

25
9-23-08

DATE: SEPTEMBER 23, 2008

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: VICE MAYOR REDELLA S. "DEL PEPPER"
COUNCILMAN LUDWIG P. GAINES

SUBJECT: CONSIDERATION OF A REQUEST FOR AN INDEPENDENT
INQUIRY OF ACTIONS RELATED TO THE NORFOLK SOUTHERN
ETHANOL TRANSLOADING FACILITY

ISSUE: City Council consideration of a request for an independent inquiry of City staff actions related to the siting, opening and operation of the Norfolk Southern Ethanol Transloading Facility.

RECOMMENDATION: That City Council authorize an independent inquiry into City staff actions related to the siting, opening and operation of the Norfolk Southern Ethanol Transloading Facility, and that, the Norfolk Southern Community Monitoring Group (NSCMG), co-chaired by Vice-Mayor Pepper and Co-Chaired by Councilman Gaines, serve as liaison to the reviewer and assist in the development of a report to City Council on the reviewer's findings.

BACKGROUND & DISCUSSION: In April, the Norfolk Southern Corporation began an ethanol transloading operation at its intermodal facility located in the City's West End. Although City staff had knowledge of the impending operation, months in advance, neither City Council nor potentially affected communities near the facility received notification. On May 15, City Manager James Hartmann sent a memo to Council advising of the ethanol transloading operation. After notification about the ethanol operation, Council received numerous inquiries from the community, including requests for the release of information associated with the ethanol operation. Subsequently, the staff made public hundreds of emails dating between June 20, 2006 and June 23, 2008, and, on June 16, 2008, launched an ethanol information page on the City's website. The City Council also established the Norfolk Southern Community Monitoring Group ("NSCMG") to support the City's actions to shutdown the ethanol transloading facility, to track the progress of ongoing regulatory, legal, and permit activities; and to keep the wider stakeholder community informed about its work.

Nevertheless, the management of the ethanol transloading facility opening along with other issues makes it clear we are not meeting our standards for transparency and accountability. In order to address community concerns, improve as a City and ensure our government is ready to meet the challenges ahead, it is critical that the Council and community have all necessary information to understand what happened as well as to help ensure organizational changes are put in place to prevent a recurrence.

Towards these ends, we recommend the following for Council's consideration:

- Authorize Vice Mayor Pepper and Councilman Gaines to coordinate the activities of the reviewer in close consultation with the NSCMG. Due to personnel confidentiality reasons, some information obtained in the review process may need to be summarized. Vice Mayor Pepper and Councilman Gaines along with the reviewer will protect employee confidentiality and ensure the NSCMG only considers non-confidential information.
- Charge the NSCMG with developing, for Council's consideration, the necessary qualifications for a candidate that would be best suited to conduct such an inquiry, as well as recommend the scope of the work that is to be covered.
- Authorize the NSCMG to review the candidates' applications and recommend three candidates for Council's final decision.
- In order to ensure that all questions are answered, the members of the NSCMG should be given ongoing access to the reviewer.
- Provide the reviewer access to all relevant information, including information produced because of FOIA requests and make available for interview City employees and Council members. He/She should have access to other applicable documents, such as results of the City Manager's consultant efforts.
- Set November 30 as the report completion date.

FISCAL IMPACT: The fiscal impact of undertaking this inquiry would be funding for an independent reviewer. We recommend that an initial sum of up to \$25,000 be designated in contingent reserves. Any additional funding shall be docketed for consideration by Council.

ATTACHMENTS:

Attachment I: Letter from Ingrid Sanden, President, Cameron Station Civic Association

Attachment II: Letter from John Sullivan, President, Cameron Station Community Association

Attachment III: Letter from Geoffrey M. Goodale, President, Brookville-Seminary Valley Civic Association, Inc.

CAMERON STATION CIVIC ASSOCIATION, INC.

Ingrid Sanden, President
5238 Bessley Place
Alexandria, VA 22304
703-505-6997
iasanden@gmail.com

August 11, 2008

Mayor Bill Euille
City of Alexandria
301 King Street
Alexandria, VA 22314

Dear Mr. Mayor:

We appreciate what you and City Council have done and are doing to eliminate the Norfolk Southern transloading facility from our neighborhood. Our board recognizes that once you and the council found out about the facility, you knew there was urgent action for you to take. And, like us, you were dismayed and disturbed that City staff had not notified you until May 15, 2008, and had not pursued these actions well before the facility started operating on April 9, 2008. Please be assured that we stand ready to assist you in any way we can in reaching our mutual goals.

The remainder of this letter reflects our review of the material (largely e-mail records) that staff made available to us after we filed a Freedom of Information Act (FOIA) request in June. After reviewing the material, we now realize staff states that documents recording the content of meetings, telephone calls, etc., related to the facility don't exist. Our inquiry was further restricted because there is no report of the circumstances leading to staff's gross inaction on the Norfolk Southern situation.

We conclude our letter with a request that you sanction an investigation by an independent investigator outside City government. We explain our rationale in the concluding paragraphs.

On May 15, 2008, Alexandria City Manager, James Hartmann, notified the City Council and the Alexandria community that the Norfolk Southern railroad had started operating an ethanol transloading and storage facility at its site in the west end of Alexandria on April 9, 2008. A copy of Mr. Hartmann's memorandum is attached.

The community and City Council were disturbed at the news in Mr. Hartmann's memorandum, and that he had waited until the facility had started operations on April 9, 2008, before informing City Council and the community on May 15, 2008. Our Civic Association's subsequent research revealed the potential dangers of such a facility, especially being located very near densely-populated residential communities, a year-round public school, a Metro station, the Beltway and other rail lines including the

Virginia Railway Express, a commuter train line.

We found much of the City's published information regarding the facility useful, however, we were still left with a feeling and belief that we needed additional information in order to have a better understanding of how this facility came into being, when and how the city responded to Norfolk Southern, and how the City planned to keep residents safe. Therefore, we filed a Freedom of Information Act (FOIA) request on May 29, 2008 to obtain all relevant information that might give us greater insight into the situation. A copy of that request is attached.

We received a package of nearly 2,500 pages (mostly e-mail records) from the City on June 27, 2008, as a result of our FOIA request. Based on our review, we realized that, with one exception, there were no notes of meetings, notes of telephone call, agendas of meetings, or attendance list of meetings related to Norfolk Southern, in spite of the fact that there had been numerous such occurrences since 2006, involving a significant number of City staff. Thinking that the absence of this data must have been the result of oversight or miscommunication, we asked again for that information on July 9, 2008. A copy of that request is attached. On July 25, 2008, we received a reply to our follow up request. We received copies of two more documents (a draft agenda for a meeting taking place on June 23, 2006, and an uncompleted worksheet for the meeting), but no notes exist from that meeting. Our Civic Association requested an explanation of why there were no notes or documents of the many meetings, telephone calls, and other communication, but City staff did not respond to that request.

We are troubled by what we learned from our review of the FOIA material that we received. We find that the City knew for some time that Norfolk Southern planned to open the transloading facility in April or May of 2008. Just citing three examples of numerous references to the facility opening in April or May, 2008:

- **11/29/07** – email from Assistant Fire Chief Russell Middleton to Emergency Management Coordinator Mark Penn informing Penn of the ethanol transfer station scheduled to open in April 2008.
- **12/3/07** – email from Chief Fire Marshall Robert Rodriguez to Faroll Hamer, Director, Planning and Zoning, Rich Josephson, Deputy Director, Planning and Zoning, and John Catlett, Director, Code Enforcement, informs them about the facility and says he ***“expects there will be some citizen concerns when this facility begins operation in April 2008.”***
- **1/1/08** – in an email, it's clear that Deputy City Manager Michelle Evans, John Catlett, Mark Penn, Russell Middleton, and Fire Chief Adam Thiel all know that there will be ***“challenges surrounding fire protection and preparedness,”*** and also that the ethanol transloading facility will open in April/May 2008.

We found that several staff members, being aware that the community needed to be informed, recommended such notification to their superiors or subordinates, for example:

- **7/17/06** – email from Rich Josephson to Jill Applbaum of the City Attorney’s Office, Josephson, referencing a meeting “*last month,*” states that Norfolk Southern is to do outreach and provide information to neighbors concerning the operation. He sent the same message to Applebaum and City Attorney Ignacio Pessoa on 8/1/06 with copies to City Manager Jim Hartmann, Deputy City Manager Mark Jinks, Eileen Fogarty, Director, Planning and Zoning at the time, Rich Baier, Director, Transportation and Environmental Services, Art Dahlberg, Director, Code Enforcement at the time, and Jannie Pennell, Deputy Director, Code Enforcement. He sent a similar message to Norfolk Southern Vice President David Lawson on 8/25/06.
- **8/10/06** – Deputy Fire Marshall Duane Perry informs Jannie Pennell, with copies to Fire Battalion Chief Bob Luckett, Assistant Fire Marshall William Coates, Maurice Jones, Supervising Fire Protection Engineer, and Dahlberg, that Dahlberg recommended to Norfolk Southern at a recent meeting, that Norfolk Southern do community outreach, and suggested three specific steps Norfolk Southern should take in performing this responsibility. On 8/22/06, Pennell transmitted the same information to Hartmann and Pessoa.
- **12/03/07** – please note the email message from Rodriguez to Hamer and Josephson. On 1/2/08, Rodriguez sent Catlett a message with a copy to Thiel, informing them that he had heard nothing from Hamer and Josephson on his 12/3/07 message, and that there may be a citizen issue with Cameron Station. Catlett in turn sent the message to Evans on the same day.
- **4/9/08** – Hartmann tells Thiel, with copies to Evans and Pessoa, “*...we need to draft up something that can be distributed to other Stakeholders/general public.*”

We found that several staff members, realizing that City Council needed to be informed, recommended such notification to their superiors, for example:

- **11/30/07** – email from Penn to Local Emergency Planning Committee city staffer Charlie McRorie, Penn indicates (referring to an attached memo about the ethanol facility), “*FYI, you want to get on top of this one! I am sure the LEPC will be very interested. Might be the first time City Council members hear about it!*” On 12/12/07, McRorie discussed the pending facility at the LEPC meeting. Based on information we obtained, it appears that the two City Council members who are members of the LEPC were not present. We do not know what, if any, other attempts staff made to notify them.
- **12/18/07** – email from Fire Battalion Chief Michael Farri to Russell Middleton outlines very specific ideas about how to address the ethanol transloading issue, who to talk to for support, and that (in his opinion) “*it’s time to get city leaders involved.*” Farri also suggests going to the federal government to get resources...

“we are definitely behind the eight ball.” Farri followed up with a similar message to Fire Captain Michael Cross on 12/25/07.

- **1/2/08** – email to Glen Rudner, of the Virginia Department of Emergency Management, with copies to McRorie, Fire Battalion Chief John North, Penn, Middleton and Catlett, Thiel asks Rudner to identify any issues that VDEM contemplates with the facility so that he can engage City policymakers in a discussion on how to ensure safety of the city.
- **See 4/9/08** message from Hartmann above. He directs staff to draft a notification to “Stakeholders” (presumably this would include City Council) and general public.

We found that staff had done background research on ethanol transportation and had reported the inherent safety and security issues to higher authority, along with some real life examples:

- **11/19/07** – in an email from Fire Captain Michael Cross to Michael Farri and Fire Lieutenant Jason Wehmeyer, Cross outlines several concerns and issues he felt needed to be addressed. He says that fire companies from Fairfax ***were “talking about an ethanol transfer station during the 5001 Eisenhower Avenue building familiarization drill on 11/19/07.”*** He highlights in his third bullet that ***“spills will quickly enter Backlick Run, which runs adjacent to the rail yard and abuts Cameron Station, then flows into Cameron Run to the Potomac River. A large spill could send burning flammable liquids with an invisible flame and no smoke down the waterway next to Cameron Station, under Eisenhower Avenue and the Beltway.”***
- **12/11/07** – in an email from Michael Cross to Michael Farri, Cross outlines very specific concerns and questions about the facility. This email shows us that city staff knew the dangers of ethanol incidents and that it couldn’t deal with one, and the need to evacuate a ½ mile radius should one occur.
- **12/16/07** – in an email from Battalion Chief Michael Farri to Assistant Fire Chief Russell Middleton and Thiel, Farri says they need to get ***“started with a ops plan and try to get ahead of this before it gets put in service... as it stands right now, it appears that we do not have enough resources in place to handle a large spill if it were to occur.”***
- **4/4/08** – in an email from Thiel to Jim Hartmann, Michele Evans, Ignacio Pessoa, John Catlett, and Bob Rodriguez, Thiel says they are ***“way behind in terms of preparation/readiness for an emergency event involving bulk quantities of ethanol. Our needs go far beyond site familiarization and training on the transloading process. We do not have the equipment or supplies to handle a fire at this site; and neither do our regional partners...There’s a lot we need to do at this point...”***

- 4/4/08 – in a different email Thiel says to the same addressees that he will notify regional partners, and that *“we’re now way behind the planning/operations curve on this deal...I want to be clear...we do not have the capacity to deal with a significant event at this ‘facility,’ nor does that capability presently exist within our mutual-aid system.”*

We find a paucity of senior level involvement and direction to notify the community and City Council and to mount any meaningful effort to stop the opening, in spite of advice, urgent warnings, and other information that was being submitted from below, some at the request of the senior level. We believe the FOIA documents show that the senior level was aware or should have been aware of the pending opening, the need to inform the community and City Council, and the potential dangers of an ethanol transloading and storage facility, yet took no action to do anything meaningful, other than seek funds from Norfolk Southern for additional fire equipment and training. Why did they not act and get City Council involved sooner knowing since at least the fall of 2007 that the facility would start operations in April/May 2008?

We find that this important question cannot be answered within the pages of what was made available to us by City staff in response to our FOIA request. We believe that an independent, outside investigation is the only option to help resolve this troubling issue. We ask that you endorse and sanction such an investigation.

The Cameron Station Civic Association Board of Directors believes that an independent investigation is in order so that the residents of Alexandria, as well as City employees, will not perceive that there is a potential conflict of interest if there is an internal investigation. We believe that this investigation will go a long way in restoring the public’s trust and confidence in not only the ability of City staff to look out for our safety, security and welfare, but also that City Council is adequately exercising it’s oversight and leadership roles. This investigation should be conducted by someone outside City government who has the experience, respect, and professional standing needed to interview mid- and executive-level officials in City government. Perhaps most importantly, this person must be able to gain the respect and confidence of you, the Council and the community.

We stand ready to assist you in any way we can. Please don’t hesitate to call us if we can be of further assistance.

Sincerely,

Ingrid Sanden

Ingrid Sanden, President
Cameron Station Civic Association

cc: Alexandria City Council



A NEW COMMUNITY IN AN OLD TOWN.
ALEXANDRIA.

CITY MANAGER'S OFFICE
ALEXANDRIA, VA
2008 AUG 27 A 11:51

August 21, 2008

Mayor Bill Euille
City of Alexandria
301 King Street
Alexandria, VA 22314

Dear Mayor Euille,

At our August 19, 2008 meeting of the Cameron Station Community Association Board of Directors it was agreed that we would fully support the Cameron Station Civic Association's call for an independent review of city staff's actions leading up to the operation of the Norfolk Southern Ethanol Transloading Facility located in the West end of Alexandria within 600+ feet of our community. I commend the Civic Association for their perseverance on this issue and the uncovering of what appears to be non professional actions by the city staff in handling this issue from the beginning.

As the president of one of Alexandria's largest home owner association, totaling almost 1800 residences, we are concerned that it seems the city staff did not exercise proper due diligence in keeping both the city's elected officials informed as well as the local community. Based on the Cameron Station Civic Association's FOIA request it appears the city staff did not follow proper procedures for meeting notes as well as informing the "chain of command" of what was transpiring.

In due fairness to the city staff, the city's elected official and the community, only an independent review of what actually transpired along with recommended corrective actions can both resolve this issue and begin to restore the citizens faith in the city's government to properly take care of their needs. Bottom line this should NOT be an in-house review.

The Cameron Station Community Association unequivocally calls for an independent review of the city's actions regarding the Norfolk Southern Transloading issue.

John J. Sullivan, Jr., P.E., M.ASCE
President, Cameron Station Community Association

cc: President Cameron Station Civic Association
Alexandria City Council
Alexandria City Manager



"Goodale, Geoffrey M."
<GGoodale@foley.com>

09/22/2008 06:09 PM

To <alexvamayor@aol.com>, <delpepper@aol.com>,
<councilmangaines@aol.com>, <council@krupicka.com>,
<timlovain@timlovain.com>, <paulcsmedberg@aol.com>,
cc <jackie.henderson@alexandriava.gov>,
<geoff.goodale@bsvca.net>

bcc

Subject City Council Hearing of September 23, 2008 -- Comments
Regarding Docket Item 25

<<BSVCA Comments on NS Inquiry.pdf>>

Dear Mayor Euille and Members of City Council:

Attached please find comments that the Board of Directors of Brookville-Seminary Valley Civic Association, Inc. ("BSVCA") respectfully submits for your consideration in deliberating on whether to conduct an inquiry of the City's actions related to the Norfolk Southern ethanol transloading facility, which is slated as Docket Item 25 on the agenda for tomorrow night's Council meeting. As discussed in the attached letter, in view of valid concerns that have been expressed by Cameron Station Civic Association, Inc. and Seminary Hill Association, Inc., we urge the Council to initiate further review and analysis of the City's actions relating to this matter. Such a review should be directed by the Council, should allow for meaningful public participation, should be conducted as expeditiously as possible, and should result in the establishment of new processes and procedures that will contribute to enhanced communications between City staff, Council, and the community.

Thank you for your consideration of our comments. We respectfully request that this e-mail and the attached document be included in the record relating to this proceeding, and accordingly, we are including the City Clerk as a "cc" recipient on this e-mail. If you have any questions regarding our comments and recommendations, please do not hesitate to contact me at (202) 672-5341 or at (703) 618-6640.

Respectfully submitted,

Geoffrey M. Goodale
President, Brookville-Seminary Valley Civic Association, Inc.

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unless expressly stated otherwise the advice is not intended or written to be used, and it cannot be used by the recipient or any other taxpayer, for the purpose of avoiding Federal tax penalties, and was not written to support the promotion or marketing of any transaction or matter discussed



herein. BSVCA Comments on NS Inquiry.pdf

BROOKVILLE-SEMINARY VALLEY CIVIC ASSOCIATION, INC.

P.O. Box 23348

Alexandria, VA 22304

September 22, 2008

Mayor William D. Euille and Members of City Council
301 King Street – City Hall
Alexandria, VA 22314

Re: Docket #25 on the Agenda for the City Council Meeting of September 23, 2008 –
Request for Inquiry Relating to the Norfolk Southern Ethanol Transloading Facility

Dear Mayor Euille and Members of City Council:

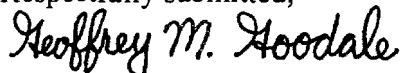
In view of valid concerns that have been expressed to the Mayor and City Council ("Council") by Cameron Station Civic Association, Inc. ("CSCA") and Seminary Hill Association, Inc. ("SHA"), the Board of Directors of Brookville-Seminary Valley Civic Association, Inc. ("BSVCA") respectfully requests that the Council conduct further review and analysis of the City's actions relating to the events that led to the establishment of the Norfolk Southern ethanol transloading facility ("Ethanol Facility"). Such a review should be directed by the Council and should provide members of the community with the opportunity to raise questions that they feel have not yet adequately been addressed, and a main goal of such a review should be the establishment of new processes and procedures that will contribute to enhanced communications between City staff, Council, and the community.

On June 14, 2008, we submitted comments to the Mayor and Council in which we expressed the BSVCA's concerns about the events leading up to the establishment of the Ethanol Facility. We noted that two of our biggest concerns were that the events seemed to indicate that there was not a process in place that required City staff to report on developments relating to the Ethanol Facility to the Council or the public and that the communications between City staff and the Council and between the City and the community on this matter were dismal. Representatives from the CSCA, the SHA, the Alexandria Federation of Civic Associations, and others also voiced similar concerns at the Council's hearing that day.

Following the Council's hearing on June 14, the CSCA reviewed many materials relating to the City's handling of events leading up to the establishment of the Ethanol Facility that were released to the CSCA in response to a Freedom of Information Act ("FOIA") request. Troubled by numerous things that the materials revealed and did not reveal, the CSCA submitted a request to the Mayor to sanction an independent, outside investigation relating to the Norfolk Southern matter on August 11, 2008. Recently, at the Council's public hearing on September 13, 2008, the SHA voiced additional concerns and expressed its support for the CSCA's request.

In our view, the CSCA and the SHA have raised valid concerns. Accordingly, we request that the Council conduct further review and analysis of this matter. Such a review should allow for meaningful public participation, should be conducted as expeditiously as possible, and should result in the establishment of new processes and procedures that will contribute to enhanced communications between City staff, Council, and the community.

Respectfully submitted,



Geoffrey M. Goodale

President, Brookville-Seminary Valley Civic Association, Inc.

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9-23-08

DATE: SEPTEMBER 23, 2008

TO: THE HONORABLE MAYOR WILLIAM D. EUILLE

FROM: COUNCILMAN PAUL C. SMEDBERG

SUBJECT: CONSIDERATION OF A REQUEST FOR AN INDEPENDENT
INQUIRY OF ACTIONS RELATED TO THE NORFOLK SOUTHERN
ETHANOL TRANSLOADING FACILITY

ISSUE: City Council consideration of a request for an independent inquiry of City staff actions related to the site location, all aspects of the construction process, and the eventual opening and operation of the Norfolk Southern Ethanol Transloading Facility. This inquiry should include all City departmental input related to the site and the facility.

RECOMMENDATION: That City Council authorizes an independent inquiry into City staff actions related to the the Norfolk Southern Ethanol Transloading Facility as described above. The independent inquiry will be lead by Vice-Mayor Del Pepper and Councilman Ludwig Gaines who currently serve as co-chairs of the (Alexandria) Norfolk Southern Community Monitoring Group (NSCMG). To help bring focus to the independent inquiry, Vice-Mayor Pepper and Councilman Gaines will serve as the principle liaisons to the independent third party reviewer and will seek guidance from the NSCMG in the initial stage of the inquiry as they select specific issues for review, develop a series of questions and frame a report format.

BACKGROUND & DISCUSSION: In April 2008, the Norfolk Southern Corporation began an ethanol transloading operation at its intermodal facility located in the City's West End. Although City staff had knowledge of the impending operation, months in advance, neither City Council nor potentially affected communities near the facility received notification. On May 15, 2008, City Manager James Hartmann sent a memo to Council advising of the ethanol transloading operation. After notification about the ethanol operation, Council received numerous inquiries from the community, including requests for the release of information associated with the ethanol operation. Subsequently, the staff made public hundreds of emails dating between June 20, 2006 and June 23, 2008, and, on June 16, 2008, launched an ethanol information page on the City's website. In addition to these steps, City Manager Jim Hartmann appointed Steve Mason, Special Assistant to the City Manager, to serve as the primary contact to the community on the transloading issue. The City Council established the Norfolk Southern Community Monitoring Group ("NSCMG") to support the City's actions to shutdown the ethanol transloading facility, to track progress of ongoing regulatory, legal, and permit activities; and to keep the wider stakeholder community informed about its work.

The management of the ethanol transloading facility opening makes it clear the City is did not meeting acceptable standards for transparency and accountability. In order to address community concerns and ensure our government is ready to meet the challenges ahead, it is critical that we conduct an independent third party review of this situation to ascertain whether or not the Council and community have all the necessary information to understand what happened.

We recommend the following for Council's consideration:

- Authorize Vice-Mayor Pepper and Councilman Gaines, to direct the activities of the independent reviewer in consultation with the NSCMG. Due to personal confidentiality reasons, Vice-Mayor Pepper, Councilman Gaines, and the independent reviewer will protect employee confidentiality.
- Authorize Vice-Mayor Pepper and Councilman Gaines, in consultation with the NSCMG, to develop for Council's consideration, the necessary qualifications for a candidate that would be best suited to conduct such an inquiry, as well as recommend the scope of the work that is to be covered.
- Authorize Vice-Mayor Pepper and Councilman Gaines, in consultation with the NSCMG to review the candidates' applications and make a recommendation for Council's final approval.
- (I would cut this out – this does not sound like an “independent inquiry” to me)
- The City staff shall provide the independent reviewer access to all relevant information, including information produced because of FOIA requests and make available for interview City employees and Council members. He/She should have access to other applicable documents, such as results of the City Manager's consultant efforts.
- Due to personnel confidentiality reasons, some information may need to be summarized. All identifiable employee information will remain confidential.
- Set November 30, 2008, as the report completion date.

FISCAL IMPACT: The fiscal impact of undertaking this independent inquiry would be funding for an independent reviewer. We recommend that an initial sum of up to \$10,000 be designated in contingent reserves. Any additional funding for the inquiry shall be docketed for consideration by Council. Council places a \$20,000 limit on this expenditure.

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Attachment I: Letter from Ingrid Sanden, President, Cameron Station Civic Association

Attachment II: Letter from John Sullivan, President, Cameron Station Community Association

Attachment III: Letter from Geoffrey M. Gooddale, President, Brookville-Seminary Valley Civic Association, Inc.

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DATE: SEPTEMBER 23, 2008

TO: THE HONORABLE MAYOR WILLIAM D. EUILLE

FROM: COUNCILMAN PAUL C. SMEDBERG,

SUBJECT: CONSIDERATION OF A REQUEST FOR AN INDEPENDENT
INQUIRY OF ACTIONS RELATED TO THE NORFOLK SOUTHERN
ETHANOL TRANSLOADING FACILITY

ISSUE: City Council consideration of a request for an independent inquiry of City staff actions related to the site location, all aspects of the construction process, and the eventual opening and operation of the Norfolk Southern Ethanol Transloading Facility. This inquiry should include all City departmental input related to the site and the facility.

RECOMMENDATION: That City Council authorizes an independent inquiry into City staff actions related to the the Norfolk Southern Ethanol Transloading Facility as described above. The independent inquiry will be lead by Vice-Mayor Del Pepper and Councilman Ludwig Gaines who currently serve as co-chairs of the (Alexandria), Norfolk Southern Community Monitoring Group (NSCMG). To help bring focus to the independent inquiry, Vice-Mayor Pepper and Councilman Gaines will serve as the principle liaisons to the independent third party reviewer and will seek guidance from the NSCMG in the initial stage of the inquiry as they select specific issues for review, develop a series of questions and frame a report format.

BACKGROUND & DISCUSSION: In April 2008, the Norfolk Southern Corporation began an ethanol transloading operation at its intermodal facility located in the City's West End. Although City staff had knowledge of the impending operation, months in advance, neither City Council nor potentially affected communities near the facility received notification. On May 15, 2008, City Manager James Hartmann sent a memo to Council advising of the ethanol transloading operation. After notification about the ethanol operation, Council received numerous inquiries from the community, including requests for the release of information associated with the ethanol operation. Subsequently, the staff made public hundreds of emails dating between June 20, 2006 and June 23, 2008, and, on June 16, 2008, launched an ethanol information page on the City's website. In addition to these steps, City Manager Jim Hartmann appointed Steve Mason, Special Assistant to the City Manager, to serve as the primary contact to the community on the transloading issue. The City Council established the Norfolk Southern Community Monitoring Group ("NSCMG") to support the City's actions to shutdown the ethanol transloading facility, to track progress of ongoing regulatory, legal, and permit activities; and to keep the wider stakeholder community informed about its work.

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The management of the ethanol transloading facility opening, makes it clear the City is, did not meeting acceptable standards for transparency and accountability. In order to address community concerns, and ensure our government is ready to meet the challenges ahead, it is critical that we conduct an independent third party review of this situation to ascertain whether or not the Council and community have all the necessary information to understand what happened.

We recommend the following for Council's consideration:

- Authorize Vice-Mayor Pepper and Councilman Gaines, to direct the activities of the independent reviewer in consultation with the NSCMG. Due to personal confidentiality reasons, Vice-Mayor Pepper, Councilman Gaines, and the independent reviewer will protect employee confidentiality.
- Authorize Vice-Mayor Pepper and Councilman Gaines, in consultation with the NSCMG, to develop, for Council's consideration, the necessary qualifications for a candidate that would be best suited to conduct such an inquiry, as well as recommend the scope of the work that is to be covered.
- Authorize Vice-Mayor Pepper and Councilman Gaines, in consultation with the NSCMG to review the candidates' applications and make a recommendation, for Council's final approval.
- (I would cut this out – this does not sound like an "independent inquiry" to me)
- The City staff shall provide the independent reviewer access to all relevant information, including information produced because of FOIA requests and make available for interview City employees and Council members. He/She should have access to other applicable documents, such as results of the City Manager's consultant efforts.
- Due to personnel confidentiality reasons, some information may need to be summarized. All identifiable employee information will remain confidential.
- Set November 30, 2008, as the report completion date.

FISCAL IMPACT: The fiscal impact of undertaking this independent inquiry would be funding for an independent reviewer. We recommend that an initial sum of up to \$10,000 be designated in contingent reserves. Any additional funding for the inquiry shall be docketed for consideration by Council. Council places a \$20,000 limit on this expenditure.

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