

A regular meeting of the Beaufort City Council was held on November 28, 2006 at 6:00 p.m. in County Council Chambers, 100 Ribaut Road. In attendance were Mayor Bill Rauch, Mayor Pro Tem Frank Glover, Council members Donnie Ann Beer, Gary B. Fordham, George H. O'Kelley, Jr., City Manager Scott Dadson and Councilman-elect Mike Sutton. 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.

CALL TO ORDER

The Mayor called the meeting to order at 6:00 p.m.

INVOCATION/PLEDGE OF ALLEGIANCE

The meeting was opened with an invocation by Rev. John Hetrick/Administrative Pastor of Tidal Creek Fellowship. The Pledge of Allegiance was led by the Mayor.

PROCLAMATION – ARBOR DAY

On motion by Councilman Glover, second by Councilman O'Kelley, Council unanimously adopted the proclamation designating December 1, 2006 as Arbor Day in the City.

PROCLAMATION – AMERICAN ASSOCIATION OF UNIVERSITY WOMEN DAY

On motion by Councilwoman Beer, second by Councilman Glover, Council unanimously adopted the proclamation designating November 28, 2006 as American Association of University Women Day in the City.

PUBLIC COMMENT

Reid Armstrong with the Coastal Conservation League thanked Council for sending the Clarendon/McLeod annexations back to be reviewed by the Joint Planning Commission.

Beth Grace commenting on the Clarendon/McLeod annexation workshop last week, said the presentation explained what the landowners would like to do with their property. Now, the Joint Planning Commission and City Council needs to locate an outside consultant who can evaluate all the proposals made and determine what is good and what is not. She suggested contacting the Urban Land Institute and Jim Chapin, a Beaufort County resident, to see if they have a consultant who could review these proposals and examine all the issues to ensure the City's vision is maintained.

The Mayor said the majority of Council asked that the matter of the annexations and development agreements go to the Planning Board but that this Council has an opportunity to vote on the matter. A special meeting is scheduled for December 6th and Council will be voting on that tonight. Councilmen Fordham and O'Kelley stated they did not consent to hold the meeting on this short notice instead of on a regular meeting agenda.

BUSINESS LICENSE HEARING

A Hearing was held in accordance with Section 7-1017(b) of the City's Code of Ordinances regarding the suspension of the business license of Russell Diller of Diller and Associates and B.

Randy Long of CBL Architects, LLC. This suspension is due to the demolition of 905 Washington Street without a permit, without authority from the City's Historic Review Board, and without a Certificate of Appropriateness.

The Mayor recused himself and left the room because Mr. Diller has conducted work on his house. (Copy of form at end of these minutes) The gavel was passed to the Mayor Pro Tem. Councilman O'Kelley noted that he represented Mr. Diller several years ago on real estate matters. The City Attorney stated that is not grounds for recusal. Councilman Fordham said Ms. Long works with his wife and Ms. Beer noted that Mr. Diller is a friend of hers. These were not considered conflicts, according to the City Attorney.

The City Manager made a brief presentation stating certified letters were delivered to Mr. Long and Mr. Diller suspending their business licenses pending a hearing with City Council because of demolition in the Historic District without a permit, without authority from the City's HRB, and a Certificate of Appropriateness for demolishing the structure at 905 Washington Street.

Bill Harvey, City Attorney, said the ordinance states the license inspector shall give written notice to the licensee by Certified Mail that the license is suspended pending a hearing before City Council for the purpose of determining whether the license should be revoked.

Councilman Fordham suggested amending this statute and asked the City Attorney for his opinion. Mr. Harvey said this is not a criminal matter, it is an administrative proceeding as to whether their license should be revoked. Tearing down a historical structure without a permit or Certificate of Appropriateness is deemed unlawful under the city's ordinances. The License Inspector has the right to suspend/ revoke the license but requires the matter be heard before City Council within thirty days. Councilman O'Kelley commented on Mr. Harvey's interpretation and stated Section 7-1018 addresses violations which speak to a person being guilty of a misdemeanor. This means there could be criminal punishment. His concern is if there are two violations that a person could be punished twice. The City Attorney restated they could have been cited for a violation and given a citation which would have been heard in municipal court. Then the criminal aspects would have applied. Councilman-elect Sutton said the loss of license exceeds the cost of the penalty. There should have been more information presented before submitting to Council. Mr. Sutton cautioned Council when proceeding because of the vagueness. The City Attorney disagreed stating this ordinance protects business licenses and this procedure is proper.

Scott Lee, Attorney for Mr. Diller and Mr. Long, said both his clients have always abided by the ordinance. He said his clients will explain what happened and address the cost they have incurred since their business license was suspended.

Russ Diller, contractor, presented a time line of their work on this non contributing house beginning August 11 when they received a Certificate of Appropriateness for the project, explaining the structure was in poor condition. The roof was unstable and the building was in danger of collapsing under its own weight. On October 25th, temporary braces were placed in the structure for support. As they jacked the structure, the existing beams broke and the walls fell. He contacted Mr. Long to discuss the danger and asked what to do. The decision to demolish the building was based on life and safety issues to avoid someone getting hurt. He said he accepts full responsibility for that

decision. The demolition was completed on Saturday, October 28th. He added that two different crews worked over nine days to try to save a portion of the structure. Had he intended to tear it down in the beginning, he could have done it in a couple of hours. The suspension of his license has put him out of business, he said. He couldn't bid on projects and he was not able to complete work on a house on Bay Street. He had to let his employees go before Thanksgiving and he has lost a lot of money. He stated this was a mistake not an intentional act. In his opinion, this was a code violation and he should have dealt with the Codes Department.

Councilman Glover asked why the decision was made to save the building versus taking it down. Mr. Diller replied that he and Mr. Long walked through the building a couple of years ago when the owners contacted them. The floors were soft then but with the leaking plumbing, everything was rotting and the bricks held in the moisture. The owners wanted it removed but he and Mr. Diller thought parts could be preserved. The house was worse than they anticipated.

Mr. Lee asked Mr. Long to explain the effect this has had on his business. He said it was unclear why the architect was included in this suspension.

Mr. Long said over a year was spent in designing and trying to preserve the inner core of the structure. Also, they were told by HRB that this was a non contributing/non-historic building so they could have applied for a demolition permit then but they wanted to save it. He pointed out that he and Mr. Diller have worked on over 30 projects together in historic Beaufort and this is the first structure to collapse. This house was not knocked down, it collapsed while they were trying to elevate it for a new foundation and that's when it became a health and safety issue. The Building Code is based on health and safety issues and if violated will close a site down, he said. When the building collapsed late Friday afternoon, they decided someone could get hurt over the weekend and they needed to clean it up. The violation occurred when the building was moved 15 feet to contain it, he said. That is when they should have called the Codes Department for permission. He said they called the Review Board to report the building collapsed.

Mr. Lee presented letters from friends and a pamphlet showing Mr. Diller and Mr. Long's work.

Councilman Fordham moved to reinstate Mr. Diller's and Mr. Long's business license with the City's apologies. Councilman O'Kelley gave second stating they acknowledged their error and their licenses should be reinstated effective in the morning.

John Gadson, chairman of Historic Review Board, offered his personal comments – not those of the HRB. Mr. Gadson stated both Mr. Diller and Mr. Long have appeared in front of the Review Board with excellent presentations. Mr. Gadson said he believes they did make an error by not first calling the City before beginning demolition. He asked Council to find an amicable solution because these are good businessmen. However, there are rules and regulations that should be followed and everyone is expected to obey them.

Jerry Stocks said she lives in the neighborhood where this house stood. She said she believes they were careful. They have been penalized and she would like to see their license returned.

Council unanimously reinstated Mr. Diller's and Mr. Long's business licenses.

Councilman-elect Mike Sutton said the City needs to ensure this does not occur again. There needs to be a stop gap measure when a building is being altered that the building code official or his representative, visit the site.

The Mayor returned at 7:00 p.m.

PUBLIC HEARING

A public hearing was held to receive comment on the Unified Development Ordinance revising Section 6.5 "Measurement and Exceptions" to revise the standards for approval of flag lots. A Notice of Public Hearing was duly published in The Beaufort Gazette on November 6, 2006. The City of Beaufort-Town of Port Royal Joint Municipal Planning Commission recommended the ordinance be revised to limit the creation of flag lots to new major subdivisions.

Libby Anderson, City Planner, defined flag lots as a flag-shaped lot that has access to a public right-of-way by means of a narrow strip of land and widens into a buildable area. On the recommendation of staff, Council amended the ordinance to allow flag lots to better use long narrow lots. After comparing them to the design and character of the existing neighborhood, they did not seem to fit in.

There being no other comments, the public hearing was closed at 7:10 p.m.

ORDINANCE AMENDING FY07 BUDGET (#2)

An ordinance amending the City's FY07 budget (#2) to include the \$25,000 received from the State for military base preservation activities to be transferred to the GB Chamber of Commerce; the \$23,360 received from the State for the Victims Rights program to be used to purchase a vehicle; and \$15,000 for the revised contract with the Town of Hilton Head for court services was presented to Council for second reading and adoption.

Councilwoman Beer made a motion to adopt the ordinance on second reading. Councilman Glover gave second. The vote to adopt the ordinance on second reading was unanimous. (Copy of ordinance at end of the November 14, 2006 minutes)

ORDINANCE TRANSFERRING ARMORY TO CEMETERY

An ordinance transferring the National Guard Armory to the National Cemetery was presented to Council for second reading and adoption.

Councilman Glover made a motion to adopt the ordinance on second reading. Councilwoman Beer gave second.

David Tedder, Attorney, responded to a question raised at the last meeting as to whether there was any environmental damage to the property that would cause the City to be responsible for clean up since it had been used by the National Guard which was a tank company. He stated the engineering company hired by the government to access the property has examined it several times during the year and there is no disclosure of environmental damage.

Council unanimously adopted the ordinance on second reading. (Copy of ordinance at end of the November 14, 2006 minutes)

The Mayor said he received calls from the Shade Tree Apartments regarding surface water draining onto the property since construction began. He asked the City Manager to investigate into the complaint.

ORDINANCE AMENDING FY07 BUDGET (#3)

An ordinance amending the City's FY07 Budget (amendment #3) to provide Christmas bonuses to City employees was presented for first reading.

Councilwoman Beer moved to approve the ordinance on first reading. Councilman Glover gave second.

The City Manager stated the Christmas bonus of \$200.00 for each employee is being presented in the form of a budget amendment. Locating a revenue source to match expenditures is an appropriate accounting of money. Councilman O'Kelley suggested making the Christmas bonus a line item in the annual budget. The City Manager said he would recommend that next year.

The ordinance was approved unanimously on first reading. (Copy of ordinance at end of these minutes)

ORDINANCE AMENDING FY07 BUDGET (#4)

An ordinance amending the City's FY07 Budget (amendment #4) to provide for the grant request for the Beaufort County Multi-Agency Joint Enforcement Traffic Team in the amount of \$66,956.00 was presented for first reading.

Councilwoman Beer moved to approve the ordinance on first reading. Councilman O'Kelley seconded the motion.

Shirley Hughes, Finance Director, stated this amendment is in two parts. The grant of \$66,956 requires a match of \$7,439. The Police Chief explained the purpose of the 3-year grant with the first year requiring 10% matching funds; 2nd year is 25%; and the 3rd is 50%. He noted the reason for applying for this grant is because the citizens' demands for calls do not allow the time for adequate enforcement. To enhance the grant, he plans to join the Sheriff's team in a joint effort and improve traffic enforcement. This employee's function will be traffic enforcement.

The second part of the ordinance amendment, according to Ms. Hughes, relates to the purchase of Munis software modules to provide better services to our customers in the amount of \$86,673.

The ordinance was unanimously approved on first reading. (Copy of ordinance at end of these minutes)

ORDINANCE REVISING UDO REGARDING FLAG LOTS

An ordinance revising Section 6.5 of the Unified Development Ordinance revising the provisions for the approval of flag lots was presented for first reading.

Councilman O'Kelley moved to approve the ordinance on first reading. Councilwoman Beer

seconded the motion.

Councilman Glover said property owners may desire to take advantage of this and it appears the City is over regulating. Since there have only been two requests since it was adopted, he doesn't see it being a problem. Councilman Fordham agreed.

Councilman O'Kelley pointed out that if someone is interested, they can request a variance. His reason for agreeing with staff is that subdivisions were platted years ago and some of those lots are big. Under the current flag lot ordinance, your neighbor could build a house in their back yard and even though you may object, the ordinance allows it. With a variance request, the adjacent property owners have an opportunity to object. Therefore, he is in favor of amending the ordinance and for each request to be reviewed on a case by case basis.

Ms. Anderson stated the department receives calls daily about subdividing lots. The allowance of flag lots appeared to be a good idea until it was applied in established neighborhoods.

Council unanimously approved the ordinance on first reading. (Copy of ordinance at end of these minutes)

CITY MANAGER'S REPORT

The City Manager reported that the amount of storm water revenues received are short \$200,000 because there is a contention by the U.S. Federal Government about whether the Air Station owes money. Secondly, it is the City's understanding that some public buildings were written off the books. That money is needed to maintain the stormwater drainage as well as pay the debt service structure that was established by this Council to borrow from and repay UDAG. If the Federal Government and the Air Station prevail, there could continue to be a shortage. He said he has suspended any further stormwater projects including Duncan/Langhorn until there is an assurance that the money will be received. At the request of the Mayor, he further explained the school system experienced some bookkeeping errors that indicated monies being owed had been paid. Meetings have been held with the County to solve this dilemma. Councilman Fordham asked that a time limit be placed on this report for the first meeting in December.

REPORTS BY COUNCIL

FORDHAM: Councilman Fordham expressed his disappointment when he saw how much money was owed to Municipal Court. He asked the City Manager to determine how the fines can be collected more aggressively. Also, he asked for a report on how to have people comply with their fines and suggested the Judge put them in jail if they don't pay. He asked for a report at the first meeting in December.

BEER: Councilwoman Beer reminded everyone of Night on the Town on December 1st and the Christmas Parade coming up on that Sunday.

O'KELLEY: Councilman O'Kelley reported he received a letter from Henry C. Chambers this week concerning his Boundary Street project near Beaufort Plaza at the intersection. Mr. O'Kelley said Mr. Chambers was told the building would have to be located in a place that conforms to the Boundary Street Plan. Mr. O'Kelley said he voted for the Plan in concept and not providing any

funds. If staff has taken the position that this is a zoning change and considering development plans along that corridor based on the Boundary Street Plan, he wants to place that item back on the agenda for reconsideration.

The Mayor reminded Council that to reconsider a matter, notice has to be given at the next meeting. Therefore, under the rules passed by this Council, an item that was on an agenda several meetings ago cannot be reconsidered. It could be amended. The Mayor stated the Boundary Street Plan will still be implemented and there will be various readings. Councilman O'Kelley said people are being affected right now based on a conceptual idea not an ordinance.

The City Manager pointed out that there is an applicant that wants to build a **Walgreen** Drug Store at that intersection. The meetings with the developer began many months ago before the adoption of the Master Plan. At that time, the developer asked for support for a traffic light and staff discussed conforming to the Comprehensive Plan. The City Manager explained a lot of time has been invested on the concept and the Plan is now beginning to move forward. In fact, he mentioned a meeting is scheduled for tomorrow night for the form based code which is the zoning tool that makes the conceptual plan work. When the one cent sales tax passed in November, that meant Boundary Street, the parallel road network, and where traffic lights are placed will happen. Staff went out to bid about a month ago for the design plan for that road placement. That is a concern when it deals with the placement of the Walgreen Store on the property so that the parallel road network can be developed. He stated, too, that when the Walgreens project went before the Design Review Board, it did not meet the Unified Design Ordinance. Those issues can be resolved; however, he said it is incumbent for the applicant to be a leader. The City has invested \$350,000 and preparing to invest \$20 million in road improvements approved by the voters of the County. The Mayor suggested a presentation on the status be given at the next Council meeting.

Councilman Glover inquired how a developer can be required to comply if there is no ordinance. The City Manager said a substantial public investment is involved. Libby Anderson, City Planner, added that the application was presented to the DRB at their November meeting. The application was tabled so that the applicant could provide the site plan to better comply with the Boundary Street Master Plan. When the revised plan came back, the proposed street behind the property was replaced with a parking lot. The applicant did not follow the Board's direction. The applicant can revise the plan and resubmit at the January meeting. Also, that Board has the final authority over the site plan, architectural design, the lighting, landscaping, etc.

Henry Chambers stated the developer offered to pay for the traffic signal. He also stated the Master Plan is good but it cannot be implemented as drawn giving examples. He added the plan was redesigned to move away from the traffic light. They were told the entrance cannot be on U.S. Highway 21 even though one is there now. He said the staff has influenced the DRB. The members said nothing and did not approve or disapprove. Later they suggested he resubmit the plan and they would consider it as modified. They applied for the December 14 meeting and it was taken off the agenda. He said something is wrong and it should be corrected. Someone should be told to enforce the ordinances.

Councilman O'Kelley welcomed Mike Sutton to Council. He said too he is sorry to see Councilman Glover leave. He suggested Councilman-elect Sutton be allowed to attend executive session.

EXECUTIVE SESSION

On motion by Councilman Glover, second by Councilwoman Beer, Council voted to move into executive session to discuss appointments of persons to public bodies, namely the Historic Review Board and the Design Review Board.

OPEN SESSION

Southside Park Development Commission

Upon returning to Open Session, Councilwoman Beer moved to appoint James C. Pisciotaro to serve on the Southside Park Development Commission. Councilman Glover gave second and the vote was unanimous.

ADJOURNMENT

There being no further business to come before Council, the meeting was adjourned at 8:15 p.m.

BILL RAUCH, MAYOR

COUNCILWOMAN DONNIE ANN BEER

COUNCILMAN FRANK GLOVER

COUNCILMAN GARY B. FORDHAM

COUNCILMAN GEORGE H. O'KELLEY, JR.

ATTEST:

BEVERLY W. GAY, CITY CLERK