

**CITY OF COLUMBIA CITY COUNCIL
WORK SESSION MINUTES
DECEMBER 13, 2011 – 2:00 P.M.
CITY HALL - 1737 MAIN STREET**



The Columbia City Council met for a Work Session on Tuesday, December 13, 2011 in the City Hall Council Conference Room located at 1737 Main Street, Columbia, South Carolina. The Honorable Mayor Stephen K. Benjamin called to the meeting to order at 2:12 p.m. The following members of Council were present: The Honorable Sam Davis, The Honorable Tameika Isaac Devine and The Honorable Leona K. Plough. The Honorable Belinda F. Gergel arrived at 2:14 p.m. The Honorable Brian DeQuincey Newman arrived at 2:15 p.m. The Honorable Daniel J. Rickenmann was absent. Also present were Mr. Steven A. Gantt, City Manager and Ms. Erika D. Moore, City Clerk.

CITY COUNCIL DISCUSSION / ACTION

1. Federal Legislative Update – Mr. Ralph Garboushian, Washington Assistant / CapitalEdge Strategies, LLC

Ms. Teresa Wilson, Assistant City Manager reported that there continues to be a moratorium on earmarks; however, we want to be primed and ready when there are opportunities to present the City's priorities.

Mr. Ralph Garboushian, Washington Assistant / Capital Edge Strategies, LLC reported that the Agriculture, Commerce, Justice, Transportation and Housing and Urban Development Departments were funded in a Mini-bus Appropriations Bill. The rest of the federal government is operating under a continuing resolution that expires at the end of this week. He reported that the Community Development Block Grant was reduced by 11.6% and the HOME Program was reduced by 37.7% to \$1 billion. We will have to lobby funding for those two programs, early and often this year. Based on the 2010 population figures, Columbia will absorb a 13.28% cut in the 2012/2013 CDBG allocation.

Ms. Teresa Wilson, Assistant City Manager added that the City's poverty levels have decreased in context to other cities, although our population has increased.

Mr. Ralph Garboushian, Washington Assistant / Capital Edge Strategies, LLC continued to report that Congress might do a Highway Transit Bill next year. The Senate might start a Water Resources Development Act Bill, which would be an opportunity to get the Waterfront Development Project authorized. He advised the Council that the Transit Protection Bill may allow for operating assistance for smaller transit agencies in large urbanized areas, specifically for transit agencies that operate 75 or fewer buses during peak service.

Upon a motion made by Mr. Newman and seconded by Ms. Devine, Council voted unanimously to add the discussion of the release of residential and commercial loan information in open session.

2. Maxcy Gregg Park Pool Project Update – Mr. S. Allison Baker, Senior Assistant City Manager

Ms. Dana Higgins, City Engineer reported that a 5-member project committee developed the following two options for the Maxcy Gregg Park Pool Project:

- Option one is to use the \$970,000 budget to repair the leak that has been prohibiting the use of the pool. M.B. Kahn Construction was the only bidder. We used our best value model for procurement. We would demolish the existing pool shell and infrastructure, install a new gutter system, and bring the bath house up to DHEC code and the pool house up to ADA requirements. We asked the bidders to include value added options. We felt that it was important to replace the existing pool pumps, provide a salt system instead of chlorine, resurface the bath house flooring, paint the exterior and interior of the pool house, replace toilet fixtures, abandon existing pool equipment building and construct a new building, backfill the existing pool house; demolish and re-pour the deck around the pool for a total amount of \$1,234,096. Another option was to remove the existing structure and reinstall a pool with the same dimension of 50 meters by 23 yards, which increases the amount to \$1.5 million.
- Option two is to replace the pool at a cost of \$1.6 million. Replacing the pool as 50 meters by 25 yards would offer another location for competitive swim meets.

Mr. S. Allison Baker, Senior Assistant City Manager said that we have continuous problems with replacing liners in our pools. We have a need and an opportunity to do what is best long-term for the City. He recommended the construction of new facility that can increase recreational, instructional and competitive swimming. The pool was constructed 64 years ago and has been rehabilitated extensively. The equipment room is under the pool and it is being corroded by chlorine.

Mr. Steven A. Gantt, City Manager agreed to present any available funding in January.

Staff was directed to notify the public of the closing of the Maxcy Gregg Pool for repairs during 2012.

Upon a motion made by Dr. Gergel and seconded by Mr. Newman, Council voted unanimously to endorse the replacement of the Maxcy Gregg Pool Project. It is noted that replacing the pool will require re-advertising this project due to procurement rules.

3. Central Midlands Regional Transit Authority Update

Councilor Newman reported that the route reductions were fewer than 40% and were to be effective on October 1, 2011. We are updating those numbers and route reductions will be effective on March 1, 2011. The newly appointed board is requesting a great deal of work on the budget by staff. Our charge is for them to work expeditiously, but also gather the correct information. I circulated an e-mail to you all from the Interim Director with the previous budget and efficiencies we have already worked on. We have reduced fuel costs, we are not paying for an interim executive director and our attorneys are working with us to keep those fees down as well. The board will meet tomorrow to discuss the current fiscal year, the next fiscal year and plans to move forward. We all have to keep in mind that we need strong financial commitments from our funding partners. We must provide the funding necessary or there will be route reductions. This affects the whole city and it affects our economic development plan. I am asking the City Manager to identify funding and our federal lobbyist to assist Veolia with seeking grants. The Board will meet on tomorrow and another report will be provided to Council. It will be beneficial for you to hear from the interim Executive Director.

3a. **Release of Residential and Commercial Loan Information

Upon a motion made by Ms. Devine and seconded by Dr. Gergel, Council voted unanimously to waive attorney-client privilege and to discuss the release of residential and commercial loan information in open session.

Mayor Benjamin stated that there are evenly distributed concerns as we talk about issues of privacy as well as those of transparency. We asked the Attorney General for an opinion on the matter. He asked that copies of the opinion be shared with the media representatives that were present. I thought it was a well done opinion; a response to a well asked question by Mr. Gaines' staff. On both commercial and residential loans made by the City over the last couple of decades and not just delinquent loans, but on the nature of those loans, the Attorney General came back with an opinion that basically says that the information could be determined to be public information. He looked around the country at some decisions that were on point; some were not on point, but also constructive. I have a degree of personal concern. We can discuss this as a Council and figure out how we move forward with this information. The opinion lays out the right of public to know how public dollars are allocated. In the same interest of transparency, I am concerned about what assurances were made to borrowers regarding public disclosure. The City actively encouraged people to participate in these programs over the years. It gave me reason for pause. Prospectively, staff has drafted a document that will be included in every residential and commercial loan made to help people understand that their documents could be public documents. Borrowers will have the opportunity to understand that on the front side. I am concerned about whether or not there are issues of fundamental fairness on the table. I have asked that we engage a lawyer who spends time on consumer protection/privacy issues. The Attorney General was not of the opinion that there were any federal privacy laws that were possibly in play here. There are issues of liability that might be discussed. Certainly, there are certain protections, such as the Federal Tort Claims Act that would protect the City. I want to make sure we are doing this right and whatever information we put out there is accurate. We are talking about making information public on everybody who has ever had a loan with the City. We received one letter today from a lawyer who thought this information was not public.

Mr. Kenneth E. Gaines, City Attorney explained that in an 11-page opinion, the Attorney General concluded that nearly all aspects about these loans were to be released under the Freedom of Information Act. We cannot release financial information and social security numbers. We can not release the home address of commercial borrowers. The Attorney General also concluded that federal privacy laws did not apply to these laws.

Mayor Benjamin said that other places determined that you could list the name of a corporation that borrowed funds, but not a personal name. A foreclosure would be public information. It is important that we exercise some discretion and prudence, because we can damage reputations. We have to balance doing the right thing and doing it in a timely manner with our responsibilities as a public municipal corporation.

Councilor Gergel said that they were asked whether or not they would release the names of people who had borrowed money in either commercial or residential loans and provide an idea of whether or not they were current or in default.

Mr. Kenneth E. Gaines, City Attorney stated that we had concerns as to the accuracy of that information. We have to be dead level certain that the information we decide to release is accurate. We have received a letter from an attorney representing one of the borrowers saying that the borrower feels this would be an invasion of privacy. My office is researching whether or not that is a viable cause of action against the City. There are certain exceptions that people can sue a city for under the SC Tort Claims Act. This Council has to decide whether you are going to release the information publicly or withhold it. On one side you have the press who has the right to file an action against the City or a borrower would have the right to file an action against the City. We need to answer the invasion of privacy question.

Councilor Gergel recalled that they agreed that obtaining the Attorney General's opinion would be the best way to resolve this. I would assume that since that time, we've had the opportunity to obtain accurate information about the loans. It has been 3-months.

Ms. Teresa Wilson, Assistant City Manager said that they have accurate information, but there is a lapse in time between when our service providers reconcile the current status of loans.

Councilor Devine said that she is not comfortable. I think that loan information is public information if someone wants to search for it. We all agree that if you received an opinion that the information is to be released, then we would release it, but we need to make sure that the borrowers understand that. My huge concern is that people don't assume their information is going to become public, because they are going through Community Development for a loan. I am concerned that if this is going to be the new norm that we make sure that information is clearly explained in one of the loan documents they sign.

Councilor Davis said that he understood that they would share the information on the loans that were in default or late. I am not in favor of having a blanket distribution of any and everybody with a loan from the City through our various programs. That was not the intention. We know why we are in this kind of business, why we have these projects and programs, and why we go after these dollars. We know that there are challenges that these borrowers bring to the table. I take exception to making it appear that we are sanctioning bad behavior. I would not want to deal with the City if I was a borrower and I knew that my private information was going to be on display. We also need to consider getting out of the business.

Councilor Newman asked if we have procedures in place to address defaulted loans. Are we going through the basic procedures as if someone went to the bank, obtained a mortgage and didn't pay on it? That appears to be the crux of the problem here. I don't understand why we are discussing this. I don't understand what purpose is going to be served by us publishing a list of names of people that have borrowed money from the City. I am assuming that someone wants to view the efficiency of our department since some loans have defaulted. This came up before the FOI request. This has ballooned into some huge thing and the focus needs to be on what measures we can take to resolve the problem.

Ms. Teresa Wilson, Assistant City Manager replied that we are attempting to have that procedure in place since we met with you all. We need to meet with the service providers, but we are working through a process.

Mayor Benjamin said that we've done \$101 million in loans in the last ten years. Roughly \$75 million was private sector and \$26 million was supported by Community Development Block Grant funds. The City of Columbia made the smart decision several years ago to leverage those funds by working with the private sector to provide down payment assistance, buying the rate down or whatever it has to be. It has turned into a program that has produced substantial program income over time. It has been very well done. There are 700 active loans.

Ms. Deborah Livingston, Director of Community Development said that less than 1% of the loans are delinquent and 95% of the default loans are second mortgages and the people are paying their first mortgages.

Mayor Benjamin said that there is a very compelling and reasonable argument that this information can be deemed public information. My concerns relate to any directly implied assurances that may have been made.

Councilor Devine asked if a privacy statement is included in our loan documents. Should a privacy statement have been included? There are certain documents that must be included in residential loan packages. Is there an attorney that practices in consumer law that could provide a supplemental opinion?

Ms. Teresa Wilson, Assistant City Manager said not currently.

Mayor Benjamin recommended Sue Berkowitz.

Mr. Kenneth E. Gaines, City Attorney said that he has contacted a lawyer for references and he asked Brick Lewis to contact other municipalities to find out what they do in regards to these type requests. I was told by a lawyer in a larger municipality that they release everything.

Councilor Plough said that she can't imagine how we're going to find ourselves in a place where we're not going to release this information. To me, there is an expectation when you borrow from a local government, if you have a second mortgage on your house in the name of the City, that that information would be displayed. I'm not sure how we would do anything differently, right now. We could get this opinion. I am not concerned about the 1% that is in the residential, but we have to pursue those that are not making their payments; we have an obligation. On the other hand, all of the commercial products that we have are a huge concern to me. We have some people that borrowed significant money and have never made the first payment. I don't know whether they were pursued or not.

Councilor Devine said that there are people that some of us may know are in default or maybe not currently in default because we have forgiven something that are big time borrowers with us and would not fall within that list. There are others that are significantly less that fall within that list. My concern is the demographics of the list. The list is disproportionate to minorities. I am concerned that the message will be sent that we have a certain number of minorities that are in default with the City. It doesn't look fair to someone reading this information without the full realm of knowledge.

Mayor Benjamin said that he is not concerned about that, at all.

Councilor Gergel said that the public expects to know how we lend money, who we loan money to and whether or not that money is being repaid. That is a fundamental expectation of our public. We're not releasing social security numbers. We are releasing whether or not they got a loan at a certain time and at a certain point and the status of the loan.

Ms. Teresa Wilson, Assistant City Manager said that the media has asked to look at the whole file at one point or another.

Councilor Devine stated that the City has released the number of loans in default, the number of loans, and the principal balance. We haven't released the names. What value is added to releasing the names?

Councilor Gergel said that she couldn't imagine not releasing the information after receiving the Attorney General's opinion which cites cases with precedence in our state. I see a big difference in going to an attorney who practices in private consumer affairs. That doesn't make sense to me.

Mayor Benjamin said that there could be some issues associated with identity theft laws. The City may need to redact some information and the city could be held liable for releasing certain identifying information. We are having a transparent discussion of what we are quarreling with. My concern is making sure we are being fair.

Councilor Devine said that we need to be clear that we are not exposing the City to any liability if

someone files a suit.

Mayor Benjamin said that one of the large banks have already expressed some concern about the City releasing the information.

Councilor Davis said that what we do impact our partners.

Mayor Benjamin said that we are in the process of renegotiating our relationships with all of the banks on the residential loans. With the change in nature of the home mortgage environment, we will have to fashion relationships that are very particulate to different financial institutions who will no longer allow you to help with down payment assistance. They want people to have skin in the game. Rates are so low that we can't buy down rates anymore. If we lose the confidence of our private banking partner, it can cause some issues and we won't be able to do \$100 million in loans again.

Mayor Benjamin asked the media representatives that were in attendance about their thoughts on this discussion.

Mr. Brian McConchie, Reporter/WACH Fox News said you are having a good spirited debate about this. Everyone at the table appears to have the opinion that people have the right to know. I certainly don't need someone's social security number or their bank account number, because it does open doors to certain things. Everyone has the right to see what's being done with the money, as Dr. Gergel raised the point.

Ms. Eva Moore, Reporter/Free Times said that some of the issues about people who've been in default for a very long time are very valuable. It seems like you guys know what you have to do. It's never a bad idea to ask us, but it seems like you guys know where this is headed.

Mr. Clif LeBlanc, Reporter/The State said that it is public information. I can't tell you what I'm going to do with it until I see it. Thousands of loans and 800 current loans; I don't know what it's going to tell me. I can't tell you what we're going to publish until we see it.

Councilor Plaugh said that this is the first time she has heard that there might be interest in going through the files.

Ms. Tina Herbert, Community Development Department explained that there was a request from WIS TV to review all commercial loan files from January 1, 2006 going forward.

Councilor Plaugh said that we truly have proprietary information in those files and we need to be very careful.

Councilor Davis said that if this becomes the practice, then we should cut the programs. There will always be folks that come in with the kinds of challenges that do not allow them to go elsewhere for partnerships and participation. We should do a moratorium on all loans until we decide how we want to do this.

Mayor Benjamin said that we've made strides forward simply in making sure that we deal with this issue on the front side. Any loan made prospectively will have a privacy statement included. The privacy statement is being reviewed by the City Attorney. It states that certain information may be made public at some point. The value in how the residential loan program has worked over the years is that we have to keep our relationships in tact with the private sector. They are looking at how we handle this. It might not be as expeditious as you want it to be Belinda, but we must set a date certain by which we are going to release whatever information that we're going to release. If we are going to engage somebody, let's engage them.

EXECUTIVE SESSION

Upon a motion made by Mr. Davis and seconded by Mr. Newman, Council voted unanimously to go into Executive Session at 4:00 p.m. for the discussion of **Items 4** through **6**.

4. Discussion of negotiations incident to proposed contractual arrangements – *This item was discussed in Executive Session. No action was taken.*
 5. Receipt of legal advice which relates to a matter covered by attorney-client privilege – *This item was discussed in Executive Session. No action was taken.*
 6. Discussion of negotiations incident to the sale of property – *This item was discussed in Executive Session. No action was taken.*
- **Council adjourned the Work Session at 5:07 p.m.**

Respectfully submitted by:

Erika D. Moore
City Clerk