

A work session of the Beaufort City Council was held March 18, 2014 at 5:00 p.m. in the Beaufort Municipal Complex, 1901 Boundary Street. In attendance were Mayor Billy Keyserling, Council members Donnie Ann Beer, Mike Sutton, Mike McFee, and George O'Kelley, and City Manager Scott Dadson.

In accordance with the South Carolina Code of Laws, 1976, Section 30-4-80(d) as amended, all local media were duly notified of the time, date, place, and agenda of this meeting.

CALL TO ORDER

Mayor Keyserling called the work session to order at 5:00 p.m.

DISCUSSION REGARDING MARINA REDEVELOPMENT REZONING PROCESS AND TIMELINE

Mr. Dadson said staff wants to ensure that council knows all the matters and that they have adequate notice as to when council is ready to begin the process. There are 3 components to the agreement: the design, rezoning process, and price.

Mayor Keyserling said **Libby Anderson** and **Lauren Kelly** sat with **Alan Dechovitz** and took the code and all the processes and showed what the steps were. He put that and the lead times into a calendar, but Mayor Keyserling said, "It misses a lot of what could happen in the process." He feels 3 deals must run concurrently: an acceptable plan for the Marina, an acceptable financing plan, and a parking plan. All three are tied together; the memorandum of understanding was written a year ago and it's very broad. The more Mayor Keyserling has thought about how to tie the 3 together, the more complicated it gets because of the increased number of partners involved.

Mayor Keyserling feels they "should postpone as long as they can," in some respects, but on the other hand, as they bring in the planning group in the second phase, if they are spending the money, if it were him, he wouldn't want to spend it on a property that he didn't control or that he didn't even know if it would be rezoned. It's different than a private deal. It has to be zoned or not.

Jim Chaffin is doing a brief narrative presentation next week, with no drawings, Mr. Dadson said, "Just what they would like to proceed with before they spend the money" on measuring, surveying, etc. There are enough votes on council, Mayor Keyserling said, that if the project is suitable for the site, and it gets through the review processes, and they come up with a parking and zoning plan that works, he will vote for it, as they have been working on it for 3 years.

Mayor Keyserling said **Jon Verity** felt that they would at least see drawings and that there would be assurance that they would see something that worked. Mr. Verity has been shooting for May. Mayor Keyserling said they need to determine when they will be ready. Mr. Dadson said the staff needs to know when that is so they "can advise about lead times for all of the elements."

Mayor Keyserling said in regard to the memorandum of understanding, it must be modified, because their timetable was slowed down, but what else needs to be changed is to be determined.

Mr. Dadson described possible scenarios that could happen “to get there,” so he asked which came first to council’s mind to move through to the rest of the processes. Ms. Anderson said it doesn’t go back to the Metropolitan Planning Commission. Councilman Sutton asked what the question was, and Mr. Dadson said it’s when they hold the public hearing on rezoning. Councilman Sutton said that could happen any time with appropriate notice. Councilman Sutton said it’s already a public debate, and he sees no problem with a public hearing on rezoning. In the past, they have done a first reading and rezoning before taking a second vote and moving something forward. He said the memorandum of understanding says a plan has to come forward before anything is finalized. Mayor Keyserling said there are a lot of parts to that, before and with the plan.

Mayor Keyserling said so many people are second guessing what’s happening, that it’s a question of whether they would be rezoning that property if they weren’t trying to get something done there. So given it’s complications, he wonders why they would rush it through. Zoning only takes a month to do and is the least complicated part of this project, if a majority of council agrees that something should be done with the property. 12 parcels were rezoned last week with nothing specific happening on them, Mayor Keyserling said. But because people are imagining a worst-case scenario, they will talk about something that doesn’t even exist, and then they will have to again when they get to the final deal. Sector One was like this, too, in that it passed first in good faith and then had to be passed again with the Civic Master Plan. The most controversial part of the Sector One plan, the marina redevelopment, has been passed twice now, though *the ideas about uses* are the difference, and that’s the crux of the problem.

Councilman McFee said they need to determine when a realistic time would be to do the public hearing. Mr. Dadson said council went to a public hearing and tabled it, then advertised it again, then pulled it, so they don’t want to do it until they advertise the date they will do it and people will know when they have to do what they have to do. First and second readings “can be more tactical.” The city owns and controls the property, Mr. Dadson said, and “has the zoning policing power.” He also suggested that they might need to debate whether a public hearing informs the process. Councilman Sutton said it gathers the public’s comments at first glance as to what may happen. They already know some in the community don’t agree with what they *might* do, so he doesn’t mind having it whenever they have it.

Mayor Keyserling said the public meeting will be presentation of the Marina Partners’ concept. Councilman Sutton said they have an memorandum of understanding, and they should have some guarantees that the government has the wherewithal to carry out a full process. They need to indicate that they will go through the steps and hear what people have to say, and there are currently good players at the table who can bring them some options.

Councilwoman Beer said the parking is the elephant in the room. They can't do away with what they have until there will be something in place when something new is there at the current marina parking lot. Mayor Keyserling said he has heard fears about high-rise buildings blocking the view. They have always discussed extending Bay Street; that would block the views except at West Street. Extension. To keep imaginations from running wild, they need to see what the planners have in mind, Mayor Keyserling said. The parking plan could be more on-street parking and they could add it if DOT gives the encroachment permit. The property isn't being rezoned for no reason, Mayor Keyserling said, but until the reason is better articulated, he doesn't see the point in having people coming in to tell council what they think might be there if there's no plan.

Mayor Keyserling said he'd convinced himself that the Redevelopment Commission and the developers need to get together and come up with a time frame that they think is reasonable. They have to modify the memorandum of understanding anyway, and come back with a plan that council can work around. Mayor Keyserling "would love to see how the package ties together" before going through the public debate on it, "to avoid doing the debate 4 times."

Mr. Dadson said they need to decide on what the clear triggers are for making their decisions. Councilman Sutton said Mayor Keyserling is saying they need a conceptual plan before they take it to a public hearing. Councilman Sutton said conceptual plans can come up completely different when it goes through the process. Even if they do a public hearing with a conceptual drawing on the wall, it may still come out complete different throughout the process. Mr. Dadson agreed that when a concept goes up, the appointed boards can take it in different directions. They could tell the developers to apply for a PUD, though that's problematic. Councilman Sutton and Mr. Dadson agreed on the variety of things that can change a conceptual plan.

Bill Harvey said the memorandum of understanding ended up being a draft everyone agreed with, and it required the developer to come up with certain things before the city had to transfer the property. There was a sense that the developer was not going to be required to have everything on the table before the city would be called upon to do anything, he said. The timetable on the zoning is loose in the memorandum of understanding and is designed to be, but the developer wanted the city to be committed before they develop final plans and invest a tremendous amount of money. He agrees that they should gather through the Redevelopment Commission to ensure that Marina Partnership is OK with the city and feels it's committed.

Mr. Dechovitz said he spoke to JC after Mayor Keyserling spoke with him today. The presentation is a written conceptual document. It doesn't talk about financing, Mr. Dechovitz didn't think, or parking. They have asked that the Redevelopment Commission take charge of the parking element. The developers need to spend a lot of money, and at some point, they need to have a good faith action by the city that shows it will seriously consider this. Councilman Sutton said he believes there's a better use of the property, but the process involves citizen boards, and the outcome from that can't be guaranteed when they only get a conceptual drawing. Mr. Dechovitz said he has told them that when the process went to the

Historic District Review Board, it is out of council's hands. The Historic District Review Board process has multiple steps.

Mr. Harvey said the public input on the development plan that triggers the obligation to transfer the property is "the Big Kahuna." Councilman Sutton said the way the regulations are set up, it's a difficult process for anyone. Mr. Harvey said there's no step that requires them to transfer the property. The city will still control it after they rezone it. If they have a public hearing now, Councilman Sutton said, "it will be a debate about a fiction"; the end result is still unknown. If they do a conceptual, it will have to go through review processes, and "it could start square and come out round." They want to appease the developer, but there's a process that has friction to it – how to get these things to mesh together.

Councilman Sutton gave the reasons he feels this should take place on the marina property and added that the city is committed. They need to be made to feel more at ease without mistepping in the process. He hates to bring the public to a meeting that has no purpose but to say, "Trust us."

Mayor Keyserling asked Ms. Anderson about the Civic Master Plan, which the Metropolitan Planning Commission voted down; Ms. Anderson said they recommended approval. Ms. Anderson said they had concerns about some of the language. They recommended denial of the rezoning. Mayor Keyserling said when it's not a zoning issue, he asked if it would go through Metropolitan Planning Commission. Ms. Anderson said no, "they look at the big picture." Sometimes a developer will put up an image, but she tells the Metropolitan Planning Commission that it is just an idea and may or may not be done.

Mr. Harvey said because the city owns the property, it is different than any other project that's been done in the city. Mr. Dechovitz said they have done all they can to make this an easy decision for council: there are two reputable developers who people trust, even if they don't trust the city. They will bring the city a plan that council will want to approve, but they have to do *something* "to instill in the developers the same confidence as to the city's track record at approving developments." They need to have their confidence developed before they spend a lot of money, Mr. Dechovitz said. Mr. Harvey said at least after next week, everyone will have an idea what's being proposed.

Mayor Keyserling said he wishes they didn't have any of this right now, because then he would vote to rezone it in concert with the Civic Master Plan, but "confusion and intentional obfuscation" that will happen in the next few months will be an ongoing problem. He doesn't feel that anything they do will change the speculation of those who won't approve of anything on that property.

Councilman Sutton said he agrees with Mayor Keyserling that it would be better if nothing was pending. He said for him it's about the sequence of events.

Councilman Sutton said if you get to preliminary approval by the HDRB, you're almost there. Councilman O'Kelley asked if the Historic District Review Board will consider it if it's not already zoned to fit. Councilman Sutton said yes, they are supposed to look at architectural design, not whether it's zoned.

Mr. Dechovitz said the process was a public hearing on the written conceptual idea, at which point council would express itself as to whether that would be a guiding document they were OK with, then the developers would spend time with the Historic District Review Board and get to conceptual approval before they came back to council for first reading on zoning; the second reading wouldn't occur until they'd gotten through the Historic District Review Board process. Mr. Dechovitz said the public hearing would be the confidence-building step the developers are asking for.

Councilman Sutton said the next step is to have the public meeting on March 26 and schedule a meeting on rezoning after it, have that presentation brought forward, and bring to council that information to show the potential for the public review process, and everyone will get to hear that process. Mr. Dadson said there's a meeting next week; the public hearing could be April 8, and to have that, they would need to put an ad in this week's newspaper to have a hearing on rezoning the marina. Councilman Sutton said that the presenter will bring the presentation from the March 26 meeting forward again, adding what they have learned at the public meeting: "Then the process will start to unfold."

Mr. Dadson said that the city is the owner of the property, and they have the right to say that before they go to preliminary approval, they want to see what they have from conceptual approval, etc. The developer is working with the owner/the city to develop the agreement. Councilman Sutton said if council gets involved with a project, they will be accused of doing nothing but delaying the process, so he thinks it has to go to the public board first before it goes to council.

Mayor Keyserling asked if Mr. Dechovitz had talked to Mr. Verity this week, and Mr. Dechovitz said no. Mayor Keyserling said he believed that Mr. Verity had talked to Marina Partners about waiting until May, and then they would have conceptual drawings. Mr. Dechovitz said it won't get any easier taking longer. They need to keep the process moving "until the guys are confident enough to put something on paper that people will feel comfortable with." The longer it takes, the more chance there is they'll be discouraged or something will go amiss, he added.

Mayor Keyserling said there's a perception that they are voting on a secret backroom deal, and when people come to the meeting and public hearing, they will have all sorts of ideas, and they will keep coming back like they did with the Civic Master Plan when Sector One was already passed and this was the only contentious part. Mr. Dechovitz said the developers just want to be put in the position that anyone else would be who had another already-zoned property: that if it gets approved, they can build it.

With conceptual Historic District Review Board approval, the expectation is that the next round before that board is likely to be similar enough that it will be approved in that round (preliminary) as well. There was a consensus to push ahead on the public hearing to conform the zoning to the Civic Master Plan, not on a particular project. Councilman Sutton asked if the app should come in to the public hearing and present what they presented 12 days before at the public meeting. Mayor Keyserling said he didn't know but it's NOT a public hearing on a particular project, just on the Civic Master Plan and conforming the rezoning to it.

Until the conceptual plan is submitted to the Historic District Review Board and approved, Mr. Dadson recommended that they say that there will be no first reading until that happens. Mr. Dechovitz said that he didn't know if the developer would find that to be fair. Mayor Keyserling said to him that wouldn't be much of an assurance. Mr. Dechovitz agreed but said they're flexible; still, he would rather the city do something more definitive, and he has no doubt that the project will be something everyone wants.

Councilman Sutton asked "how to frontload this to get it through conceptual approval" by the Historic District Review Board. He added that he would be willing to take it to first reading, not just public hearing. He would like to see it get past preliminary approval in the Historic District Review Board before it went to second reading, though. Councilwoman Beer said first reading won't change anything, and it "might give the developers some comfort that the city is doing something."

Mayor Keyserling asked why they "wouldn't just charge through and rezone." Councilman McFee said because of mistrust and Mayor Keyserling said that will still be there regardless, and Councilman McFee and Councilwoman Beer agreed.

ML said she feels that "the culture of mistrust is legitimate," in that a lot has been put in front of the public that it has reacted to when they weren't expected to react to it so vehemently, e.g., the renderings in the Civic Master Plan that the public believed is what would be built there. She thinks council is opening itself up to a long period of "the public reacting to what the city doesn't intend to be there."

Mayor Keyserling said he would still want to rezone it if the Marina Partners walked away tomorrow because that's what they voted on in the Civic Master Plan. An element of the public wants nothing in the marina parking lot, and they will do whatever they want to do to make their point; another group in the public will work with and talk to people and will meet with developer, whether it's this one or the next one. The Civic Master Plan doesn't change, Mayor Keyserling said, even if these developers leave tomorrow. He feels some people will never be happy, and it's like the Waterfront Park, which people didn't like until after it was completed. Councilwoman Beer said most of the critics don't come to council meetings and address the council; they just talk amongst themselves.

Mayor Keyserling asked if these discussions become a contract of some sort. Mr. Harvey said no: "Council doesn't act until it acts."

It was agreed that the first reading on the zoning would be on April 8, the same day as the public hearing. Councilman Sutton said if this developer or another one steps up, the zoning needs to be done to meet the idea of the Civic Master Plan. It was then agreed that the public hearing would be on April 8 and the first reading on April 22.

DISCUSSION REGARDING WATERFRONT PARK PROPERTY AND LEASES

Mr. Harvey said the genesis of this was Luther's Restaurant. Mr. Dadson said the property line of the park is "very squiggly," and Councilman Sutton said, "It's a saw blade." The city is concerned with protecting its interests, Mr. Dadson said.

Councilman Sutton said there was an applicant for the lease deal who had already built into the city property line. Three are other businesses that haven't asked for leasing into the park. He has data on the noise ordinance, but he doesn't want to make the work session about the noise ordinance. Councilman Sutton feels certain venues on Waterfront Park who want to use private property on the park or are asking for private use of public property, they are setting the city up to create a larger entertainment zone, which is fine, but creates an unintended consequence of greater sound nuisance in the future and he wants to talk about that.

Mr. Harvey said the noise issue is a valid discussion. This matter is directed not to create any further problems. Councilman O'Kelley asked if it should be included in the leases that the lessees won't have amplified sound. Mr. Harvey said that's in the Plums lease.

Councilman O'Kelley said other parts of the public way are used without lease; The Old Bull Tavern has a serving area on the sidewalk on city property. Emily's does the same thing. When he was on council years ago, there was concern about an upper porch on Bay Street leaning and council approved columns to keep it up on the sidewalk. His point is that this is OK, and there's already a tacit approval for this kind of thing. Councilman McFee said this prescribes who's doing it and using it, so he feels it's appropriate. Mr. Harvey said they are writing up the regulations instead of just letting them happen by circumstance. Councilman O'Kelley said people take food from the restaurants and go out to the park to eat.

LaNelle Fabian said she parks in the Yoyo's lot, "and people fly around the curb," and there are more pedestrians there now. The entrance to the park is at the curve, so people don't walk straight across, and she worries about kids coming off the steps to the park, so she suggested a sign or crosswalk there for safety. There was a discussion about who owned that part of the road. Councilman Sutton suggested a speed bump, rather than a sign that would be ignored. Councilman O'Kelley suggested a hard portable speed bump.

Councilman Sutton said the lease issues aren't the issue. Mayor Keyserling said they should define the noise issue and then have a work session on it. Councilman Sutton gave out copies of the noise ordinance. Councilman McFee said he's heard the most complaints about amplified music, which is not supposed to be amplified outside. Mr. Harvey said that's not meant to apply to the music district; it applies to people in their back yards. Councilman Sutton described how

it's open to interpretation. Councilman Sutton said the areas outside of downtown are rarely spoken of. Some language needs to be changed to fix this.

Councilman O'Kelley said Section E pertains to the whole city. Mr. Harvey said Sections C&D are carved out for the nighttime music district. Councilman O'Kelley said loud and unseemly noises are not allowed anywhere, and "that runs the gamut." Councilman Sutton said he'd like a workshop. Councilman O'Kelley said there are only a handful of noise ordinance complaints over the course of a year. **Chief Matt Clancy** said there aren't many overall, but they see more cases of loud and unseemly noise from a vehicle. Sunday–Thursday, Councilman Sutton said, there's no ordinance from 2:00 – 9:00 AM. Councilman O'Kelley said they still have to abide by the loud and unseemly noise part, though.

Mr. Dadson asked **Chip Dinkins** when they make the bulk of their money on a weekend, and Mr. Dinkins said lunch sales at Plums and dinner sales at Saltus. They once did a lot of evening business from 10-2, and they still do OK, but it's not as lucrative as it once was. They have always run their bands until 2 AM and didn't know about the ordinance that made them stop bands at 1 AM. They would like uniformity as to how it's measured. Their bands are all inside. They have been asked to have the music down after 1 AM. Councilman McFee asked if they are now ceasing at 1 AM or lowering it between 1 and 2 AM. Mr. Dinkins said he is waiting to see what council does. They want clarity as to what they can do and be legal.

Councilman Sutton said they need to determine if these are the parameters they want for where the city is going. If they want a bar row downtown, some will have indoor music with no barriers to the park. Mayor Keyserling said Councilman Sutton wants the ordinance reviewed, and Councilman Sutton said yes, until they are very comfortable and to determine if they want to make changes.

Councilman Sutton said Panini's went through building modifications to their outside patio. Councilman Sutton said the changes were approved, and if it were going to make things louder, he would like to know about it; they might have remediated some noise issues if that had been a part of the permitting process. He thinks it's not going to get better for people living downtown. Mr. Harvey said the ordinance in regard to the decibel level and the uses hasn't been tweaked for many years. The first paragraph was modified for the street preachers and C&D were for the outdoor music district.

Mr. Dadson asked where the nighttime music district was, and Chief Clancy said it's the east side of Bay Street, primarily but there are restaurants in other areas of downtown now. Mr. Harvey said none of that has been tweaked. Councilman McFee suggested that making the ordinance stronger for the Bay Street businesses would put unfair restrictions on businesses that want outdoor music that aren't on Bay Street and pay the same amount in business permits and taxes.

Mr. Harvey said when **Nancy Rhett** built apartments above Bay Street Jewelers, they tweaked the ordinance then because of bass amplification going into the walls of the Rhett Suites. This

ordinance has been tweaked with reference to residential areas that close to Luther's. Ms. Fabian asked if this applies to music or sound. A business is alleged to be encouraging their patrons to be loud after 1 AM.

Mr. Dadson asked, if they want people to live downtown, and more people do, what's the proper mix of business and residential? If you live downtown, you have to expect noise, but what's the best case of the businesses and the residents who live there? Ms. Fabian said 30% of one business' bar business is between 10 and 1 AM. Mr. Dinkins said there's profit to be made. Mr. Dadson said there are costs to the city, too. Mr. Harvey said the downtown music district ordinance now is designed to help weigh that balance. It was written to try to foster co-existence with residences.

Councilman Sutton said different buildings can withstand different levels of decibels. Councilman O'Kelley said they had gone far afield of the topic. Mayor Keyserling said they had decided that they needed to review the whole ordinance. Mr. Dinkins asked if council would approve his project by next week. Mr. Dadson said he thought they should.

Councilman McFee asked if it's appropriate to add to the ordinance at Yoyo's that they must add a safety component to the steps. Mr. Harvey said he thinks that's appropriate, and they can require it because it's going into the city's property.

EXECUTIVE SESSION

Pursuant to Title 30, Chapter 4, and Section 70 (a) (2) of the South Carolina Code of Law, **Councilman O'Kelley made a motion, second by Councilman McFee, to enter into Executive Session for the purpose of a legal briefing, and a discussion of personnel and land acquisition. The motion passed unanimously.**

Councilman O'Kelley made a motion, second by Councilwoman Beer, to come out of Executive Session and resume the work session. The motion passed unanimously.

ADJOURNMENT

There being no further business to come before City Council, the meeting was adjourned at 7:47 p.m.

ATTEST: _____
IVETTE BURGESS, CITY CLERK