

CITY OF HARDEEVILLE
SPECIAL CITY COUNCIL MEETING
AND PUBLIC HEARINGS
MINUTES
JANUARY 25, 2010
10:00 AM

Present: Mayor Bronco Bostick, Mayor Pro Tem Roy Powell, Council Members A. Brooks Willis, Michael Foskey and Bill Horton, Interim City Manager Ted Felder, City Attorney David Tedder, Assistant City Manager Jeff Slocum, Planning Director Brana Snowden, Finance Director Dennis Averkin, Fire Chief Dan Morgan, City Clerk Lori Pomarico, Media Technician Juan Singleton and Media Technician Brandon Sligh.

I. CALL TO ORDER

Mayor Pro Tem Powell called the meeting to order at 10:05 a.m.

II. INVOCATION & PLEDGE OF ALLEGIANCE

Council Member Michael Foskey gave the invocation

A motion was made by Council Member Horton to amend the agenda and place a new Item, Executive Session, before Item III, Old Business, to obtain legal advice in accordance with S.C. Code of Law 30-4-70(A)(2). The motion received a proper second by Council Member Foskey and carried unanimously.

A motion was made by Council Member Foskey to return to regular session from executive session. The motion received a proper second by Mayor Pro Tem Powell and carried unanimously.

III. OLD BUSINESS

A. SECOND 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 reported that this is the Core Communities/Tradition document addressed in the last special meeting and deferred to City Attorney David Tedder. Attorney Tedder stated that this is the second of two required meetings to be held in order to amend the Development Agreement. This is being presented under section 6-31-90 of the Code of Laws of South Carolina that generally provide, as the findings of fact in this ordinance set out, that if there is a default in performance of the obligations of the Development Agreement, the

government let the developer know what the problems are, give them an opportunity to cure the defaults within a reasonable time, and if not cured within a reasonable time, then the local government unilaterally may terminate or modify the Development Agreement provided that the local government has first given the developer the opportunity to rebut the finding of the determination or consent to amend the Development Agreement to meet the concerns of the local government with respect to the findings and determinations. Attorney Tedder stated that there have been no changes to Section I Findings of Facts between the first and second readings. There are some grammatical and typographical corrections in the ordinance, three have dealt with the insertion of the words “successors or assigns” in various places to be consistent with the Development Agreement beginning with Section IIa. Attorney Tedder clarified that what the City is doing is a conditional voiding under the Development Agreement and the statute of the permits, plans, plats previously permitted but allowing for the City to revoke that conditional voiding by passing a resolution once sufficient redress has been given to the City to address their concerns. Mr. Tedder added that some minor typographical corrections and insertions notwithstanding to the contrary have been made in a couple of places to clarify the language; and cleaning up the assignment language that the City had brought into effect from some of the other Development Agreements where there would be an apportionment of the property through some methodology. As discussed in the previous meeting, there is a foreclosure sale moving forward, and, assuming that the foreclosure is not cured or the default is not cured, a court order would eventually be entered that will say this mortgage company owns this portion of the property and Attorney Tedder stated that he wanted to insert, as had been done on the others where they knew there was going to be a clear delineation of some areas, how they track the assignment of commercial/residential obligations in those matters and provide for approval of the City of an assignment in that regard. Attorney Tedder stated that the other two amendments that came into effect as a result of the last meeting in which the location of the equipment was addressed, a section has been added to clarify that due to the defaults that they have had, relocation of equipment and those types of matters are at the sole discretion of the City. Attorney Tedder stated that this is a continuing default and until these matters are resolved, the City reserves the right to come back and further amend the Development Agreement based on the findings of facts that may come about as a result of future matters.

Attorney Tedder asked, in recognition of discussions, that the ordinance, as presented, be approved with the amendments he has inserted, but that Section IIc be deleted. This section deals with the sweeping of the escrow accounts, the capital funds for roads, parks, and those types of things, to pay our fees. Attorney Tedder asked that this be removed and keep that it is the will of Council to leave those fees where they are at this point in time.

The Mayor opened for public comment. Mr. Morris Ellison, representative for National Bank of South Carolina which has a lien on a part of the property that is subject to what Mr. Tedder has been talking about, asked for clarification from Attorney Tedder regarding the conditional voiding of plats previously submitted and approved that is contained in the proposed ordinance. Mr. Ellison indicated that he did not see that in the ordinance. Attorney Tedder responded that this was an addition, as he had pointed out, that came between first and second reading after consulting and stated that he could provide Mr. Ellison with a copy of that language and of the

ordinance; Attorney Tedder read the actual language. Mr. Ellison stated that the National Bank of South Carolina has filed a foreclosure action with respect to a part of the property that would involve approximately 42% of the units previously approved. Mr. Ellison added that there is a hearing today in Beaufort, scheduled on an expedited basis, on a motion to have a receiver appointed for that portion of the property. The National Bank of South Carolina has no authority to do anything with respect to the ordinance that Council is considering. Mr. Ellison reported that a letter was sent to the developers attorney approximately three weeks ago indicating NBSC's thinking with respect to providing some funding for some of the obligations that are provided under the Development Agreement. The receiver, if appointed today, would have the authority to go forward and address some things, but until that happens, NBSC could not do so. Attorney Tedder stated that the letter Mr. Ellison is referring to was sent to the Mayor and Council the second week of January. Attorney Tedder stated that he would be representing the City at today's receivership hearing.

Attorney Tedder stated, as a point of information, City Council's next regular scheduled meeting is February 4, 2010.

Mr. Jeff Vinzani, Attorney for AEGON USA Advisors, introduced himself to Council, and stated that they are in the same position as NBSC on some property that had not yet been developed.

A motion was made by Council Member Horton to approve Ordinance No. 2010-1-18A with modifications presented by City Attorney Tedder at second reading. The motion received a proper second by Council Member Foskey and carried unanimously.

IV. 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 11:00 a.m.

Lori Pomarico, City Clerk

Date

SEAL