

20070913 City Council Minutes

Mayor Buelterman called the Consent Agenda Meeting to order at 6:30 p. m. on September 13, 2007. Present in addition to the Mayor were City Council members; Sessions, Crone, Pearce, Wolff, Doyle and Williams. Also attending were City Manager Schleicher and City Attorney Hughes.

Mayor Buelterman listed the items on the Consent Agenda as:

Council Minutes for August 9, 2007

Alcohol License with Sunday Sales for Lighthouse Pizza at 15 Tybrisa St.

Alcohol License with Sunday Sales for The Sandbar at 1512 Butler Ave.

Contract renewal with EPD for lab services at \$23,000 a year

**Contract Approval-Fire Station Doors-Keith Ray Contractor's Inc
\$22,675**

Ms. Williams expressed ethical concerns over the requirement by EPD for the lab test and the EPD being the sole source provider of the service.

Ms. Williams asked if the evaluation committee for the Fire Station Doors was satisfied that the RFP gave enough details to the contractors. She said her concern came from only one contractor meeting the requirements for the RFP.

Ms. Schleicher said the bid documents contained bullet points for the contractor's response and she feels if the contractor didn't pay attention to the bid documents they will be unresponsive during the construction phase as well.

Mr. Wolff moved to go into Executive Session to discuss; Real Estate Acquisition and Litigation, Mr. Pearce seconded, and the vote was unanimous.

Mr. Wolff moved to return to Regular Session, Ms. Doyle seconded and the vote was unanimous.

Mayor Buelterman called the Regular Meeting of the City Council to order at 7:00 p. m. City Officials present at the Consent Agenda were still in attendance.

Deacon Fretwell Crider gave the Invocation and the Tybee Island Memorial Color Guard Posted the Flag. Everyone recited the Pledge of Allegiance.

City Manager Diane Schleicher welcomed Chantel Morton as the new Administrative Assistant to the City Manager and Clerk of Council.

Mr. Bill Cannon of Tybee Beautification announced the Beach Sweep on September 22, 2007 at the Pier.

Mr. Stephen Hines presented a petition requesting speed breakers on Cedarwood. He said all residents on Cedarwood unanimously approved the speed breakers being installed. He said there were a few property owners that do not live here that haven't responded.

Mayor Buelterman opened the Public Hearing for the variance at lot 121 Miller Ave. for Michael Godbee.

Ms. Brannyn Allen presented the petitions due to Mr. Brown's candidacy for City Council.

Ms. Allen said the PC recommended approval for Mr. Godbee's request for a zoning variance from Section 5-010(k) Prohibiting placing materials in the marshlands. She said the stipulation given to Mr. Godbee was that he culvert the ditch at his own expense.

Mr. Wolff asked if the written proof of ownership had been submitted as requested during the PC Meeting.

Ms. Allen said the ownership question had been answered but a request for a complete package was not a part of the motion for approval from the PC.

Mr. Godbee said he is requesting a portion of unopened Miller Avenue be opened to allow access to his property. He said this request had been approved in the past. Mayor Buelterman asked when it had been approved. Mr. Godbee said in 1998. Mr. Hughes said, in 1998, Mr. King asked for a revocable license to cross this ditch. He said it was rejected once and then approved but it was never acted on.

Mr. Hughes said he thinks there is a problem; if council grants access to the property then we will be stuck with whatever variances Mr. Godbee will need to build on his property. Mr. Hughes said, he suggested to the PC that the entire requests be done at the same time.

Mr. Hughes said he feels Tybee is obligated to honor the approval Mr. Godbee has received from the EPD; with respect to his using building methods that would permit him to effectively build within the buffer. He said within his original request he was requesting a variance to fill the wetlands but if you take that out then it is identical to Mr. Goode's request. Mr. Hughes recommended that any approval for access be contingent on the subsequent approval of whatever variances he needs to construct on the lot itself. He said that way you haven't

allowed him to invest with the expectation that no matter what he will be allowed to build there.

Mayor Pro Tem Sessions asked if the ditch is a wetland. Mr. Hughes said the Coastal Resources Division has determined the ditch is a wetland just as was the case with Mr. Goode. He said even if council approves this Mr. Godbee will still have to go to the state for access.

Mr. Pearce said the entire property is beset with wetland areas. He said Mr. Godbee would have to request variances through the EPD and Coastal Zone Management. He said he would like those issues dealt with before the city makes the culvert decision.

Mr. Godbee said he would just like access to his lot whether or not he wants to put a tent on it or build; he still needs access.

Ms. Doyle asked if the variance was to bridge a wetland in an opened right of way. She asked Mr. Hughes if this variance should be approved contingent on a variance being granted to build on his lot. Mr. Hughes said it is not in the City's interest to permit or grant the variance for access and allow that improvement to be installed; and then deal separately with any variance required for construction on the lot itself.

Mr. Wolff said Mr. Hughes advice to the Planning Commission was sound; and this should be submitted as a package because there is no sense in granting access to an un-buildable lot.

Ms. Williams asked if there was a delineation submitted. Mr. Godbee said initially in the package the Planning Commission requested an updated delineation; but when the decision was made to break up the request and ask only for access there was no delineation required. He said he has had multiple delineations completed on the property and right of way and wants to get access before taking on that additional expense.

Mr. Tony Bach, a neighboring property owner, asked what had been approved for Mr. Godbee's access. He said he has no problem with Mr. Godbee building a house there if it is a buildable lot; but wants to know what will happen with the storm water runoff and drainage that might adversely effect his land.

Ms. Schleicher said every building plan requires a drainage plan that calculates a predevelopment runoff calculation and post development runoff calculation and the runoff rates have to be the same.

Mr. Godbee said that lack of maintenance has created the indentation that is the ditch. He said it is very shallow and has been used to park machinery while ditch maintenance was being done for years. He said in his discussions with DNR they suggested that the city could ask the DNR if Mr. Godbee could go in and improve the ditch. He said the ditch would then look normal with culverts like everyone else's houses and with no bridges.

Mr. Bach said it is not the same because everyone else's culvert comes straight onto their property without violating the adjacent property.

Ms. Williams asked Ms. Schleicher to clarify who does ditch maintenance on Tybee. Ms. Schleicher said Chatham County does ditch maintenance on Tybee.

Mr. Wolff moved to deny, Mr. Pearce seconded. Ms. Williams said Mr. Hughes made a very valid point in recommending that council look at things as a complete package. She feels that granting the petitioners request with a contingency will do no more for him than if he presents a complete package with all of the information at one time.

Mayor Pro Tem Sessions said several times this petition has been compared to the Goode property in regards to the wetland. She said for her the consistency factor is an issue.

And the vote was Wolff, Pearce, Williams and Sessions in favor of the motion to deny and Doyle and Crone opposed.

Ms. Allen presented the Zoning Variance petition at 809 Butler Ave., Chapel by the Sea Baptist Church. She said Lou Off is representing the petitioner and the PC recommended approval.

Mr. Off said the building originally was built in the 1960's and was built on the 20 foot setback line and in the 80's there was a small entrance built in front that encroaches on the setback line by 10 feet 8 inches. He said they have a non-conforming structure and have to ask for a variance for anything they want to do. He said they are proposing the addition of two 12 x 12 rooms on either side of the present entrance. He said one of the rooms will be used for maintaining their internet presence and copying CD's of various programs.

Mr. Wolff asked Mr. Off if they would consider expanding to the sides instead of to the front of the building. Mr. Off said that was considered; but they decided no in the interest of aesthetics and to maintain a proper balance they would also have to raise the present roof.

Mr. Crone moved to approve, Mayor Pro Tem Sessions seconded, and the vote was unanimous.

Ms. Allen presented the **zoning variance for Margaret Stone and Robert Parker at 29 Van Horn**. She said they are requesting to construct a covered front porch. She said the PC recommended approval.

Ms. Stone said she was requesting to replace an original stairway that faced West onto the sidewalk. She said her request was to turn the stairs so they would face North and South.

Ms. Doyle moved to approve, Mr. Wolff seconded and the vote was unanimous.

Ms. Allen presented the petition for Site Plan Approval at 802 First Street for Shell Solomon petitioner. She said the petition is for amended construction. She said the PC recommended approval. She said there were stipulations that the petitioner submit a parking plan, a tree plan and the lot recombination take place. She said additionally the deck reconfiguration as it relates to the oak tree must be shown on the revised site plan. Ms. Allen said all of the stipulations have been met and presented to her.

Mr. Solomon said they have a letter from the arborist stating; trimming that tree is not going to kill it. He said they have shown the parking plan and combined the lots.

Mr. Wolff asked how many parking places were identified on the parking plan. Mr. Solomon said 21 are required and they have 31 spaces.

Mr. Pearce asked if the arborist would supervise the tree trimming. Mr. Solomon said whatever it takes to do it safely we will do.

Mayor Pro Tem Sessions asked if parking stops would be placed in the gravel parking lot. Mr. Solomon said no, they will not stay in place. He said the way traffic is now the parking stops would be a hindrance. He said they have the trolley and motor homes pulling in there and they know they have enough parking to accommodate everyone without defining the spaces.

Ms. Allen said the code requirement states you must show the number of possible spaces on a parking plan but does not dictate parking stops being installed.

Ms. Williams asked if Mr. Solomon wouldn't consider raising the present structure instead of constructing the new structure requiring the stress to the tree. Mr.

Solomon said it isn't structurally or financially feasible to consider raising that structure. He said people need handicap access and easy access without the visitor's center being located on the second story.

Mayor Pro Tem Sessions said even if our code doesn't dictate parking stops; do we need them for safety reasons? Ms. Allen said the only way you would know the parking plan is being adhered to would be somehow defining the spaces. She said the stops are something that Council can require.

Mr. Wolff moved to approve, Mr. Pearce seconded. Mayor Buelterman asked if the motion was contingent on the four recommendations made by Planning Commission; Mr. Wolff answered yes as did Mr. Pearce.

Mayor Pro Tem Sessions said she is not requesting that the motion include parking stops but if in the future the lack thereof becomes a problem maybe Mr. Solomon would consider putting them in.

Mr. Solomon said if he sees they have a problem he will absolutely address this. He said he wants things to travel as smoothly as possible and if he sees they are having a problem he will identify every single spot.

Ms. Williams asked if the city would have recourse to demand the stops if this becomes a public safety issue. Mr. Hughes said yes.

And the vote was unanimous.

Ms. Doyle commended Brannyn Allen for the open public hearings moving along so well. She said she felt it was due to her professionalism and experience. Mayor and Council agreed.

Mr. Wolff moved to approve the Consent Agenda, Mr. Crone seconded, and the vote was unanimous.

Mr. Crone moved to allow the City Manager to take installing the speed bump on Cedar Wood under consideration, Ms. Doyle seconded and the vote was unanimous.

Mayor Buelterman read the Proclamation for the City of Tybee Island employees and proclaimed September 15, 2007 as Employee Appreciation Day. Mayor Buelterman thanked Janice Elliott for her hard work in planning and putting the event together. Mayor Buelterman thanked Vivian Woods for the well worded proclamation for the employees.

Mr. Crone moved to approve the Employee Appreciation Proclamation, Ms. Williams seconded and the vote was unanimous.

Mr. Pearce requested council approval for out of state travel. He requested to attend the National league of Cities Conference in New Orleans, in November. He said he has been an active member of the environmental committee for many years. He said his committee comes up with policy to be recommended and presented to congress. He said he asked Mr. Crone if he could use some of his travel budget and received his permission. Ms. Williams asked if Mr. Crone had used any of his travel money this year. Mr. Crone answered no. Mr. Wolff asked what the date was. Mr. Pearce said the week of the 14th. Ms. Doyle asked if this was just an environmental conference. Mr. Pearce said no they have many committees that make policy and all of their input goes into the National league of Cities Policy.

Mr. Crone asked how much money Tybee had received back from the National League of Cities. Mr. Pearce responded that the City of Tybee is a member of the National league of Cities. He said it isn't a matter of how much money comes back to Tybee. He said it is a matter of national environmental policy that affects not only Tybee but the entire nation.

Ms. Doyle asked if Mr. Pearce would be allowed to go to this conference even if he loses the election. She asked if Mr. Pearce doesn't have enough money in his travel fund where the money is is coming from specifically.

Mr. Pearce said he has asked Mr. Crone and Mr. Crone said he could use his travel money.

Mayor Pro Tem Sessions said she understands there is value in having Tybee represented at the National League of Cities Conferences. She said there are networking opportunities at the federal level. She said it would be nice if this and future council's would decide during the budget process if these conferences are to be considered. She feels the city should attend at least one of the really important conferences during the year.

Mr. Pearce said if he were not re-elected he would still represent the city for the final time. He said he is still on council until January even if he is not re-elected. He said he will leave it to the discretion of Council.

Mayor Buelterman requested a report on environmental grants that Tybee could apply for. Mr. Pearce said he submitted a report to Ms. Schleicher last time and he will submit a report this time.

Ms. Williams asked Mr. Redmond if council can vote to transfer travel money between council members. Mr. Redmond said within a department money can be exchanged between line items without going back to council for reapproval.

Ms. Williams asked Mr. Crone if his offer to allow Mr. Pearce to use his travel money still stood. Mr. Crone said yes.

Mr. Crone moved to approve, Mr. Wolff seconded.

Mayor Pro Tem Sessions said Tybee does need to be represented at these meetings and everyone that has gone on out of state trips has come back and reported to council. She said Mr. Pearce could do a little bit better of a job on reporting to council and getting the message out.

And the vote was four in favor with Crone, Wolff, Sessions and Williams voting in favor and Doyle opposed. Mr. Pearce recused himself.

Mr. Hughes said the Ethics ordinance has been adopted in its entirety but there were errors consisting of typographical and section numbers. He said those have been cleaned up we need to get it re-approved in its final form so it will be clear in the minutes.

Ms. Doyle asked Mr. Hughes if he is satisfied with the section dealing with the Planning Commission in regards to the recent candidate filings and its consequences on the Planning Commission. Mr. Hughes said the provision in question is the one that requires anyone qualifying to run for office that is appointed to a city commission or committee to become inactive during the period of candidacy. He said that provision was thought by the Ethics Advisory Board to be an important component. He said it caused a problem because so many of the Planning Commission members declared their candidacy and we did not have a quorum. He said staff has pending applications under control where no one will be delayed in getting their ultimate approval. He said council may want to take a look at that if they want to change it in the future. He said they could require resignation when they qualify like an employee. Ms. Doyle said there would still have to be a provision to fill those seats because if five happened to resign you still have to make some kind of modification. Mr. Hughes said that is correct. He said you could have auxiliary members in the event that something was to happen to ordinary members.

Ms. Doyle said she can't vote on this without making a point because of conversations she has heard over the past few weeks about the ethics ordinance and the way it was written. She said she wasn't at the meetings and cannot say this is exactly what happened; but she knows some people on that committee have some concerns about not having as much participation in this ordinance as they thought they were going to have. She said at one point there were

definitions that were compiled and submitted and they were thrown in the garbage can. She said if people volunteered to work on this ordinance and feel that they were not given an opportunity to participate then she has concerns.

Ms. Williams said she hates that as much time and effort that has been put into this ordinance that negative comments are being made. She said the chairperson made regular presentations to city council; and the night council approved it almost every member was in the audience. She said they had multiple opportunities during the process to contact the Mayor or Council or City Manager. She said to her knowledge that did not happen. She said it is not a good thing to criticize it in public after the fact without inviting the people involved here to at least give their side of the story.

Ms. Doyle said she just wanted it in the public record.

Ms. Williams moved to approve the Ethics Ordinance for 1st Reading as written Wolff seconded, and the vote was Williams, Wolff, Pearce and Sessions in favor and Doyle and Crone opposed.

Mr. Wolff asked Mr. Hughes about the constitutionality of the handbill part of the ordinance. He said his research has concluded that this type of ordinance has been found to be unconstitutional at the state and federal level.

Mr. Hughes said there is a blanket prohibition in the sign ordinance against handbills. He said sign is defined in such a way as to include handbills. He said the prohibition has been addressed by a number of courts both federal and state. He said with respect to political speech and political literature there is no doubt that the prohibition on handbills is unconstitutional. He said he has recommendations about how the ordinance can be changed. He said he doesn't see how the city can enforce it under the circumstances. He said the restriction on it is invalid.

Ms. Williams asked how much we paid Municode to go through our ordinances and find anything that wasn't right, get everything cleaned up and sent back to us. Mr. Hughes said you could work on sign ordinances for years and possibly never get it right. He said he can't answer for Municode but he doesn't remember that issue coming up on that ordinance. He said it did come up on some of the others. He said we had the same problem with the prohibition on nude dancing. He said the law changes about every week and you cannot keep an ordinance up to date, that will withstand every attack.

Mayor Pro Tem Sessions asked Mr. Hughes to explain the Ethics Ordinance and why the need for it to go through another approval. Mr. Hughes said it is on the agenda as reaffirmation. He said there was only four or five things that were

typographical corrections. He said the only substantive change and the reason it had to come back for 1st and 2nd readings was that one definition had been left out due to the formatting process. He said it was the definition of the person with a private interest or personal interest.

Ms. Doyle announced that she and Mr. Redmond attended the GMA meeting concerning House bill 900. She said it was very informative and she wants to give a presentation during the September 27th council meeting. She said she may contact Larry Norton to do a short presentation to get the information on this bill to the citizens of Tybee.

Mr. Wolff moved to adjourn, Ms. Williams seconded and the vote was unanimous.

Mayor Jason Buelterman

Vivian O. Woods, Clerk of Council

