Gateway was located in a floodway fringe.

#### ADDITIONAL ITEM – SOUTHPARK BOULEVARD RETAINING WALL

Mr. Robby Stone, Streets Director, stated that staff received notification from the City's Stormwater Division on December 8, 2008, regarding a potential collapse of a retaining wall on Southpark Boulevard. The designing engineer stated that there was a lack of longevity factors within the design of the wall. Staff reviewed the timeline of construction and found that the developer was responsible for the collapse, but when contacted, they said they would have no part in the repair.

Council Member Leight noted that the road has been closed for months and is an inconvenience to citizens. She questioned any recourse the City may have.

Ms. Guthold stated that the City could file a complaint against the two engineers involved with the project with the North Carolina Board of Examiners for Engineers and Surveyors, who would investigate the design and construction of the wall. Staff has been unable to obtain the wall design, but if the design was found to be faulty, the City could also file a lawsuit as the third party beneficiary due to the wall being located within the right-of-way. She also stated there is no statute of limitations on this type of construction, but warned that a lawsuit could be expensive and exceed the cost of repair.

In response to Council Member Besse's question, Ms. Guthold stated that the standard of liability for a developer building a retaining wall would be to demonstrate negligence, whereby the duty of the wall would pass from the developer to the City.

Mr. Turner noted that the position the Public Works Department was taking was that the culvert was not installed according to the original plan, meaning the construction was deficient.

In response to Council Member Terry's question, Mr. Turner stated that once an item is dedicated to the City, there is a final inspection prior to the acceptance of the item.

Chair Johnson questioned if there should be ongoing inspection of these types of construction.

Council Member Terry suggested that a checklist be created for inspections, because too often a situation could have been prevented had there been due diligence in the beginning of a project.

In response to Council Member Clark's question, Mr. Stone noted that staff will receive an estimate for repairs on Friday, which should be less than \$100,000.

Chair Johnson stated that staff should proceed with filing a complaint and obtaining cost estimates for repairs.

ADJOURNMENT: 7:21 p.m.