

## 20100325 City Council Minutes

Mayor Buelterman called the Consent Agenda meeting to order at 6:30pm on Thursday, March 25, 2010. Council Members present were Mayor pro tem Shirley Sessions, Wanda Doyle, Bill Garbett, Frank Schuman, Sr., Kathryn Williams and Paul Wolff. Also present were City Attorney Bubba Hughes, City Manager Diane Schleicher and Zoning Director Jonathan Lynn.

Mayor Buelterman listed the following items on the Consent Agenda:

- 02/25/2010 City Council Minutes w/amendments
- 03/11/2010 City Council Minutes w/amendments
- Audit Committee Appointment: Dick Smith
- Ethics Resolution for Recertification of GMA's "City of Ethics" designation
- Application for Retail Beer/Wine, Liquor, Sunday Sales Alcohol License and Entertainment License. Location: 1513 Butler Ave. Applicant: Nick C. Alexander DBA Nickie's 1971  
Kathryn Williams asked the city attorney if she should or should not vote on liquor license applications. Mr. Hughes responded in his opinion there is no prohibition on Ms. Williams voting on liquor licenses. If she feels uncomfortable to do so, she can recues herself, but there is no legal requirement to do so nor is it an ethical violation.
- Special Event Application- Patrick "Fuzzy" McGlade Comes to Tybee. April 23, 2010 2:00pm  
Location: Tybrisa St. at Beach crossover, finish Line for Cross Country Run. Applicant: Stephen Palmer is requesting waiver of \$106 application fee and Tybrisa St closing if the police department deems it necessary.
- Special Event Application-Beach Bum Parade- May 21, 2010 Applicant Beach Bums-R-Us is requesting waiver of \$106 application fee and street closures at TIPD discretion from 6:30pm until the end of parade.  
Discussion was held about the improvement on traffic barricades and how well they worked in the last parade. Ms. Doyle stated the public safety committee is working on coming up with a regular policy so all parades will be consistent.
- Application for Retail Beer/Wine, Liquor, Sunday Sales Alcohol License and Entertainment License. Location: Santiago's Mexi Cali – 1<sup>st</sup> Street. Applicant: James D. Davies
- Proposed Bid and Contract Approval for Cross-walks on Butler Ave.  
Williams Construction Inc., Base Bid \$39,618 and Additive Alternative #2 Pavement Mounted Signs, \$4,800 as recommended by the Public Safety Committee. Ms. Doyle stated staff is going to go back to DOT and Robert McCall to get more information and for possible lower cost. Officer Case from the police department had looked at the pavement mounted signs and thought these were a good idea. Ms. Williams agreed something did need to be done at the crosswalks and related a personal experience with a group crossing and vehicles not stopping. Ms. Doyle stated the base bid included the additional crosswalks at 3<sup>rd</sup>, 11<sup>th</sup> and 13<sup>th</sup> and widening the striping to be more reflective. So we will have a total of sixteen crosswalks.

- Banking Services with SunTrust-City Attorney will draw up contract. A committee had reviewed the four RFP responses and recommended SunTrust. Mr. Wolff asked if First National here on Tybee had submitted a RFP. Ms. Schleicher responded they had not.
- Resource & Land Consultants Contract-Polk Street Improvements and Environmental Services. Originally approved on 01/28/10. Revised Contract approved.
- GIS Update and Maintenance Agreement with O'Brien & Gere Engineers, Inc.: The budget line item #7220-54-2150 is for the remainder of this fiscal year (\$450 for the month of June 2010). The rest of the contract (\$450/month through May 2011 and up to \$15,000 for updating of the site throughout the year) will be budgeted for the same line item for the next fiscal year but the contract must be approved or the budget line item will be null and void. Mr. Wolff commented on free services offered by Google and the importance of keeping the GIS information and services updated. Mr. Lynn stated updates would be done on a quarterly basis as needed, up to five.

Maria Procopio from the Marine Science Center gave an update on the 2009 Coastal Incentive Grant. This is federally funded monies that come through NOAA into GA DNR and they administer the program. The City of Tybee sponsored part of this with the Sea Turtle Conservation Grant that ends in a couple of days. She displayed and presented council with numerous handouts including brochures, stickers, etc all geared to increase public awareness and education on Sea Turtles.

Mayor Buelterman adjourned the Consent Agenda.

Mayor Buelterman called the regular meeting of the City Council to order at 7:05pm. Those present at the Consent Agenda were also in attendance for the regular meeting. Rev. Andy Lamon gave the invocation and everyone recited the Pledge of Allegiance to the Flag.

Kathryn Williams and Mayor Buelterman thanked Rev. Lamon for his services to the citizens and commended him and his family for being a viable part of the Tybee community. He has been reassigned to start a new church in the Rincon area and will be moving in June.

Mayor Buelterman announced the Flip Flop party for the "Last Song" movie premier is sold out.

#### Reports of Staff, Boards, Standing Committees and/or Invited Guest

Woody Hemphill gave the monthly financial report on the Campground. The February anticipated revenues were \$37,250 and we came in at \$43,964 up \$6,000. On expenditures we came in \$6000 under anticipated. March anticipated revenue is \$78,550 and we are already there, so we should have another good month. Our cabin rates have now gone up for the season and to be more competitive. They are staying full. April first we will have a new rate structure going into effect. Instead of charging by 30 amps; 50 amps; tent site; or water and electrical site, because of the renovations we have made to our electrical infrastructure, we will now be able to charge a shoulder season, off season, peak season

rate. This should also increase occupancy rates and make us more desirable to travel clubs, groups, alumni associations, reunions, etc. We've already had as many bookings thru the spring of 2010 as we did for the entire year of 2009. That should continue with the new rates.

Ms. Williams commented on a letter recently received from the Burnett family very complimentary on their recent stay there, and that speaks very well of him and the rest of the staff and the facilities.

Mr. Wolff asked if he had a total on what the electrical upgrades cost was. Mr. Hemphill stated he did not have the total but would provide it for the council.

Mayor Buelterman asked if the report was posted on the website and easily accessible. The city manager and Mr. Hemphill stated it was and under the newsletter but would have it moved to the Finance Department's financials area.

### Consideration of Boards, Commissions and Committee Appointments

Appointment of Kathy Jackson postponed until April 8<sup>th</sup> in order for Ethics Commission Chairman to be notified.

Mayor Buelterman asked how this is to be handled for future references, by the city manager or clerk of council. Mayor pro tem Sessions stated we should have a process for this. Some chairs had asked to see the resumes. Ms. Sessions suggested this is a process the clerk of council should do. Council concurred. Mr. Wolff suggested until a complete process is established, when council is sent the resumes she could copy to committee chair.

### Citizens to be Heard

Monty Parks spoke on the road closings for parades. He stated the way it was done for the St. Patrick's Parade worked very well for the businesses and encouraged council to keep this consistent. This was one example of government and commerce working together for a good solution. He thanked everyone for their support of the Tybee businesses and local economy.

Mayor Buelterman asked if the public safety committee could look into this. Ms. Doyle stated it was discussed at the last meeting and they are looking into it and since it worked so well at the last parade there is no reason it couldn't for all.

The city manager stated the closure for the cross country run would only be for a very short time like five minutes. The St. Michael's children are running the last little leg. It will be very quick with police escort.

### Consideration of approval of Consent Agenda

**A Motion** by Paul Wolff to approve the consent agenda was seconded by Frank Schuman. The vote was unanimous.

### Consideration Local Requests & Applications-Funding, Special Events, Alcohol License

- Special Event Application-2010 Sand Arts Festival-April 30, 2010 (rain date 5/14/10). Applicant Savannah College of Art and Design Sculpture Department requesting 50 parking permits for

participants and volunteers. Applicant will purchase (approx 100) additional parking passes at city designated rate.

The city manager confirmed the parking passes being purchased would be at the regular daily rate and the ones being given would only be for that one day.

Kathryn Williams recused herself due to her son attending SCAD.

**A Motion** by Paul Wolff to approve was seconded by Wanda Doyle. The vote was Wolff, Doyle, Garbett, Schuman and Sessions voting in favor. None opposed.

#### Consideration of Bids, Contracts, Agreements and Expenditures

- Easement Maintenance Agreement with Williams 1501 Chatham Ave.

Kathryn Williams recused herself due to being the owner of the property.

Mr. Hughes explained there is an existing easement through the Williams property with a storm water pipe that has been a problem area for years with allegations that the city's maintenance has been inadequate and damaged the yard. As part of the 14<sup>th</sup> Street Drainage project that outfall was to be improved and it was a fairly elaborate plan proposed. Eventually the engineers revised their thinking on it because of the expense and the additional damage likely to occur from that. So the Soil Stabilization Contract is tied to this easement agreement and is actually a modification because there is an existing easement. It is not as comprehensive as what had been proposed. The Soil Stabilization Contract and the easement agreement expenses would both go to the budget of the drainage project because that's what is causing it. There is an issue of the engineer and legal expenses that were incurred by the Williams as the result of the original engineering plan and the revised plan. Mr. Hughes stated he had conflicted himself out of whether or not the city would be responsible for any legal fees or other fees associated with that and Mr. Jim Gerard gave us an opinion that we would not be able to pay attorney fees however if the easement is modified and we need the easement you can make a payment for the easement. This could be very similar to what was done with the Peter Hand's outfall at the end of Chatham Avenue. Ms. Williams' attorney prepared an Easement Modification Agreement, it went to Mr. Gerard, he revised it and that is what is before you today.

Ms. Doyle asked how this is different from the original agreement done in 1983. Mr. Hughes stated the original agreement was basically a storm water easement only. The description is a little suspect and there is a drawing attached that is not real clear. It doesn't define the obligations of the city with respect to maintenance. That has been part of the dispute that has been going on and we've been facing a potential claim from all of this for a number of years. This expands the area due to the Soil Stabilization project and encompasses more activity than the existing easement does. Obviously the hope is it is going to stop the damage that has occurred. Apparently sometime during the course of the existing outfall the bolts that were used to attach a flange to the existing pipe or the pipe itself caused electrolysis to set in which caused the erosion of the sea wall which allowed sand to migrate out of the yard into the river causing damage to the property. That is why soil stabilization is being done. That is the best I can describe it.

Ms. Doyle asked if the \$10,000 that is in the agreement is it like a performance bond and how was that figure determined. Mr. Hughes responded it is not a performance bond and he did not come up with that number. He thinks it has more to do with the amount of expenses incurred by the property owners having to deal with it and the amount that was paid to the other owner down the street in order to get the easement from Mr. Hand. This is the same number. What it does contain that we haven't had is a release of the city of any claims for damages that have occurred up to date.

Ms. Sessions asked how long it has been going on. Mr. Hughes responded the original easement was in the 80's. Ms. Sessions asked how long the problems had been going on. Mr. Hughes answered, at least ten years that he is aware of. There may have been problems before he started. He seems to remember issues coming up over the years and efforts to repair, but some of the repairs are thought of as to be part of the problems.

Mr. Wolff stated this has been coming to the infrastructure committee for at least the last four years he has been on it and they have investigated multiple solutions, every one of which was considerably more expensive than what this is. What this company has come up with and their product looks as if this is going to solve the problem. The fact that we now have a waiver of past liabilities which could have had serious consequences is a plus. Mr. Wolff stated we have a good projection from the contractor and he is going to do a little more than what we originally looked at. This will solve the problem along the sea wall where the problem has been exacerbated by the outfall. Do we have anything that states after a year, the property owners are going to hold us harmless of any future problems? Mr. Hughes stated no, we have an ongoing obligation of a year from the contractor. It is just like the easement we have now and our commitment to properly maintain it so it doesn't cause damage to anything else. That is just the nature of the easement although you can put in anything you wanted but there is nothing going forward. In fact it states the "settlement is only on claims for past damage and in no way intended to limit claims owners may suffer due to breach of the agreement."

Mr. Wolff asked if the burden of proof could be put onto the property owner. Mr. Hughes stated that is on there. Mr. Wolff confirmed with Mr. Hughes that the property owner would have to have an engineer prove future damages were caused because of what the city had done. Mr. Hughes stated that has always been his position on past damages. The engineers dispute that. Mr. Hughes stated the burden falls on the party making the allegation.

Mayor Buelterman confirmed it is Mr. Hughes recommendation this is the best way to move forward and handle this situation. Mr. Hughes confirmed based on Mr. Gerard's opinions yes.

Mayor Buelterman asked if it is consistent with what was done with the other property owner. Mr. Hughes answered yes, if more favorably.

**A Motion** by Shirley Sessions to approve contingent on the approval of the Soil Stabilization Contract was seconded by Frank Schuman. The vote was Sessions, Schuman, Doyle, Garbett and Wolff and none opposed.

- Soil Stabilization Contract for 1501 Chatham Ave with Soil Stabilization Specialist, Inc. Not to exceed \$19,000. Recommended by Infrastructure Committee Budget Line Item #100-4250-52-2102.

Kathryn Williams recused herself due to being the owner of the property.

The city manager stated this is the company that will come in and inject the cement internite grout into the easement area and that will fill in the voids that are possibly causing the sinking area around the pipe. They will also fill in around the sea wall opening so that when the tide rises the water will not go back behind the pipe. It will seal that area as well. This contractor will seal around the pipe at the sea wall and go into the yard and seal around the pipe as well and do injections. They say the liquid material finds the voids and fills up that area as they pipe it in there. Ms. Schleicher said the city had met with the contractor twice on site and discussed it.

Mayor Buelterman confirmed with Ms. Schleicher the infrastructure committee was also in agreement this was the best solution.

Mayor Buelterman asked Ms. Schleicher to please have the contractor on the drainage project to please attend the second council meeting in April and give council and the citizens an update on the project.

**A Motion** by Paul Wolff to approve as written, not to exceed \$19,000, was seconded by Wanda Doyle.

Frank Schuman asked if this had any type of warranty. Mr. Hughes stated there is not an expressed warranty as he recalls. It was something discussed by the Infrastructure Committee and the options of buying some type of warranty or performance bond. Due to the lapse in time since these meetings Mr. Hughes could not recall the outcome.

Mr. Wolff stated we may need to confirm this before approving the contract, because it was his understanding there was a year warranty. Mr. Hughes responded he had that understanding also but could not locate it in the contract.

Mayor Buelterman asked if council could approve contingent on confirming warranty. Mr. Hughes stated yes.

**The Motion** was amended by Paul Wolff to make approval contingent on the contractor warranting the work, Doyle accepted the amendment. The vote was Wolff, Doyle, Garbett, Sessions and Schuman in favor and none opposed.

#### City Manager's Report - Diane Schleicher

- Review and Updating of Fees for Community Development Office.

Mr. Lynn gave a power point presentation on the new fee structure. He stated the staff had been reviewing all the fees charged by the department, the staff time being used, the meetings being held, etc. This is not really a revenue stream for the city but he is just trying to break even and cover some of the staff time involved with how in-depth some of these requests are. We have not been taking into account the extra time for new additional required inspections and permits. Tybee is a little unique to a lot of places. We do require drainage plans, ENS Plans; all the land disturbing guidelines have changed since the last time our permits were updated by the state. Now Tybee is our own license issuing

authority and now we have to do the site inspections. Due to the nature of the permits having separate requirements there is proposed to be a different permit rate structure for residential construction and commercial construction. Mr. Lynn then reviewed the different types of fees, the current rate and proposed new rates. (Attached and part of the minutes is the proposed schedule) Mr. Lynn gave some examples of other cities fees in comparison. He gave a few examples of current permit applications, what they entailed and what the city collected for the fee. He also discussed fines for people working without permits. The proposed fines are structured like Savannah's.

Ms. Williams asked if this would pertain to homeowners or contractors. Mr. Lynn stated normally the contractor. Ms. Williams stated sometimes it may be a simple case of misunderstanding and the homeowner not knowing a permit was necessary. Mr. Lynn stated some cases would be held on a discretionary basis.

Ms. Sessions asked for clarification of real estate signs. Mr. Lynn gave For Sale signs as an example. Ms. Sessions confirmed with Mr. Lynn this was in residents' yards, not city right a ways.

Mr. Wolff asked for examples of what kind of signs would require a \$50 permit for a temporary sign. Mr. Lynn answered, as discussed at a previous council meeting, if ABC business wanted to buy 25 temporary signs and place them throughout the island, they would have to pay the \$50 for the Temporary Sign Permit. If we do not have this type of fee in our ordinances we would not be able to issue it.

Ms. Doyle asked for clarification on the new electrical fee per thousand structures and if this had not been done before, why now and if we were in the red. Mr. Lynn gave the clarification and stated we had only been charging the \$25 base fee. The amount of staff time and the cost of operating and doing business have been more; the department is not meeting their revenue projections as they pertain to permit fees and business licenses. We have not made as much as what was projected.

Mayor Buelterman asked if this is because of the economy and the slow down. Mr. Lynn stated he couldn't say that. The department is still really busy. The jobs are not as big. But people are now picking back up and getting the work done. The fees have not been adjusted in some time. The lack of new construction could be contributing because that has always been a source for revenue and we don't have that going on right now.

Ms. Doyle asked how we stood as compared to Savannah. Mr. Lynn stated we are the lowest in Chatham County. Some cities or counties do have different categories.

Mr. Wolff stated council did need to see some kind of comparisons for other areas.

Mayor Buelterman asked if we could have some kind of tier structure for variances. Mr. Lynn said yes we could.

Bill Garbett restated the sole purpose is to recoup our cost not to gouge people; a real effort has been made to calculate actual cost. Mr. Lynn stated yes, these are not arbitrary figures. We have calculated them.

Kathryn Williams asked about the return check fee being constant throughout the city. Ms. Schleicher and Mr. Lynn stated it is. Ms. Doyle confirmed with the new system funds are taken for checks immediately. Mr. Lynn answered yes, except when checks are mailed in.

Ms. Sessions asked how staff time is determined for each category. The amounts do seem arbitrary to her.

Mr. Lynn gave an example of a job and what staff steps were taken to process the application and permit. Ms. Sessions stated that helped and can see where the tracking does happen.

Mr. Schuman asked if homeowner has to prove how much project is going to cost for the application.

Mr. Lynn stated staff does do an evaluation but also relies on the honor system. They can spot if something looks off and help adjust.

Ms. Williams asked about driveways. Are we going to continue asking for ADA driveways? Mr. Lynn answered yes. Ms. Williams stated since we are requiring pervious surfaces to help with driveways not to charge additional per thousand because it seems we are penalizing them for using better materials when we are requiring it to help with our community. It's different than running the cost up choosing granite floors rather than linoleum.

Mr. Garbett reminded we do need to cover our cost. Ms. Williams suggested a little higher base rate of \$75. Mr. Lynn stated this would be a good compromise.

City Council requested detailed analysis of fee structure and man hours required for each process; Comparisons of surrounding Cities and Counties and a standard permit fee charged for pervious driveways instead of a per thousand dollar value charge.

#### Council, Officials and City Attorney Considerations & Comments

Jason Buelterman

- Posting of Council Meeting packets to city website.

Mayor requested personal information contained in council packets be redacted and packet posted on city's website. Todd Smith and Vivian Woods stated this could be done. Mr. Lynn had also informed Ms. Woods the zoning packets and plans are already put on the website under the planning commission, so that will not be with the regular council packet. Mr. Lynn stated a link could be put on the agenda to be able to access the zoning packets.

- Dune Fencing in Savannah River Area, Inlet Area and North Central Area.

Mayor requested dune fencing be placed to funnel public away from the dunes at these locations and help build them up and maintain turtle friendliness at the same time. DNR has to approve this and Ms. Schleicher has already met with them. Williams asked for 19<sup>th</sup> Street crossover area to be included on list.

- D.O.T. Correspondence

Mayor Buelterman stated this was the letter answering his request to the state of what they had spent ten million dollars on for Hwy 80, so he requested this correspondence to be included in council minutes for the record.

## Shirley Sessions

- Public Hearings

Mayor pro tem Sessions asked for Mr. Hughes to explain procedures for public hearings. There seemed to be some confusion and misunderstanding at the last meeting. She and other council members had thought they were following the guidelines and doing what they were supposed to do, which is; if there is something on the agenda, people can speak to it, in favor or opposition, and council can take action on it. Only, if is not on the agenda, can nothing be done. It is her understanding a Public Hearing is put on the agenda if council is knowingly going to change an ordinance or the charter. That particular item had been on the agenda the month of January and February. Council had gotten tons of emails, phone calls, spoken to numerous organizations and talking to a lot of the people who had spoken since October and felt that many of the people that night in the audience were looking for an answer.

Mr. Hughes stated his understanding, and he did comment on it at that meeting, is there is not a lot of difference between the public meeting section and a public hearing section. A lot of this is terminology or semantics more than any substance of issue. You had public comments on the dogs on the beach issue in January that begin as a visitor commenting that it was listed as dogs on the beach options. In his view that satisfied all the purposes of the public hearing. The same thing happened in February when it was on the agenda listed as a visitor. Council acts frequently on items that are made or result in a request being made from visitors and that is what happened in February. Public hearing has a certain meaning in the zoning context. You were not talking about a zoning issue. Unless council wants to direct a different procedure than what was done; you had public input, which is the purpose of a public hearing, the motion that was made to go ahead and resolve the issue that night was in order. Maybe instead of the minutes reflecting not to have a public hearing it should say "no more public hearings". You had already basically had two. As the Mayor pointed out at the meeting, people can request to speak again. It would not technically be a public hearing as that phrase is considered in a zoning context. Which I believe is what Ms. Woods was thinking of when the issue came up about a change in the ordinance. We can change ordinances, unless it involves certain things, without having public hearings but to have it happen at public meetings. Again here, it is not a lot of difference since anyone is welcomed to speak on anything on the agenda. Mr. Hughes stated he did not think anything inappropriate about the procedure. Council had public input on the issue and I think there was some misunderstanding about that.

Mr. Garbett stated council has already asked Mr. Hughes to come up with some guidelines for council to establish their own rules of order and this will help avoid issues of misunderstanding like this.

Mayor Buelterman stated he finds it ironic that of all the cities in America we could possibly be criticized for not getting enough public input and of all issues dogs on the beach. For ten years we have let anybody come up and say anything they wanted to on dogs on the beach. Yet we are still getting criticized.

Ms. Doyle stated she thought we already had procedures in place for public hearings and what determines the difference between a public hearing and public meetings. Mr. Hughes answered we

have procedures in place for both. Sometimes, and council got this right too, you will have a meeting that is a public meeting that is dedicated to one topic. The skate park is an example. That technically wasn't a public hearing. It may have been called one but it wasn't a zoning-no less than 15 days –no more than 45 day notice requirement, but it was about as public hearing or meeting or whatever you want to call it, as it could be. Council has the right to hold one on whatever they might consider doing but, you are not required to. You did have public input.

Ms. Doyle stated she did not think we should reinvent the wheel. Mr. Hughes answered he thought we were just giving it a little more clarification.

Ms. Williams stated doing our own Rules of Order is just to give us better procedural policies.

Ms. Sessions asked for input from Ms. Woods as she had gotten a lot of calls and feedbacks.

Ms. Woods stated first she had expressed her apology to city council because she was in error with her statement at that meeting. She was not at the January 28<sup>th</sup> meeting and totally missed the whole public meeting on dogs on the beach, and misunderstood what the intention was for council to hear the proposals coming back. It was her misunderstanding and unfortunately has reflected badly on council and that was not her intention.

Ms. Sessions stated she knew the clerk's office had received a lot of calls that day. Ms. Woods stated yes a lot of calls had come in about a public hearing and since she had not advertised for one she informed the callers there was not going to be one. Since they were told that, they did not come to voice their opinion on that subject in a public meeting. Some people may think council had not heard them because of her response to their phone calls.

Mr. Hughes and council stated there was no fault on any ones part there had still been a lot of public input from both sides of the issue and felt there would continue to be input.

#### Executive Session

**A Motion** by Paul Wolff to go into Executive Session to discuss, Litigation, Personnel and Real Estate Acquisition, was seconded by Wanda Doyle. The vote was unanimous.

**A Motion** by Paul Wolff to go back into Regular Session was seconded by Wanda Doyle. The vote was unanimous.

#### Adjournment

**A Motion** by Paul Wolff to adjourn was seconded by Frank Schuman. The vote was unanimous.

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Jason Buelterman, Mayor

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Vivian O. Woods, Clerk of Council