

A regular meeting of the Beaufort City Council was held on June 22, 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 regular meeting to order at 6:03 p.m.

### **INVOCATION AND PLEDGE OF ALLEGIANCE**

The invocation was led by Pastor Jim Wooten of Baptist Church of Beaufort, and the Pledge of Allegiance was led by the mayor.

### **PROCLAMATION CELEBRATING MAIN STREET BEAUFORT, USA 25TH ANNIVERSARY**

Councilwoman Beer, second by Councilman Fordham, made a motion to adopt the proclamation. The motion passed unanimously. Councilwoman Beer read the proclamation, and it was presented to Randall Birch.

### **PUBLIC COMMENT**

**Frank Emminger**, 38 Seabrook Point Drive, spoke about health insurance for retired city employees which he said he considers a contractual issue. He worked for the city for 28 years and maintained his city health insurance thinking that after retirement, the individual and family health insurance could be maintained. On May 5, 2010, he received an internal memo advising of a rate increase for "pre-age 65 retirees." He said the rate increase is 147% over what pre-65 retirees were paying to \$2021.12. The current employees will receive a 25% rate increase. He said the notification was not professional communication and had handwriting on it. They were given only 30 days to adjust to the change and had the next month's invoice included with the memo. The day after he received the letter, he sent a certified letter requesting information under the Freedom of Information Act (FOIA) to Dr. Kimberly Foxworth, director of human resources for the city. He has not received a response from the city, though the letter was signed for as received. City staff's lack of response, he feels, "has made this a council issue."

Mr. Emminger said he believes that anyone receiving such a substantial increase in insurance costs with only 30 days notice would have a similar reaction to his. He sent a letter similar to the one he sent Dr. Foxworth to Harvey Mathias, who responded that, because they are not a public entity, they were not obliged to respond under the FOIA. Mr. Emminger wrote again and asked to be shown how the insurer "came up with the rate increase." He said "the pooling effect" and "the economies of scale" seem to have disappeared, which he feels sends a bad message to current city employees.

He read from a letter from Mr. Mathias in which he said that because of HIPAA privacy rules, he could not give out personal health information. Mr. Emminger felt that Mr. Mathias “is hiding behind that.” The letter from Mr. Mathias also said that of the 5400 employees covered, 188 pre-65 retirees were taken from the pool, and this was not age discrimination, Mr. Mathias told him, because those in the group were not of a particular age, just early retirees. Mr. Emminger thought that having checked with an attorney to determine this indicates that there was concern that it *could* be considered discriminatory.

Mr. Emminger went on to say that the study upon which the determination of the increase was based appears to have run from July 1, 2009 – March or April 2010, which seems not to be a sufficient sample to indicate a trend for the study. He feels this is “suspect” as a trend to determine data. He would like to know what date Dr. Foxworth attended the meeting to which she referred in the memo, because he feels it’s too short of a time period to determine a rate.

Mr. Emminger went on to read from a letter he’d received from Mr. Mathias. Mr. Emminger said he still doesn’t have sufficient information about how the rate increase was determined to be so high. The letter said that the board considered that raising the rates of the early retirees would prevent having to raise current employees’ rates as much. Mr. Mathias said that as one ages, one’s medical needs are greater and costs get higher. Mr. Mathias said there are options other than the raised rate, but Mr. Emminger hasn’t seen any other options. Mr. Mathias also said the day has passed when “health care costs can be expected to be borne by others” in reference to the city.

Mr. Emminger said that in another letter to Mr. Mathias, he requested information about the average monthly claim costs. He feels there has been “funny math.” He asked who he is subsidizing; he has been blessed with good health and feels that “individual diligence is not paying off.” The insurance company “is making money off of” him. He asked Mr. Mathias if he had spoken to city staff about the recent Health Care Reform Act and the \$5 billion approved to offset rate increases. In response, Mr. Mathias said he felt he had answered the questions as well as possible and had nothing further to say at the time. Mr. Emminger felt that the type of company that would respond to people on the plan in this way is not a good company to represent the city of Beaufort. Healthy people subsidize the costs of sick people, Mr. Mathias explained, and Mr. Emminger feels this contradicts what he said about health care costs no longer being subsidized by others.

Mr. Emminger feels the city desires to get the early retirees off the health care plan. He said some pre-65 retirees are dropping the plan and won’t have insurance for “the ten years until they are eligible for Medicare,” something he said no one anticipated when they took early retirement. He feels the city would be better off to have dropped the retirees altogether from the policy so they could get on another policy to get around pre-existing condition costs. He feels there is something “morally wrong” with the way this has been done.

3.5% of the pool was chosen, Mr. Emminger said, to receive the 147% increase. He said that the benefit of the pool is the softening of the rates over what they would get as individuals seeking insurance. He feels they would have been better off never to have left Blue Cross Blue Shield. He wanted to know if there could have been more notification given to them to adjust their budgets, among other questions. He would like to know if any council members and city employees under age 65 are paying the same rate in their same age class as those who have retired. He said the city wants long-term employees. The pre-age 65 retirees during their employment subsidized the retirees' insurance, and he feels it should still be that way. Due to the short notice they received of 30 days, he requested that the city offer a "stay of execution of 3 months" on the increase. He said he is willing to pay the same 25% increase of current employees during that time.

He offered to provide council and Mr. Dadson with copies of the letters he has sent to a variety of officials. He said California tried to have a rate increase, and their attorney general said they'd used the wrong formula to calculate it. He requested that council find a way to prevent the June 30 institution of the rate increase for the pre-65 retirees.

Councilman Sutton made a motion to amend the agenda to include a discussion of health care coverage; Councilman McFee seconded. The motion passed unanimously.

#### **PUBLIC HEARING: REVISING SECTIONS 6.6.C.5 OF THE UDO TO DELETE THE MINIMUM OPEN SPACE REQUIREMENT IN DESIGN DISTRICTS**

Mayor Keyserling opened this public hearing. Libby Anderson said this change would revise the design district standards that requires 25% of the site to remain open space. She said the UDO doesn't define the term "open space," so the standard hasn't been applied consistently, if at all, which is a poor policy. If the open space requirement were rigorously applied, it might require building setbacks and separations that would be more suburban in nature, which is contradictory to the comp plan of urbanization in development. The UDO does include limits on impervious surfaces, and there are minimum landscaping requirements; these work together to achieve the urban open space that is desirable.

**Ann Bluntzer**, Executive Director of the Open Land Trust, expressed concerns about what is being accomplished with this revision and with the idea of deleting the language without replacing it with something else. There being no further comment, the mayor closed this public hearing.

#### **MINUTES**

The minutes of the regular council meeting on June 8, 2010 were presented to council for review. On motion by Councilwoman Beer, second by Councilman McFee, council voted unanimously to approve the minutes. Councilman Sutton abstained because he was not present at the meeting.

The minutes of the work session on June 15, 2010 were presented to council for review. Mayor Keyserling requested clarification in the minutes of the fact that the board of directors for which Commissioner Wendy Zara might not be eligible is the board of Rebuilding Together, owing to her position on the Redevelopment Commission. On motion by Councilwoman Beer, second by Councilman Fordham, council voted unanimously to approve the minutes as amended. Councilman Sutton abstained because he was not present at the meeting.

**ORDINANCE SETTING ELECTION RELATED DATES AND FILING FEE FOR 2 MEMBERS OF CITY COUNCIL**

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

**RESOLUTION SUPPORTING RIVERVIEW CHARTER SCHOOL INTO THE CITY OF BEAUFORT**

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

**RESOLUTION SUPPORTING OPERATION F35BEAUFORT**

Councilwoman Beer, second by Councilman Fordham, made a motion to adopt the resolution. The motion passed unanimously. Councilwoman Beer read the resolution to Pete Cotter. Mr. Cotter said there was a public information session taking place at the Holiday Inn which 450 people had attended so far. There has been good turn-out at other similar events as well.

**ORDINANCE REZONING A PARCEL OF PROPERTY LOCATED AT 2410 ALLISON ROAD, FROM R-2 SINGLE-FAMILY RESIDENTIAL DISTRICT TO OFFICE COMMERCIAL DISTRICT**

Ms. Anderson said a public hearing has already taken place in May. The proposed zoning should be more appropriately called "office residential district" but general retail uses, restaurants, etc. are not permitted. She reviewed the history of this potential rezoning thus far. The city attorney has said this would not be spot zoning. The Planning Commission has recommended approval and has directed staff to present it to council for first reading on this parcel. Two other parcels have been recommended for rezoning as well.

Councilman McFee said that adjacent owners had expressed concern about re-zoning on the residential properties that would be abutting the office commercial, and asked about the requirements. Ms. Anderson said a screening device between the office and the residential - like a fence or landscaping, depending on what the resident prefers - is a requirement. Also, as part of the design review process, an adjacent use buffer over and above the building setback is required. It "implies landscaping as mitigation." Lighting must not extend over the property lines, and there are other safeguards as well.

Councilman Sutton said the buffering seems to be the point of concern in almost every case. If for vegetative buffering it's not enforced in the 3-year period, he asked why it's not 12 months

and enforced. Ms. Anderson said the 3 years are required to grow it to the 90% opacity required. It must be at least 7' in height; she suspects that it may be difficult to get shrubs that high initially to plant. Councilman Sutton said his problem isn't with the intent but with the need to tighten up the enforcement of the vegetative buffers.

Councilman Fordham said if the neighbors who were objecting to the rezoning before council in May have agreed to the rezoning, he'll vote for it. Ms. Anderson said the objections came from the people on streets to the south of Allison Road; they have not necessarily changed their minds, and their property isn't being rezoned. Upon receiving this information, Councilman Fordham said he would change his vote. Councilwoman Beer, second by Councilman McFee, made a motion to adopt the ordinance on first reading. The motion passed 4-1 with Councilman Fordham opposing.

#### **STREET CLOSURE REQUEST FROM THE BAPTIST CHURCH OF BEAUFORT TO HOST JULY 4TH PICNIC AND OTHER ACTIVITIES**

Councilwoman Beer, second by Councilman Fordham, made a motion to accept the request. The motion passed unanimously.

#### **MOTION RECONSTITUTING THE BOARD OF DIRECTORS FOR THE CENTER FOR CIVIC AND COMMUNITY DESIGN**

Mayor Keyserling explained why he felt this matter should be tabled. Council voted unanimously to table it.

#### **MOTION TO ACCEPT JUSTICE ASSISTANCE GRANT (JAG)**

Ms. Hughes said that the city had been notified that they are eligible for a Justice Assistance Grant of about \$16,200. Council has to publicly discuss and approve the matter, and if they're willing to accept the grant, the police department has items it would spend it on. It would also require a budget amendment. Councilman Sutton asked if the items would be consumable and would need to be replaced at some point. Ms. Hughes said yes and gave the example of traffic cones. Mr. Dadson said they're reasonable expenditures. Councilwoman Beer, second by Councilman Fordham, made a motion to accept the grant. The motion passed unanimously.

#### **HEALTH INSURANCE RATE INCREASE FOR PRE-65 RETIREES**

Mayor Keyserling said he sees two issues: the way the city responded to the request for information and "the deal itself." He said he doesn't know that there are other options than to defer to the insurer or to find the money to subsidize a 3-month period out of city dollars.

Mr. Dadson said the way the matter was presented, it would be best to take the materials Mr. Emminger had offered to council and staff, and to take the matter under advisement. Mr. Dadson said the city is not the insurer, and it's up to the insurer to release information, not the city. The council is welcome to hear the issues and can raise matters with the company. Mr. Dadson agreed with Mayor Keyserling that making other financial arrangements would require

subsidization from the city. He said that he agrees that the issue of the rate increase “is a big bump.” In order that they might respond to the individuals affected, he will distribute the materials in Mr. Emminger’s packet to council, legal counsel, and the insurer.

Councilman Sutton said he felt the issue had been clearly presented by Mr. Emminger. He said the key points are that there’s an imminent deadline, and he’s willing to entertain suggestions as to how to provide time to solve the problem. Mr. Dadson said the request Mr. Emminger had made was for 3-months with everyone’s rate increasing 25%, and reiterated that city money would have to be used to subsidize this.

Dr. Foxworth said she recognizes the time and loyalty of the former city employees. She said her fiduciary responsibility is to the city now. She disagreed with Mr. Emminger’s notion that this is a contractual issue. When SCLGAG was chosen to be the city’s insurance company, she had presented information as to why it was a better company than previous insurers. Being pro-active with health insurance leads to fewer claims and then lower rates. She said she also handles workman’s comp. She said that the handwriting in the memo Mr. Emminger referred to was not hers because she wouldn’t send a memo from her office with handwritten notes on it.

Dr. Foxworth said that when she received the FOIA request from Mr. Emminger, it was, as is the city’s policy, sent to Bill Harvey, city attorney, who forwarded it to SCLGAG because they needed to provide the information which neither Dr. Foxworth or Mr. Harvey could provide.

Dr. Foxworth said the city is not the military; therefore, one cannot have a reasonable expectation of receiving a lifetime of health insurance coverage. She said benefits in any location are not a right and are subject to change, whether it’s a change in costs, terms, or coverage. The SCLGAG board members made the decision to move the pre-65 retirees as a group in *all* of the municipalities they cover. Dr. Foxworth said the retirees have the option of staying on the plan, or they can seek other plans if they are unhappy with it. She feels it’s not reasonable “to have to respond to someone’s dislike.” She said that SCLGAG will apply for the federal funding to which Mr. Emminger referred, but applications weren’t available until June. If it’s received, everything will be done to ensure that there’s a reduction in costs for the future; the retirees wouldn’t be paid back at that time for what they’ve already paid out.

Dr. Foxworth said she doesn’t recommend the 30-day “reprieve” because there are city employees who are currently working who are subject to an increase. If there is going to be nothing offered in the way of a rate reduction to active employees, she doesn’t feel such an offer should be made to retirees. The current employees deserve the same opportunity to have affordable health care that the retirees had when they were working.

Mr. Dadson said that Dr. Foxworth always sends out information in a timely manner.

**Jeff Dowling**, Lady's Island, said he was a retired police officer in the city of Beaufort. He said the FOIA request is the same thing as a subpoena, and it "had slipped through the cracks somewhere," which he said "sure is embarrassing, isn't it?" Mr. Dadson responded that they were given advice from the city attorney, and they acted appropriately by forwarding it to the insurer, who responded to Mr. Emminger.

**Wendell Wilburn**, Lady's Island, said he has asked for a review of the contract with the insurance carriers, and he thinks there might be more reasonable insurers. The contract was supposed to have been sent to the city attorney; Mr. Wilburn has not received a response. Mr. Dadson said he will ask, but it's the insurance group from whom Mr. Wilburn should expect a response.

Mayor Keyserling said the question is whether the carrier violated the contract mid-stream with the city. Mr. Dadson said he'd ask the city attorney about it. The \$5 billion reinsurance program, Mr. Wilburn was told by Mr. Mathias, is "a drop in the bucket," and Mr. Mathias said that he wasn't interested in filing for it until he was pushed to do so by the pre-65 group. The group feels disappointed that they couldn't make the insurer do due diligence for the city and the individual customers. Mr. Wilburn said he would want to keep his insurance plan, but he wants to be treated fairly.

Dr. Foxworth said that she's not subjective in this situation, and she understands that it's taxing, but the emotional comments are difficult to separate because, from her conversations with Mr. Mathias and federal officials, applying for federal funds involves more than just sending in an application. The more accurate the information received, the more likely they are to receive funding. It's not like a job application. Dr. Foxworth said that when Mr. Mathias says they're doing due diligence, and the underwriter is helping them, they are trying to be in the running for funding and when that information is available, she'll send that out.

In regard to looking at other plans, Dr. Foxworth said she doesn't know others' plans, so she can't speak to that because she only knows the city's plan. She can't compare it with other plans when she only knows her own books, not others'. She said no one is hiding any information, and she will maintain her fiduciary responsibility to the city.

Mr. Emminger read from a letter he had received from Mr. Mathias. He reiterated that he did not get a letter in response to the FOIA request he'd sent to Dr. Foxworth. He got a letter from Mr. Mathias 19 days after his request, but Mr. Emminger said that letter wasn't a result of the FOIA request. He thinks there was "a flagrant disregard of the law" regarding the FOIA request.

Mayor Keyserling said he "doesn't think it's the city and its employees, it's the city and its insurance company." He said he's not hearing that the city has done anything other than what the carrier did.

Councilman McFee said he feels the increases are “ridiculous,” and he doesn't understand enough about how South Carolina insurance is done and thinks the situation needs to be analyzed better. Mayor Keyserling asked Dr. Foxworth to explain the June 30 deadline, and she replied that the plan year begins July 1. There would be difficulty switching carriers. Mr. Wilburn interjected “unless they violated the contract by separating us.” Dr. Foxworth said that when they left the state plan and went to SCLGAG, they didn't go to a plan that was a mirror of the previous plan. They set up the type of plan they were interested in. There is no contract that says that this plan mirrors the previous plan or that no changes would occur. Mayor Keyserling said the question is not when the city switched but whether there was a violation when the insurer separated the pool. Dr. Foxworth said plans are subject to change. Mayor Keyserling said the question is whether it's a matter of law and added that they can get the answer to that.

Mr. Wilburn said he liked this plan, but if the city can't afford it, maybe they should look at something else. Dr. Foxworth said they can look at cost and a number of other things to reduce the cost but another plan might not cover annual physicals, colonoscopies, etc. Mayor Keyserling said the recommendation was that active employees shouldn't be hit with as big an increase. Mr. Dadson said council approved the increase. If the pools had been put together, there would have been a higher increase overall. He agreed that it is a big increase but he doesn't think it's within the grasp of council to solve the problem. He advised that council speak to the attorney and look at Mr. Emminger's information. Councilwoman Beer suggested the matter for council's work session the following week.

Mayor Keyserling suggested Dr. Foxworth and Mr. Dadson meet with Mr. Harvey. Ms. Hughes said the South Carolina local government insurance group offers many plans, but the city of Beaufort only participates in 2 of them. Mr. Dadson said participation in more is going to cost more, but they could ask the question. Mr. Emminger said that his and other retirees' current health is due to serving the city for many years. The retirement plan was once terrible, and the city addressed and corrected the issue at that time. He said he wants this similar issue to be addressed now.

### **EXECUTIVE SESSION**

On motion of Councilwoman Beer, seconded by Councilman Sutton, 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 discussion of proposed sale or purchase of property and receipt of legal advice. The motion was approved unanimously.

Councilwoman Beer, seconded by Councilman Sutton, 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, Councilman Fordham made a motion to adjourn, seconded by Councilman McFee. The motion was approved unanimously, and the meeting was adjourned at 9:01 p.m.

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