

CITY OF HARDEEVILLE  
SPECIAL CITY COUNCIL MEETING  
AND PUBLIC HEARINGS  
MINUTES  
JANUARY 18, 2010  
6:00 PM

Present: Mayor Pro Tem Roy Powell, Council Members A. Brooks Willis, Michael Foskey and Bill Horton, Interim City Manager Ted Felder, City Attorney David Tedder, City Clerk Lori Pomarico and Media Technician Juan Singleton.

Absent: Mayor Bronco Bostick

I. CALL TO ORDER

Mayor Pro Tem Powell called the meeting to order at 6:00 p.m.

II. INVOCATION & PLEDGE OF ALLEGIANCE

Council Member Brooks Willis gave the invocation

**A motion was made by Council Member Foskey to change the order of the agenda and place Item IV Executive Session before Item III New Business reserving public comment on Item III until after staff presentation to Council. The motion received a proper second by Council Member Horton and carried unanimously.**

III. EXECUTIVE SESSION

A. DISCUSSION OF NEGOTIATIONS INCIDENT TO PROPOSED CONTRACTUAL ARRANGEMENTS AND PROPOSED SALE OR PURCHASE OF PROPERTY, THE RECEIPT OF LEGAL ADVICE WHERE THE LEGAL ADVICE RELATES TO A PENDING, THREATENED, OR POTENTIAL CLAIM OR OTHER MATTERS COVERED BY THE ATTORNEY-CLIENT PRIVILEGE, SETTLEMENT OF LEGAL CLAIMS, OR THE POSITION OF THE PUBLIC AGENCY IN OTHER ADVERSARY SITUATIONS INVOLVING THE ASSERTION AGAINST THE AGENCY OF A CLAIM IN ACCORDANCE WITH S.C. CODE OF LAW SECTION 30-4-70 (A)(2)

**A motion was made by Council Member Foskey to move into executive session. The motion received a proper second by Council Member Horton and carried unanimously.**

**A motion was made by Council Member Willis to return to regular session from executive session. The motion received a proper second by Council Member Horton and carried unanimously.**

IV. NEW BUSINESS

A. FIRST READING OF AN ORDINANCE AMENDING THE SECOND RESTATED AND AMENDED DEVELOPMENT AGREEMENT (ARGENT WEST TRACT) PURSUANT TO SECTION 6-31-90 REGARDING DEFAULTS, NOTICE TO CURE, AND MODIFICATION **(2010-1-18A)**  
**PUBLIC HEARING**

Interim City Manager Felder deferred to City Attorney David Tedder. Attorney Tedder stated that this is an ordinance dealing with amendments to the Development Agreement and it has been no secret that there have been negotiations and conversations between Core Communities of South Carolina and the City over items that were needed to be paid or transferred to the City under the Development Agreement that was first entered into several years. Attorney Tedder stated that the ordinance before Council has findings of facts and under section 6-31-90 if the City declares a default it is to give written notice to the developer and give them reasonable time to cure; if not cured, the local government, under Subsection C, unilaterally may terminate or modify the agreement. This ordinance will modify the agreement. Attorney Tedder distributed, to be made part of the record, a series of letters dealing with the correspondence with Tradition/Core involving the payment of a \$200,000 fee for administrative staff; a \$1,000,000 fee for a fire station; and a request under the Development Agreement that the City be transferred a two and one-half acre site. Those letters, dated October 29, 2009, November 5, 2009 and December 15, 2009 all under Attorney Tedder's letterhead, are referenced in this ordinance. Attorney Tedder gave reference to the particular findings; the Development Agreement was originally entered on July 8, 2005; it was amended; under Section XIX, Enforcement, which provides the City the right to enforce the terms, provisions and conditions of this Agreement if not cured by any remedy available at law or equity including specific performance, the right to recover attorney's fees and costs; Defaults provides if there is a monetary default that is not cured within fifteen days, the non-defaulting party is entitled to pursue remedies, including specific performance, provided they cannot declare termination by the City absent according the owner and any other secondary developer the notice, and hearing an opportunity to cure; and provided further that nothing would prevent the City from being able to stop work orders or void permits issued for development when such development contravenes the provisions of this agreement, the City makes exceptions for individual owners; the City must provide the writings, which have been provided; the City may, if it chooses, deny business license upon renewal; the City had periodic reviews/discussions as noted in the letter and in these findings of fact back in October, November and December, trying to get this cured. As of December 31, 2009, there has been no formal written response rebutting any of the alleged defaults.

Attorney Tedder reiterated for the benefit of the public that a Development Agreement is an agreement with the City to provide entitlements to a developer if they meet the conditions for that development. The City has taken the position in all of its Development Agreements that the developer has to provide the public infrastructure to service those lots including police, fire, libraries, parks, schools, etc. Up until this past year, Core Communities was a very good citizen and has done what it can and Attorney Tedder added that he is not saying that they are bad in any way, shape or form; there is an economic crisis and they have not been able to pay the City; Attorney Tedder stated that he does not know why they have not been able to transfer the 2.2 acre site that is identified in the Development Agreement for a fire station. Attorney Tedder stated that in order for this City to provide its citizens, including those in the areas it annexed in Tradition, the level of service that was promised by a period of time as set forth in the Development Agreement, allowing others to be built when we do not have the ability to provide that level of service is not proper, could create a public nuisance and there is findings of facts regarding the further encumbering of the City's ability to provide those services in the absence of the money, the site and the public infrastructure that it needs. The failure to pay the administrative staffing fees is having an impact on the staff, which impedes the ability to process subdivision, master plan, and other permits.

Attorney Tedder stated that the amendments in Section II are necessary to protect the health, safety and welfare, in particular, the residents in this area. The City has given notice; publicized the notice of this meeting and a meeting next Monday, at 10:00 a.m. in a paper of general circulation that came out on Saturday; provided notices to the attorneys for the parties involved, Core as well as the two lien holders; and Attorney Tedder asked that the City Council find that the finding of facts in the ordinance are supported by the documentation provided after giving the developer, Core Communities, an opportunity to rebut or refute or consent to the amendment as set forth. The City has asked for the Council to amend is set forth in Section II and there are several different sections involved with the Development Agreement. Section XIII adds a new Section K, that basically says, in effect, that no building or development permit shall issue for any property lot owned as of December 15, 2009 by owner or any of its subsidiaries, nor shall any master plans or subdivision be processed until such time as fire/public safety site is transferred to the City lien free; the fees due as of October 21, 2009 in the amount of one million dollars with interest at the legal judgment rate be paid to the City; the administrative fees due as of November 1, 2009 likewise be paid to the City with interest; the section of the Development Agreement providing for the cost of the city's attorneys to enforce the agreement be paid; and any further fees or obligations coming due in the interim until this matter be cured likewise be paid in the same manner as discussed before. Individual lot owners, other than owners or its subsidiaries, obtaining legal title to their property prior to the enactment of this ordinance or the filing of a Notice of Intent that this Council passed by resolution at the first meeting in January and was filed with the Register of Deeds Office on Friday, January 8, 2010, can continue to move forward by paying the individual impact fees that are set forth in the agreement prior to obtaining a building permit. There is also a bail out provision in Item 3 of this section that allows the City, in its sole discretion by resolution, agree that any particular application could move forward.

Attorney Tedder stated that Section XIII is amended by adding Subsection L which provides that if there is a money obligation or fee owed to the City by owner or its transferees other than individual lot owners, is going to be treated as a lien enforceable by the City's tax collection process.

Attorney Tedder stated that Section XII(I)(2) amending a new sentence provided that there are certain funds in different accounts for police, fire, library, parks and provides at this time that those monies could be used to pay the expenses of the City and administrative staffing; Section D affixes a typographical error. New subsections have been added to provide the structure of a forum and a process by which if there is going to be an assignment of obligations, an acceptance of burden and a receipt of benefits that they are clearly spelled out. Section E provides that if the City is satisfied that there is a fair and equitable and financially solvent way to do an apportionment that there is a process to approve it.

The City staff has recommended that the Council consider and pass on first reading setting another Public Hearing for Monday, January 25, 2010 at 10:00 a.m.

Council Member Foskey commented that up until a few months ago, Core Communities has been a great citizen and part of this community and has hosted several golf tournaments, United Way, Catfish Festival, and there are people that are living there now that are part of this community and it is sad that they will have to go through this as well as the City.

Council Member Foskey asked with regard to the fire station site what, if any, is the reasoning behind Core not deeding the property over to the City. Attorney Tedder responded that in his request through attorneys to have that site transferred to the City, Core Communities was willing to deed that property over to the City but without the consent of the lien holder on that property they could not give it to the City lien free. Additionally, the Development Agreement provides that a berm be knocked down for a road and put to rough grade which is a physical thing that needs to be done. Attorney Tedder added that the reason why the mortgage company did not agree to release that would have to be asked of Core Communities. Attorney Tedder stated that he presumes that there ought not to have been any reason why Core Communities would not want to transfer that site to the City because it has clearly been owed to the City under the Development Agreement for months on end and even the original Development Agreement provided for a site.

**There was no public comment. A motion was made by Council Member Horton to accept Ordinance No. 2010-1-18A at second reading. The motion received a proper second by Council Member Foskey and carried unanimously.**

Mayor Pro Tem Powell announced that there will be a public hearing regarding this ordinance on Monday, January 25, 2010 at 10:00 a.m. in Council Chambers.

V. ADJOURNMENT

A motion was made by Council Member Foskey and seconded by Council Member Horton to adjourn the meeting. The motion passed unanimously. The meeting adjourned at 7:40 p.m.

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Lori Pomarico, City Clerk

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Date

SEAL