

20101118 City Council Minutes

Mayor pro tem Shirley Sessions called the consent agenda meeting to order at 6:30pm on Thursday, November 18, 2010. Council members' present were: Wanda Doyle, Bill Garbett, Frank Schuman, Sr., Kathryn Williams, and Paul Wolff. Also present was: City Attorney Bubba Hughes, City Manager Diane Schleicher, Zoning Director Jonathan Lynn, and Clerk of Council Vivian Woods. Mayor Buelterman arrived at 6:45pm

Mayor pro tem Sessions listed the following items on the Consent Agenda:

- Tybee Island Historic Preservation Commission appointment of Monti Parks
- Tybee Island Historic Preservation Commission appointment of Neca Blair Stoller
- Community Resource Committee appointment of Shelly Krueger
- Community Resource Committee appointment of Brad Sherman
- Special Event Application for Critz Tybee Run, February 5, 2011 Applicant: Critz Incorporated Tybee Run
- Rejection of Anti litem notice on Heather Clendenen
- Rejection of Ante litem notice on Mary Fountain-Hobbs
- Extension of Indigent Defense Agreement
- Conservation property/DNR application/Captains Row & Lighthouse Point
- Beach Task Force appointment of Chuck Powell

Joe Richardson, Ph.D., Professor Emeritus of Marine Sciences-Presentation summary of the Coastal Incentive Grant project: "Runoff, Shorebirds and Beach Water". He said the total project cost was \$37,520

Mayor Buelterman adjourned the Consent Agenda.

Mayor Buelterman called the regular meeting of the City Council to order at 7:00pm. Those present at the consent agenda attended the regular meeting. David Laughner gave the invocation and everyone recited the Pledge of Allegiance to the Flag.

Announcements:

Paul Wolff reminded everyone of the public forum hosted by the Georgia Windworking Group. There will be experts from Georgia Tech, GEFA and England. The forum will be on December 2nd from 6:30 to 8:30 at City Hall.

Recognitions and Proclamations

Jonathan Hagan of the Tybee Island Police Department presented Police Chaplains David Laughner and Burke Day. He said the implementation of the new chaplain program has been very successful.

Mayor Buelterman presented a proclamation to Jack Youmans Honoring him on his 85th birthday and recognizing his contributions to the City of Tybee during his sixteen years of service (1988-2005) as a City Councilman.

Representative Burke Day expressed his gratitude to everyone for allowing him to serve sixteen years in the State House of Representatives.

Representative Day presented a House Proclamation to Lou Off recognizing his years of service on the Beach Task Force.

Reports of Staff, Boards, Standing Committees and/or Invited Guests

- Jonathan Lynn presented the Chatham County Hazard Mitigation Plan from CEMA. He said it is required to be updated every five years. He said every Municipality is required by FEMA to approve and adopt the plan and a resolution be sent from that Municipality to the county. He said there was a CD placed in council members boxes a few weeks back.

Frank Schuman moved to approve. Paul Wolff seconded. The vote was unanimous.

Hunter Robinson gave the Ocean Rescue annual report.

The following department heads gave quarterly reports:

George Reese-Water/Sewer

Joe Wilson-Department of Public Works

Robert Bryson-Police Department

Skip Sasser-Fire Department

Woody Hemphill-Campground and Financial report

Mary Hogan-Finance

Jonathan Lynn-Community Development

Vivian Woods-Clerk of Council

Rusty Fleetwood gave a report from the Community Resource Committee.

Committee Reports will be attached to the council minutes.

Judy Miller announced, the Tybee Island Water Fair will be held on Saturday, January 29, 2011 at the Tybee Gym from 10-4.

Citizens to be heard

Bobbe Richardson presented a request to City Council asking for an ordinance to address emergency access to the racquet club. She said there are many elderly and disabled people living there that need emergency care and in many instances emergency personnel cannot gain access in an emergency until someone comes to the gate.

Mayor pro tem Sessions asked how many gated communities are on Tybee. Mr. Lynn estimated six. Sessions asked Mr. Hughes or Mr. Lynn to locate the Chatham County ordinance and mirror it for Tybee.

Ms. Williams said council was assured that this was being addressed a few months back when the situation first came to their attention.

Mr. Wolff asked Mayor Buelterman to write a letter to the management company that controls the gate and request that this situation be remedied until the ordinance can be put in place.

Mayor Buelterman said he would call the manager and tell them this needs to be fixed now and there is an ordinance forthcoming. Ms. Schleicher asked that the Chatham County ordinance be considered at the public safety committee meeting in December.

Judy Miller explained the program for energy assistance with home heating bills. She said applicants can contact the economic opportunity authority at 238-2960 for application information.

Elaine Weathers made an appeal to council to consider allowing dogs on the beach in the area of the curve where the jetties are located; and people don't swim, at least during the low season for people that own property on Tybee.

Consideration of Boards, Commissions and Committee Appointments

Tybee Island Historic Preservation Commission:

Joseph Griffin, Jr. Postponed for resume review

Mayor Buelterman invited members of the beach bum parade committee to attend the next public safety committee meeting in order to discuss the safety concerns for the beach bum parade. Jack Boylston addressed concerns and said the growth of the community is to blame for the increase in safety concerns and should not cause the island to lose a piece of Tybee history. Ms. Doyle read a letter of support for the beach bum parade from the Tybee Tourism Council. She said the parade will be discussed at the public safety committee meeting on December 9th at 5:00 before the council meeting. Mr. Schuman said staging the parade at any location other than North Beach will be a disaster.

Consideration for the Consent Agenda

Paul Wolff moved to approve the consent agenda. Wanda Doyle seconded. The vote was unanimous.

Consideration of Bids, Contracts, Agreements, and Expenditures

1. TE Grant Application and Resolution- 2 Proposals: Proposal I: Bicycle/Pedestrian Path Only, North of Hwy 80 from still Avenue to Lazaretto Creek – Grant Amount \$218,200, Local Share \$54,550 with total cost of project: \$272,750. Proposal II: Add a Multi-use Sidewalk to Connect Path to Byers (Total additional cost of \$51,300), Total Project Cost: Grant Amount \$259,240, Local Share \$64,810, with the total cost of project being \$324,050.

Mayor Buelterman read a grant support letter from Dale Williams into the record.

Ms. Schleicher said proposal number 1 is for doing only the path section with a fence on the easement section at a cost of \$272,750 of which the local share would be \$54,000. Proposal number 2 adds a multi use trail connecting to Byers which would connect to the current path and make the total cost \$324,050.

Mr. Wolff said the infrastructure committee recommended going for the higher dollar amount which will give us a continuous path. Mayor Buelterman said we could take the match money from the SPLOST funds for either option since this project is on the list.

Ms. Schleicher asked council if they wanted her to apply for an additional grant of \$100,000 from the DNR with an 80/20 split along with applying for the TEE grant.

Mayor Buelterman explained for the record that local share coming out of SPLOST that can be minimized with in kind work would be \$64,810.

Paul Wolff moved to approve the 2nd option, contingent on the match coming from SPLOST and/or in kind funds. Shirley Sessions seconded. The vote was unanimous.

A Motion by Paul Wolff to approve the Resolution authorizing the City Manager to apply for a GA. Recreational Trails Grant for a bike trail as written and contingent on match coming from SPLOST or in kind was seconded by Kathryn Williams. The vote was unanimous.

2. Jennifer Palmer-Weddings for Warriors-Wednesday, December 8th 10am-7pm.
Requesting waiver of \$300 user fee for Guardhouse

Mayor pro tem Sessions explained that Weddings for Warriors is a non- profit and all the items such as: flowers, ceremony, and officiating will be donated. She said she thinks its kind of special that they want to use the guard house for this event.

A Motion by Shirley Sessions to approve with waiver was seconded by Paul Wolff. The vote was unanimous.

Public Hearings –Zoning Packet Separate

1. Request for Setback variance, 9A 13th Street (#4-0007-04-029). LDC Section 3-090, Applicant/Owner: Judy Degenhardt (Item has been removed but public hearing was advertised)

Mr. Lynn explained this request did not need a variance and the owner will be coming and getting a permit for the pool and the cost for the variance will be credited to their permit.

Mayor opened public hearing.

Opposition Letter to Variance request at 9 13th Street received from Kit Traub on November 9th. Mayor requested letter to be made a part of the record and asked Mr. Lynn to contact the Traub's and let them know what happened.

Mayor closed public hearing.

2. Request for Setback variance, 1210 Lovell Avenue (4-0007-07-003) LDC Section 3-090, Applicant/Owner: Mr. Rusty Black

Mayor opened public hearing.

Mr. Lynn explained that Mr. Black is seeking a variance in order to construct a deck.

Mr. Schuman said he has visited Mr. Black's house. He said he would approve a deck with a roof over it in order to solve the problem. The neighborhood has several people that have done the same thing.

Ms. Williams asked for the definition of a hardship. Mr. Lynn said unique physical differences beyond that of surrounding properties: irregularity, narrowness, or shallowness of the lot size or shape; or, exceptional topographical or physical conditions particular to that piece of property; because of physical conditions the property cannot be developed in strict conformity to this Land Development Code, without undue hardship to the property.

Mr. Black said he has looked at 3M window film and 3M solar shades which will reduce the heat into the window 40 or 50 percent. If he is allowed to come out twelve feet with his roofline, it will reduce the heat by 70 to 75 percent.

Mr. Garbett said this doesn't meet the definition of a hardship.

A neighbor from across the street said "in his opinion it would improve the looks of the house."

Mayor closed public hearing.

Mayor Pro tem Sessions said she is concerned with setting precedence if this petition is approved because of an electric bill.

A Motion to approve by Frank Schuman was seconded by Wanda Doyle. The motion failed with Schuman and Doyle voting in favor and Garbett, Sessions, Williams and Wolff voting in opposition.

3. Site Plan Approval (Section 4-050) at 211 Butler Avenue, Zoned C-1, (#4-0004-08-004)
Applicant: Paul Theron, Owner: Ronnie Navon

Mayor opened public hearing.

Mr. Lynn explained this Site Plan approval for the inclusion of occupancy on the second floor deck. Mayor Buelterman asked if this request included both ends of the building. Mr. Lynn said there is only one deck on the north end. Ms. Williams said the planning commission minutes said the first unit has its own deck on Third Street.

Mr. Lynn said in speaking with the building official, there is no provision for occupancy calculations on a residential deck. Ms. Williams said she thought the city did adopt something after the accident years ago when the deck collapsed. Mr. Hughes said there were discussions but no ordinance adopted that related to capacity or beyond the building codes themselves. Ms. Doyle asked if there was a chance a restaurant was going in on the 2nd floor. Mr. Lynn said the site plan was approved for residential on the 2nd floor and commercial on the 1st floor; but, a restaurant may be going in on the 1st floor. Mr. Wolff asked Mr. Hughes if city council had the purview to ask that the deck be accessed only by the occupants' of that residence. Mr. Hughes said the problem is the occupant of the residence may be the bartender from downstairs who invites the patrons up to the deck. Mr. Garbett said this is not a variance request; and, if the plan meets the requirements of the code, he believes, they are obligated to approve it. Ms. Doyle said she feels that if this meets the requirements of a residential deck; then it is as if council is passing judgment, and that is not what we are here for. Mr. Peter Hand, Architect, said council needs to put some teeth into their decision and dictate that the deck can only be used for the residents; because, if this were changed to a commercial deck, that would hold over seventy people; it would be required to have two means of egress. Mayor Buelterman said he thinks Mr. Lynn was saying it had teeth in it. Mr. Lynn said that was correct and you would see it again. Ms. Williams said it doesn't seem that the city has the requirements or enforcement to insure that the deck would be used according to this request. Maryann Bramble said she understands anything that goes onto this property is going to be an enforcement nightmare. She said it's a good plan but the owners keep coming back every 4 months with requested changes and we can't enforce the existing ordinances. She showed pictures of a construction worker on the property dumping mortar water into the retention pond; and,

another showing an uncovered dumpster on the site. Mr. Lynn said the dumpster is supposed to be covered every night and that will be addressed. Mayor pro tem Sessions asked if this plan came to council with no recommendation from the Planning Commission. Mr. Lynn said that is correct. She said she has a problem approving or disapproving tonight with no recommendation from the Planning Commission. Mr. Lynn said on the Planning Commission's behalf they did hear this petition twice and the first time they requested additional information and the second time there just wasn't enough members present, after the recusals, to allow them to vote on it. Ms. Doyle asked if there was anything in the code dictating how many times a petitioner can come back and request changes to their site plan. Mr. Hughes said at this time no, but he has been looking at it, and believes they could address it in article 4, which they are not reviewing yet. Val Rome spoke in opposition to the request. She said if the owners' built a rail according to commercial use requirements, and maintain that they are using it for residential, there is motive in that and council should vote no to the changes. Mayor closed the public hearing.

Shirley Sessions motioned to send back to Planning Commission for their recommendation. Wanda Doyle seconded. The vote was Sessions, Doyle, Schuman, Wolff, and Williams voting in favor and Garbett opposed.

4. Special Review Approval-Section 4-050 (C) at 1518 5th Avenue, Zoned R-2 (#4-0008-11-007) Owner/Applicant: Ron and Leuveda Garner

Mayor opened public hearing.

Mr. Lynn explained that the petition was for a Special Review. The applicants are owners Ron and Leuveda Garner; the property is zoned R-2 and the master plan shows this area as an Inland Cottage Neighborhood. The current existing use of this property is intended to be a storage/accessory building. The proposed use is to make it a caretaker's cottage, guest cottage, mother-in-law suite; any of those terms you want to put on it. What they are seeking is permitted in the R-2 zoning district after special review. He said there is kind of a convoluted reason we got here; it was originally constructed as the packet you were handed tonight states with the building permit in 2001, as an accessory structure. Somehow over time it became a rental and we found that out through the vacation rental by owner website found on May 26, 2010. They immediately contacted the Garners to try and to work out a scenario with them to either get it back to an accessory structure or keep it as some sort of unit where they could have people live. This is the best scenario they can have is to have it occupied as a mother-in-law suite, where they can't rent it out; they can't charge rent for anything but they can have family stay there, however, it cannot be a rental property. They are aware that if they do not receive special review it will have to be converted back to an accessory structure; meaning anything done without the permits would be required to be removed. He said just to clarify; this is not a variance but a special review. Mayor Buelterman asked if Planning Commission

approved it unanimously. Mr. Lynn said yes. Mr. Garbett asked if this was fully plumbed. Mr. Lynn said everything. He said if council approves it; all the work that required a permit will be required to obtain a permit, brought to FEMA standards and will receive required inspections at that time. Mr. Wolff asked if this was all moonlight construction and if no impact fees were paid or no permit fees while this was being converted from a shed. Mr. Lynn said that is correct; their fees for the accessory structure were \$95.00 back in April of 2001. Ms. Williams asked if they had a permit when they built it as an accessory structure. Mr. Lynn said they did have a permit just to build it as an accessory structure. Ms. Sessions said once again she is a little confused because she is familiar with the property; it's a cute little structure. She said she is having a problem and asked how many years ago this was done. Mr. Lynn said 9. Ms. Sessions said 9 years ago this was started as a structure and all that time the city never noticed the structure turn into a house. She said it is putting us in a bad position. She said she has to put this on record and she knows Mr. Lynn was not here but these are the types of things; again zoning, enforcement, and here we are. Mr. Lynn said it was constructed to look like the house and the exterior never changed and apparently no one ever caught the work taking place and luckily we were able to stumble across the website advertising it as a rental, which immediately triggered our enforcement action in the zoning department. Ms. Sessions asked if someone sent something to make them aware of this; it is her understanding a citizen made ya'll aware of this. Mr. Lynn said he doesn't remember if someone sent it but Dianne Otto is very good about checking these websites, just to make sure these locations have business licenses. Ms. Sessions said she remembers specifically because they all received a copy from the person. Mr. Lynn said whether or not it came in as a complaint or not, as soon as they became aware of it, they acted on it. Mr. Garbett asked for the criteria required for special review approval. He asked if they were looking at the design of the building because this requires no variances and he assumes everything fits the setbacks. Mr. Lynn said everything fits the setbacks; that is correct. Mr. Wolff asked if a guest cottage required the same setbacks as a residence. He said he knows a shed doesn't but a guest cottage does and this is the site plan and it doesn't meet either the front or meet the side; it meets the rear but not the front. He said the front door faces 16th Street. He said it is 18.473 feet. Mr. Lynn said technically that is the side yard. Mr. Wolff said that is the way the front door faces. Mr. Lynn said it goes with the house. Mr. Wolff said, so your saying the front yard is the same as the house even though the front door faces the other way. He said that can't be right. Mr. Garbett said so you've got one front yard for the house. Mr. Lynn said yes. He said this is the lot of record and is not two different lots. Mr. Hughes explained that even if it is a caretakers cottage it would be an accessory to the main structure, so, you would only need the side yard setback there. He said 5-070 is the standard for special review and is significantly more city friendly than a site plan review. He said there is a list of factors to take into account but It won't be contrary to the purpose of the Land Development Code or detrimental to the use and development of the adjacent properties of the general neighborhood or adversely affect the health and safety of residents and workers; will not constitute a nuisance or hazard because of the number of persons who will attend or use it; will not be adversely affected by the existing uses of adjacent properties; it will be placed on a lot which is

sufficient in size to satisfy the space requirements of the use; parking and all development standards set forth for each particular use for which permit may be granted will be met. He said some of these won't apply to a caretaker cottage but overall that is what it is. He said you have a right to impose additional restrictions and standards including setbacks, buffer strips, screens, etc., as may be necessary to protect the health and safety of residents of the community and to protect the value and use of the property in the general neighborhood. Mr. Garbett asked if this would require additional parking. Mr. Lynn said he doesn't believe we currently have it but it is in the proposed part of Article 3, where a caretaker's/guest cottage would require 2 parking spaces. Ms. Sessions said she doesn't have a problem with little guest cottages and mother-in-law suites, especially when it seems those are the ones that actually have two people in them. she said when you look at every usage in this city: C-1,R-1,R-2,R-1-B; all have rental properties. It can be a little house or a big house but there is no control and people can put as many people as they want in them. Mr. Lynn said in 3-080(b) says: A caretaker's cottage is a separate dwelling unit and shall be provided two off street parking spaces. Mr. Lynn said that is one of the recommended changes and is not currently part of the ordinance. Ms. Sessions said as she understands it, what they are asking for is special review with the understanding that they would have to have it raised according to FEMA standards. Mr. Lynn said he believes it will require 3 feet 9 inches to bring it up to FEMA level. Leueda Garner said she and her husband are requesting a caretaker's cottage status for an accessory building that already exist. She said the footprint wouldn't change; the exterior wouldn't change and it does meet all the setback requirements. She said she has a letter from Chuck Bargeron, dated October 5, 2001, stating that it does meet all the requirements. She said when they built the cottage, not cottage but structure. They call it the cottage now because it looks like a cottage. They traveled all over the coastal regions like the Ford Plantation, Habersham Plantation, looking for structures that improved the appearance of the property rather than degrade the appearance of the property. They wanted something they thought was attractive. So they built that and as she said Chuck Bargeron came out and he has sent this letter that is not part of your packet but I can make it available and pass it around. She said they did over time, as their family grew, their house is only 1400 square feet; it looks bigger than it is, but anyway when their grandchildren started coming along, it was just sort of a natural transition for them to convert that to sleeping space for their family. She said they did have people ask them from time to time if they could rent it and they did rent it occasionally, but, just in the last several years. She said this spring she did put it on the vacation rental by owner, just fishing to see how that would do, but, she was the one that got caught with her fishing expedition. She said it hasn't been a rental other than occasionally, until this spring when she was just trying to see how that would fly. She said obviously it got them into a lot of trouble here but, they plan to elevate it 3 1/2 feet to meet FEMA and the city's requirements. She said they would love to salvage it and they are asking for council's approval for a caretaker's cottage. Peter Hand said he is a neighbor across the street from Ron and Leueda's little cottage. He has been practicing architecture for a little over 35 years and he can only hope sometime in his future that he will do a building as lovely as that little cottage is; it's just a great addition to the community and he hopes council will consider

that in their considerations because it's a gem; it's just superbly done. It has not been a problem for them to live across from them whatsoever.

Mayor closed public hearing.

A Motion to approve by Wanda Doyle was seconded by Bill Garbett.

Ms. Williams clarified that the permit fees would be retroactive to the time the building was converted and inspections will be done. Mr. Lynn explained that the permit fees will be charged according to our current fee schedule and all inspections will be required. Mr. Schuman asked if Mr. Bargeron had approved this being converted from a shed to a cottage. Mr. Lynn said no, it was always maintained as a shed.

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

Consideration of Ordinances, Resolutions

- 1) 1st Reading Section 58-167 regarding Occupational Taxes(32-2010)

Mr. Lynn explained that this ordinance raises the fee for working without a business license from \$100 to \$500. Mr. Hughes said this makes our code consistent with state law.

Mr. Hughes said he would check on the ability of the city to set a minimum fine.

Ms. Williams said if someone is operating a business without a license they should be fined up front without a warning.

Paul Wolff moved to approve. Frank Schuman seconded. The vote was unanimous.

- 2) 1st Reading Section 34-49 Penalty for violating provisions of the occupational tax and licensing requirements and for other purposes. (33-2010)

Paul Wolff moved to approve. Kathryn Williams seconded. The vote was unanimous.

- 3) 1st Reading LDC Article 3 in its entirety without 3-050, 3-060, 3-130, 3-140, 3-190, 3-200, 3-030 and 3-250

Postponed until December Meeting.

- 4) 2nd Reading ordinance on removing Ethics Commission members

Paul Wolff moved to approve. Kathryn Williams seconded. The vote was unanimous.

5) 2nd Reading on Section 66-183 on Tax payment for decals

Wanda Doyle moved to approve. Paul Wolff seconded. The vote was unanimous.

6) 2nd Reading Article 3-050

Shirley Sessions moved to approve. Bill Garbett seconded. The vote was unanimous.

7) 2nd Reading Article 3-060

Paul Wolff moved to approve. Frank Schuman seconded. The vote was unanimous.

8) 2nd Reading Article 3-130

Shirley Sessions moved to approve. Paul Wolff seconded. The vote was unanimous.

9) 2nd Reading Article 3-140

Paul Wolff moved to approve. Kathryn Williams seconded. The vote was unanimous.

Council, Officials and City Attorney Considerations & Comments

Bubba Hughes

- 1st Reading Water conservation ordinance to create Section 70-46

Mr. Hughes said we are required to adopt this ordinance in order to comply with state law.

Paul Wolff moved to approve. Bill Garbett seconded. The vote was unanimous.

Mr. Wolff explained that an additional part of the request to ask the State Attorney General for a ruling on whether or not the DNR is enforcing and/or the army corps is complying with HB727, was, asking Eric Olson to review HB727 for the city. Mr. Wolff explained that the Beach Task Force budget had only \$57,000 left for the remainder of the fiscal year. Ms. Schleicher said that amount would not include amounts left over from last year's budget.

Mayor Buelterman requested Ms. Schleicher talk with Mr. Olsen and get an estimate of the cost of his review.

Mr. Hughes said he will contact the Attorney Generals office and confirm that their policy is, in order to get an opinion; you have to submit an opinion, and report back to council.

Mr. Wolff requested this item be put on the December 9th agenda for a decision.

City Manager's Report

- Request to close City Hall on Saturdays from Thanksgiving until January 3, 2011.

Ms. Schleicher said she had received questions and had Ms. Hogan prepare answers: Customers on Saturdays have averaged ten or less since Pirates Fest. We will not be doing parking which is one of the reasons for having a Saturday cashier.

No vote required, due to it being, a City Management decision.

Executive Session

Paul Wolff moved to go into executive session to discuss litigation. Shirley Sessions seconded. The vote was unanimous.

Paul Wolff moved to go back into regular session. Wanda Doyle seconded. The vote was unanimous.

Adjournment

Paul Wolff moved to adjourn. Wanda Doyle seconded. The vote was unanimous.