

February 3, 2009

The regular March Meeting of City Council was held on March 3, 2009 at 7:00 p.m. in the Council Chambers located on the Fourth Floor of the Municipal Building. The following Council Members were present: Ruby B. Archie, L. G. "Larry" Campbell, Jr., T. David Luther, Gary P. Miller, Albert K. "Buddy" Rawley, Jr., Mayor Sherman M. Saunders, and Fred O. Shanks, III, (7). T. Wayne Oakes and Adam J. Tomer were absent (2).

Staff Members present were: City Manager M. Lyle Lacy, III, Assistant City Manager for Utilities Joseph C. King, City Attorney W. Clarke Whitfield, Jr. and City Clerk Annette Y. Crane, CMC.

Other Staff Members present were Finance Director Barbara Dameron, Community Development Director Jerry Fischer, Planning Director Kenny Gillie and Economic Development Director Jeremy Stratton.

Mayor Saunders presided.

INVOCATION AND PLEDGE OF ALLEGIANCE

Council Member Miller offered the Invocation. The Pledge of Allegiance to the Flag, led by Girl Scout Troop 152.

Mayor Saunders welcomed Boys Scout Troop 376, led by Scout Master Kathy Fisher and Assistant Scout Master Tim Fisher. The Troop was present to earn its Citizenship and Community badges.

Mayor Saunders read and presented a certificate proclaiming the March 8 - 14 as Girl Scout Week in Danville. He presented the certificate to the Troop and thanked them for the Girl Scout cookies that had been placed at the desk of each Council and staff Member prior to the Meeting. Scout Leader Susan Dalton thanked Mayor Saunders for the honor and encouraged everyone to support the cookie sales. Ms. Dalton stated the funds are used to help create tomorrow's female business leaders through the efforts of Girl Scouts programs. The Troop recited the Girl Scout Promise prior to exiting the podium.

Mrs. Archie commented that she was very proud of the girls and was reminded of her days as a Girl Scout. Dr. Miller praised the Girl Scout program, stating he had two daughters who were Scouts and sold many boxes of cookies.

COMMUNICATIONS FROM VISITORS

There were no communications from visitors.

MINUTES

Upon Motion by Council Member Luther and second by Council Member Archie, Minutes of the February 17, 2009 Regular Council Meeting were approved as presented. Draft copies had been distributed to Council prior to the Meeting.

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AMEND INTERIM CITY MANAGER TO CITY MANAGER

Dr. Miller moved that Ordinances and Resolutions on the March 3, 2009 Agenda containing "Interim City Manager" be amended to read "City Manager." The Motion was seconded by Council Member Rawley and carried unanimously.

Clerk's Note: At the time the documents were drafted for inclusion in the agenda, Mr. Lacy was Interim City Manager. He was appointed City Manager effective March 1, 2009. It was Council's intention that the actions for this Meeting reflect the wording "City Manager."

PUBLIC HEARING-AMENDMENTS TO 2009 BUDGET APPROPRIATION ORDINANCE

Mayor Saunders announced the following budget amendments had been previously discussed by Council and introduced for First Reading and would be further considered by Council in the Public Hearing. After the Public Hearing is closed, there would be no separate discussion on the items and they could be enacted in one motion. If a Citizen or Council Member desires discussion on the item(s), the item will be removed from the consent process and considered separately.

Mayor Saunders opened the floor for a Public Hearing to consider amendments to the FY 2008-2009 Budget Appropriation Ordinance. Notice of the Public Hearing had been published in the Danville Register and Bee on February 23, 2009. No one present desired to be heard and the Public Hearing was closed.

Upon Motion by Council Member Shanks and second by Council Member Campbell, Ordinance No. 2009-02.14 presented by its First Reading on February 17, 2009 amending the Fiscal Year 2009 Budget Appropriation Ordinance by increasing revenues to anticipate the receipt of funds from the American Public Power Association's Demonstration of Energy-efficient Developments Program in the amount of \$50,000 and appropriating the same was adopted by the following vote:

VOTE: 7-0
AYE: Archie, Campbell, Luther, Miller, Rawley, Saunders and Shanks (7)
NAY: None (0)
ABSENT: Oakes and Tomer (2).

Upon Motion by Council Member Shanks and second by Council Member Campbell, Ordinance No. 2009-02.15 presented by its First Reading on February 17, 2009 amending the Fiscal Year 2009 Budget Appropriation Ordinance anticipating revenues from Virginia Department of Transportation Revenue Sharing Program Funds in the amount of \$800,000 for projects to be undertaken within the City and appropriating same was adopted by the following vote:

VOTE: 7-0

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AYE: Archie, Campbell, Luther, Miller, Rawley, Saunders and Shanks (7)
NAY: None (0)
ABSENT: Oakes and Tomer (2).

PUBLIC HEARING-REZONE PROPERTY AT 700 LANIER AVENUE

Mayor Saunders opened the floor for a Public Hearing to consider an application to amend the Year 2020 Land Use Plan and to rezone property located at 700 Lanier Avenue for converting the facility for Multi-family use. Notice of the Public Hearing had been published in the Danville Register and Bee on February 17 and 24, 2009. Applicant Edwin Gaskin of Hylton Hall Partners appeared to answer questions from Council Members and citizens. No one present desired to be heard and the Public Hearing was closed.

Council Member Rawley moved adoption of an Ordinance entitled:

ORDINANCE NO. 2009-03.01

AN ORDINANCE AMENDING THE YEAR 2020 LAND USE PLAN FROM ECONOMIC DEVELOPMENT TO MULTI-FAMILY RESIDENTIAL AND REZONING FROM TO-C TRANSITIONAL OFFICE COMMERCIAL TO M-R MULTI-FAMILY RESIDENTIAL DISTRICT, 700 LANIER AVENUE.

The Motion was seconded by Council Member Luther and carried by the following vote:

VOTE: 7-0
AYE: Archie, Campbell, Luther, Miller, Rawley, Saunders and Shanks (7)
NAY: None (0)
ABSENT: Oakes and Tomer (2).

PUBLIC HEARING-REZONE PROPERTY AT 1036 MONUMENT STREET

Mayor Saunders opened the floor for a Public Hearing to consider an application filed by the City of Danville requesting to rezone property located at 1036 Monument Street to allow for consolidation with adjacent City-owned property. Notice of the Public Hearing had been published in the Danville Register and Bee on February 17 and 24, 2009. No one present desired to be heard and the Public Hearing was closed.

Council Member Campbell moved adoption of an Ordinance entitled:

ORDINANCE NO. 2009-03.02

AN ORDINANCE REZONING FROM OT-R OLD TOWN RESIDENTIAL TO HR-C HIGHWAY RETAIL COMMERCIAL DISTRICT, 1036 MONUMENT STREET.

The Motion was seconded by Council Member Rawley and carried by the following vote:

VOTE: 7-0

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AYE: Archie, Campbell, Luther, Miller, Rawley, Saunders and Shanks (7)
NAY: None (0)
ABSENT: Oakes and Tomer (2).

PUBLIC HEARING-DONATE EASEMENT AT MEMORIAL DRIVE & PARK AVENUE

Mayor Saunders opened the floor for a Public Hearing to consider the donation of 0.099 acres of right-of-way and 0.043 acres of temporary construction easement, which consists of a portion of Memorial Drive and a portion of Park Avenue for the Piedmont Drive/Robertson Bridge Project. Notice of the Public Hearing had been published in the Danville Register and Bee on February 17 and 24, 2009. No one present desired to be heard and the Public Hearing was closed.

Council Member Archie moved adoption of an Ordinance entitled:

RESOLUTION NO. 2009-03.01

A RESOLUTION AUTHORIZING AND APPROVING THE DONATION OF REAL PROPERTY TO THE VIRGINIA DEPARTMENT OF TRANSPORTATION TO REPLACE THE ROBERTSON BRIDGE OVER THE DAN RIVER.

The Motion was seconded by Council Member Campbell and carried by the following vote:

VOTE: 7-0
AYE: Archie, Campbell, Luther, Miller, Rawley, Saunders and Shanks (7)
NAY: None (0)
ABSENT: Oakes and Tomer (2).

PUBLIC HEARING-INITIATION OF EMINENT DOMAIN PROCEEDINGS

Mayor Saunders opened the floor for a Public Hearing to consider authorizing and directing the initiation of Eminent Domain Proceedings for the purpose of installing and maintaining the power lines along the proposed transmission line route. Notice of the Public Hearing had been published in the Danville Register and Bee on February 21, 2009.

Tom Fork Road resident Jerry Rogers appeared to oppose the present transmission line route and felt the current survey was improperly done. He asked that another survey be conducted, that a different route for the transmission line be considered and that property already purchased be considered for the lines.

Kentuck Church Road resident Mattie Fitts expressed health and safety concerns with electric transmission lines being so close to residences, that fear of electro-magnetic fields would eliminate the possibility of any future sale of the property, that property values would be lowered, and expressed concern that a fair market value for the property would not be received and said the loss should be compensated justly. Ms. Fitts said City

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Attorney Whitfield had quoted an appraised price of \$490 for her property and her family found that price to be unfavorable and unacceptable. She said the fair market value should also include pay for damages. Ms. Fitts said her family would sell the entire property for \$70,000. She said her family felt this would be fair and just compensation. Ms. Fitts said that if an agreement could not be reached, she asked that the City's Power and Light Division create a route that did not cross land located on Wilkerson Road. She said an alternative would be to build a new high-voltage line down the existing power line. That would be the least disruptive to the public. She hoped the matter could be concluded to the satisfaction of all parties. She asked for time to have an additional survey done and requested the City Engineer take a look at the property.

Mr. Rawley requested a copy of the information Ms. Fitts brought to Council. Ms. Fitts agreed to provide same.

County resident John Foster appeared to discuss two pieces of property that he owns on South Boston Road, namely, parcels 76757 and 76522 that are being considered for the easement. Mr. Foster said in January 2008, he purchased two parcels of property on South Boston Road. Mr. Foster advised parcel 76757 was a vacant lot with 115 feet road frontage and parcel 76522 has a building on it that he spent considerable time and money renovating with more to follow. Before he made the final purchase, the title search revealed no easements on the properties. Mr. Foster said his first communication from the City was on October 30, 2008 from City Attorney Whitfield informing him of what the City was planning to do. The second page of the letter had two sentences, one for approval and one for disapproval. He said the letter did not state what the easement would be and he signed that he would not accept and returned the letter in the required period of time. The next communication he received was from Sharon May, an appraiser from Lynchburg, who had been hired by the City. Ms. May visited the property on January 20 or 21, 2009. Mr. Foster spoke with her and asked how many feet were on his parcel and how many on James River Equipment Company's. At the time of the visit, Ms. May said she would rather not give him a figure until she had reviewed her findings further and would fax it when she returned to Lynchburg. Mr. Foster received the fax the next day and he was informed that out of the fifty feet proposed for the easement, 48.67 feet was on his property and 2.22 feet was on James River Equipment's property. He said no one from the City had communicated that information to him. He said the easement was not a good thing for him since it takes away from the 115 feet of road frontage.

Mr. Foster advised the next communication came from City Attorney Whitfield and it contained the appraisal price. He said another piece of his property that is behind parcel 76757 is going to touch on the back corner. He said three parcels were being affected by the proposed action. He felt the proposed easement would completely destroy the value of the vacant lot and hurt the value of the parcel with the lot.

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Mr. Foster presented two options that would be agreeable to him: 1) Move the easement to the west towards James River Equipment and get some of the footage off his parcel, and 2) Purchase both parcels that he purchased in January 2008 at the fair market value. He said the easements would greatly affect the plans he had for the properties.

In response to Dr. Miller, Mr. Foster said he had spent \$150,000 to date on the properties.

Mr. Luther said he was having problem with the dates of Mr. Foster's communications. Mr. Foster reiterated that on October 30, 2008, he received the initial communication from City Attorney Whitfield. He advised the letter did not delineate the footage, but only stated the City wanted an easement and asked him to check a box indicating his approval or disapproval. Mr. Foster said he received an appraisal package sometime in February 2009, which gave the appraised amount.

South Main Street resident Bill Booker stated he and his brother, Tom, operated a small farm equipment business at 2126 South Boston Road. He said the business is just east of Airside Industrial Park, the City's water reservoir is on the eastern boundary and the Airside Electric Substation is on the western border of the business. Mr. Booker said the redundant power line has been in the planning stages for years. He said the first notice they had received came in January 2009 from Sharon May in Lynchburg. He was informed Ms. May would be on the Bookers' property on January 12 to appraise the easement being sought by the City. Mr. Booker continued that on February 7, he received a letter from the City Attorney explaining the City's proposal, making the City's offer and giving him until the 18th to accept or face having the property taken by eminent domain statutes. Mr. Booker stated his purpose for being in this Meeting was to see if a compromise could be reached that would be mutually beneficial to both Bookers and the City. He advised the appraisal report from Sharon May included at least three significant errors. The errors include: 1) The Bookers are in the building materials and farm equipment business. Mr. Booker advised they had never sold building materials; 2) The report describes in detail two buildings on the property. Mr. Booker stated there were actually three; 3) The report states the easements would have no adverse affects on the Bookers' business. Mr. Booker said the report was dead wrong. The proposal calls for them to move the perimeter fence from the western boundary line to the eastern border of the easement. Mr. Booker stated moving the fence would reduce the used equipment display area tremendously. It would severely reduce the company's unloading area, eliminate the employee parking area and most significantly the easement would restrict the western drives into the business lot through the gate to such a degree that it would be extremely difficult to get tractor trailers into the rear lot or the towing of wide farm equipment. He reiterated he was asking for more time to work out an

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alternative proposal or to work out an agreement that all could live with.

In response to Mr. Luther, Mr. Booker advised he did not receive a letter in October from the City Attorney. Mr. Booker stated he spoke with Electric Department employee Carlis Wells. He said Mr. Wells told him that someone had come by to speak with his brother and him, but neither could remember anyone speaking with them about the easement. Mr. Booker stated the letter he received on February 7, 2009 informed him that he and his brother would receive a certain amount of dollars -- take it or leave it. In response to Mr. Luther, Mr. Booker stated he had received no other letters.

No one further desired to be heard and the Public Hearing was closed.

Dr. Miller asked about alternative routes for the power lines. City Manager Lacy called on Assistant City Manager for Utilities Joe King to respond. Mr. King advised the easement was designed by Dewberry and said any easement would cause inconveniences when going across private property. He said Dewberry had taken that into account when designing the route for the power lines. Dewberry did look at alternate routes taking into account topography and attempted to make the power lines as direct as possible to the locations intended -- the substation in this case. Mr. King said without any hesitation Dewberry had considered all possibilities when designing the route. They were focuses on minimizing cost and minimizing the impact on properties.

Mr. Shanks said he and Mr. Campbell had spoken with property owners over the past few days and it was apparent there were other alternatives, but whether or not they could be worked out is another thing. Mr. Shanks said eminent domain is such a tool of last resort and offered a Motion to **TABLE** the Motion indefinitely, but at least until the next work session to consider other alternatives and to better understand why certain things may or may not work on behalf of the land owners there. Mr. Shanks felt Council was getting a little ahead of the game. Eminent domain is where property rights and public welfare go hand in hand. Mr. Shanks said there were issues that needed to be addressed before Council gets to that point. Council Member Miller seconded the Motion.

Mayor Saunders and others shared Mr. Shanks' concerns.

Mr. Luther questioned the wording of Mr. Shanks' Motion stating Council could not table a Motion that had not been made. With the approval of the Mr. Shanks and Dr. Miller, the Motion was amended to state, "Move to **TABLE** the matter in Council Letter No. 33-09."

Mr. Luther stated he was not afraid to live under power lines. He said citizens experienced more electro-magnetic fields from the earth than from power lines. He said danger would be most

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imminent if the lines fell and landed on anyone. He said Dewberry and Davis should be provide alternatives and additional information leaving no stone unturned to Council with enough detail so an informed decision could be made. Mr. Luther said the last thing Council wanted to do was to go through imminent domain proceedings without more details.

Mr. Rawley asked for costs for re-routing the lines should that come about.

The Motion to **TABLE** was carried by the following vote:

VOTE: 7-0
AYE: Archie, Campbell, Luther, Miller, Rawley, Saunders and Shanks (7)
NAY: None (0)
ABSENT: Oakes and Tomer (2).

EMPLOY DANIEL, MEDLEY & KIRBY PC

City Attorney Whitfield advised that outside legal counsel needed to be employed to assist with the eminent domain proceedings, but since Council had tabled the matter, the Resolution before Council relating to the proceedings should be tabled as well.

Council Member Rawley moved to **TABLE** a Resolution employing the Danville Law Firm of Daniel, Medley and Kirby. The Motion was seconded by Council Member Campbell and carried by the following vote:

VOTE: 7-0
AYE: Archie, Campbell, Luther, Miller, Rawley, Saunders and Shanks (7)
NAY: None (0)
ABSENT: Oakes and Tomer (2).

BUDGET AMENDMENT FY 2009 - FIRE DEPARTMENT GRANTS

Upon Motion by Council Member Campbell and second by Council Member Archie, an Ordinance entitled:

ORDINANCE NO. 2009-03.03

AN ORDINANCE AMENDING THE FISCAL YEAR 2009 BUDGET APPROPRIATION ORDINANCE TO PROVIDE FOR GRANTS FROM THE VIRGINIA OFFICE OF EMERGENCY MEDICAL SERVICES' RESCUE SQUAD ASSISTANCE FUND IN THE AMOUNT OF \$38,000, FEDERAL EMERGENCY MANAGEMENT AGENCY AND THE DEPARTMENT OF HOMELAND SECURITY IN THE AMOUNT OF \$91,637 AND LOCAL SHARE IN THE AMOUNT OF \$38,000 FOR A TOTAL OF \$167,637 AND APPROPRIATING SAME

was presented by its First Reading, as required by City Charter, to lie over before final adoption.

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AMEND 2001 REIMBURSEMENT AGREEMENT FOR WINDSOR HEIGHTS

Council Member Luther moved adoption of a Resolution entitled:

RESOLUTION NO. 2009-03.02

A RESOLUTION APPROVING AND AUTHORIZING THE AMENDMENT OF THE JANUARY 3, 2001 RESIDENTIAL REIMBURSEMENT AGREEMENT FOR WINDSOR HEIGHTS.

Council Member Campbell seconded the Motion.

During the February 17, 2009 Work Session, Howard Burnette, representing the Daniel Group, had requested the performance obligations contained in the 2001 Agreement be amended. He advised Council the Certificates of Occupancy had been issued on four (4) of the required eight (8), with a fifth currently under construction. Mr. Burnette had offered to donate approximately four (4) acres of the property, which contains the one-half acre that VDOT needs for the Robertson Bridge right-of-way, if Council would waive the requirements and provide an initial reimbursement payment now.

Mr. Shanks and Mr. Rawley opposed the amendment stating it would set a precedent for other developers to request the same, the land in question was floodplain land and to date the Reimbursement Agreements had not been amended. Other Council Members expressed these concerns as well.

The Motion **FAILED** by the following vote:

VOTE: 3-4
AYE: Archie, Luther, and Saunders (3)
NAY: Campbell, Miller, Rawley, and Shanks (4)
ABSENT: Oakes and Tomer (2).

COMMUNICATIONS

There were no communications from the City Manager, City Attorney, and City Clerk.

ROLL CALL

Council Member Archie stated Danny Marshall and Whitt Clement were attempting to get funding earmarked for Robertson Bridge and if the funds were not used in 120 days, it would revert to the Federal Government. She asked if the money could be used in the 120 days. Mr. Lacy said he believed the project would be close to being shovel ready within the time frame allotted. He stated that Virginia's share of the stimulus package for roads was approximately \$650 million and the current view is that the Commonwealth Transportation Board will choose projects to fund

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and using those monies to expedite those items. There is some question as to whether the Robertson Bridge will be included in that or not. Mr. Lacy said he was actively pursuing inclusion of the Robertson Bridge project in the deal.

In response to Council Member Campbell, Mr. Lacy stated the impact of the stimulus funding is complicated to explain. Some of the money will stay in Washington and be distributed across the country through federal agencies. Some will come through a formula. Danville get some of the money based on the formula, for example, the U.S. Department of Housing and Urban Development through the City's Community Development Block Grant. The distribution at the Federal level will be competitive and the City will learn within the next three to four weeks where it stands. Other stimulus monies will come to Virginia. Much of the funding will not be in the form of grants, but in the form of tax relief that will come to each individual taxpayer. There will also be money coming to the State on a competitive basis and in a formula basis. It is believed that K-12 and higher education will receive monies through a formula. It is also believed the formula for 599 monies will mean increased funding. There will probably be come competitive monies that communities throughout the State will participate in. He advised that very little of the stimulus monies are in the form of grants. A great majority of the package contains tax relief.

Council Member Luther stated he felt the City had turned its back on the Daniel Group relating to the amendment to the Reimbursement Agreement. He said the Daniel Group had done much in the development of the City. Mr. Luther commended Public Works and the City's Public Safety Officers for their excellent performance during the snowstorm on Monday.

Council Member Rawley stated the Daniel Group had been an unbelievable corporate citizens and would continue to be, but did not think the Council had turned its back on them. He felt Council would not be living up to its obligation to other developers if they had amended the Reimbursement Agreement.

Council Member Shanks stated he felt if Council had amended the Reimbursement Agreement for the Daniel Group, it would have been at the expense of the City during the current economic climate. He said he took exception that Council had turned its back on them. He cited projects that Council had approved for the company along certain floodplain areas of Riverside Drive.

Mayor Saunders commended City employees for reporting to work in spite of the bad weather on Monday. He congratulated Mr. Lacy on his appointment as City Manager and again, thanked Council Members for their hard work over the past eight months during the selection process.

Mr. Saunders asked for an update on the AmTrak schedule for Danville. Mr. Lacy explained that Danville was on the Crescent Line schedule, which travels from New York to New Orleans. The

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City is subject to the schedule of the Crescent Line, since it makes stops between those two points along the way. He said the hours for Danville was where the City fits in along the route. Mr. Lacy advised he had been in contact with Senator Webb and Congressman Perriello's offices regarding attempts to improve the customer service on accessing the Crescent Line. He said the City was getting exceptional attention from those legislators relating to the matter.

The Meeting adjourned at 8:45 P.M.

MAYOR

CITY CLERK