

A work session of Beaufort City Council was held on August 18, 2015 at 5:00 p.m. in the City Hall Planning Conference Room, 1911 Boundary Street. In attendance were Mayor Billy Keyserling and council members Mike McFee, George O’Kelley, and Phil Cromer, and City Manager Bill Prokop. Stephen Murray was absent.

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.

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

CONTINUED DISCUSSION REGARDING REVISIONS TO LANDSCAPING AND TREE CONSERVATION ORDINANCE

Mayor Keyserling said that concerns that were raised at the last work session were addressed in other parts of the ordinance. The PTAC chairperson was not able to be at the meeting, so the matter would be tabled. **Liza Hill** said this ordinance has never affected single-family residential development, and won’t now. **Steve Tully** was concerned about how this would affect Whitehall, Ms. Hill said, but it does not apply to single-family lots. She found that Mr. Tully’s development has a surplus of trees, so he does not need to mitigate anything per this new definition. Street trees need to be planted, but there does not need to be any mitigation for grand trees removed.

Dick Stewart asked if there will need to be a tree survey under the revised requirements “to determine what qualifies as a grand tree,” and Ms. Hill said, yes, that has always been required. On a survey, they usually request 8-caliper inch trees or greater, but about 50% of the time, the surveyors – especially those from out of town – do 4-, 5-, and 6-caliper inch trees. With the revised ordinances, “We would now ask for magnolias of 4 caliper inches to be surveyed. Mr. Stewart said that a tree survey is “one of the incremental costs on those parties looking to do development.” He said the survey has “a lot more detail . . . required under this proposal.” Ms. Hill corrected Mr. Stewart about the grand trees that need surveying. Some of the sizes are reduced that now qualify as grand trees – but not the types of trees to be surveyed – because they are increasing the numbers of smaller trees that *become* grand trees. They copied what the county has required for a decade. She said they had upgraded the city’s requirements “to be a little more stringent” like they are in the county.

Mr. Stewart said, “My point is, it’s going to be more expensive for us to do surveys, according to my surveyors, and then when I send in an arborist to determine the status of the trees . . . there is additional cost to be borne by the developers, if they choose to develop in the city.” He considers that expense to be equivalent to a contribution to the reforestation fund.

Ms. Hill said the certified arborist reports have been asked for but not required, and without one, borderline healthy trees can be left on the sites, where they can be hazardous. The idea is to reduce the size of the trees, and “go with smaller trees that withstand development better.” The certified arborist report leads to savings, Ms. Hill said: more trees that are hazardous are taken down, without the need for mitigation.

Mr. Stewart argued that his developments' certified arborist reports are "usually significantly greater" than the \$300 Ms. Hill had said the Family Dollar report cost. Ms. Hill said **Michael Murphy** did it, and it was a small site.

Mayor Keyserling told **Merritt Patterson** that many of the questions he, **Charles Aimar** and **David Tedder** had raised were "answered in the broader ordinance," and since **Barb Fariior** couldn't be at the meeting, they would look at the parts of the ordinance that looked at the "different treatment" of single-family lots, for example, in terms of the responsibility of the subdivision. Ms. Hill said **Libby Anderson** could speak to the ordinance as it applies to industrial parks. Ms. Hill said the new ordinance would affect Light Industrial zoning but not industrial park zoning.

Mr. Patterson said he wanted to make some comments, and Mayor Keyserling told him to go ahead. In general, Mr. Patterson said, he "can find nobody who complains about the result that the current ordinance has produced." He "had a long conversation with Mr. Murphy, and "a couple other tree people." He challenged "anyone" to drive around Beaufort and point out problems with trees. Beaufort is a Tree City, and "probably other communities come to us to look at the *current* ordinance we have," and wish they had such an ordinance. He asked what problem they are trying to solve with this ordinance change. It is not clear to him, "or to Michael Murphy, or to many other people that we have a problem with tree preservation." The current ordinance, Mr. Patterson said, "seems to work pretty good."

Mr. Patterson thinks there's "public distrust," because "everybody's got a Tree Nazi story, right?" So he feels that the public should be told what problems are being addressed with the revisions. Next, he said every tree on The Point is a specimen tree, and "most of the City of Beaufort is like that." He believes there is nowhere to plant an oak in Pigeon Point. Mr. Patterson listed other problems he feels are more important than this for the city to work on, and then reiterated that he thinks there is not a problem with trees. The understory trees may be a problem, he acknowledged, and preserving live oaks has lead to "wiping out all the understories," i.e., there are no trees anymore under the oaks. "You could require those to be planted . . . but we're not addressing the diversity that way."

Mr. Patterson went on to say that if he pays a reforestation fee, "the city will go do something with it," which he said means a reforestation fee is "nothing more than an impact fee." He described what he thought would "go down better politically," which is to plant a tree wherever someone wants to plant one. The property owner, Mr. Patterson believes, should control mitigation. Rather than contribute to a fund for the city's use, "they can actually plant a tree." That "and several other things" would make the ordinance "much more palatable" to Mr. Patterson.

He went on to describe which trees among those that had been determined by PTAC and city staff to be specimen trees he feels "are not the standard our community accepts as specimen trees." Mr. Patterson termed his remarks "positive comments" and warned again that these ordinance changes are not going to give council "much bang for your buck with the citizens."

Mr. Stewart said he had planned a presentation, then understood the matter was tabled; however, he said he “wanted to give my opinion and the opinion of a number of other folks that there are three major problems” with the proposed ordinance revisions. “Number one, if we were really interested in trees, we would have found ways to let people plant them,” Mr. Stewart said. He referred to “the gazebo and a fenced-in area” at Jean Ribaut Square. “We proposed to plant trees and make that area a park,” he said, “and we were denied the opportunity to do that because it wasn’t in the right place according to the pictures.” The city’s “Boundary Street plan said we want a network of green spaces,” so Mr. Stewart cited places 303 Associates had put in a park and green space in Beaufort Town Center, including the Open Land Trust’s marshfront property. “We wanted to make that park the third leg of that,” he said, referring again to the parking lot at Jean Ribaut Square. “We’re delighted to see city council’s here with some green space in front of this building [City Hall] instead of parking. We were denied that opportunity.” Mr. Stewart continued that he feels “we ought to say ‘yes’ to people instead of ‘no.’ I spent \$80,000 in planters and stuff. We put a few small trees in there. We would have taken up that asphalt and made a park. That’s not long-term; that’s fairly recent.”

“Two,” Mr. Stewart continued, “this is really about creating a fund for the city on the backs of commercial development. We already pay 2% more in electricity in the city than you do in surrounding areas. If you want to destroy trees, encourage people to build outside the city limits because that’s the definition of sprawl. Not only do they tear down things to build things, they build highways, more parking spaces – (because) you can’t walk from place to place; you have to drive. Just look at the peninsula of Charleston and areas around it,” he said. “This is just another instance of making it less predictable about what you can do: timing and cost. Another study, another fee, another decision about remediation. What’s going to happen is folks will just pay the money, and I don’t know that the trees will be improved.”

“Finally,” Mr. Stewart said, “let’s look at economic development as a goal of the city. The Family Dollar site, if you look at the last several years of what that property values has done, it’s declined about \$750,000 to around \$175,000, is my recollection. This development . . . is going to bring in about . . . by my estimate – \$9000 to \$10,000 in property taxes per year. It may be twice that, because I don’t know what the building permit says, but of that, that’s \$2,500 or \$3,000 to the city. Plus, you get the building permits, plus you get the business license fee, which as you know is significant. It’s a bigger portion of the city budget, I think, than probably taxes are today. I don’t know that, but I’ve been told that. So every time you make it more difficult for somebody to invest in the city in redevelopment, it goes directly against the stated policy of this council to pursue and encourage redevelopment, infill, and otherwise. When you do that, it pushes people to behave in strange ways.” By way of example, Mr. Stewart pointed out that “the front door of Margery Trask’s house” has a wall on the other side because of a tax policy when the house was built that was based “on the number of doors. It creates strange things.”

His last point, Mr. Stewart said, “is what I refer to as the shoot, shovel, or shut-up effect.” He shared an anecdote about a Utah rancher who was stopped from ranching because he had spotted a species protected by the EPA’s Endangered Species Act, only to be told “18 months

later” that “it’s OK” to do so, “so you can start again from nothing.” Other ranchers in the area at this time, Mr. Stewart said, concluded “‘If you see one of those species, shoot it. Bury it. And don’t tell anybody.’ The very act intended to protect the thing lead to (its) destruction.”

He said he hasn’t read the ordinance, only an article about it in the newspaper, “but I’ve talked to a few other business people, and my immediate response is, ‘OK, so where are my 3” trees I need to cut down this week? And my 11” trees I need to cut down next week. And the other places where I need to cut out these trees that are going to be a hazard for me if I try to redevelop that lot.’ I’m not suggesting I’m the only one that feels that way; I’m suggesting that’s what will happen if you pass” the ordinance changes.

“More importantly,” Mr. Stewart continued, “the reality of the situation is, the economic benefit of that Family Dollar store, far exceeds the \$3000 it’s supposed to be. If you want to set aside money for trees, do it. Take it out of the budget. Take it out of property taxes. To simply assume we can keep layering this and that and this and that on people that are too stupid to invest somewhere else . . . implies that only really stupid people here will do stuff. Smart people don’t come to places where it’s hard to do business . . . It’s very easy to create another (Highway) 278 and another Bluffton Parkway-type environment where everything’s spread out.” Redevelopment and investment, Mr. Stewart said, “is the challenge that you folks say you embrace, and it needs to be reflected in the policy.” Revision of the tree ordinance, he said, “is just another example” of the city not following its stated policies.

Councilman McFee said if this matter is tabled, “let’s table it.”

WHITEHALL DEVELOPMENT

Mr. Tully said this is the first public presentation of the proposed public-private partnership at Whitehall. He said he and Mr. Stewart are working with the city, the county, “and a number of other people,” and the project is moving slowly but gaining support. He and Mr. Stewart are making a \$2.3 million contribution into this project “one way or another.” The park in the development will be valued at \$5.6 million, he said, and he described how that number was attained: “Our land was \$3.8 million – that would be the state appraisal – and the development costs for the loop road, boardwalk, and dock are approximately \$1.8 million.”

Mr. Tully said he and Mr. Stewart would acquire “the park land at a discount.” For the costs to develop “the interior – roads and such,” they “are trying to encourage the city, the county, and whoever to join us in investing in this as a civic investment partnership. We put in \$2.3 million, we have someone putting in approximately it looks like maybe \$1.5 million, we need \$1.8” million. “We need the city’s help to jump on and help push this through,” Mr. Tully said. **Bill Prokop** had gone with them to a county council meeting, Mr. Tully said, but the meeting ran long, and their presentation was pushed to the next month’s meeting.

He and Mr. Stewart “have discussed incremental financing, fee in lieu taxes and such.” They have ruled out “some ways of funding.” They will put in \$2.3 million, he said again, that they will contribute “besides a number of other contributing factors.” They hope that “the

incremental increase in tax revenue” this project generates will be used to pay back financing that they or someone else provides for the development.

When the project is developed, Mr. Tully said, in the first year, it will generate a minimum of permits and fees at \$1000 per lot times 76 lots. “Business licenses probably in the same range.” 76 families will live in the development when it’s complete, and they will shop and eat in Beaufort. “The park should attract people. ‘Heads in beds,’ which is what everyone is looking for downtown, customers for downtown Beaufort.”

Whitehall’s park is designed to be self-funding, Mr. Tully said, and he and Mr. Stewart feel confident that it will be developed under a form-based code. The park can be a public park and the streets could be made public, too, “after we pay to develop and build” them, and the city may take over ownership or management of that. “This development will (create) \$90,000 a year in excess of the regular tax base in homeowner fees” that will “come into the city through some sort of tax overlay, municipal improvement district, or some other tool. But it’s \$90,000 a year to fund the park, maintain the park and the roads. That’s a surplus of cash, you might say.”

Mr. Stewart said, “This is not the sort of stuff I really do,” but he’s confident in Mr. Tully. He described the history of his ownership of this property. “This is the closest place you can be” with new homes and streets “and still have the authenticity of Waterfront Park,” he said. Waterfront Park and Whitehall can be connected by a walkway, which is “a good match for everything we’re trying to do.”

Buying the land and “making the infrastructure investments just doesn’t work,” Mr. Stewart said. Whitehall’s park is appraised at \$3.8 million, and “we’re proposing to sell that to somebody for \$1.5 million.” The \$1.8 million Mr. Tully had talked about “is for roads and stuff,” including the road directly in front of the park, which is unnecessary if no park is developed. Mr. Stewart said they are “talking about getting \$1.5 million for the \$3.8 million park, which is a pretty good donation, we think,” and then “the \$1.8 million we’re proposing” would be “advanced against tax revenues that would be generated out of this project.” He described how this would work.

This park will not be built out over the water like Waterfront Park is, so it should cost less to maintain than Waterfront Park does. They think “the cost numbers (for maintenance) . . . work at \$90,000” per year, according to Mr. Stewart. To “come up with that \$1.8 million in advance, so that as we sell of the lots and stuff, this gets paid back,” multi-county parks have been created around the state, their attorney has suggested, “to do just this sort of thing.”

It’s very expensive to issue a bond for \$1.8 million, Mr. Stewart said, “we would have to pay \$180,000 in fees – give or take – and hold \$300,000 in cash in reserve.” He believes “our credit worthiness is such” that if they got an agreement that “pledged revenues to repay it in the future,” they could probably get a bank “that would finance that on the front end,” with loan fees at 1% origination.”

Mr. Stewart went on to describe the benefits to the city. From the owner's asking price for the property, "the bank's taking about a \$4 million write-down" already, he said, so "we don't feel like we can push them another \$1.8 million." Mr. Stewart concluded that "somehow, if this is going to get financed, somebody – the city, the county, and some other folks – have got to come by (and) help us take some of those future revenues and recover (unintelligible), or it's just not going to work."

Mayor Keyserling said, "We're back, I think, where we started." The two bond counsels met to discuss the \$1.8 million, he said, and there was disagreement between them about what the payback was. **Kathy Todd** said she didn't recall what the disagreement was. Mayor Keyserling said everyone at the table and in the room "thinks this is a great idea," and wants to see it happen, but somehow they have to get the bond counsels to have a conversation to figure out how to do that. Mr. Prokop said, originally, the city was "going to have to upfront the infrastructure, and that was where the difference was." Now, the city is not building the roads with the \$1.8 million; it will assume "the roads and infrastructure when they're done."

Mr. Stewart said again that "the cost of issuing the bond is prohibitive," so he and Mr. Tully are proposing that the city "pledge the proceeds from taxes to repay a note (that) we would get from a bank . . . but that note would get repaid out of the proceeds from the taxes that would come out of a multi-county park." Ms. Todd said there was no talk of a multi-county park with bond counsel; "we talked about a MID," and the cost of putting that in place was expensive." Mr. Stewart described how a multi-county park in the Town of Port Royal worked. A multi-county park is simpler than a TIF, he said, and "you can define it differently, and the school district is already participating, and so you get to decide how much of their fees get paid to them and how much you keep to pay off debt."

Ms. Todd asked if there were a new pro forma. Mr. Tully said nothing had changed.

Councilman O'Kelley said these figures that are being discussed "are way above my pay grade." "The \$90,000 is fees paid to the city above and beyond property taxes," Mr. Stewart told him. As a lot is built, it's \$1200, over 5 years. Councilman O'Kelley asked what the \$90,000 is for; he said it "can't all come to the city, because you've got to worry" about street maintenance. Mayor Keyserling said, "That's why it would come to the city," for park maintenance. Councilman O'Kelley said if the homeowner fee is all paid to the city, and there's a need to fill a pothole in the subdivision's streets, where would the money come from to pay for it? Mr. Stewart said there would not be a homeowners' association, and they are proposing that the streets would be publicly owned. There will be a tax on each property of \$1200 a year. That amount, per lot, would come to the city directly, so *the city* would fill in that pothole. It would maintain the streets because it owns them.

If the city owns and maintains the streets, Councilman O'Kelley said, "Then the \$90,000 could not just be to retire the debt, and it could not be to maintain that park alone." Mr. Stewart said he hadn't meant to imply that the \$90,000 would repay the debt. He said he'd meant to say that the \$90,000 "can be used for the streets and the park, but the park will not have the

maintenance requirements of Waterfront Park.” Councilman Cromer said, “If they do the roads right, you’re looking at maybe 20 years before the problems are going to creep up.” Mr. Stewart said the property taxes would be used to repay the \$1.8 million.

Mayor Keyserling said he understands the city receiving \$90,000 in perpetuity as an assessment fee to maintain the public facilities, which are the roads and the park. Councilman O’Kelley asked Ms. Todd to give “a for instance.” When Councilman O’Kelley said he didn’t know the values of the houses, Mr. Tully said, “\$40 million, total.” The price of the houses would be an average of \$500,000, which, Ms. Todd said, “is in their pro forma.” Mr. Prokop said the \$1200 fee is paid per lot, as soon as it’s bought, “whether there’s a house on it or not.” Mr. Tully said, “It sounds like it’s per lot. It depends on where we get down the line on that negotiation,” which he said is “open.” He said, “It’s critical for me to sell this product and not have a homeowners association, to make it a cool neighborhood that just fits into Beaufort like every other neighborhood.”

Mr. Tully said Whitehall’s waterfront park would be a passive park, like the Bluff on Bay Street is. Habersham and Newpoint both charge their residents \$1200 a year “to maintain their whole development, their parks, everything.” The property value of the development will be \$40 million, and Mr. Tully reiterated that he feels “that might be a low number,” based on the “interest in fancy stuff” that the people he’s spoken to have expressed. He said the park is about 4 acres, and having it, “everyone here thinks, is important.” He and Mr. Stewart “will contribute \$2.3 million,” but “we can’t fund it by ourselves,” and while there are “ten ways to get to the same number” to pay for it, “we need help constructing those values.”

Mayor Keyserling said he understood from county staff two weeks ago that the project is moving forward, the conservation fund is moving along, and the multi-county park “was the way they thought it would work.” He asked which committee they had to go through. Mr. Tully said they went to the county’s Finance Committee meeting last night, hoping to report the results of that meeting to council today, but “they didn’t really have time for us.” They will get back on that schedule, then go before the Natural Resources committee. There are stat committee meetings they have gone to as well. Mr. Tully said the application to the conservation bank has been sent in, but their meeting hasn’t been set yet. They need “some champions” and for this to be public, he said, adding again that he and Mr. Stewart are offering \$2.3 million again. They want the city “to do whatever it takes to make this project go through.”

Mr. Stewart said there “seems to be some conflict on county council related to the Graves’ property and various other . . . economic development topics, and that seems to be filtering through to a lot of other decisions” which are being evaluated differently than if “had that situation not occurred.” He continued, “If you talk to everybody individually, they really like” the Whitehall project, “but certain folks want to trade what they’re doing for some endorsement of what’s happening at the Graves’ property,” which he’s not interested in doing, “and I am not asking the city to do it.” This is not a county park, he said. This is in the City of Beaufort, and it needs to be city-led: “The county is . . . too distracted . . . to take a leadership role.” Mr. Stewart said people have told him he’ll find a way to pay for it if it’s what he wants to

do, but he would “walk away” if there’s not a way found to fund this “because it’s not really what I do, anyway.”

Councilman O’Kelley said the homes in the development “look like grand homes,” and he asked if they would have covenants. Mr. Tully said no, it’s a form-based code. Councilman O’Kelley said if there are no square footage requirements, for example, “I could go build a bungalow and it’s not going to be anywhere near the value” Mr. Tully has estimated. Mayor Keyserling said the form-based code wouldn’t allow that. Mr. Tully said, “We will control it through the city’s form-based code, which we’ll write.” That is what they did at Midtown, where they had three builders. Councilman O’Kelley said, “You directed the type and size of the houses.” Mr. Tully said there is lot diversity at Whitehall, unlike at Midtown, where all the lots were about the same, so the house sizes were, too. At Whitehall, if “you spend \$140,000” for a lot, you’re going to fill” it up. The architectural standards will be controlled. “The built up value will definitely exceed \$40 million,” Mr. Tully said, “when it’s built out in tax value.”

Mayor Keyserling said this would not be resolved here. He said they are asking council to find a way to finance \$1.8 million for the park. If they weren’t getting ready for the audit, he would say they could get together with Mr. Prokop and Ms. Todd in a week, but two weeks would be better. Mr. Tully said they had wanted to make their intentions known and give a presentation “in a full and public manner.” Mayor Keyserling said that everyone likes the idea, and he hears Councilman O’Kelley’s maintenance issues.

Ms. Todd asked about the pro forma: if the MCIP would replace the MID and the TIF. Mr. Stewart said, “We can do that if you’d like. That’d be the same effect.” Mr. Tully said his goal would be that this be profitable for the city. It wouldn’t happen if it weren’t profitable for Mr. Stewart and him and for the city.

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, seconded by Councilman McFee, to enter into Executive Session** for a discussion of economic development, personnel matters in regard to administration, and receipt of legal advice in regard to the Boundary Street project. **The motion passed unanimously.**

There being no further business to come before council, the work session adjourned at 6:02 p.m.

Ivette: Since the work session was over, and (as far as I know) no action was taken in the ES, do we still need the information here about when the ES ended and who adjourned it?