

20100708 City Council Minutes

Mayor pro tem Sessions called the Consent Agenda meeting to order at 6:30pm on Thursday, July 8, 2010. Council Members present were, Wanda Doyle, Bill Garbett, Frank Schuman, Sr., Kathryn Williams and Paul Wolff. Mayor Buelterman was on vacation. Also present were City Attorney Bubba Hughes, City Manager Diane Schleicher and Zoning Director Jonathan Lynn.

Mayor pro tem Sessions listed the following items on the consent agenda.

City Council Minutes for 6/10/2010 with revision to pg. 13 under Ordinance for Idling Engines- To add the specific name of the truck (Freezer King) that has a separate refrigeration unit and doesn't need the engine idling.

- Appointment of Tommy Linstroth to the Community Resource Committee
- Appointment of Lisa Callahan to the Community Resource Committee Beach Task
- Force Renewal of Freda Rutherford.
- Beach Task Force Renewal of Helen Downing,
- Beach Task Force Renewal of Amy Lanier.
- Beach Task Force Renewal of Bill Sprague.
- Special Event for Taste of Tybee: August 19, 2010 5:30pm – 7:30pm @ Pier & Pavilion, Applicant-Savannah Area Chamber of Commerce.
- Volunteer Policy-Most Recent Version

City Council asked Vivian Woods to verify whether or not a Community Resource Committee Member is required to be a Tybee Citizen.

Mayor pro tem Sessions adjourned the Consent Agenda.

Executive Session

A Motion by Wolff to go into Executive Session to discuss Litigation and Personnel was seconded by Bill Garbett. The vote was unanimous.

A Motion by Paul Wolff to end Executive Session was seconded by Frank Schuman. The vote was unanimous.

Mayor pro tem Sessions called the regular meeting of the City Council to order at 7:00pm on Thursday, July 8, 2010. Those present at the Consent Agenda were also in attendance for the regular meeting. Former Mayor Walter Parker gave the invocation and everyone recited the Pledge of Allegiance to the Flag.

Mayor pro tem's Announcements

Mayor Buelterman is out of town on vacation.

Citizens to Be Heard

Bill Cannon of the Tybee Beautification Association announced the Tybee Prom on July 17, 2010 at the American Legion at 7:00pm.

Lindsey Fructe of the Tybee Island Tourism Council said judging from last week's performance during the 4th of July she believes the Labor Day Beach Bash will be outstanding too. She thanked the City of Tybee departments for all of their hard work.

Steve Smith a resident of Tybee and owner of Smith Tile Installation Service, a home based business licensed by Tybee, spoke to the proposed Amendments to Section 66-185 regarding the use of parking decals and limitations. He said he has two trailers parked on city property and has no problem moving one of them off of city property. He said the other trailer they use regularly for their business has his tools in it. He said having access to their work trailers is vital to his business. He said he has been provided stickers for his vehicles for fifteen years with no restrictions. He asked council to reconsider the 24 hour limit on trailer parking or consider having a commercial trailer parking permit that can be purchased.

Frank Kelly said the parking ordinance is a little vague and he asked if it was only to be conveyed to commercial areas. He asked if council were making it to broad. He suggested making it from May to August. He asked if council should look at employee parking and vendors in order to prohibit parking in the very best spots.

Reports of Staff, Boards, Standing Committees and/or Invited Guest Limit reports to 10 minutes

Paul Wolff conveyed the wishes of the Beach Task Force as requested in the letter contained in the council's packet. The task force is asking council to be proactive in supporting them. They are hoping we will help them engage the Ga. Ports Authority in a positive way and enlist our coastal engineer, Eric Olsen to examine near shore disposal, which is one of the prime alternatives being considered by the Corps of Engineers for harbor deepening. Whether near shore disposal is good for Tybee or not has been debated on both sides. There could be pollutants contained in that dredge material that could wash up on the beach and not be a good idea. They would like to have our Coastal Engineer look into that and also ask the Corp to consider other alternatives other than near shore disposal. They want Tybee included in the COE's mitigation fund which is about fifty million dollars for mitigating effects of the harbor

deepening. They are requesting that the state through the DNR take a position on the ten million cubic yards of dredge material being placed near shore by the Corp from the proposed deepening. Wolff said the DNR sent the COE about a three page list of questions regarding the environmental impact of the harbor deepening and the Corp at this time, roughly a year or year and a half later is still in the process of drafting a response to those questions. He thinks that is something they all need to be concerned about. They want the Mayor and Wolff as liaisons to arrange a meeting with DNR Director Chris Clark to discuss the lack of enforcement to House bill 727 which requires that all beach quality sand, dredged from the Savannah River be placed on Tybee's beaches as partial mitigation for the damage that is being done to us from the effect of the channel. He said that was tried in 93 or 94 and there were clay balls all over the beach and it wasn't exactly the best solution but one of the alternatives discussed and supposed to be enforced is that beach quality sand that meets DNR specifications or a like amount would be banked and Tybee would receive that as part of our cost share for beach renourishment. They want us to lobby the state to issue a 401 water quality certification on the harbor deepening project because there are concerns regarding the disposition of the dredge spoils. They want us to engage our City Attorney together with Eric Olsen to bring about results similar to those achieved in Brevard County Fla. And Wilmington NC in which a permanent and complete source of funding for the systematic and cyclical replacement of sand lost to erosion caused by federally mentioned shipping channels was secured. The Mayor and Beach Task Force Chair, Amy Lanier want to welcome director Spud Woodward, the newly appointed director of the Coastal Resources Division and replacement for Susan Shipman. The BTF will have a reception for him in July at the Beach Task Force meeting. BTF has requested Mayor and City Council be a part of that reception. They also want to welcome Col. Hall, the new District Commander of the COE. Wolff said he believes the BTF had an evening reception in mind for these folks in order to interact with them on a more social level. Sessions asked for Wolff to verify the two dates and let council know in order to RSVP.

Sessions said she is pleased to see the BTF correspond with council in this fashion because they do so much and sometimes a lot of what they are doing gets lost in between their getting their message to us. She is glad they are asking specifically for what council needs to do to help them. She asked if council wanted to look at these seven items at their upcoming workshop and discuss and prioritize them; after which council can respond to the BTF in writing and let them know what actions will be taken based on what they are asking for. Williams asked for Wolff to get a full copy of the BTF motion for council's review. Sessions requested this item be put on the workshop agenda.

Consideration for the Consent Agenda

A Motion by Paul Wolff to approve the Consent Agenda was seconded by Kathryn Williams. The vote was unanimous.

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

1. Labor Day Beach Bash: September 5, 2010 4:00pm -10:00pm @ Pier and Pavilion- Applicant-Tybee Island Tourism Council.

Schleicher said at one point they were asking for a waiver of fees but have revised the request which asked for Fire Department Personnel to attend the Fire Works with the city paying those fees. The group has decided to pay the Fire Department Personnel directly and has withdrawn the fee waiver request.

A Motion by Bill Garbett to approve with the understanding that no fees will be waived was seconded by Paul Wolff. The vote was unanimous.

Public Hearings

Request for Private Parking Lot at 201 14th Street (Section 34-3 Private Parking Lots)

Lynn said this is a request for a new business license application for a private parking lot. The location at 201 14th Street is directly behind Stingray's at the corner of 14th and Lovell. The submitted drawings left out where they labeled the right of way. The line in between Lovell and where the parking starts is the right of way. It shows that no parking will take place on the right of way and they would have adequate room on the lot for their parking spaces. Wolff said assuming the white corner fences are the property line the proposed spaces would only be 12 feet deep and there's not going to be room to park in many of these spaces except for maybe three or four, including the one in the driveway. They are just not deep enough to park without having the back of the car sticking in the right of way. Lynn said his recommendation would be to limit them to a certain number of spaces. Wolff asked who would provide enforcement, Economic Development or City Marshal. Lynn said both. Lynn said he thinks the owner's intention is not to have parking there every weekend but only on Holiday weekends. He said they have their vacation home here and they only come down on holidays. Lynn said he would convey council's wishes concerning the number of spaces to the owners'. Wolff said if Lynn doesn't mind enforcing this, then its okay with him.

Williams asked if Lynn knew if the house was definitely rented out. Lynn said he doesn't believe there is anyone living there and it's only used by family. Garbett said he was under the impression that the spaces were large enough to park the cars within the property boundaries. Lynn said he thinks it will be up to the day their parking and how far forward they can pull the vehicles and he believes they have enough lot to pull at least four of the cars forward and all the way off of the right of way. Lynn said they would have to say something to them if they parked cars to overhang the right of way. Garbett said he assumes this is a scale drawing although they omitted any numbers. He said he is satisfied if those are in fact adequate parking spaces but if we check and find they are not, we need to repeal this. He suggested

council send it back and have numbers put on the drawing or else approve it and have it checked. He said he is a little leary. Lynn said the petitioners live in Tenn. but if this plan is sent back he would have time to contact them and bring the plan back before the next holiday arrives.

A Motion by Wanda Doyle to approve contingent on Mr. Lynn keeping an eye on things and making sure the parking is not spilling over into the right of way was seconded by Wolff.

Wolff asked that someone get in touch with the petitioners and let them know, based on his measurements, they are not going to have the parking spaces they think they will according to this drawing. Lynn said he would pass that information along.

The vote was Doyle, Wolff, Garbett, Sessions and Schuman in favor and Williams opposed.

Zoning Hearings

Special Review (Section 3-060 and Section 5-070)) 21 Officers Row PIN 4-0002-20-014, Zone R-1,
Petitioner: Ann Last, 21 Officers Row.

Mayor pro tem Sessions opened the hearing and asked for Lynn to introduce the petition. Lynn said this request is for Ann and Jurgen Last at the property know as the Savannah Beach Inn. The request is to be permitted to host events of up to 20 people. The current use for this property is a residential B&B. He said Planning Commission recommended denial of this application. Currently the Inn has six bedrooms and an owner's suite. Ordinance 3-060 requires at least one parking space per bedroom and two spaces for the owner. According to the plan submitted in 2001, they do have the required number of spaces but when Lynn and Downer Davis went to drive the lot, at the top of the hill there is a Palm Tree, an AC unit and Landscaping that was not shown on the parking plan. Lynn said there is a tight fit in terms of cars backing in and out.

Sessions disclosed ownership of a B&B but said she doesn't host events at this time.

Wolff disclosed ownership of a B&B but said he doesn't host events at this time.

Williams lived at this residence twenty six years ago when it was a single family home with an apartment.

Williams said during the Planning Commission, several speakers referenced the number of bedrooms in this Inn and how many were actually approved. Lynn said after the questions were raised the staff pulled the permits and determined that the additional bedrooms were done over time and not permitted. He said they have not been able to determine when they were done and the permit for them. Lynn said sometimes you are able to create a bedroom from a room without construction and therefore you do not have to have a building permit. Sessions asked what the limit was on the number

of bedrooms allowed at a B&B in a residential neighborhood. Lynn said seven. Wolff asked if there would be additional parking requirements for twenty people for events. Lynn said they are figuring the people already staying at the B&B would be included in the twenty leaving only an additional four spaces needed for the event attendees. Doyle asked Davis to explain what he determined while doing the ride through with Lynn. Davis said when we went to the site we took the pictures of the parking out along Officers Row. He said in looking at the parking it was hard to see how it fit on the plan. If you look at the drawing it is hard to see the edge of the pavement on Officers Row and he could not determine if the parking would be entirely on the property or not. He said it is very unlikely they could get three vehicles perpendicular to the building considering he had trouble maneuvering his one vehicle up there. He said his understanding is the previous plan with six spaces didn't meet the demand for the currently required seven or eight spaces. He said the sketches show a 1 to 6 slope but it seemed like it was steeper than that. He said initially when he went out to the site he was spinning rocks trying to get up the hill and when they finally made it up there they had a heck of a time maneuvering to get down again. He couldn't tell where the additional parking spaces were being delineated on the property. Sessions said she understands that occasionally Breakfast is provided to other visitors in addition to the guests of the Inn. Lynn said he has never received any complaints on that. He said with the special event ordinance they would be allowed to serve food from 5:00am to 12:00 noon but only to their guests. Sessions read an opposition letter from the Blahoue family residents of Sandlewood Court. They strongly oppose the B&B at Officers Row holding wedding receptions for the following reasons. We have very limited parking and Street parking is for residents only. They would be greatly impacted by the influx of wedding participants, support people, musicians, caterers etc., trash and noise associated with frequent parties and the intrusion of a business in a strictly residential neighborhood. Walker Beason said the Sea Shore Colony Homeowners Association is strongly opposed to the plan. He said the petition is from the Last's that have admitted they don't live there. The plan is certified from a Mr. Markowski that states he is part of a limited liability corporation with Ms. Last and they actually run this business there and he is the one that is living there. He said this violates the spirit of the original B&B ordinance. And to allow these people to increase its use would be ashamed. He said the Sea Shore Colony Homeowners Association owns the right of way on Wrenwood which includes approx. 10 feet into the Officers Row side of that lot. He said that B&B does not own down to the Street and could not use the Street without permission.

Ann Last said her Husband will be eighty next year and she is seventy six and her son Craig has helped her for the whole time they have been here. She said they do not have children's equipment. She said they do not have to park up there on the berm. The event guests could be dropped off by the hotels or at the Beach because we have our weddings at the beach anyway. If it rained we would have the ability to have eight extra people at the house which would allow the wedding to proceed. She said if it comes to it they could have them park somewhere else. She said someone with the city met with them and told them how to measure the spaces and they do have eight spaces. She said the only time they have guests for breakfast is when someone staying at the Inn invites friends from town to have breakfast with them and we serve them. she said they use the Guard House and Tybee Trees for larger weddings. Ms. Last said they have never had a citation. Ms. Williams asked Ms. Last who lives in the B&B. Ms. Last said her son, Craig Markowski and his fiancé live in the house. Ms. Williams asked when the B&B expanded

from the approved four bedrooms to six. Ms. Last said originally we had five which was on the plan because that was in the ordinance. She said she didn't realize she could only have four. Ms. Williams said you were approved for four and now you have seven. Ms. Last said they only use six but they were using five up until the city approved having seven. She said she has paperwork saying that any B&B can have seven rooms but they only have six.

Dottie Klutzz spoke in opposition to the petition. Her concerns were: possible code violations due to having six rooms instead of the approved four rooms, lack of enforcement, parking safety and locations. She does not believe there is enough safe parking on the berm to host events at that location without spilling out onto Cedarwood and causing danger to other people using the private drive. She asked how the B&B can have seven bedrooms without coming and having them approved. They have admitted having guests of the Inn come for Breakfast and the ordinance is very clear and states there will be no outside dining. She said by their own admission they have hosted three or four events and they are not allowed to have events. They have shown a great ability not to follow the rules along with not a great ability to be considerate of their neighbors. She asked who is going to enforce the twenty people limit. She asked council not to give benefit to one person to the detriment of the neighborhood.

Paul Wolff asked if their permit was for four bedrooms or six. Lynn answered that there is no permit for six bedrooms. Wolff said when the ordinance changed in December 2008 going from a maximum of four to a maximum of seven bedrooms and if they did not come back with a revised parking plan and undergo special review for the additional two bedrooms, he thinks that is where they need to start. Are they operating out of compliance right now needs to be clarified. Lynn said the increase in bedrooms can be handled at staff level. Wolff asked if they would be required to present a revised parking plan in order to increase the bedrooms. Lynn said yes and no plan has been presented.

Fletcher Kirby said Tybee caters to beach parking very well but we do not cater to event parking. He requested that event parking be permitted through City Hall with event coordinators purchasing the permits for parking in the large lots so that the City can rope off and dedicate those purchased spaces during events.

Peter Bannon spoke in opposition to the petition. He said Cedarwood is a private drive serving the people on Officers Row. He explained that the berm was built as a levee for the fort after a major hurricane in the late 1800's. He said the berm is twenty one feet above sea level and sea level would be above where Cedarwood is so the hill is very steep. He said when the initial approval of the first B&B happened he couldn't believe they proposed to park on the berm. He said the truck with coral rock got stuck trying to deliver the rock to the berm via his yard next door and the tractor could not get up the berm to spread the coral rock out once it was delivered they had to spread it downhill by hand. Bannon said it has been chained off for a least a year because it is unsafe to even walk up. He said concerning the owner occupying the B&B, the only room left to be occupied would be a closet sized space suitable for a small office that only a cot would fit in. He said the right of way on Cedarwood is forty to sixty feet from centerline and the paved Street is eighteen feet wide. He said that is the narrowest part of Cedarwood without enough room for two cars to pass each other while moving without being extremely careful. He said when the Inn was for sale last year, a perspective buyer came over and told him she planned to have events there and he thinks that may be the intent of the owners in order to increase the value before selling the property.

Kathy Kilday, owner of Tybee Island Inn and past owner of Savannah Beach Inn said she was the person who got the original approval for the property. She explained that the truck that got stuck on Mr. Bannon's property was a dump truck with ten tons of rock. She said the original parking plan on the berm was designed by a consultant recommended by the City of Tybee and approved by the City of Tybee. She said when she owned the Inn she parked on the berm all the time. The issue of the Inn hosting beach weddings is no issue because anyone can do a beach wedding. Only until the ordinance was changed we were not allowed to bring people back to the house. She said the people wanting to get married want to get married on the beach and the only time they would have the wedding at the Inn is if the weather was bad. Mr. Garbett asked how much parking Ms. Kilday has for her events. She said they have one parking space for their seven rooms and two for the owners. The additional parking fell under the special events, commercial requirement which is one space for every four guests. Garbett said the plan before them will not accommodate the additional parking unless they park on Cedarwood. Lynn said that is correct. She said that end of Cedarwood is much wider than where Ms. Klutzz lives. Dan Akins, a Wrenwood Drive resident spoke in opposition to the petition. He said they love the B&B but are opposed to special events. He said looking to the future of their neighborhood, there is approximately three other homes for sale on Officers Row. If those properties became residential B&B's hosting special events it would really impact our neighborhood and the whole north area of the Island. Craig Markowski, son of the owner said he helps run the Inn. He showed a picture of a large broad area that he said could be utilized for parking three cars wide by four cars deep. He said since they've had the B&B, they have added two physical parking spaces they carved into the hill at the street level. He showed a video of eight cars parked on Cedarwood which is the original approved parking plan. He said this petition if approved would give the wedding couple a chance to invite their guests by for a small reception and also create a rain backup in case of incimate weather.

Susan Kelleher said as this Island grows it all comes down to parking. We have to find a way to accommodate some of these businesses. In a year we are going to have a theater coming on board with no place to park. We have to find ways to accommodate all of these situations. She said we have a giant parking lot at North Beach and she doesn't see why it can't be used for event parking to shuttle people back and forth in a non obtrusive way.

Sessions said parking is our favorite problem her on Tybee. For those that don't know we have a parking committee working very hard to continue to see what answers and solutions can be found from collaborative efforts with the business community, residents and the city. She said Wanda, Bill and Paul are on that committee. She suggested that Ms. Kelleher and Mr. Kirby may want to bring their suggestions to the committee for discussion.

Ms. Sessions closed the public hearing.

A Motion by Frank Schuman to deny was seconded by Kathryn Williams. The vote was unanimous.

Mayor Pro tem Sessions opened the public hearing.

Front Yard Setback Variance Request (Section 5-090) (f) 1403 Solomon Ave Zoned R-2,
PIN 4-0022-01-325, Petitioner: Steve Day

Mr. Lynn said the property is owned by BB&T due to the contractor defaulting on the construction loan. In trying to get a Certificate of Occupancy for the property there were several deficiencies noted including a couple of the piers and the stairs on the front porch extended about eighteen inches into the front setback which is required to be twenty feet. Mr. Hughes said there was an amendment to code section 5-090 subsection (f) which went into place several years ago in order to cure what was then an ongoing issue. It prohibits people applying for variances on property that is then non compliant which would prohibit the zoning department from accepting this application without that provision being changed or some other relief having been granted. He said he proposed an alternate text that would permit a variance in a situation where council deemed it appropriate even though it already existed at the time the application was filed. He said the Planning Commission debated that text at length and tabled it so this petition is coming to you without the accompanying proposal to change section 5-090(f) which doesn't allow variance applications to be submitted. He told council that the application is not in conformity with the existing ordinance currently on the books. In his opinion the options are to impose a moratorium on the prohibition on accepting those applications before this variance is addressed; Continue this application after hearing the variance request until you do have the ordinance to hopefully change subsection(f) in Section 5-090 and readdress it at that time. Or if you were so inclined to hear it at this point and deny it, it would render all of the other suggestions moot. He does not think it is proper to act on a variance request that is inconsistent with the existing ordinance without doing something to explain how that happened.

Kathryn Williams said she remembers the very emotional situation that generated that amendment to the ordinance you're talking about and she doesn't feel like they could pass a moratorium without having a public hearing. She said people were outraged that variance requests after variance requests were being sought in an effort to ask forgiveness rather than permission. She personally doesn't support enacting a moratorium on an issue of this importance with all of the ramifications that could result without having a public hearing. Paul Wolff said he believes they would be doing an injustice to the process if they were not to wait for the Planning Commission to reconsider this. He thinks council needs to have their input before taking any action on this.

Ron Wilder with BB&T gave an overview of the situation. He said the house was foreclosed on in 2009 and at that time the house was totally complete on the outside and we assumed that the city inspectors had inspected and approved the setbacks as built where it was. He said he is in possession of a survey that was done at some point that shows the property not violating the

setback lines. He said they have consulted a contractor that said it is impossible to take down the piers supporting the entrance to the property that is on the second floor. Sessions asked Lynn what Tybee could do to insure that this situation doesn't happen in the future. Lynn said this property actually had a string pulled when the foundation was put in. He said that is why the city requires the as built survey in order for any discrepancies to be fixed before the certificate of occupancy is issued. Lynn said however the length of time that has lapsed between the time this was constructed and the time there was actually a final inspection and c/o requested, the contractor was out of the window and essentially no longer in existence so we can't go back and make them fix it. Lynn said the bank has sunk a considerable amount of money into finishing this house. He said the zoning department insures this doesn't happen and problems like these are from 2006 to early 2008. Sessions said she understands a contractor waiting until the property is ready for the market to get a c/o because of the tax assessment. Is there something we can do as a timeline in which there is a certain amount of time in which you finish the property and maybe it doesn't have to be 100% completed but can be 80% or 90% completed to get the c/o, in order to prevent the builder from leaving before the property goes into foreclosure. Lynn said they can't issue a c/o until the house is 100% completed. He said if they do issue a c/o before the house is completed and the builder goes back and puts in steps, the city has no recourse. Wilder said it is not uncommon for a string to be pulled in order to define the line for the builder and his subcontractors and they end up putting the blocks on the wrong side of the string. It normally doesn't do damage to anyone. Wolff said the contractor on this project built within four inches of the setback all the way around and there was no margin for error. He said that is one of the inherent flaws for trying to maximize the heated and cooled space. He asked if there are interior steps. Wilder said there are interior steps but you have to go in through the garage. Wolff said the front piers could be moved back and the deck could be brought into alignment with the top deck. Wilder said they had an engineer look at that but it is cost prohibitive. Doyle asked if this property was located on an open right of way. Lynn said yes, Solomon Ave. Doyle asked Hughes exactly what re writing the ordinance will do for this situation. Hughes said it only gets you past the ability to ask for permission for a variance. He said right now under the current ordinance you can't apply for this variance. Doyle asked how this request could have gone through and passed the Planning Commission. Hughes said because the petition went with the proposed text amendment to change that prohibition. Doyle asked how council could approve this petition without being able to amend the text of the ordinance to allow it. Lynn said the Planning Commission was told that the text amendment exactly addressed the Solomon Ave. house but they essentially tabled the text while still considering this petition. Sessions asked if the Planning Commission considered the amendment and variance request in that order. Lynn answered yes. Doyle asked Lynn if he stressed to the Planning Commission the need to address these items in order. Lynn

answered yes it came up five or six times. Doyle said she thinks council should give Wilder his variance and move on because this is obviously not his fault. Williams pointed out that Hughes said it would be illegal to give the variance. Doyle said Planning Commission did it. Harold Yellin, Attorney for BB&T said he is familiar with the code section in question tonight and it's a troubling ordinance as Hughes pointed out. He thought the ordinance had a very specific purpose and it was to be applied where a party built a house and that same party came before council and said they made a mistake but didn't mean too. He said whether it was deliberate or by negligence, it was the same party. He said it seems right that if he built the house incorrectly and he is the one at fault, he shouldn't be allowed to come before council asking for a variance before fixing it first. He said that is clearly not the case here and this ordinance was never intended to punish innocent property owners or buyers. He said judging by the number of properties for sale on Tybee, this will not be the only time this problem comes before council. He believes if there had been an inspection at the foundation stage they wouldn't be here now. He said it seems that there was a period at Tybee in which inspections were done at the foundation stage. He said at that point you easily could have moved your foundation over and taken corrective action. He said asking someone to tear off the front of the house now, in his opinion, is just not reasonable. He said council will have to decide the relative innocence of the party coming before them. In this particular case BB&T actually had a survey done that showed they were within the line. He said someone else has done their own platting and has determined they are over the line. He said he doesn't know how this can be done but if they could acquire an easement for eighteen inches on Solomon, that may be a solution. He feels very strongly that making BB&T as well as others tear off the front of their house is not the solution.

Garbett asked Yellin if council was dealing with the original builder then it would be alright to ask him to tear off that section, right. Yellin said he thinks that was what the ordinance was intended for, to keep people from being violators of the ordinance. He said personally and not as an attorney for BB&T, he thinks there are some constitutional problems even with that. Once someone builds the house there are some issues as to at what point Tybee should have been involved in the process to say whoa, whoa, stop right now. Garbett asked how this is Tybee's problem because Tybee is not building the house. Yellin said because council is here to protect the citizens of Tybee and BB&T is now a property owner with property rights. There are going to be hundreds after BB&T with the same problem, either acquiring title through foreclosure or buying property that is later discovered to have violated something, either a setback or height ordinance or something else. He said Tybee is going to have innocent people coming before them that had nothing to do with the construction of a property and then for some reason when there is a need to get that final c/o it is not going to be given through no

fault of theirs. Garbett said this ordinance was put in place because of a litany of oops. Yellin said he agreed. Garbett said we are trying to stop that and until we put our foot down and deny one of these things and say, well no you have to make it right, In his opinion they are going to keep seeing this. He said he understands the situation but according to our code there is no hardship here. There is nothing about the property that makes it unbuildable within our current regulations. Yellin said he understands but there are unique facts and circumstances behind this petition before council. He said this petition does warrant a variance and the ordinance needs to be amended to be directed at the person that violated the ordinance and not at the innocent purchaser. Frank Schuman said he feels that some of this is Tybee's fault because we have an enforcement office that is supposed to be out there enforcing laws and this slipped by. He said he can't see tearing down the front of the house for eighteen inches. Barry Brown said the intent behind the ordinance was to stop all building on the weekends without permits and also everyone coming in here and asking for forgiveness versus permission. He said the ordinance does not even apply to this petition. He explained that the step is probably the deepest part of that eighteen inches and the column is only five or six inches into the setback. He said the only thing that could be done with the steps is to elevate a ramp to them but you would have to take two steps off, and you would still have to deal with that column. He said the ordinance was intended for the builder or homeowner or whoever was actually violating the ordinance and going over the side yard setbacks etc. He said council needs to make a decision one way or another because tearing down those stairs will be a very expensive process. Mr. Brown said Tybee should penalize the builder if they make a mistake and that is the way it was intended but it was never intended to penalize the purchaser or anyone that may inherit the property.

Kathryn Williams said she is adamantly opposed to the moratorium but she is not without sympathy for the current owner. She said she agreed with Mr. Brown's explanation of what the intent was. She said what concerns her and what everyone needs to be aware of is, there is a letter from Mr. Day that explains that BB&T is the second owner of the property and in no way had any input to the location or construction of the building. Ms. Williams said frequent visitors to city council can attest that this has been a frequent problem. She said it might be that someone builds the house and transfers it to their son's name to get around the, oh I wasn't the one who built it. She thinks that while they are looking to make modifications to that ordinance council has to be very aware of that situation. She said while they don't want to be punitive to an innocent party they also don't want to facilitate illegal building, which is what started the whole ordinance in the first place. Wolff said he wanted to clarify that his earlier remarks were not directed at BB&T but at the builder who made these mistakes and the fact that he didn't allow any room for error. He said as Hughes pointed out, they cannot deal with this tonight and violate their own code but instead have to wait for the text amendment to go

through the process. He said it is unfortunate that the Planning Commission did what Council was cautioned not to do. He said he agrees the problem will come up again and he has no problem with the text amendment. He hopes Planning Commission will deal with this at their next meeting and council will be able to consider both items at the same time in a more humane manner. He said they do not want to punish anyone but instead want to hold them accountable for being masters of their trade. It is not a punishment issue. He said council has to operate under the code and cannot deal with this tonight. Mr. Brown said requiring an as built survey at the foundation stage was discussed when this ordinance was being considered. He said that step would probably solve a lot of these setback issues because if the pier is wrong, they can move it at that time instead of moving it when they have a million dollar house sitting on top of it. Fletcher Kirby said he is familiar with Solomon Ave. and was an Island resident when the ordinance was being considered and it was a hot button issue at that time and good cause for the ordinance. He said it was a very pro development council and there was a pro development air at that time with people literally building to the lot line and using any excuse they could get to put something over the lot line. He said council basically got fed up with it. He said in this situation the problem has gone down and you will get a lot of people that say oops, I've had this and it is not my fault. He said we have an attorney giving his personal opinion that has nothing to do with the law. We have the interested parties pleading that they are the innocent parties and had nothing to do with it. All of this has nothing to do with the law and Tybee instituted this ordinance for a very valid reason at the time. He said if Tybee wants to rescind it due to economic conditions then it should be considered separately from this whole emotional million dollar property issue. He said in his opinion they should keep the ordinance as it is because the economy will come back again and we will have a repeat situation. He said Tybee should have a public hearing about changing the wording and if they feel sympathetic to BB&T, then the eighteen inches on Solomon Ave. will not make that much of a difference because it is a lightly traveled street with plenty of room. Frank Schuman said he thinks this is an enforcement issue and the City Marshal should go around and inspect the buildings that are being built. That way we will not have these problems in the future.

Sessions closed the public hearing.

A Motion by Bill Garbett to continue this until we address the ordinance dealing with variance requests after the fact was seconded by Paul Wolff.

Wolff asked that the zoning department begin drafting an ordinance with Hughes help to require a foundation survey, perhaps unilaterally. He said he thinks it will save contractors a lot of heartache and money in the long run. He said it is a little more money but the four or five hundred dollars could save thousands or hundreds of thousands. Lynn said they are in the

process of revising Article 5 and they can put that into the revision. Sessions said that is a nice action item out of this.

The vote was Garbett, Wolff, Sessions and Williams in favor and Schuman and Doyle opposed.

Mayor pro tem Sessions opened the Public Hearing.

Front Yard Setback Variance Request (Section 3-090) 1619 Chatham Ave. Lot 5-D, Zoned R-2, Pin 4-0010-05-016, Petitioner: George Hammond.

Mr. Lynn said this request was originally heard by council at their June meeting and requested to send back to Planning Commission for clarification and additional drawing. He said the items were submitted and the petition went back to Planning Commission at their June meeting. He said Planning Commission recommended approval by a 3 to 2 vote. Since that time the applicant has had their Attorney, Harold Yellin contact our Attorney and discuss section 3-090(A)(2) of our Land Development Code concerning administrative variances and if this property would qualify. The administrative variance was brought up at one of the meetings but no formal request was submitted. He said since that time the applicant has submitted the required drawings showing the properties within two hundred feet of this location and with that done the administrative variance did apply. He said the ten foot requested setback in the front will actually be a greater setback to the other two properties that had been previously built within the ten foot setback. He said the applicant has requested this petition be withdrawn but Mr. Hughes said since the petition has been advertised for public hearing, a public hearing should be conducted accordingly. Kathryn Williams said the two hundred foot rule came up when they were here at the last council meeting and council was told that it did not apply, so what changed. Lynn said the applicant never asked for it. Hughes said the applicant had applied for a variance and never applied or provided the required information needed for Lynn to determine that the two hundred foot rule would allow what they were asking for. He said by the time it got to council there was no application for council to consider that. Ms. Williams read from the minutes of the previous meeting that stated Ms. Wiley said she presented the new drawing to reflect the two hundred foot rule but because there is a jag in the property, Mr. Lynn said they still had to come before council. Williams said that is where her confusion is coming from. Mr. Lynn said what they needed was an actual survey of the property and what she had submitted was a sketch on the property map provided by SAGIS. Mr. Lynn extended his apologies for any confusion provided by him referring to the jag in the property. Mr. Hughes said he was confused when he read the minutes because he had not seen the drawing. Mr. Garbett asked where the front property line was on the drawing, is it the

diagonal or the straight one? Mr. Lynn said his interpretation was it would be both because it is still a part of the front yard even though it may not be shaped as a straight line.

Mayor pro tem Sessions closed the public hearing.

Consideration of Ordinances and Resolutions

1st Reading of an Ordinance to create Section 66-185 regarding use of parking decals and limitations thereon for the City of Tybee Island.

Mr. Hughes said he was asked to draft this ordinance based on the information provided as to what the preference was. There were several different variations of ordinances trying to address the problem. This is the final one that made it through the committee to come before council. Ms. Schleicher explained the background of this ordinance. She said one of the reasons for this ordinance is the parking committee talked about it and as everyone has heard parking is an issue on Tybee. What we have been concerned with is, we have a situation where we have parking trailers parked long term on the improved city right of way on Butler Ave. and major parking lots down on 14th Street and 16th Street. She said they are considered to be being used as storage for businesses because they get a decal. She said we've had people leave boats long term and RV's parked with decals for long term using prime parking. The concern was if that was really what the city needed to do and how to deal with it. She said they don't want to penalize the use of decals on trailers and especially for businesses. If you had a decal on a trailer and a business wanted to hitch up and do landscaping for example or construction work in front of a business then having a decal is very valuable allowing them to park during the day in order to do the work. The parking committee really did not want to take away that decal use. Basically in order to free up those parking spaces for the visitors, the parking committee felt that if it was limited to the use of a decal on those types of uses for twenty four hours in a particular parking space, they would have to move that trailer, boat or an RV every twenty four hours. They wouldn't be so prone to use that parking space as storage. That was the basic reason for the ordinance. She said a part of that ordinance reads that a person cannot leave their car parked for over seven days; they have had instances where cars have been parked for months on end in order for the owners to go to New Hampshire, etc. whether they live here part time or not. We've actually had grass growing underneath the car that has been parked there for so long and we received complaints. This ordinance would prohibit people leaving their cars in spaces over seven days and rotating valuable parking spaces that we need. Wanda Doyle said she is on the parking committee and they have discussed this quite a bit. She said the issue she has is being involved in a day to day business with trucks and trailers and her

question is ,what will these people do with the size lots they have with limited space. She said if you have the business she is involved with that has four trucks, two trailers and all this equipment and you don't have a place to park them, where are you going to park? She said if they did not have a yard to park their work vehicles and trucks, they probably would be parked along hwy 80 behind Eagles Nest because there would be no other place to park them. She said what are we saying when we say they have to be moved every twenty four hours and she does have a problem with that. Schleicher said this ordinance doesn't prohibit you from say, parking on Butler Ave. or in front of your house on First Street. It just means you would have to move your car everyday. She said they had a business on Butler over by Sunrise that had a trailer and all he did was put his wares in front of the business and every day go out and get stuff out of the trailer for his business. She said when DOT came to resurface the road the trailer had been there so long that the footing for the hitch left an indentation of about two and half inches. She said when he was ordered to move it he had a big problem getting the hitch to connect because it probably had not been moved in years. The goal is not to use prime parking for storage. She said it should not affect Doyle because they move their trailer everyday. Doyle said what if the business she is involved with doesn't have room in the trailer to take all of their equipment to every jobsite. Where would a business store their extra equipment? She said she has been looking at this for weeks and feels it will affect the businesses. Schleicher said the question is, are they storing it where it is properly zoned and is their business operating where they can actually operate? She said the twenty four hour rule was worked on by the committee including Doyle and they've been kicking this around for a really long time. She said in talking with some people that had similar concerns, they asked for one of the compromises to be to amend this ordinance to limit the twenty four hour parking requirement with a decal, be enforced only during the summer season, from March until October. They wouldn't be forced in the middle of winter to move their vehicle every twenty four hours because that is really when we see this issue and it would be less of a hardship for them.

Kathryn Williams said committee work is extremely valuable but she also thinks it is important that we communicate with one another because we have parking, safety and infrastructure and maybe getting meeting minutes so that council is kept abreast of what is going on from the other committees. She made several suggestions in addition to the seasonal point that Schleicher had just made including, she wants the ordinance to reflect that all of the different types of things would be allowed to park in one designated city parking space, because of concerns over right of way parking in residential neighborhoods. She said concerning the seasonal suggestion, it has been her experience that usually the parking problems are only on Friday, Saturday and Sunday. She asked Schleicher if she sees problems on other than holiday weekends like a regular Monday through Thursday. Schleicher said she thinks it is more of a weekend issue when they have lack of parking. Mr. Wolff said he appreciates the input and

would like to see this go back to the parking committee for possibly some additional public input. He said he thought a remote lot if they are able to find one, that would be fenced and open to people with commercial permits, possibly requiring a payment of more than one hundred dollars in order for them to store their work trailers or trucks at that location rather than in a city space. He likes the seasonal and weekend ideas and he thinks they need to stress the fact that these parking spaces generate anywhere from five to eight thousand dollars each within about a 120 day period. He said they are owned by all of the tax payers on the island and not just the folks that run businesses and he thinks they should be spreading this around in order to maximize revenue for the city, especially in this crunch their in. He suggested adding a seasonal and daily provision and Williams added, also the designated parking space. Garbett said there are boat trailers and work trailers that have been basically stored on the beach side of Butler Ave. and that is not what we see as the purpose of our public parking. We have to maintain public parking so that we can continue to get funds to renourish our beach. He said a conservative estimate is that any space on the beach side of Butler will bring in at least a thousand dollars each and that is the amount of money the citizens are giving up in order to store someone's trailer. He said the original proposal was not to allow decals for trailers and you could use your vehicle decal and the trailer could come with it. He said there are so many people such as the Kayak business that often cannot find parking. He said Doyle's could easily drop a trailer off and run off and do something. If you didn't have a decal like that and a couple of construction companies could be in the same situation where they would pull up with the truck and trailer and drop the trailer because they had their equipment there and run around and bring supplies in. He said that is why it came to where it is now. He said the seasonal suggestion is probably a realistic approach and any other suggestions as to how we could keep public parking areas from being used to warehouse unused vehicles, we would certainly appreciate. Ms. Doyle agreed this should go back to the parking committee to be considered along with Frank Kelly's suggestion concerning employee parking down on Tybrisa. Doyle said she receives a complaints about some of these issues from several places on the island with one being on Polk Street where for some reason a vehicle appears there for several months, has a decal on it but will sit there. She said the last complaint she received said it had been sitting there for four months with no one coming to it and then all of a sudden it was gone. She said it is important for the time limit provision to be left in the ordinance for this situation to be addressed. Sessions confirmed that the parking committee meetings are advertised so that everyone can attend and participate, specifically the businesses on Tybrisa participating in the employee parking discussion. Doyle said these committees are good because she would hope that they start a foundation of something good coming to the island. She said it's important for people to realize that this is not just another ordinance coming to council but that this ordinance was generated through the parking committee and has been brought to council for

their input and for the citizens to have input. She thinks this is a good process with our city committees whether it's parking, infrastructure or public safety. It's good to have that core group to get things started before you bring it to city council. Sessions said the committees all have staff involved and so it goes from the committees to the staff and then to council and the citizens.

A Motion by Paul Wolff to send this back to the parking committee for input was seconded by Kathryn Williams. The vote was unanimous.

1st Reading of Ordinance to Amend Section 58-179 of the Code of Ordinances pertaining to Regulatory Fees Applicable to Vendors.

Mr. Lynn said this ordinance came up as they were revamping the policies and procedures. Their general process had been that if you had a city business license with the city of Tybee, you were not charged to do a vendor application for example to Pirates Fest or something else, although that was contrary to what our ordinance said. He said Mr. Hughes added the language that a Tybee Island business License holder would not have to pay that fee in order to go along with the practice already in place. Doyle said during the Irish Heritage Celebration the committee sold t-shirts under a vendor permit under one of the committee member's business license. She asked if this language would prohibit that. Garbett said as he understands it the fees are to recoup the cost of providing the service. Lynn said they already pay their license fee to the city. Garbett asked if we are spending a lot of time servicing people like this. Lynn said it is very minimal time. Williams said awhile back when council was considering adjusted fees for construction the staff did a really good job of comparing our fees with those of other communities. She asked if a comparison had been done with what other communities charge on the regulatory fees listed on the document given to council. Lynn said he didn't think so because a lot of these fees have been in place for a while. She asked for the definition of an escort. Lynn said he had no idea. Garbett said Mr. Hughes assured him they have definitions for all of these terms. Williams said she would like the definition of an escort. Mr. Hughes said we will take its most common and expected meaning, whatever that may be. Mr. Hughes said if it were to happen you would want to have some regulatory control over it. Schleicher asked if council wanted staff to do a survey before second reading in order to determine if our fees are in line. Williams said that would be appropriate.

A Motion by Wanda Doyle to approve contingent on Lynn checking into other locations in order to see if our fee schedule is in line and checking on the word escort was seconded by Bill Garbett. The vote was unanimous.

City Manager Report

Special Event Application with Policies and Procedures

Diane Schleicher said Mr. Hughes recommended this language in our special event permit process so that it is consistent with what he is suggesting for the Grant process. Doyle asked if the Irish Heritage Parade Committee will be able to sell t-shirts since they do get a grant from the city. Lynn said it is not a waiver of fees if you are already exempt. Doyle said it looks as though Morten put a lot of effort into this but it is lengthy and contains a lot of information. She hopes staff has time to go through all the sections with the references. Williams said the first page of the application specifies that the applicant must meet with the Better Hometown Coordinator when applying for a permit. She suggested or her designee be added in case the BHT Coordinator is unavailable. She asked if it's a problem if the parades are not permitted to start later than one o'clock. Doyle said the Irish Heritage Parade can start no earlier than three o'clock because of the TARA Fest downtown that utilizes some of the same volunteers to help with their event. Doyle asked how this applied to Beach Bum. Williams said that's on Friday and this only applies to Saturday parades. Schleicher said basically what they are trying to do is tell the parades they can start no later than one o'clock. She said staff is trying to set guidelines so that there are fewer groups coming to council for variances or waivers and staff can do this administratively and everyone kind of fits into a box. She said there are always exceptions to these situations. Frank Schuman said the Pirates Fest and Beach Bum parades need a large staging area in order to get the floats in line and North Beach Parking Area has been used for a long time. He thinks those two parades should still be able to use that same area for staging. Schleicher said another reason to have the parades earlier is because we block off Tybrisa Street for public safety and the earlier we have the parade the sooner we can open the street for businesses. Schuman said he doesn't believe Tybrisa is hurting for customers because the people were five people deep on the sidewalks for the parades he has been in. Williams said the way the policy reads all parades have to be on Saturday and she asked if it was intentionally worded that way in order to require all parades to be on Saturday. Schleicher said yes they are looking at Beach Bum being moved to Saturday unless that is not the council's intention. She said they have had that discussion at public safety. Schuman asked how the Beach Bum parade could be held on Saturday considering having to stage it with the parking lot full of visitors along with a parade at one o'clock going down Butler Ave. in the middle of the day. He said there is no way and he doesn't see how it can happen. Doyle asked Schleicher if she expected

council to approve this document tonight. Schleicher said yes but council can strike some of the language if needed. Doyle asked if they could approve it contingent on more discussion on parades at the public safety committee meeting. She said she feels Schleicher or someone from that committee needs to sit down and talk to Jiggs about the beach bum parade. Doyle asked if they could remove this part and approve it contingent on more discussion at public safety committee meeting. Garbett said they can approve it as it is because they can always change it. He said maybe they should set that as a task to review it by the next meeting. He said this is not an ordinance. Lynn said the only parade this would affect right now would be the Pirates Fest. He said if council votes on it one way he thinks they have plenty of time to amend it as needed or as he sees fit, given that amount of time, between now and anyone this would affect. Doyle said after discussing this at the public safety committee meeting, she doesn't think Pirates Fest has a problem with the starting time. Sessions asked if this would apply to facility bookings. She said from what she understands this is separate process from, if someone wants to book a city owned property such as the Gymnasium or the Guard House. If it involves any kind of city services such as Fire, Police, Trash pickup, etc. then this process would need to be a part of that application. Schleicher said correct.

A Motion by Paul Wolff to approve was seconded by Wanda Doyle. The vote was Wolff, Doyle, Garbett, Sessions and Williams in favor and Schuman opposed.

Executive Session

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

A Motion by Kathryn Williams to go back into Regular Session was seconded by Paul Wolff. The vote was unanimous.

Adjournment

A Motion by Kathryn Williams to adjourn was seconded by Bill Garbett. The vote was unanimous.

Jason Buelterman, Mayor

Vivian O. Woods, Clerk of Council