

CITY OF HARDEEVILLE
REGULAR CITY COUNCIL MEETING
AND PUBLIC HEARINGS
MINUTES
NOVEMBER 6, 2008
6:00 PM

Present: Mayor Bronco Bostick, Mayor Pro Tem Roy Powell, Council Members A. Brooks Willis, Michael Foskey and Bill Horton, City Manager Kevin Griffin, Assistant City Manager Jeff Slocum, City Attorney David Tedder, Municipal Judge John Carroll, Planning Director Brana Snowden, Parks and Recreation Director Joe Gailey, Permitting and Licensing Director Jaime Vega, Economic Development Director Ted Felder, Police Chief Richard Nagy, Assistant Chief Steve Murphy, Fire Chief Dan Morgan, City Clerk Lori Pomarico and Public Information Director Jason Rogers.

I. CALL TO ORDER

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

II. INVOCATION & PLEDGE OF ALLEGIANCE

Council Member Brooks Willis gave the invocation

III. PUBLIC PRESENTATIONS/COMMENTS (2 MINUTE TIME LIMIT)

Parks and Recreation Director Joe Gailey stated that he received a special event application from Boy and Cub Scout Troop 235 to hold a yard sale this weekend from 7:00 am to 2:00 pm at the Boy Scout hut. Mr. Gailey asked for Council's approval.

A motion was made by Council Member Bill Horton to allow the Boy Scouts to hold a yard sale on Saturday, November 8, 2008. The motion received a proper second from Council Member Brooks Willis and carried unanimously.

Mr. Gailey thanked everyone that attended the 2008 Catfish Festival, as well as the committee members, volunteers and sponsors.

Ms. Linda Nease commented on the beautification of the T.B. Carroll Jr. Memorial Park. Ms. Nease stated that the park had gotten into a state of disrepair and now has new flags and the fountain is working. Ms. Nease added that the park looks the way it should to honor the memory of a person that meant so much to Hardeeville. Ms. Nease thanked all the people responsible for fixing up the park.

IV. OLD BUSINESS

- A. SECOND READING OF AN ORDINANCE MAKING PROVISION FOR TAX ANTICIPATION BORROWING BY THE CITY OF HARDEEVILLE, SOUTH CAROLINA, IN THE PRINCIPAL AMOUNT OF NOT EXCEEDING \$600,000, IN ANTICIPATION OF THE COLLECTION OF AD VALOREM TAXES FOR THE FISCAL YEAR BEGINNING THE FIRST DAY OF JULY, 2008 AND ENDING THE 30TH DAY OF JUNE, 2009; TO PRESCRIBE THE TERMS AND CONDITIONS OF SUCH BORROWING AND THE FORM OF NOTE TO BE EXECUTED EVIDENCING THE SAME; AND TO MAKE PROVISION FOR THE PAYMENT THEREOF. (2008-10-21A)

PUBLIC COMMENT

City Manager Kevin Griffin deferred to Assistant City Manager Jeff Slocum. Mr. Slocum stated that this is the second reading of the tax anticipation borrowing ordinance. The original ordinance did not have a percentage for the not exceeding amount and since that time, 4 ½% has been added. This is the only change to the ordinance. Mr. Slocum stated that the City has received two bids from the RFP process, one for 4% with a one thousand dollar (\$1,000) closing fee; and the other proposed amount was 3.94% from SCB&T with no attorney fees.

There was no public comment. A motion was made by Council Member Foskey to accept Ordinance No. 2008-10-21A at second reading. The motion received a proper second by Council Member Horton and carried unanimously.

- V. PRESENTATION & APPROVAL OF MINUTES FROM THE OCTOBER 16, 2008 REGULAR CITY COUNCIL MEETING AND THE OCTOBER 21, 2008 SPECIAL CITY COUNCIL MEETING

Mayor Pro Tem Roy Powell asked to make an amendment to the Minutes from the October 16, 2008 Regular City Council Meeting to add his request for a copy of the by-laws from the Hardeeville Chamber of Commerce. To date, Mayor Pro Tem Powell has not received these documents and has asked that it be noted that he made this request at the October 16, 2008 City Council meeting and is again requesting these documents at this meeting.

A motion was made by Mayor Pro Tem Powell to approve the October 21, 2008 Special City Council Meeting Minutes as written and the October 16, 2008 Regular City Council Meeting Minutes with this amendment. The motion received a proper second by Council Member Foskey and carried unanimously.

VI. NEW BUSINESS

- A. FIRST READING OF A PLANNED DEVELOPMENT DISTRICT (PDD) AMENDMENT FOR PARCELS 029-43-05-006 & 029-43-02-001 OF THE

**GATEWAY CORNERS PLANNED DEVELOPMENT DISTRICT (PDD)
LOCATED ALONG MOORER AVE. AND FRONTAGE RD (+/-22.17
ACRES). (2008-11-6A)
PUBLIC COMMENT**

City Manager Kevin Griffin stated that a few meetings back a group of community members presented a petition to Council to amend the zoning of this particular property. Council then, in the affirmative, remanded that back to Planning Commission to take a look at the zoning. Planning Commission has made a recommendation back to Council. City Manager Griffin deferred to Planning Director Brana Snowden.

Ms. Snowden stated that the Planned Development was originally approved in 1998. Staff went through all the planned development documents and the final one that is under consideration for amending was done in October 2003. Ms. Snowden stated that the changes from 1998 to 2003 added more general commercial uses and took away some multi-family and neighborhood commercial uses. The Planning Commission took into consideration the concerns of the citizens; that they would like residential uses and that they understood the need for neighborhood commercial uses and they would like those convenience uses as well; but that they feel the general commercial uses would have a negative impact on their neighborhood. Ms. Snowden indicated that she included in the packet presented to Council the different site plans that came through from 1998 to 2003 on this project. Planning Commission and staff have reviewed and are recommending to Council to amend the Planned Development Ordinance to go with the neighborhood commercial uses on the entirety of these two parcels. As the planned development defines neighborhood commercial, it goes back to the 2003 version of the MZDO which defines neighborhood commercial as Downtown Mixed Use Allowed Uses which includes multi-family residential and a wide variety of commercial uses, but not the big scale, warehouse, more intense general commercial uses.

Council Member Michael Foskey asked if there was any suggestion made to this company to go somewhere else in city limits other than this particular site. Ms. Snowden stated that currently we do not have an application, but have had pre-application conferences on a proposed use for the site. Other parcels that might allow that type of zoning were discussed but pushing them to other locations is not something the City promotes.

Council Member Brooks Willis asked if this amendment passes, would it move the prospects of this store from going in near the neighborhood. Ms. Snowden responded that it would not allow for the type of use that has been requested.

Mayor Pro Tem Powell asked if we go back to the 2003 neighborhood commercial use, since it still allows for a private or semi-private club, could someone still have a bar, even though it would not be a public bar, or a private social club that serves alcohol. Ms. Snowden responded that in South Carolina a private social club is not a bar. Mayor Pro Tem Powell asked if there is still a good chance that with this change there would still be alcohol in the

community. Ms. Snowden responded that that would be the likelihood, there could be a small restaurant there, but a large scale retail shop would not be allowed.

Mayor Pro Tem Powell stated that as of the meeting with the Planning Commission two weeks ago the owner had not been contacted, therefore, the owners are not present. Ms. Snowden responded that notification letters were sent out and the property owners did not receive them. The notification was returned to the City by mail, on the day of the Planning Commission, that the property owners were no longer at that address. Ms. Snowden worked with City Attorney David Tedder that day and found another address through a source that Mr. Tedder had and the notifications were sent back out. Mayor Pro Tem Powell asked if the City had heard from the owner's attorney today. Ms. Snowden responded that they had.

City Attorney David Tedder stated that he received a phone call this morning from Mr. Simon Fraser, an attorney in the Hilton Head Bar, who questioned the noticing of the property. Mr. Tedder related to him what his understanding was concerning where we sent the notification, which was according to statute. The notification was sent to the person on the tax assessment notices, as well as the registered agent for the corporation that owns it. Mr. Fraser expressed some concern about the rezoning and the lack of notice. Mr. Tedder was later contacted by Mr. Chester Williams of the Hilton Head Bar who is assisting Mr. Fraser. In Mr. Tedder's discussions with the two attorneys he said that he would relate to this council their concerns that there was not proper notice of the zoning change, and that his recommendation would be that the council consider sending these documents back to the Planning Commission so that the owners will have an opportunity to present their site constraints and other matters they could have done if they appeared in front of the Planning Commission. Mr. Tedder stated that it is his opinion that the City has complied with both the statute and ordinance as far as the notice went; there is a specific procedure that says notification is to be mailed to the person on the tax assessment notice.

Council Member Willis stated that it is his understanding that this corporation has been doing business with the City for some time and asked if this corporation has no encumbrance on them that when they have a change of address to notify the city. Mr. Tedder responded that statutes require that if you are a landowner and change your address you must notify the assessor's office of the change so the tax bills can go to the correct address. If a corporation or company changes its address there is a time limit to submit a change of address form to the Secretary of State so that they can make certain any legal process can be served under the state statutes. Mr. Tedder further stated that in this case the City did what it was supposed to do under the statutes and the ordinance. However, this does not change his opinion that this Council and the council before it always wanted to give the landowner and the neighbors plenty of opportunity to comment on anything. If this Council sees fit, it can take action on the Planning Commission's recommendation and in light of the facts, remand back to the Planning Commission according to Code of Laws of South Carolina, Title 6, Chapter 29, South Carolina Local Government Comprehensive Planning Enabling Act of 1994, § 6-29-370 Referral of matters to commission prior to second reading so they can bring forward that

recommendation, which may be amended, after the landowner has an opportunity to present his side of the story.

Mayor Pro Tem Powell stated that as late as June 26th or 28th, a member of the town staff did communicate about this same piece of property, not about this issue, with a law firm, the same one that contacted us today. This law firm guarantees that if we proceed with this they will take legal action. Mayor Pro Tem Powell stated that the town knew who to talk to about this property and did not. Mayor Pro Tem Powell stated that the people who own the property should have the same say as the people who brought in the petition to defend their right to go back to the 2003 recommendation. He would like to see the Council table this item until the Planning Commission can meet with the owners of the property.

Mayor Bronco Bostick asked if the liquor license in a certain area is still open for petition. Ms. Snowden responded that she could not speak to the liquor license, it is through the state and is a totally separate process than zoning.

Mayor Bostick asked City Manager Griffin to respond to Mayor Pro Tem Powell's statement regarding communication between the town and property owner as recent as June 26th or 28th. Mr. Griffin responded that he had not had a chance to investigate this, but stated that the City literally receives hundreds of calls weekly on zoning determinations and verifications. In his opinion, the staff had no way to know at the time, that that person, three months later, was the representative that should have been notified.

Council Member Foskey asked if the City had legally followed the procedures according to state law. City Attorney Tedder responded that the City has complied with the state statute and the ordinance. However, there is always the opportunity to let them have another go at the Planning Commission before you take final action on the rezoning ordinance.

Council Member Bill Horton commented that as with any situation where we are rezoning a person's property there are a number of concerns including the property owner's rights as well as the rights of the citizens in that area. The City worked long and hard when doing the rezoning ordinance to try to catch all such instances as this. Council Member Horton added that there are a couple of things at hand, the property owner who is requesting that we delay, and the residents of that area who have come to us with a viable concern. In looking at the base zoning of the area and looking at the neighborhood, at this point, the City would be in the best shape to put itself in a situation where no permits could be applied for on that property until this goes back to the Planning Commission. Council Member Horton stated that the only way we have the ability to do that is to approve the first reading of the ordinance, put things on hold, remand it back to the Planning Commission and give the property owner his rightful way to have a public hearing and move forward. If the Council tables this at this time we are putting ourselves in a position that the citizens rights are not being held up as well. Council Member Horton stated that he made a terrible mistake a couple of years ago with a similar situation on Jenkins Avenue and said at that time he would never let anything like that happen again. Council Member Horton suggested that the

Council pass this on first reading and remand it back to the Planning Commission for them to review and have a public hearing, which would satisfy all parties.

Mayor Pro Tem Powell stated that he did not understand why the Council could not table this item and instruct the staff to get in touch with the owners to come back here because the public has this session and one more session to tell the Council to change it, but the owner will only have one chance at the second reading. The owners of this property should have the opportunity to voice their opinion two times just like everybody else does.

Council Member Horton stated that he understood Mr. Powell's concerns, but voiced his concern that if the Council tables this, then there is nothing to preclude the owner of this property from applying for a permit tomorrow. Mayor Pro Tem Powell stated that it does preclude the staff from giving it to them. Council Member Horton responded that the staff has no legal right not to give them a permit on this property if it is presently zoned to allow for that use. Mr. Horton added that the City cannot withhold that permit unless we take action tonight.

At this time Mayor Bostick called for public comment.

Mr. Kraig Gordon, owner of Gordon Construction, stated that he knew Mr. Wade Jefferson, owner of the property, who passed away unexpectedly two years ago. The property has been turned over to his estate and two banks. Mr. Gorton stated that he had never had an instance where land will be decreased in value without the owners input. The owner has had no input and no notice, and they have been paying their taxes. Mr. Gordon represents a separate party and as of Monday this past week, the money went hard on it with closing in thirty days. Monday of next week, the site engineer has a meeting with Ms. Snowden to go over the design and layout of the configuration of this property. Therefore, Mr. Gordon's client is obligated to purchase the land with the zoning that is with it and is under contract and obligated to close the 14th of December. His client has a very large investment and has spent a large amount of money to go through the licensing process for the building and what might go in that building. Mr. Gordon stated that they have certain obligations to the community for zoning, setbacks and all the other criteria necessary to go on with this project. Mr. Gordon's client is a developer who has found a person to sublease 6,000 of 10,000 square feet and has options on the other parcels around this with the idea of building more buildings. There is a sizeable amount of money at stake and decreasing the value of the land by making it multi-family or residential will decrease the value of that property in excess of \$1,000,000, which does not even contemplate the loss of revenue that his client would be after because they have not been able to put their business in place and the costs they have had up to this point in time. Mr. Gordon stated that no one has had a fair hearing in this and he has been involved with several different buildings on this site for four years and it has not changed, even down to the architectural design that was approved by council in the past.

Mr. Gordon stated that the market the owner is looking for isn't from Hardeeville. Their desire has been to capture the snowbirds and travelers on I-95 and be able to sell liquor,

particularly wine, to them. That is the market the owner is after and pursuing. They are not after the local liquor store, but after a warehouse, wine store that also sells liquor for travelers.

Council Member Foskey asked if they are basically inviting transients off I-95 in this community to buy alcohol and drive while drinking on I-95 through our state, and bringing transients into this neighborhood, in people's backyards, where there is a crime element that is going to be huge in Hardeeville, how are they going to deal with that problem. Mr. Gordon responded that he does not control issues such as law enforcement in the community, but believes there are a lot of good people that travel on I-95.

Council Member Willis stated that he concurred with Council Member Foskey, and is surprised to hear that Mr. Gordon would invite drivers off I-95 to buy alcohol. There are a number of wrecks and lives lost on I-95 and the stretch between Richmond Hill and Walterboro is one of the most dangerous on I-95. Council Member Willis also stated that he understands the company Mr. Gordon represents wants to make money, but he also understands that there are citizens in this town that the Council needs to look after. Council Member Willis again stated that if the owner has as much business going on in Hardeeville as has been indicated, he should have made sure that the City knew what the mailing address was and some of this may not have happened. Council Member Willis added that talking about bringing travelers off I-95 to buy whiskey and get back on I-95 is a bad selling point.

Mr. Gordon responded that he could not disagree with Mr. Willis, but this is not what this is about. Mr. Gordon stated that this is about selling a case of wine to somebody going to Florida; it is about selling a case of wine to somebody going wherever. They are not trying to attract people that drink and drive. Council Member Willis disagreed with Mr. Gordon stating that there are all different kinds of drivers on I-95 and they are not all good people that Mr. Gordon is talking about. There are people that have alcohol problems, and people that are just not conscious of the danger of alcohol and buy it and get back on the road.

Mayor Pro Tem Powell commented that not all of the Council feels like that, because if he did there wouldn't be a fireworks store in Hardeeville, because their market is the transient people moving up and down the interstate. A lot of local people buy the fireworks here and there is no difference between fireworks, liquor, gas or anything else.

Mayor Bronco Bostick stated that as Mayor of this town, one of his biggest concerns is the citizens, and after listening to all the arguments tonight, he concurred with Council Member Horton and the recommendation from the City Attorney and City Manager and asked for a motion for approval or disapproval of this reading.

A motion was made by Council Member Horton to accept Ordinance No. 2008-11-6A at first reading with the recommendation that this be remanded back to the Planning Commission for a proper public hearing with full representation of the owners of this

property before it is brought back to Council for second reading. The motion received a proper second by Council Member Foskey.

The motion carried 4-1 with voting as follows: Mayor Bostick, In Favor; Council Member Horton, In Favor; Council Member Foskey, In Favor; Council Member Willis, In Favor; Mayor Pro Tem Powell, Opposed.

B. FIRST READING OF AN ORDINANCE PROVIDING FOR THE ANNEXATION FOR THE PARCEL LOCATED AT SHORTCUT ROAD AND HIGHWAY 170 TMP 080-00-03-065 (+/-39.46 ACRES) **JASPER STATION LLC (2008-11-6B)**
PUBLIC COMMENT

City Manager Kevin Griffin deferred to Planning Director Brana Snowden. Ms. Snowden stated that this property is located on Shortcut Road and Hwy 170 and is adjacent to another property by the same ownership that was annexed a few months back. The owner is requesting 100% method of annexation and meets all those standards.

Mayor Pro Tem Powell asked who are the members or owners of Jasper Station LLC. Mr. Dan Lynch responded that in addition to himself, Brian Moss, Bob Glover and Rick Turner make Jasper Station LLC.

There was no public comment. A motion was made by Council Member Horton to accept Ordinance No. 2008-11-6B at first reading. The motion received a proper second by Mayor Pro Tem Powell and carried unanimously.

C. FIRST READING OF A ZONING AMENDMENT FOR TMS 080-00-03-065 (PARCEL C) LOCATED ALONG S.C. HIGHWAY 170 AND SHORTCUT ROAD TO BE REZONED FROM RURAL PRESERVATION (RP) IN JASPER COUNTY TO GENERAL COMMERCIAL (GC) IN THE CITY OF HARDEEVILLE **JASPER STATION LLC (+/- 39.46 ACRES) (2008-11-6C)**
PUBLIC COMMENT

City Manager Kevin Griffin deferred to Planning Director Brana Snowden. Ms. Snowden stated that this property is adjacent to the parcel that was annexed previously this year and the owner is requesting the same zoning district, General Commercial. Staff and Planning Commission recommend approval.

There was no public comment. A motion was made by Council Member Willis to accept Ordinance No. 2008-11-6C at first reading. The motion received a proper second by Council Member Horton and carried unanimously.

VII. MANAGER'S REPORT

City Manager Kevin Griffin thanked the community and staff for their participation in the community planning charrette. Mr. Griffin stated that the City will continue to hold community meetings regarding the comprehensive plan.

City Manager Griffin thanked Parks and Recreation Director Joe Gailey for his efforts on the Catfish Festival.

City Manager Griffin stated that City Hall would be closed on Tuesday, November 11, 2008 in honor of Veteran's Day.

City Manager Griffin stated that Senator Clementa Pinckney would be spending the day in Hardeeville on Thursday, November 13, 2008. Mr. Griffin added that Senator Pinckney would be available at lunchtime. If anyone would like to see him they can contact either Mr. Griffin or Economic Development Director Ted Felder.

City Manager Griffin stated that the Jasper County Chamber of Commerce will be sponsoring the Big Thursday Oyster Roast on Thursday, November 20, 2008. For more information, please contact the Jasper County Chamber.

City Manager Griffin stated that the Hardeeville Chamber of Commerce will be sponsoring the Hardeeville Christmas Parade on December 13, 2008. The City will be holding the Christmas Tree Lighting Ceremony and festivities at 5:00 pm.

City Manager Griffin reported that the Greater Hardeeville Chamber of Commerce had a luncheon today at which Mayor Bostick gave a State of the City address on where we were and where we have come in the last six months. Mr. Griffin thanked the Chamber for this opportunity.

City Manager Griffin stated that Mayor Bostick is sponsoring a Christmas Bicycle Drive for needy children. For more information or if anyone would like to donate please call City Hall.

Mayor Bronco Bostick stated that Council Member Horton suggested there be a joint meeting with all elected officials in Jasper County including County Council, Ridgeland City Council and the School Board which is very integral to our growth. Council Member Horton stated that we have to work regionally on all of our matters.

Council Member Horton stated that on Tuesday, November 11, 2008 from 5:00 to 7:00 pm there will be a Drop In Social event and presentation at Sun City. This event will show what they are doing to try to help the community, and this is a good networking opportunity for anybody that has not had a chance to meet the elected officials from Beaufort County.

VIII. EXECUTIVE SESSION

A. DISCUSSION OF NEGOTIATIONS INCIDENT TO PROPOSED CONTRACTUAL ARRANGEMENTS AND PROPOSED SALE OR PURCHASE OF PROPERTY; DISCUSSION OF MATTERS RELATING TO THE PROPOSED LOCATION, EXPANSION, OR THE PROVISION OF SERVICES ENCOURAGING LOCATION OR EXPANSION OF INDUSTRIES OR OTHER BUSINESSES IN THE AREA SERVED BY THE PUBLIC BODY IN ACCORDANCE WITH S.C. CODE OF LAW SECTION 30-4-70(A)(2)(5).

A motion was made by Council Member Bill Horton to recess for five minutes then move into executive session. The motion received a proper second by Mayor Pro Tem Powell and carried unanimously.

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

City Attorney David Tedder announced that there will be a public hearing regarding Gateway Corners PDD at the next regularly scheduled City Council meeting, November 20, 2008.

Council Member Brooks Willis made a motion that the City Council authorize the Mayor to execute the letter of intent as discussed in the executive session as soon as the city attorney and bond counsel proof the letter of intent. The motion received a proper second by Mayor Pro Tem Powell and carried unanimously.

Council Member Foskey made a motion that the November 20, 2008 meeting be moved from 6:00 pm to 5:00 pm and that the December 19, 2008 meeting be cancelled. The motion received a proper second by Council Member Horton.

The motion carried 4-1 with voting as follows: Mayor Bostick, In Favor; Council Member Willis, In Favor; Council Member Foskey, In Favor; Council Member Horton, In Favor; Mayor Pro Tem Powell, Opposed

IX. ADJOURNMENT

A motion was made by Council Member Horton and seconded by Council Member Foskey to adjourn the meeting. The motion passed unanimously. The meeting adjourned at 8:05 p.m.

Lori Pomarico, City Clerk

Date

SEAL