

A regular meeting of the Beaufort City Council was held on May 11, 2010 at 6:00 p.m. in the Beaufort Municipal Complex, 1901 Boundary Street. In attendance were Mayor Billy Keyserling, Council members Donnie Ann Beer, Gary B. Fordham, Mike Sutton, Mike McFee, City Manager Scott Dadson and Shirley Hughes. 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**

The Mayor called the meeting to order at 6:04 p.m.

**INVOCATION AND PLEDGE OF ALLEGIANCE**

The invocation was given by Carlos Williams of Life House Church. The Pledge of Allegiance was led by the Mayor.

**PROCLAMATION CELEBRATING MR. GEORGE ALSTON'S 100TH BIRTHDAY MAY 12, 2010**

Councilwoman Beer, second by Councilman Fordham, made a motion to approve the proclamation. The motion was approved unanimously. Councilwoman Beer read the proclamation and presented it to Mr. Alston's granddaughter.

**PROCLAMATION PROCLAIMING MAY AS FOSTER CARE MONTH**

Councilman Sutton, second by Councilwoman Beer, made a motion to approve the proclamation. The motion was approved unanimously.

**PROCLAMATION PROCLAIMING MAY 21, 2010 AS BIKE TO WORK DAY**

Councilwoman Beer, second by Councilman Sutton, made a motion to approve the proclamation. The motion was approved unanimously. Councilwoman Beer read the proclamation to Bob Stoothoff.

**RESOLUTION COMMENDING JAMES LANE FOR SERVING ON THE ZONING BOARD OF APPEALS**

Councilwoman Beer, second by Councilman McFee, made a motion to approve the resolution. The motion was approved unanimously. Councilwoman Beer read the proclamation to Mr. Lane.

Mayor Keyserling asked to add an Executive Session to the agenda for discussion of a legal matter. Councilman McFee, second by Councilman Sutton, made a motion to approve the request. The motion was approved unanimously.

**PUBLIC COMMENT**

Lanelle Fabian of Main Street Beaufort said there's a possibility that tourists will be coming to Beaufort instead of going to the Gulf Coast because of the massive oil spill there. She asked if at the next work session, council could consider a temporary means to let downtown merchants

have sandwich boards during the tourist season in the hope of bringing in more tourists to Beaufort merchants' businesses.

**Bob Middaugh** said the information given about trees was from Virginia. He said he'd also heard that police were going to arrest someone who was complaining about a tree limb being cut down in his lawn. He feels property owners should have a right to protect their property.

**Peter White**, speaking on behalf of himself, Rose White, and Southurn Rose Buggy Tours, thanked the city, specifically Councilman Sutton, and others for what they've done to make things smoother for the city's carriage tour operators. He said business is more enjoyable and everything's working out very well.

#### **PUBLIC HEARING: FY 2011 OPERATING BUDGET**

The mayor opened the public hearing. Ms. Hughes said the budget is online at [www.cityofbeaufort.org](http://www.cityofbeaufort.org). There will be a request for an increase in the debt mill because of delinquencies. Should they come in to cover the payments, staff will recommend an adjustment at that time. They are also recommending an increase in the stormwater fee to protect the \$165 million asset and to maintain and fix problem areas. Ms. Hughes said that budget presentations from departments are also up on the city's web site. There are differences between what's in the budget and the department heads' plans. There being no public comment, the mayor closed this public hearing.

#### **PUBLIC HEARING: ORDINANCE REZONING A PARCEL OF PROPERTY LOCATED AT 2410 ALLISON ROAD FROM R-2 DISTRICT TO OFFICE COMMERCIAL DISTRICT**

Mayor Keyserling opened the public hearing. Libby Anderson showed a visual of the parcel applying for rezoning and described its location. **Dr. Ralph Moore** is the property owner. The current zoning is R-2: Single Family Residential District. The proposed zoning is Office Commercial District, which is considered a "transitional" type of zoning. This permits all types of residential dwellings as well as all types of offices. She indicated the mixture of medical zoning and commercial zoning in the area. In general, commercial uses are not permitted. If the property were converted to an office, all changes would need to be reviewed for compliance with the design district by staff or the Design Review Board. The ordinance would require screening between the office and the residential uses.

Ms. Anderson said this is consistent with the comprehensive plan in which this area is designated as G-2: Urban Neighborhood or Traditional Neighborhood Development which is denser use with neighborhood centers, walkable neighborhoods, etc. Ms. Anderson went on to discuss the commercial uses on Allison Road at Ribaut where an office complex stood recently until the hospital purchased the land and created a parking lot. There is also a small business and a medical office on Allison, though the majority of current land uses in the area are single-family residential. The developer would have to install a sidewalk, unless that requirement is waived by the Design Review Board, which Ms. Anderson implied is unlikely.

Ms. Anderson said staff is concerned that rezoning a single lot different than those in the surrounding lots would be a spot zoning, so they recommend that two other parcels be rezoned to Office Commercial District to prevent that.

**Lorraine Hutto**, 2213 Oak Haven Street, said she opposes the rezoning “because of the natural breaking point”; waste smells of a dumpster; parking in the back; lighting; hours of operation; other businesses that might come in the long-term; property values being helped or hindered; and taxes. She recommends going no farther than Hobbs and Myrtle Streets.

**Ganelle Polk**, 2409 Allison Road, said she lives across the street from the property under discussion and asked what type of business it is going to be and what kind of parking lot will be used to accommodate clients. Once the business is opened, she wondered about the long-term vision for future years. She wanted to know if there will be parking on the right-of-way on Allison Road. She also wanted to know if the city has an ordinance about the developer putting up a privacy fence on all three sides. Her eastern lot line is a western lot line for the hospital property. In 1990, she was told there would be shrubbery put up for privacy, but very little was put up by the developer. The noise was extreme, and she had to put up a fence, which cost her \$1000.

Mayor Keyserling said the petitioner is medical, and if the ordinance is changed, the business wouldn't be restricted, but the zoning would be for “office” not just medical. Ms. Polk said parking on the right-of-way of Allison Road is very dangerous.

Dr. Moore, the applicant, said people typically use Hobbs Road to get in his office now, and that probably won't change. He showed a map. They will have to have an in and an out driveway. He said they would put up a fence or shrubbery, whatever's agreeable. They want it to look residential. There's no medical waste, and they are there during normal business hours. There will be no light after hours other than a shining porch light.

Their goal is to fit into the neighborhood where their office already is. The building has been empty for awhile, and it's not very attractive, so they want it to be nicely landscaped and look like the pediatrician's office. He feels it's a logical extension of the city's development plan. His previous building was razed by the hospital when the lease was up, which is why he's buying the Allison Road building.

Ms. Hutto said she's concerned about where the dumpster would be, and Dr. Moore said that hazardous waste is stored in the building and taken away by a company. He assured Ms. Hutto that he has been in Beaufort for 15 years, and his goal is to have a place he can practice where he can stay permanently for at least 15 years. He discussed ingress and egress / parking and tree concerns with Ms. Polk.

Councilman Fordham said it's assumed that this is going to be one doctor office on this property, but someone could buy a property on the south or north. Council is still waiting to hear from the city attorney and the planning commission about whether this rezoning would be allowed. He feels that the city is "jumping ahead of the game."

Councilwoman Beer said adjacent property owners need to be talked to. Councilman McFee asked if Dr. Moore had talked to other neighbors, and he said he has spoken to two: One didn't care how it was zoned, another had concerns about fencing, etc. but was open-minded, not opposed. Mayor Keyserling said they saw a development plan at the hearing, and what would come to council will not be the development plan but the zoning.

**Christine Seabrook** lives on Oakhaven Street. She's concerned about spot zoning. She moved from Atlanta because pieces of her neighborhood were supposedly being bought for commercial use, but that never happened, property values went down significantly, and only a few businesses came in. She's worried that she won't be able to sell her house for commercial or residential use. There being no further public comment, the mayor closed this public hearing.

#### **MINUTES**

The minutes of the regular council meeting on April 27, 2010 were presented to council for review. On motion by Councilwoman Beer, second by Councilman Fordham, council voted unanimously to approve the minutes.

The minutes of the council work session on April 29, 2010 were presented to council for review. On motion by Councilwoman Beer, second by Councilman Fordham, council voted 3-0 to approve the minutes. Councilman Fordham and Mayor Keyserling were absent from the meeting and so abstained from voting.

The minutes of the council work session on May 4, 2010 were presented to council for review. On motion by Councilwoman Beer, second by Councilman Fordham, council voted unanimously to approve the minutes.

#### **REQUEST FROM GRAND ARMORY TO CLOSE SPECIFIC STREETS FOR ORGANIZATION TO HOST ANNUAL MEMORIAL DAY PARADE**

Councilwoman Beer, second by Councilman Fordham, made a motion to approve the request for the May 31, 2010 parade. The motion was approved unanimously.

#### **ORDINANCE TO ADOPT FY 2011 OPERATING BUDGET**

Councilwoman Beer, second by Councilman Fordham, made a motion to adopt the ordinance on first reading. Councilman Sutton told the public that they're looking at not raising the mill rate when more than \$1 million in costs to the city were cut last year. They "can look at the city's books with such clarity," and it's so much different than it was three years ago. Given the economic turmoil in the country, to not have to raise operating costs is impressive when other

communities are “upside down.” He’d like the mill rate to drop, but the cost to do service is there; just not to have to raise it is impressive. Councilman McFee offered kudos to the “exceptional staff,” and said he feels very knowledgeable. Councilwoman Beer said she’s been through many budgets and finds it amazing what has been accomplished. She feels they’ve come a long way, thanks to the staff’s expertise. Councilman Fordham agreed and credited Mr. Dadson, Ms. Hughes, Kimberly Foxworth, and Mack Cook. Mayor Keyserling said the department heads have set a standard, and council is thankful to them. He hopes the public is cognizant of that, too.

**Edie Rodgers**, 127 Spanish Point Drive, said she wouldn’t be happy with an increase in debt service and asked when the public would know if it will happen. Ms. Hughes said it depends on when people pay their taxes. Additional money that comes in will be monitored between now and early September, so if enough comes in to pay the debt service, they will recommend an adjustment to council. The debt mill can be changed up until early September, prior to the printing of tax bills. They have some time and are cautiously optimistic that people will pay their taxes enough to pay the debt service. Mayor Keyserling said that’s not part of the operating budget being considered today. Councilman Sutton said there was never a debt mill until recently, and citizens have to bear the burden to make the city great. In reality, a fiscally responsible council might have to do a debt mill increase. The motion was approved unanimously.

#### **ORDINANCE TO SET THE TAX LEVY FOR THE FY 2011 OPERATING BUDGET**

Councilwoman Beer, second by Councilman Fordham, made a motion to adopt the ordinance on first reading. The motion was approved unanimously.

#### **RESOLUTION DECLARING THE CITY’S INTENT TO REIMBURSE**

Councilwoman Beer, second by Councilman Fordham, made a motion to adopt the resolution. Mr. Dadson said this is an administrative tool for council. If it needs to borrow, it can do those things now and reimburse itself in the future, including tax anticipation notes. As a practical matter, the council does this every year to be able to reimburse itself. The motion was approved unanimously.

#### **RESOLUTION TO ADOPT A FIVE YEAR FINANCIAL PLAN, INCLUDING THE FY 2011 CAPITAL IMPROVEMENT PLAN**

Councilwoman Beer, second by Councilman Fordham, made a motion to adopt the resolution. The motion was approved unanimously.

#### **RESOLUTION TO SET RATES FOR STORMWATER FEES**

Councilwoman Beer, second by Councilman Fordham, made a motion to adopt the resolution. Mayor Keyserling said those who’ve been around for years know stormwater has been a huge problem. He feels strongly that the dollars under discussion are necessary “to protect the asset that is the system.” Councilwoman Beer said one of the stormwater projects, Duncan-

Langhorne, took 20 years to resolve. All dollars spent are for the betterment of those living here. Councilman Sutton said this is a long time coming; there was no plan in the past to maintain a simple storm drain. At the time, there was no funding stream to cover it. The city collects the fees themselves on the tax bill. There are 24 projects on the list currently, and it will continue to grow as the system ages. An important piece of the funding is partnering with the county as with the Southside Park pond. It will allow monitoring of wetland health. Mr. Middaugh said he'd sent out a memo on how to clean the drains. He asked about a schedule for the lines and catch basins. The motion was approved unanimously.

#### **CONSIDERATION TO AMEND THE 1997 UTILITY TREE PRUNING AGREEMENT BETWEEN CITY OF BEAUFORT AND SCE&G**

Councilwoman Beer, second by Councilman Fordham, made a motion to adopt the resolution. Mayor Keyserling offered history about the tree cutting matter in the last couple of weeks. Council has the Tree Board's recommendations for changes and additions to the currently used 1997 agreement. Both the city and SCE&G are parties to the contract. SCE&G has made comments on the recommendations. Mayor Keyserling clarified that this is a Tree Board recommendation with proposed amendments by SCE&G. Mr. Dadson recommended that council ask the city attorney to re-draft the agreement for them if they're ready for that. Mayor Keyserling asked Councilwoman Beer to read the recommendation aloud.

**David Temple** asked if there were questions for him. He said there were still issues of the amount of clearance reduction that's possible while remaining safe and about trimming every two years.

**Jim Neighbors**, 137 North Hermitage Road, said he is "a long-term Tree Board guy" and has a problem with the arborist under discussion because he is the same one who approved the "butchering of trees" earlier.

**Lila Meeks**, 911 New Street, asked if there were matters peculiar to live oaks which are "paramount." There are some magnificent limbs, she noted, and there are lines closer than four feet to them. They need to figure out a way to save them because the limbs won't grow back. Mayor Keyserling said there was a discussion about the large limbs on the oaks that are sturdier than other trees. There would be a third-party arborist, he understands. Mr. Temple said the goal is to leave the limbs that aren't growing toward the power lines. He said there are a number of those limbs within 10' of the lines that have not been removed. Isaiah Smalls reiterated what Mr. Temple had said.

**Rebecca Compton** reminded Mr. Temple and council that research indicates that many cities in the Southeast have shorter cycle trimming; it's successful and not more costly to the utilities. She feels SCE&G can make this affordable and viable, too. With the training the city would require, she wondered if that would include the differences between live oaks and other species of trees. She wanted to know if, when palms are removed because they're growing into

the lines, they'll be replaced. Mayor Keyserling said there's confusion in the right-of-way; the city doesn't own them. If something is put on the right-of-way that intrudes on it, he believes, it's the property owner's responsibility. He doesn't know who would pay for it. Mr. Smalls said SCE&G felt if it was in the easement and had to be removed, the property owner would have to replace it.

Ms. Compton said in many places live oaks are recommended for public placement for many reasons. She also said that following pruning, if the tree is damaged or its aesthetics grossly compromised, there's a formula for determining the monetary value of mature live oaks into the 100's of thousands of dollars. A property owner should be compensated if a tree's in decline *following a pruning* because it doesn't have a proper canopy. She wants to know if there would be compensation in that case to the owner. Mr. Temple said they're trying to maintain the clearance around power lines. Things have been planted under them and have grown up into them. If they trim, they get clearance. If a tree needs to be removed, they will take it down if that's what the property owner and city decide.

Ms. Compton said her major concern is the mature live oaks. Crepe myrtles will come back, palmettos grow too tall, etc., but live oaks were there before the lines were run through. They have different growth patterns than other trees, and other power companies have adapted to live oaks in other areas. She feels there needs to be a compromise with less extreme trimming.

She asked about the difference between short-term and long-term views on the matter of the trees. Mayor Keyserling said the Tree Board, Planning Commission, and Public Works will look at a long-term view with SCE&G about things like relocating lines. Mayor Keyserling's biggest concern is that he hates what he sees and is probably going to see, but the city has a chance to keep it from happening again. Ms. Compton asked if this will apply to cable and phone companies. Mr. Dadson said the city has a contract with them to exist and operate as a business inside the city. SCE&G runs power poles and has subset agreements with non-electric utilities which have different needs. The second set of contracts is between them as an entity and the private property owner. The city isn't a third party in either contract. The city's entire leverage is in the original franchise agreement with them to operate as a business. The 1997 agreement comes out of that, so right now, the two parties are willing to negotiate, and SCE&G is willing to investigate these matters.

Mr. Dadson said if council passes this, they would direct the attorneys to put together the format, answer those questions, and bring it back to council to see if it's satisfactory. The long-term solution will be economic: the ability to plan to bury lines in the city. Through the agreements, they'll seek to protect the live oaks and also make a plan to go neighborhood-by-neighborhood burying lines if property owners are willing to vary their rates for a time. Within the leverage the city has, they'll see what they can do; no attorney would recommend getting into a third party contract, and no council could take on that liability. The parties seem to have common objectives, he feels.

Mr. Temple said federal law requires offering the other utilities space on the poles, and SCE&G has no right to ask the other utilities to remove them, so if SCE&G buries, they have no right to make the other utilities do so. They don't have a trimming cycle, though they do it when they have to.

**Terry Murray** said she appreciates council offering multiple opportunities to discuss this, and she feels heard. She agreed with Jim Neighbors' skepticism about the arborist, and thinks an independent third party is important. She said members of the public, like Ms. Compton, had researched other communities who had successfully negotiated much smaller clearances in their trees. She asked Mr. Dadson about the contractual relationships: Is SCE&G not subject to any city ordinance? Mr. Dadson said it's subject to what's been agreed to as two parties. He said he's not aware of anything else. Ms. Murray feels it's important for council to realize that there are other models that relate to this matter.

**Jay Weidner** was chairman of the Park and Tree Commission when the city had that. He thanked the council and Mr. Temple for taking citizens' concerns seriously. He's noticed in the past trees that will suffer death from improper pruning. He also noted that different trees grow and respond differently, and crepe myrtles grow back to full-size in a year or two. With live oaks, topping permanently disfigures them, and they might have to be taken out altogether.

In reference to replacement policies, Mr. Weidner said the streets where trees have been taken out and not replaced are blazing hot and need trees. The sides of the streets are owned by the state, and they have to ask SCDOT for encroachment permits, but he said that's a waste of time for individual properties, and they will always say no. He feels it's important to budget for trees like Charleston does. He also worries that when lines are buried, there will be no pruning of trees.

Mr. Middaugh said the contract calls for directional cutting. He said there are no transformers between the poles. If there's no ordinance, the contract signed is the purview of lawyers. Virginia allows people to stop cutting if a tree is on their property. If the contract says they will comply with all the ordinances, they will be running around in circles. The trees must be cut, and he hopes council will support the ordinance.

**Becky Trask** feels better that the council understands the need to protect the trees. She said there was an opportunity for Ribaut Road to have underground wiring when it was two-lane, but no citizens would put up the money to do so. They made the mistake and she suggested, "Let's not do it again." She said it is an obligation, not an option.

Ms. Meeks asked about people who live where the burying has been done. Mr. Dadson said it hasn't been done for distribution, just transmission. 65' transmission lines get up above the tree canopy. Councilwoman Beer made a motion, second by Councilman Fordham, to accept

the Tree Board recommendations with consideration of SCE&G's concerns and send them to the city attorney, directing him to look at amending the 1997 agreement with a due date in two weeks, which would be before the next regular council meeting.

Councilman Sutton pointed out that there are changes pending legal review, and he's "not comfortable putting it out there." Councilman Sutton asked how many street trees have been planted in the last 5-10-20 years, not counting Streetscape. He said the city manager put in 500 trees in the 1930s, and that's what we see today – before the current form of power transmission and distribution. He feels first, new trees need to be planted. The Tree Board recommended tree planting years ago, but there wasn't funding, property, or political will before. If new trees aren't planted, what is seen now won't be here for grandchildren. There needs to be planning, for storms among other things, which will force Beaufort to plant trees. All trees beyond the 300 year old live oaks aren't that old. He said they need to find places to plant trees. Councilman Sutton said there haven't been any low-voltage companies represented at any of these meetings. The power company will do tree-trimming, but low-voltage poles will still exist.

Councilman Sutton said the Tree Board recommended a certain clearance; he hears that it's a multi-faceted issue. The power company has to worry about workers getting electrocuted. Mr. Temple said 10' is the industry standard for the workers to be able to work the lines. Councilman Sutton said no matter what is said, the trees have to be trimmed to that. If SCE&G has to trim to the industry standard, nothing has indicated this will change. They can trim to grow the tree in a different direction. The only long-term answer is to move power lines or trees, Councilman Sutton said. Historic Beaufort Foundation recommended trimming every 2 years in the critical areas or more often if needed. The Tree Board recommended treating the whole city as a critical area. He doesn't think this can be solved with a written document or handshake. He doesn't see significant action in the document.

Councilman Sutton agreed with Ms. Trask that this has to be done because it's Beaufort. Lawyers must debate the clearance; it would be a huge step forward if live oaks can have fewer than 10' clearance for distribution lines. The other issue for debate is the running cycle. 5 years is the SCE&G budget cycle; they can't afford to do it more often. Bladen and Port Republic Streets are examples of where everything's underground; these are new neighborhoods. SCE&G has agreed to underground utilities in some neighborhoods. He asked what to do if SCE&G comes back and says the SCE&G budget can't accommodate the pruning cycle.

Ms. Murray said the American National Standards Institute (ANSI) standards don't say there has to be a 10' tunnel. Mr. Temple said a 2.5 year cutback will be the same clearance as a 5 year cutback. Ms. Compton said it doesn't have to be 10', though that's what SCE&G wants.

**Peg Neighbors** said citizens want SCE&G to know that the live oaks are "the heart and soul of the community" and asked that they give maximum consideration to the live oaks.

Mr. Weidner said if the trees are pruned on a 2.5 year cycle, they won't look so stripped of foliage. Mayor Keyserling said he's trying to get the city through an agreement that does the least amount of damage in the short-term. The long-term goal is "to not get to this place again." Councilman Sutton said there are so many subtle changes in the document between what the Tree Board wants and what SCE&G wants. He doesn't trust it to go to lawyers; at the end of the day, he knows it's about the money. The motion to send the agreements to the lawyers passed unanimously.

### **MAYOR'S REPORT**

Mayor Keyserling said on May 15, The Greenery and all the garden clubs are doing a seminar on flowers in the park at 8 am. In Mossy Oaks, it's clean-up day from Allison Road to First Blvd.

### **EXECUTIVE SESSION**

On motion of Councilwoman Beer, seconded by Councilman Fordham, council voted to move into Executive Session pursuant to Title 30, Chapter 4, Section 70(a) (2) of the South Carolina Code of Laws for legal briefing. The motion was approved unanimously.

Councilwoman Beer, seconded by Councilman Fordham, made a motion to come out of executive session and resume the regular council meeting. The motion was approved unanimously.

### **ADJOURNMENT**

There being no further business to come before City Council, Councilwoman Beer made a motion to adjourn, seconded by Councilman Fordham. The motion was approved unanimously, and the meeting was adjourned at 8:45 p.m.

ATTEST: \_\_\_\_\_  
IVETTE BURGESS, CITY CLERK