

A regular meeting of the Beaufort City Council was held on September 24 , 2002 at 6:00 p.m. in County Council Chambers, 100 Ribaut Road. In attendance were Mayor Bill Rauch, Mayor Pro Tem Donnie Ann Beer, Councilmen Gary B. Fordham, Billy Keyserling, and City Manager John F. McDonough. Councilman Frank Glover was out of town. In accordance with 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.

INVOCATION/PLEDGE OF ALLEGIANCE

The meeting was opened at 6:00 p.m. with an invocation by Rev. Leon Meadows, Pastor of Riverview Baptist Church. The Pledge of Allegiance was led by the Mayor.

PROCLAMATION - ESTUARY DAY

On motion by Councilman Fordham, second by Councilwoman Beer, Council adopted the Proclamation designating October 5, 2002 as Estuary Day and recognizing the establishment of the Lowcountry Estuarium.

PUBLIC COMMENT

Ted Felder, of Congressman Wilson's office, responded to comments made by Councilwoman Beer at the last meeting. He stated the Congressman does not own property on Vivian Island nor is he involved in a lawsuit against the Marine Corps Air Station.

PUBLIC HEARINGS

A public hearing was held to receive public comment on the proposed rezoning of a 8.6 acre parcel of property located off Cottage Farm Drive identified as District 120, Tax Map 5, Parcel 187 from R-9 to PUD. A Notice of Public Hearing was duly published in The Beaufort Gazette on September 9, 2002. The City of Beaufort-Town of Port Royal Joint Municipal Planning Commission recommended the PUD be revised as per staff's recommendation, specifically, that the density of the development be reduced to 20 units in five structures.

Councilman Keyserling recused himself from the council chambers during both public hearings explaining that having sold one of the lots in question at Battery Point and having sold a house to one of the property owners who feels aggrieved, and also being the listing agent for the 8.59 acre island and having contributed to the concept, his participation could be perceived as a potential conflict. He will also not participate in discussions when an ordinance is presented for a vote. (Statement at end of minutes.)

Patricia Griswold, 370 Cottage Farm Drive, stated the proposed apartment complex is out of scale and out of character for the surrounding area which is now zoned single family residential. Referring to the plantations on Hilton Head, she stated a step-type of zoning is used to group zoning districts in tiers. She suggested Council listen to the planners who state this plan is out of character for the area and to the planning commission who suggested there be no more than two floors in each structure.

Marshall Smith, McChesney Lane, representing the Cottage Farm Property Owners Association, said they are concerned about the impact that this proposed development will have on the entrance to Cottage Farm. He recommended council visit the site in order to observe how close the ingress/egress is to the railroad tracks and how a ladder fire truck or construction equipment may have difficulty maneuvering without encroaching on Cottage Farm property. These issues create a safety issue that the developers have not satisfactorily addressed, he said. He pointed out also that there is a 70 degree blind curve near the entrance to the property and the view easement does not meet SCDOT standards of 250 feet.

Pat Ashley, 332 Cottage Farm Drive, asked council to consider the character of Beaufort and realize that a complex of this magnitude does not fit in the area.

Fred White, 2506 Stratford Lane, said the developers mentioned they presented the property to the Rural and Critical Land Preservation Board for purchase as open space but their offer was denied. He asked what is the criteria and the process used. The Cottage Farm Property Owners would like that application to be submitted again. He added that developing the island would create an unsafe situation with the railroad. Based on the twenty-four foot wide requirement for the causeway onto the island, it appears wetlands will have to be filled in. He said he does not think the adjoining property owners have been provided all the answers. The Mayor replied that county council is undecided on whether the lands to be considered are rural or critical. The criteria is still unknown.

Monty Hopey, 2600 McChesney Lane, president of Cottage Farms and former policeman with experience in traffic accident investigation, spoke for the residents. The rezoning of Ribaut Island will impact the traffic pattern and the traffic flow at the intersection of Cottage Farm Drive and the causeway leading to Ribaut Island, he stated. This development will add about 60 more vehicles not including the traffic generated by cleaning companies, delivery vehicles, visitors, and trash pickup. The issue of the railroad has led to an impasse between Merritt Patterson, the South Carolina Ports Authority, and the city. The acceptance of this intersection and the roadways within Cottage Farm into the city's roadway system needs to be resolved. This is a sore issue with the 83 property owners within Cottage Farm who drive over the crossing daily. The residents would like the opportunity to meet with the above parties and the Ribaut Island developers to determine a solution agreeable to the Ports Authority and city council. He enumerated several hazards that he thinks will be aggravated by the approval of the zoning request. He presented two petitions to council, one with the names of 44 people who are concerned that the traffic of the proposed development will present a major safety hazard and the other asks council not to approve a zoning change for Ribaut Island.

Anne Chiaviello, 117 South Hermitage Road, stated she and her husband, who own the island, appeared before the Cottage Farm Property Owners Association at their annual meeting yesterday and briefly explained their plans. She said she wrote to the Critical Lands Board requesting the island be preserved but their request was rejected. The City included the island on their list to the Board but were also rejected. Since the Board did not seem to be interested in preserving the island as open space, they considered zoning the parcel R-9 but decided that was not appropriate for this unique and beautiful property. They then contacted Billy Keyserling for advise because of his experience with environmental and community concerns. He advised them that there are people who live on the outer islands that would be interested in living closer to the city's amenities while simplifying their lives. With the help of a local developer, Bill Jones, this concept of Beaufort-style structures for the Ribaut Island PUD was created. She pointed out that Wilbur Smith and Associates performed a traffic analysis which addresses concerns of the Cottage Farm residents. They learned

that the R-9 zoning would generate more traffic than 30 condominium homes. Additionally, this PUD creates 70 % more open space as opposed to a single family development. Several ideas have been discussed for solving the problem when approaching the entrance to the causeway from the curve to ensure safety.

There being no other comments, the public hearing was closed at 6:47 p.m. and a five minute break was taken.

A public hearing was held to receive public comment on the proposed revision of the Battery Point Planned Unit Development Ordinance making 52 nonconforming lots conforming and revising the front building setback requirements. A Notice of Public Hearing was duly published in The Beaufort Gazette on September 9, 2002. The City of Beaufort-Town of Port Royal Joint Municipal Planning Commission considered the ordinance revision at their September 16 meeting but tabled the application until a site visit could be conducted.

Michael G. Patterson, 86 Bostick Circle, said of the 40 lots in question, 27 have houses on them, 11 are undeveloped, and 2 are in the process of being built. He is concerned that the value of the homes may change. Also, that there may be litigation from the 27 homeowners if this revision is denied because the lots were approved by the city and the planning commission. He asked council to consider these things.

Donald May, 12 Petigru Drive, asked council not to grant the variances in the PUD to make the sixty substandard lots conforming. He said the subdivision was not platted correctly by the developer. Had the city's R-6 zoning been adhered to the lots would be the correct size. The density is greater than planned and the impact on the marshes, storm drains, and the live oaks needs to be studied. He told council that if the PUD requirements are amended, the developer will be given a complete pardon for ignoring the city's R-6 standards of 6,000 square feet and he needs to be held accountable for what has been done. He further stated that the people who purchased lots need reconciliation but that is the responsibility of the developer. Also, the Zoning Review Board needs to be held responsible for issuing variances for the substandard lots. He asked, too, why did the building inspector allow forty lots to be permitted that were substandard and is still issuing building permits for substandard lots.

Ron Lewis, 54 Petigru Drive, noted that his property value has risen. However, there have been other situations in the past five years similar to the house being built on the substandard lot on the cul-de-sac which is a serious issue. The Battery Point neighborhood's architectural review board and the board of directors are made up of the developer's appointees and it seems they should be speaking to council. The homeowner's have received no information from the developers regarding this issue with a variance for the substandard lots.

Larry Holman, 3 Petigru Drive, said Mr. McNeal was given permission to build the Battery Point PUD on 6,000 square feet lots with the exception of the homes on Brian Drive. Now he is asking for a revision because he did not adhere to the rules. Mr. Holman asked council not to revise the PUD to keep the developer out of litigation.

Sandy Kozuck, 273 Locust Fence Road, Dataw Island, said she works for Bennett McNeal at

McNeal Realty Company. In her opinion, Mr. McNeal is an upstanding person and he far exceeds what is required of a builder. It is unfortunate that there are several people who are dissatisfied.

David Tedder, attorney representing McNeal Land Development Company, said hundreds of man hours have been spent studying the plats looking for discrepancies between what is existing and what was presented to council in 1995 and then revised in 1996. He said the planning commission had concerns with the Charleston-style houses that don't have porches across the front but 20% of the homes were allowed to have a variable setback and be closer to the road in the original PUD and restrictive covenants. Speaking to the commission regarding that issue, the decision was to eliminate that style of house in the future unless they meet the 10 foot setback. He said the problems with the pie shaped lots on the cul-de-sacs which are not 60 feet across the front could have been resolved if they had been discovered at the beginning. Regarding density, Mr. Tedder said the subdivision was permitted for 280 lots but there are not that many there and no one has been cheated out of land to create extra lots. He added that there was extra acreage that could have been used at the time the surveyor was platting the lots. Additional property was later allotted for a tennis court and expansion of the marina building for a total of 41,000 more square feet of common space for the Battery Point Subdivision residents. He pointed out that real estate attorneys, title examiners, insurance companies, and home owners relied on the approved, stamped master plan that is recorded by the county, not the city's PUD ordinance, to confirm the square footage. He said it is a good development, property values are rising, and the statement intent of 1995 has been realized beyond expectations and the tax base has increased.

David Stroupe, 120 Prescott Drive, said the property owners don't want Mr. McNeal to suffer any financial loss but they are concerned with how the community is beginning to look. He said he is leery of forgiving him for an oversight.

Jane Bruce Brooker, St. Helena Island resident and a Battery Point property owner, said she supports the revision of the Battery Point PUD. As a retired architectural design professional, she said the negotiations to develop plats of this type are very difficult and time consuming. Mr. McNeal complied with all the requests asked of him by the city and the Salem Point residents for the development which shows that he has demonstrated his ability to do the right thing. She said if problems are still occurring when everyone is working to resolve them, the requirements may not be clear and they should be simplified. The fairest way to proceed, in her opinion, is to grant variances to correct nonconformance.

Alton Aimar, Riverside Drive and previous Battery Point property owner, stated Mr. McNeal went out of his way financially to assist him during the problems he encountered with the purchase of his lot and home. He added that real estate values have not been impacted by substandard lots because he made money when he sold both lot and house. There have been mistakes made but the development still exceeds expectations. If it is necessary to revise the PUD ordinance to correct the mistakes made by many parties, that should be done.

Lorick Fanning, 9 Holbrook Drive, said he is happy with Battery Point and with what Mr. McNeal has done. He said the value of the houses continue to increase so how are the residents harmed. If the number of lots are decreased and there are fewer families, the homeowners will have to pay a higher regime fee. He said council should consider the tax base and the fact that the infrastructure is

in place and paid for by the developer. As a land surveyor, he said he has a problem with the ability to withdraw a permit once it has been issued. Mr. McNeal built the infrastructure based on the permit he received. Prior to the permit, the plat could have been modified, had someone found the error then.

Terry Davis, Bartrum Drive, said her lot is 6,000 square feet but she has been impacted by the rules that were broken. Because 10 feet by 60 feet was taken away for an alley, she cannot build the carport she wants. Her house was set back because the porch did not extend over 50% of the front and the look of the street has been ruined because the houses are off set. Seven houses were built last year on her street and four received variances. She and her neighbors are upset because the developer has broken the rules.

David Gasque, Lady's Island, who has been involved in this project from the beginning, said the Master Plan was developed with the help of the city's former planner. Extra money was spent to develop a promenade, save a tree in the center of the road, and install sidewalks on the water's edge at his recommendation. The Master Plan was created, individual plats were submitted to the city for review, then reviewed by the county and stamped, permitted, and recorded with tax notices issued. Recently, a variance was needed because an architect misjudged a setback line and the foundation was poured and construction of the house began. He said further that the master plan was always referred to, not the PUD. That was when the 6,000 square foot requirement was discovered. They always relied on the city building inspector to review and permit the houses. The city has now mandated an inspection survey as a safety check which will solve the problem before money is spent.

Josh Gibson, 111 Barton Drive, suggested a variance be granted to the property owners where houses have been built but the lots that do not have structures at this time should be treated individually and variances granted as needed.

Jim Key, 51 Petigru Drive, served on various committees in the neighborhood for the three years that he has lived there. He agreed with Mr. Gibson that to change the entire PUD is not the solution. When his house was being constructed, he learned there were many copies of the PUD document and the one being used for his house was not in compliance. The city needs to concern itself with the process of how PUD documents are negotiated, developed, and published. The planning and permitting departments need to familiarize themselves with the correct PUD document, he said.

There being no other comments, the public hearing was closed at 7:55 p.m. and a short break was taken.

The public hearing held to receive public comment on the proposed zoning of two 0.31 acres parcels of property located on Highpoint in the Sweetwater subdivision on Lady's Island, identified as District 200, Tax Map 15, Parcel 698 and "District 200, Tax Map 15, Parcel 699, from Community Preservation to R-6 was withdrawn and will be rescheduled. A Notice of Public Hearing was duly published in The Beaufort Gazette on September 9, 2002.

MINUTES: REGULAR MEETING - SEPTEMBER 10, 2002

On motion by Councilwoman Beer, second by Councilman Keyserling, Council voted to adopt the minutes of the regular City Council meeting of September 10, 2002 as presented.

PARKS, RECREATION & TOURISM GRANT FUNDS

The City Manager reminded Council the city applied for and was granted \$25,000 through the South Carolina Department of Parks, Recreation and Tourism to use towards the purchase of the Battery Saxon property. However, the city was informed there was a stipulation in the state law that the money could not be applied towards the purchase of that property because it was acquired through condemnation. Staff contacted PRT asking if the money could be applied to the purchase of other property for similar purposes. After consideration, they consented. Staff is recommending the smaller of the two properties on Ribaut Road, specifically, the lot on the east side, if council decides to use the grant.

The Mayor commented that the city would then agree this lot could only be used for open space. The city manager added there would be a stipulation attached to the deed.

Councilwoman Beer moved to apply the Parks, Recreation & Tourism Grant funds toward the purchase price of the smaller lot on the east side of Ribaut Road. Councilman Fordham seconded the motion.

Councilman Fordham expressed his concern with placing a restriction in perpetuity on the property. Councilman Keyserling asked about maintaining the lot. In reply to Councilwoman Beer's question regarding what size house could be placed on the lot, the city manager stated a very small house could be built on the property; however, the purpose of buying the property was to maintain the character of that single family neighborhood and create a buffer between office commercial and residential. The mayor added that the intention was also to rezone it and then perhaps resell it. From a realtor's perspective, Councilman Keyserling agreed it should be used for a small park because of its size and because it would be difficult to sell it for what the city paid to accomplish its goals. However, the lot across the street should be sold because it is larger and has trees.

Council members Rauch, Beer, and Keyserling voted to apply the grant to the purchase of the smaller lot purchased in January, 2001 on the Northeast corner of North Street and Ribaut Road and to have the deed reflect the restriction. Councilman Fordham voted nay. The motion passed 3 to 1.

REQUEST TO PURCHASE UNIMPROVED CITY PROPERTY

At the last meeting, council reviewed a request from John Perrill to purchase an unimproved piece of property on Waddell Road (District 120, Map 8, Parcel 545) from the city.

Councilman Keyserling moved to sell the property to Mr. Perrill. Councilwoman Beer gave second.

The mayor recused himself since Mr. Perrill is his banker and Councilwoman Beer recused herself because she serves on the Advisory Board. (Forms at end of these minutes.)

Councilman Fordham stated the property should be appraised and sold at the appraised value.

The consensus of council was to have the property appraised. The city manager said that information will be presented to council at a later meeting.

ORDINANCE AMENDMENT - SECTION 8-2016 - IMMOBILIZATION OF VEHICLES

The ordinance amending Section 8-2016 of the City's Code of Ordinances regarding immobilization of vehicles by adding a subsection to allow violators an opportunity to settle their traffic tickets prior to enforcing use of the "boot" was presented for second reading and adoption.

On motion by Councilwoman Beer, second by Councilman Fordham, council adopted the ordinance on second reading. (Copy of Ordinance at end of September 10, 2002 minutes.)

RESOLUTION AUTHORIZING MASC TO ACT FOR THE CITY FOR THE COLLECTION OF DEBT

A resolution and agreement authorizing the Municipal Association of South Carolina to act for the city for the collection of debt in the Setoff Debt Program in an attempt to collect aging bench warrants was presented for approval.

Councilwoman Beer moved to adopt the Resolution. Councilman Fordham gave second. The motion passed unanimously. (Copy of Resolution at end of these minutes.)

REQUEST TO SELL CARRIAGE TOUR TICKETS AT THE MARINA

A letter from Rick Griffin, General Manager of Griffin Enterprises, Inc., was presented to council for an ordinance amendment to allow the sale of carriage tour tickets at the marina.

Councilwoman Beer moved to amend the ordinance to allow the sale of carriage tour tickets at the Marina. Councilman Keyserling seconded the motion.

Rick Griffin said he has been approached recently by Southurn Rose Buggy Tours to sell their tickets and earlier by Carolina Buggy Tours. Section 7-10013(g) of the City's Code of Ordinances states that tour tickets may only be sold inside the Chamber Visitor's Center or on private property. He said he would be happy to sell tickets for both companies since his employees already respond to numerous questions from the public regarding the carriage tours. He said they are authorized by the city through a Memorandum of Understanding to sell tickets now for the tour boats and the staff has experience in these type sales. Also, the city will be paid a percentage of all commissions the marina receives.

The city manager said an amendment to the ordinance will be drafted by the city attorney and presented to council at the next meeting.

Peter White, owner of Southurn Rose Buggy Tours, said a set schedule has been prepared by the Tour Vehicle Coordinator with the times for both companies' carriages to leave. This schedule is distributed to the stores and will be given to Mr. Griffin.

Councilman Keyserling withdrew his second and Councilwoman Beer withdrew her motion in view of the fact that an ordinance amendment will be presented at the next meeting..

MOTION TO ADD ITEM

On motion by Councilwoman Beer, second by Councilman Fordham, Council voted to add an item to the agenda.

REQUEST TO WAIVE NOISE ORDINANCE

Council received a request from the Rhett House Inn for the Noise Ordinance to be waived on October 11, 2002 for one hour, until midnight, while they host a rehearsal dinner. The request was reviewed by the Police Chief and he recommends approval.

Councilwoman Beer moved to extend the noise ordinance for one hour. Councilman Fordham gave second. The motion passed unanimously.

CITY MANAGER'S REPORT

The City Manager reminded Council of the joint dinner meeting with the Town of Port Royal Council, hosted by the city, on Thursday, October 10, 2002 at 7:00 p.m. at the River Club at the foot of the McTeer Bridge to review the land use and transportation elements of the county's comp plan and to review the traffic impact fee ordinance.

EXECUTIVE SESSION

On motion by Councilwoman Beer, second by Councilman Keyserling, Council voted to move into executive session to discuss appointments/reappointments to the Tourism Management Advisory Commission, The Tree Board, Board of Architectural Review, Parks Utilization Advisory Commission, an update on a land acquisition matter and a personnel matter.

ADJOURNMENT

Upon returning to open session and there being no further business to come before Council, the meeting was adjourned at 9:20 p.m.

BILL RAUCH, MAYOR

COUNCILWOMAN DONNIE ANN BEER COUNCILMAN FRANK GLOVER

COUNCILMAN GARY B. FORDHAM COUNCILMAN BILLY KEYSERLING

ATTEST:

BEVERLY W. GAY, CITY CLERK