

A regular meeting of the Beaufort City Council was held on February 12, 2008 at 6:00 p.m. in the County Administration Building, Ribaut Road. In attendance were Mayor Bill Rauch, Mayor Pro Tem George H. O'Kelley, Council members Donnie Ann Beer, Gary B. Fordham, Mike Sutton, and City Manager Scott Dadson. 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.

PLEDGE OF ALLEGIANCE

The invocation was given by Rev. Steve Keeler, Pastor of Sea Island Presbyterian Church. The Pledge of Allegiance was led by the Mayor.

PUBLIC COMMENT

David Butler, a member of Congressman Joe Wilson's staff, advised Council of how to contact the Congressman and his office with concerns.

Al Segars, Department of Natural Resources, invited City Council, staff, and the public to attend a presentation in Bluffton tomorrow night and next Tuesday at the Technical College of the Lowcountry from 6:00 to 9:00 p.m. on the Future of our Drinking Water.

Mike Cataldo, Battery Point Subdivision resident, spoke about an ethical complaint against Mayor Rauch. He said there is a lot of development that is attempting to take place with a lot of decisions to be made by the City staff. All the tax payers need to know what is going on in the City. The ethics complaint filed against the Mayor could be very minor but a bad perception is being sent to the public by remaining silent. The Mayor stated he would make a comment, but has not. Mr. Cataldo asked Council to consider suspending the Mayor of his position until the charges are known. He asked Council to debate whether to suspend the Mayor from office until the Ethics Commission makes their findings.

MINUTES

The minutes of the regular City Council meeting of January 22, 2008 were presented to Council for review.

On motion by Councilwoman Beer, second by Councilman Fordham, Council approved the minutes as presented.

MOTION TO SUSPEND ORDER OF BUSINESS

On motion by Councilman Sutton, second by Councilwoman Beer, Council suspended the order of business.

The Mayor read a statement regarding the City's Zoning Administrator's comments to the engineer

who submitted the Wal-Mart site plan to the City, that it is her determination that the proposed Wal-Mart development does not conform to the PUD standards for the Airport Junction PUD as approved by the Council in 2003. Therefore, the proposed Wal-Mart plan for use of the property is denied. Wal-Mart can appeal this determination by the Zoning Administrator to the City's Zoning Board of Appeals. The basis for the Zoning Administrator's determination was that the original PUD contemplated multiple and multistory buildings as a multi-purpose business center park not a single, one-story commercial retail use building.

Libby Anderson, Zoning Administrator, displayed the original master plan for the PUD showing 21 buildings with the largest building approximately 70,000 sq. feet and the Wal-mart site plan.

The Mayor stated the ordinance presented for first reading tonight extends the term of the Development Agreement that was entered into between the owners and the City in 2003 for five years. Additionally, it updates some of the references and provisions in the original Development Agreement to the more recent Unified Development Ordinance. It also increases some fees payable to the City for future development and adds new fees payable to the City and to the schools. The City agreed in the original Agreement that the term would be extended for a new five year term unless the owner materially breached the Agreement. There has been no material breach. This ordinance is not related to the Wal-Mart proposed site plan or use.

ORDINANCE EXTENDING DEVELOPMENT AGREEMENT

An ordinance was presented for first reading to extend the Development Agreement for the Cane Island Retreat, Airport Junction, and Hanover Park Planned Unit Developments (PUD).

Dale Marshall commended staff on the decision to deny the plan. Pointing out some of the discrepancies, he said there has been a lot of change since 1993 when the PUD was approved. He asked Council to let the Agreement expire.

Councilman O'Kelley reiterated that the initial Agreement states that this Agreement "shall" be renewable unless there is a material breach. The alternative is a possible lawsuit.

Margaret _____, Distant Island resident, said the pollution will affect the marine habitat, the wildlife, and increase the traffic. The influx of traffic in the summer by visitors to Hunting Island is already a concern, she said. She asked Council to protect the environment. She asked if the plan for 21 buildings has been part of the Development Agreement from the beginning, how did Wal-mart enter into this. The Mayor pointed out that some changes can be made in a Master Plan. The lady said there is a strong sentiment against that sort of development on Lady's Island.

Evan Thompson, Director of Historic Beaufort Foundation, said they are opposed to Wal-mart being built there and they have concerns about the Development Agreement that is before Council. He asked if a legal opinion has been obtained to determine if replacing the 21 buildings with a Wal-mart is a breach of the Agreement since it is such a divergence from what was intended. The Mayor said the City Manager can ask the Attorney for an opinion.

Jeffery Pollock, Spanish Point resident, said part of the issue of annexing that property may have been for the tax revenues from a commercial development. He said from talking to a number of

people, the citizens realize there is always the risk of litigation and there may be demands for the City to purchase property if necessary. So for Council to say the City may have to purchase property at an unfair price doesn't give credit to the people of Beaufort. Two and a half weeks are not enough to explore all the financial opportunities that we could have to remove that type of density. There are enough people in the City to support Council on taking the financial risk on behalf of the community. He asked Council not to renew the PUD.

Bernie Schein asked for a clarification on the Agreement and Wal-mart. The Mayor explained they are two different issues. The Zoning Administrator explained earlier the proposed plans for Wal-mart and the Master Plan are not consistent. She notified the engineer the City would not consider the plans for Walmart. Councilman O'Kelley stated Wal-mart can appeal to the Zoning Board of Appeals. If that Board affirms the Zoning Administrator's opinion, Wal-mart can appeal to the Circuit Court. Mr. Schein stated a strip mall could be built there with the same problems. He said the people have spoken against a previous annexation and now this matter. He mentioned that the streets are already congested, the bridges are under stress, pristine views are obstructed, wildlife is being pushed out, and the seafood is imported. Beaufort is overloaded and overcrowded. He suggested imposing a moratorium on all development until the infrastructure and preservation efforts are established. If there had been no annexation of that property, the owner could build what he wants without affecting City residents through taxes. However, a Wal-mart will destroy wildlife.

The Mayor addressing questions stated the PUD is basically the same as it was in the County before it was annexed. Referring to the "big boxes" on Highway 170, he said he talked with County Councilman Sommerville, who also serves on the Northern Regional Plan Committee, and they determined that is an appropriate item for discussion during that meeting since it needs to be considered interjurisdictionally.

Tom Martin said he is not against anyone selling property for a profit but it should be done properly. His preference would be the Master Plan rather than a huge "big box" structure because he is against cutting down all the trees and putting in asphalt parking lots. He said he would like to have the information for this space and the area behind the Bi-Lo because he understands a 1,400 seat auditorium/art center is planned for that site. The Mayor offered to meet with Mr. Martin to discuss the various plans.

Arlie Lange agreed it is difficult to follow the land use/decision-making process and to obtain information. He said as an attorney, he has been working in environmental protection and Smart Growth his entire career and is having problems understanding the Development Agreement and the original PUD. He suggested it be updated, reference current laws, and includes language consistent with the current planning process before approving. Also, he said a provision should be added for an analysis of environmental, economic, traffic and other impacts when a development is proposed under this Development Agreement. He said the public needs more time and more information. The Mayor agreed with Mr. Lange's suggestions and asked the City Manager to ask the land use attorney about land use studies, traffic studies, and cost of infrastructure studies.

Michael Zara asked Council to defer action on the Agreement and to consider rezoning this property regarding commercial square footage.

Susan Dixon asked if the FAA as well as Homeland Security shouldn't have input on this development since it is next to the airport.

Dan Luger, Dataw Island resident, warned Council and the Planning Commission about the FAA issue. He said they have rules but no authority to enforce them. Also, the proposed Wal-mart building would be directly in the flight pattern. He said companies like Wal-mart will use every means possible to place their business where they want it. He asked Council to adopt an ordinance making the developers pay for the impact studies and take that burden off the taxpayers.

Jim Brown pointed out that the marshes across the road from the site are navigable with a kayak during high tide. He mentioned that he spoke to the Charleston SCDOT regional engineer and was told that they consider whether there is safe access to services in the affected area. The traffic impact study submitted by Wal-mart did not include the affected area. The Mayor replied the City imposed a traffic impact analysis ordinance on new businesses within the past five years and the developer does have to pay for turn lanes, traffic signals, etc. and this will be included in the updating of the Development Agreement.

Dick Morgan, 303 Federal Street, said he recently moved here. However, he senses a nervousness they experienced in other locations. These communities became so expensive due to out of control development that the people had to commute for jobs and local businesses closed. He suggested studying the history from another town that faced the same issues Beaufort is facing.

Don Starkey, Otto Circle, encouraged Council to consider updating the Agreement. He said he studied both plans and that property should be under the UDO. There are things that can be done to allow these stores and make them more compatible.

Jim Hicks, representing the Lady's Island Business and Professional Association, said this was a challenge and they appreciate the manner in which this was approached. They worked with the Planning Administrator and there was no hidden information.

Ann Blencher said she directed a fifteen county land trust in Texas. She stated basic landowner rights may have been forgotten and it is important to understand the property was zoned for commercial. In 1993 the Agreement was approved and the landowner is allowed to hold on to some of those rights. She implored Council to consider those issues. She mentioned the economics of the Wal-mart. They do help prices in the area to be lower and there are a lot of people that could benefit from those prices and they would not have to drive across town.

Evan Thompson responded to the last speaker by saying Wal-mart may lower prices but those things are not needs, they are wants. They destroy small, local businesses and a lot of people work hard to keep them a live. With respect to property owner rights, he said the property owner has had fifteen years to do something with the parcel and two weeks before it is about to expire there is a proposal for a Wal-mart to be built. Perhaps this is an opportunity to transfer the commercial square footage rights to the Hanover Park parcel on Highway 170.

Jennifer Bradley, resident of St. Helena Island, said she believes most people are concerned about the quality of life issues and don't want this area to turn into a fast growing large town. She said

development cannot be stopped but she would like it to be done smartly and be put together carefully.

Councilman O’Kelley suggested delaying second reading until Council can discuss the items brought up regarding the Development Agreement with the landowner.

Councilman O’Kelley made a motion, seconded by Councilwoman Beer, to authorize the City Manager to execute a five-year extension to the Development Agreement.

Councilman Sutton said there is not an answer to the question of the consequences of not extending the Agreement. Although he is not pleased with the decisions made in 2003 regarding the Agreement, they were thought to be the best at that time. Also, he does not think the intent of that Agreement was to build what was applied for. He explained to the public that although the “big box” is not wanted, other commercial businesses are allowed in Highway Commercial zoning to which people may object. Between first and second reading of the ordinance, answers can be obtained and shared. He asked how many acres in the Airport Junction PUD are high land. Mr. Trask replied forty acres. Also, Mr. Sutton asked if substantial changes have occurred since the Agreement was approved.

In reply to Mr. Sutton’s questions as to whether the Agreement complies with the City’s Comp Plan, Ms. Anderson said the Comp Plan does not extend beyond the City Limits and this property was annexed after the 1998 Comp Plan and before the update. Also, she said the land use plan shows the preferred land use designation not the zoning. Mr. Sutton said the 2004 City Future Land Concept Map does not indicate any commercial development. He would like to see an updated map showing the zoning. He asked about the cost for services for this project. He said he needs answers before second reading so he can make a decision.

Councilman O’Kelley mentioned that during tomato season, the traffic at the packing shed on that corner becomes quite congested. The tractor trailers have a difficult time backing up to the shed. That needs to be considered in the traffic analysis.

The Mayor listed seven items of concern to be answered before second reading.

Council members Beer, O’Kelley, Rauch, and Fordham voted to approve the ordinance on first reading extending the Agreement. Councilman Sutton voted nay. The motion passed 4 to 1. (Copy of ordinance at end of these minutes)

ORDINANCE AMENDING SECTIONS OF THE TOURISM MANAGEMENT ORDINANCE

The ordinance amending Sections 7-11006 through 7-11073 of the City’s Code of Ordinances regarding the Tourism Management was presented for second reading and adoption.

Councilwoman Beer moved to adopt the ordinance on second reading. Councilman Sutton gave second.

Councilman O’Kelley asked what was decided about marking the spills. The Tourism Management

Advisory committee Chairman explained it will be marked with a non-toxic, water soluble substance.

Council adopted the ordinance on second reading. (Copy of Ordinance at end of the January 22, 2008 minutes)

ORDINANCE AMENDING FY08 BUDGET (#3)

The ordinance amending the City's FY08 budget for the purchase of a fountain for Knott Park in an amount not to exceed \$6,000 was presented for second reading and adoption.

On motion by Councilwoman Beer, second by Councilman Sutton, the ordinance was adopted unanimously on second reading. (Copy of ordinance at end of the January 22, 2008 minutes)

REQUEST FOR CITY TO CO-SPONSOR THE HERITAGE OF AMERICA BAND

A request was presented by Main Street Beaufort, USA for the City to co-sponsor the Heritage of America Band, Rhythm & Blue Jazz Ensemble on Sunday, March 9, 2008 in the Waterfront Park.

Councilwoman Beer moved to approve the request. Councilman O'Kelley gave second. The request was approved unanimously.

REQUEST TO SELL ALCOHOL IN THE WATERFRONT PARK

Main Street Beaufort, USA presented a request to sell beer and wine in the Waterfront Park on May 3, 2008 during the Taste of Beaufort.

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

EASEMENT AGREEMENT

An easement agreement between CDM Investments, Inc., Daniel R. Denton, PC, and the City of Beaufort for a perpetual, non-exclusive easement on and across a portion of the property designated as the Easement Area for an access road from the Municipal Complex to Sycamore Street was presented to Council.

Councilwoman Beer moved to approve the Easement Agreement. Councilman Sutton seconded the motion.

The City Manager explained this agreement allows the City to use a portion of the property as a roadway. In exchange the City will create four parking spaces for Mr. Denton. The roadway will actually be a fire lane; a hard surface under grass, and joins the municipal complex property to Sycamore Street.

The vote was unanimous.

CITY MANAGER'S REPORT

The City Manager reported staff has been working on the traffic lights since the bridge accident. The majority of the problem is the loop detectors and about 21 will have to be ordered. Staff has

been working with the SCDOT Traffic Manager and it was determined the internal clocks on Craven Street were off by six hours. Other issues were detected on Lady's Island. The Mayor asked that while work is being done on Craven and Carteret Street that the light be adjusted so the horse and carriage can trip it.

COUNCIL REPORTS

SUTTON: Councilman Sutton asked for an update on the planter and amphi-theater issue in the Waterfront Park reported in the newspaper.

EXECUTIVE SESSION

On motion by Councilman O'Kelley, second by Councilwoman Beer, Council voted to move into executive session pursuant to Title 30, Chapter 4, Section 70(a)(2) of the South Carolina Code of Laws to discuss negotiations incident to proposed contractual arrangements and the appointment/reappointments to the Zoning Board of Appeals.

OPEN SESSION

Zoning Board of Appeals

Upon returning to Open Session, Councilman Sutton moved to appoint Brad Hill to serve the unexpired term of Roy Matthews on the Zoning Board of Appeals. That term will expire June of 2009. Councilman O'Kelley gave second. The motion passed unanimously.

ADJOURNMENT

There being no further business to come before Council, the meeting was adjourned at 8:35 p.m.

BILL RAUCH, MAYOR

COUNCILWOMAN DONNIE ANN BEER

COUNCILMAN GARY B. FORDHAM

COUNCILMAN GEORGE H. O'KELLEY, JR.

COUNCILMAN MIKE SUTTON

ATTEST:

BEVERLY W. GAY, CITY CLERK