

A regular meeting of the Beaufort City Council was held on June 24, 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 Assistant City Manager Shirley Hughes. Scott Dadson, City Manager 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.

### **CALL TO ORDER**

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

### **PLEDGE OF ALLEGIANCE**

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

### **RESOLUTION**

On motion by Councilman O'Kelley, second by Councilwoman Beer, Council voted to adopt the resolution commending Lt. Carol G. Smalls-Jenkins of the City of Beaufort's Police Department upon her retirement after 31 years of service.

### **PUBLIC COMMENT**

**Matt McAlhaney** referred to an article he read in the Beaufort Gazette today regarding the ban on "formula businesses." He said he is opposed and thinks Council should be concerned about preserving the National Historic Landmark District and most concerned with the exterior architecture and not with what goes in the building. Downtown Beaufort would do well if there were some franchise businesses. Charleston and Savannah have done a great job in their historic districts of preserving their architectural integrity while at the same time inserting these franchise businesses. In between the franchise businesses, there are a number of "mom and pop" stores that thrive. He suggested reviewing the economic benefits those cities have recognized before a decision is made.

**Deanne Bowdish** said she believes what sets Beaufort apart is its uniqueness. Charleston and Savannah are both inundated with franchises. Beaufort is an example of independently owned businesses that are thriving in a difficult time. She encouraged maintaining that uniqueness and consider creating an ordinance that would keep franchises out of the historic district.

**John Trask, III** concurred with Mr. McAlhaney's comments. If businesses are to thrive, there needs to be an open market with the store fronts and the uniqueness and character and then once inside the store, there needs to be the ability to shop where one wants. Main Street Beaufort and the downtown merchants complain about a lack of business and that could be because of a lack of choices. It is short sighted for shopping choices to be limited by some people. Mr. Trask encouraged Council to rethink what was in the paper today and let the people make their choices without Council dictating.

**Fred Trask** said over the past few months, his proposed development, Walmart, was lynched. He said he too read in the paper that the Mayor wants to prohibit national franchises in the downtown area. He said some of the buildings are ideal for certain franchise businesses. He asked Council if they are going to tell those store owners that they cannot lease their buildings for this type of business. He said he asked the City Planner for information and to communicate directly with him for the last few weeks. He would appreciate being given honest answers. Regarding the 70,000 sq. ft. "big box" issue, he said this has come about because of the Walmart project. It seems it would be legally required to communicate with the property owners that would be affected by this. He compared the size of Walmart to Target and Home Depot.

**Tommy Winburn**, Emily's restaurant, addressing the Smoking ordinance, said he could have lived with the ordinance the way it was originally written. He didn't object then because it was inevitable that it was going to be adopted. But it was changed after another restaurant owner appeared before Council. This change made it difficult for a couple of store owners that do not have outside facilities to serve their customers. Therefore, he bought a couple of benches and a table and put them out in front of his restaurant. There was no warning by the police department or provocation by his customers; however, two of his customers were cited Saturday night for drinking out there. He said he believes the restaurants provide a large revenue to the City through the hospitality tax but it does not appear to be very hospitable to give an unsuspecting tourist a \$200.00 ticket for walking from one waterfront restaurant to another. He was told there is a zero tolerance policy downtown due to the waterfront littering problem. He suggested a portion of the hospitality money be used to pay someone to clean up the park for an hour a day. He asked that the rules be fair for everyone. He asked Council to find some relief for him whether it is a special permit or temporarily include a small area outside his restaurant like Breakwater has.

Councilwoman Beer agreed that everyone should be treated the same and she has no problem with outside dining if it can be done without affecting the ADA requirements. Councilman Sutton asked that a discussion be held at an appropriate meeting regarding a café-type overlay of the Port Republic Street area in order to consider amending the ordinance to allow this. He noted that those tickets written were two of twenty-eight written that night. This has to be done correctly and there are rules about drinking. Councilman O'Kelley said only the smoking rules were changed and a person cannot drink and smoke in the same area. Mr. Sutton recommended holding a meeting of the business owners, independents; members of the Main Street and Merchants Association who are involved and try to work out a solution.

Mr. O'Kelley commented on the issue regarding not having franchise businesses downtown which, in his opinion, is not a good idea. During the history of Bay Street there have been business chains; if particular businesses are banned downtown or anywhere they would ordinarily be allowed, there will be lawsuits. Ms. Hughes, Finance Director/Assistant City Manager, said there are a couple of issues to consider; the ordinance that prohibits public drinking and zoning, and who owns the sidewalks and this could be placed on the July 15<sup>th</sup> worksession. Councilman O'Kelley said he assumes that includes a discussion of a café-overlay ordinance. People could apply for that designation once there are guidelines established. Councilman Sutton agreed and said the area has to be identified and it won't work in all areas. Port Republic Street needs to be revitalized and this is a step in the right direction.

**Albert Hefner** owner of several downtown businesses said this is an age of regulation; however, the customer makes the decision and very little regulation is needed. Beaufort is confused about chains. He said “mom & pop” businesses are not run out of business by a chain store; it is taxes. They cannot afford increased taxes but chain stores can.

### **PUBLIC HEARINGS**

Randy Marrero, Codes Compliance Officer, stated the following structures are all located in the Historic District and have been presented to the Historic District Review Board for their approval for demolition. An Order to Repair or Demolish was served via certified mail on May 13, 2008. Mr. Marrero stated staff is recommending that the City take action to demolish the vacant, abandoned structures under Article B of Part 5 of the City Code, “Buildings Unfit for Human Habitations

A public hearing was held to receive comment on the *demolition of the vacant, abandoned structure at 1012 Newcastle Street*. This structure was removed from the agenda.

A public hearing was held to receive comment on the *demolition of the vacant, abandoned structure at 1207 Congress Street*. There is also a structure on the rear of the lot that needs to be demolished. Lewis Grayson, son of the owner, was present and in agreement with the demolition.

There being no other comments the public hearing was closed at 6:48

A public hearing was held to receive comment on the *demolition of the vacant, abandoned structure at 1211 Congress Street*. There seemed to be confusion as to whether this building was on the historic survey. The Historic Review Board has approved demolition; however, if the front and the rear additions of the building are removed, the main structure may be saved; if so, the Historic Beaufort Foundation will be contacted for recommendations for repair. If it is not repairable, it will be demolished.

**Evan Thompson**, Historic Beaufort Foundation, noted that all the structures have gone through the review board process and all the recommendations presented to night were approved. He recommended removing the entire structure.

There being no other comments the public hearing was closed at 6:50 p.m.

A public hearing was held to receive comment on the *demolition of the vacant, abandoned structure at 1406 Congress Street*. This house was to be included in the Block-by-Block program for repair. When City Staff inspected the structure it was found to be beyond repair. It is infested with termites and is causing a real safety concern.

There being no other comments the public hearing was closed at 6:56 p.m.

A public hearing was held to receive comment on the *demolition of the vacant, abandoned structure at 605 West Street*. The rear section of the building was hit by lightening a couple of months ago and is in an extreme state of disrepair making it unfit for human habitation.

There being no other comments, the public hearing was closed at 6:57 p.m.

### **DETERMINATION ON BUILDINGS UNFIT FOR HUMAN HABITATION**

The following structures were presented for demolition:

**1207 Congress Street; 1211 Congress Street; 1406 Congress Street; and 605 West Street.**

Councilwoman Beer moved to deem the four structures unfit for human habitation and to demolish them. Councilman O'Kelley seconded the motion.

Councilman Sutton asked that these structures be removed as soon as possible to improve the neighborhood. Mr. Marrero explained the steps to be taken after Council deems the structures unfit and stated he is looking to have all the structures removed within a two month time frame. Councilman O'Kelley said he viewed all the structures today and saw 1010 Church Street is in bad disrepair.

Council unanimously deemed the four structures mentioned above to be unfit for human habitation.

### **MINUTES**

The minutes of the regular City Council meeting of June 10, 2008 were presented to Council for review. On motion by Councilwoman Beer, second by Councilman O'Kelley, Council approved the minutes as presented.

### **ORDINANCE AMENDING FY09 BUDGET**

The ordinance amending the fiscal year 2008 budget to receive the payment for the sale of the parcel of property on Duke Street and appropriate the use of the funds for the Southside Park Project was presented for second reading and adoption.

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

Shirley Hughes, Finance Director, pointed out that the proceeds are to be used for the Southside Park.

Council unanimously adopted the ordinance on second reading. (Copy of Ordinance at end of June 10th Council minutes)

### **ORDINANCE AMENDING UDO REGARDING COLONNADAES**

The ordinance amending Section 6.8 of the Unified Development Ordinance "Boundary Street Redevelopment District," to clarify where colonnades can be located 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 the June 10, 2008 minutes)

### **ORDINANCE REVISING SECTIONS OF THE UDO SETTING A TIME LIMIT FOR APPEALS TO CIRCUIT COURT**

The ordinance revising Section 3.17.H of the Unified Development Ordinance, "Administrative

Appeals, Appeal to Circuit Court” to set a time limit within which appeals to Circuit Court for Zoning Board of Appeals decisions must be made was presented to Council for second reading and adoption.

Councilwoman Beer moved to adopt the ordinance on second reading. Councilman Fordham seconded the motion.

Libby Anderson, City Planner, said this change is to make the ordinance consistent with state law. A clarification in paragraph 4 about how Circuit Court would handle this has been included.

Council unanimously adopted the ordinance on second reading. (Copy of ordinance at end of May 10, 2008 minutes)

**ORDINANCE REVISING SECTIONS 5.1, 5.3.D, AND 11.2 OF THE UDO ADDING REQUIREMENTS FOR LARGE RETAIL ESTABLISHMENTS**

The ordinance revising Section 5.1, 5.3D, and 11.2 of the Unified Development Ordinance to define large retail establishments, add large retail establishments as conditional uses in the Highway Commercial District, and add specific use standards for the approval of such uses was presented for first reading.

Councilwoman Beer made a motion to approve the ordinance on first reading. Councilman Sutton seconded the motion.

Libby Anderson, City Planner, stated Council asked staff to prepare an ordinance to restrict large retail establishments to SC Highways 170-Robert Smalls Parkway and 280-Parris Island Gateway area. The first step was to define large retail establishments. Council’s recommendation is “one with a tenant space of 70,000 sq. ft or more.” The next step would be to decide where such large retail establishments would be located. The decision of guiding large retail establishments to the Highways 170 and 280 is consistent with the northern regional plan. Staff is recommending within the Highway Commercial District be a conditional use. The following conditions would have to be met before appearing before the Design Review Board; a minimum lot size of three acres, the lot must have frontage on SC 170 or SC 280; the lot cannot be located on a marsh-front or water-front lot; the lot cannot be located in the Boundary Street Redevelopment District; and the lot must have a front buffer of 50’ on all street frontages. Not all of the 170/280 area is currently zoned Highway Commercial; however, staff would accept applications to rezone parcels to Highway Commercial. This would be consistent with the Highway Regional Plan. If Council approves the wording, the attached ordinance will be presented to the Planning Commission next month. Ms. Anderson said it is better to have a larger and more densely vegetated buffer instead of placing the large foot print building right up to the street so staff is suggesting the buffer be doubled in size.

Evan Thompson, HBF, stated it is a good idea to consolidate “big box” retail establishments to one area. However, there doesn’t seem to be a cap on how big the buildings can be. He asked Council to consider placing a limit on how large it could be. He visited a web site today that displayed a graph showing a “mom & pop” 2,000 sq. ft. store compared to Walmart, Target, and large super centers of 250,000 sq. ft. A Barnes & Nobel book store would be approximately 40,000 sq. ft.

Ms. Anderson pointed out that the proposed Walmart Super Center on Ladies Island had a building foot print of 206,400 sq. ft., Lowes on Robert Smalls Parkway is approximately 115,000 sq. ft, the former Walmart was 85,000, and the Publix grocery store on Ladies Island is a little less than 40,000.

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

Councilman O'Kelley agreed there should be a limit on size and asked for feed back on size before second reading. The Mayor asked the reason for limiting size if the infrastructure supports it. Mr. O'Kelley said traffic, aesthetics, and the Beaufort look would be affected. The Mayor said he would like to hear the arguments. Councilman Sutton said he would also because he does not totally agree with setting a limit because the economy will control that. Everything can be controlled but he thinks it is best to create an area where the large structures can locate and leave it at that. Councilwoman Beer asked if this also includes height of buildings. Ms. Anderson said the height limit on 170 is 50 feet and Boundary Street is 50 feet. The definition being considered tonight is "an establishment with 70,000 sq ft. or more in one tenant space." It is not just the footprint, it is the total tenant space. The square footage can be divided among three floors. Mr. O'Kelley said the ordinance doesn't state that and it could be interpreted to mean the footprint of the building. The Mayor and Ms. Anderson agreed to clarify the wording.

Evan Thompson, HBF, mentioned there are esthetic concerns to consider in respect to a cap. Height limitations would control to some extent how big something could be. He agreed that the footprint of the building would be more appropriate. Encouraging smart growth principles and condensing retail establishments into one area, vertical space would be better than spreading it out.

**ORDINANCE REVISING SECTION 6.5.I.5 OF THE UDO CLARIFYING CRITICAL LINE SETBACK REQUIREMENTS**

An ordinance amending Section 6.5.I.5 of the UDO to clarify the requirements for the critical line setback was presented for first reading.

Councilwoman Beer made a motion, seconded by Councilman Fordham, to approve the ordinance on first reading.

Libby Anderson, City Planner, said there were two options for addressing the critical line setback discussed during the public hearing at the last Council meeting. Option 1 was a minor change to the existing ordinance to address what was discovered to be a gap in the ordinance. Option 2 was a more significant change that would bring the City's requirements for the critical area buffer in line with what the County currently has and what has been recommended in the northern regional plan. Staff recommends that they continue to work through the issue with increasing the critical area buffer, work with the Planning Commission and in the meantime close the gap identified in the current ordinance by making a minor change to say there is a 30 ft. critical line setback for all impervious surfaces and vehicular use areas.

Councilman Sutton stated Council asked how this would affect efforts to work on the roadways on the Boundary Street corridor and he would like an update. Those are issues that should be studied

when a more major change is made, Ms. Anderson said; if the Boundary Street Redevelopment District is to be exempted. The change being proposed today is that all impervious surfaces and vehicular use areas would not be allowed in the buffer. A road could be built but it would have to be gravel. Mr. Sutton said there is to be a parallel road and it might fall into this category; therefore, he is cautious. Ms. Anderson stated this change will not impact the Boundary Street Redevelopment area.

Councilman Sutton asked staff to prepare a study of how this change will affect current projects with road beds.

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

**RESOLUTION ESTABLISHING A COMPREHENSIVE PLAN ADVISORY COMMITTEE**

A Resolution establishing a Comprehensive Plan Advisory Committee was presented for first reading.

Libby Anderson, City Planner, stated it is desirable to establish a 15-member advisory/steering committee from various agencies to work with the consultant and the staff to guide preparation of the Comprehensive Plan. The members would consist of representatives from City Council, the Joint Municipal Planning Commission, the Design Review Board, the Historic District Review Board, the Zoning Board of Appeals, the Redevelopment Commission, the Marine Corps Air Station Beaufort, the Beaufort County School District, the Lowcountry Economic Network, the County Planning Commission, the Greater Beaufort Chamber of Commerce, and a representative from the Historic Beaufort Foundation.

The Mayor recommended County Councilwoman Laura Von Harten also serve on the Committee. Councilman Fordham suggested deleting a representative from the Redevelopment Commission since Council also serves on that Commission. Councilman O’Kelley said he was unsure of whether a member from the Zoning Board of Adjustments should be included because they handle appeals and that could be a conflict. Councilman Sutton recommended adding two at-large seats for those people who do not serve on a board or commission but would be interested in serving in this capacity. The Mayor mentioned that with the election approaching, it would be best for the two Council members who are not affected by that election to serve as the Council representatives. Council concurred.

On motion by Councilwoman Beer, second by Councilman Fordham, Council voted to amend the resolution by adding two at-large representatives and removing the ZBOA representative. The vote was unanimous. (Copy of resolution at end of these minutes)

On motion by Councilwoman Beer, second by Councilman Sutton, Council approved the following five ordinances on first reading:

**ORDINANCE REVISING A SECTION OF THE UDO PERTAINING TO THE FIRE CODE**

An ordinance updating Part 2, Chapter 2, Part B of the Code of Ordinances pertaining to the current fire code (Copy of ordinance at end of these minutes)

**ORDINANCE A SECTION OF THE UDO PERTAINING TO BUILDING CODE,**

### **PROPERTY MAINTENANCE CODE, AND ENERGY CONSERVATION CODE**

An ordinance revising Part 5, Chapter 1, Article A of the code of Ordinances pertaining to the Building Code, Property Maintenance Code, and Energy Efficiency Code. (Copy of ordinance at end of these minutes)

### **ORDINANCE REVISING A SECTION OF THE UDO PERTAINING TO THE PLUMBING CODE**

An ordinance revising Part 5, Chapter 1, Article D of the Code of Ordinances pertaining to the Plumbing Code. (Copy of the ordinance at end of these minutes)

### **ORDINANCE REVISING A SECTION OF THE UDO PERTAINING TO THE MECHANICAL CODE**

An ordinance revising Part 5, Chapter 1, Article F of the Code of Ordinances pertaining to the mechanical code. (Copy of the ordinance at the end of these minutes)

### **ORDINANCE REVISING A SECTION OF THE UDO PERTAINING TO THE FUEL GAS CODE**

An ordinance revising Part 5, Chapter 1, Article E of the Code of Ordinances pertaining to the fuel gas code. (Copy of ordinance at end of these minutes)

### **COUNCIL REPORTS**

**SUTTON:** Councilman Sutton reported that the work camp project was held last week with 300 volunteers participating in the Block by Block project. This week there are 100 students staying at the Beaufort Baptist Church who are continuing to work on projects throughout the City. This will continue for about five weeks. He complimented the City staff for collecting the debris on Friday.

**FORDHAM:** Councilman Fordham asked that Council confirm that their e-mail addresses on the City's web site are correct. He asked that a status report on the Block By Block project be presented at the next Council meeting. Mr. Fordham asked if the Waterfront Park repairs are completed and what was the total cost. He also inquired about the construction fence blocking access to the Waterfront Park at the old BB&T site that was mentioned during public comment at the last meeting. Councilman Sutton suggested using concrete barriers on the asphalt 3 feet from the fence to create a barrier to protect the pedestrians. Mr. Fordham recommended Mr. Sutton, the City Manager, and Bill Jones discuss this further. Councilman O'Kelley reminded Council that Mr. Ungaro was concerned that vehicular traffic did not have access.

### **ASSISTANT CITY MANAGER'S REPORT**

Ms. Hughes referred to the request for e-mail addresses on the web site and asked Council if they would prefer the City e-mail address be posted and have the messages directed to their individual addresses. Council agreed to send the information to Ms. Hughes.

Also, Ms. Hughes asked Council to visit the Municipal Complex site to view the color of the grout. Councilman O'Kelley and the Mayor chose the rose color over the gray concrete color. Council members Beer, Sutton, and Fordham agreed.

Ms. Hughes reported the letters to the business owners regarding the no smoking ordinance are being printed tomorrow and will be mailed Friday.

**ADJOURNMENT**

There being no further business to come before Council, the meeting was adjourned at 8:03 p.m.

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BILL RAUCH, MAYOR

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COUNCILWOMAN DONNIE ANN BEER

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COUNCILMAN GARY B. FORDHAM

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COUNCILMAN GEORGE H. O'KELLEY, JR.

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COUNCILMAN MIKE SUTTON

ATTEST:

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BEVERLY W. GAY, CITY CLERK