

Aiken City Council Minutes

REGULAR MEETING

December 10, 2012

Present: Mayor Cavanaugh, Councilmembers Dewar, Diggs, Ebner, Homoki, and Price.

Others Present: Richard Pearce, Gary Smith, Stuart Bedenbaugh, Larry Morris, Glenn Parker, Charles Barranco, Tim Coakley, Kim Abney, Alicia Davis, Sara Ridout, Amy Banton of the Aiken Standard, Andrew O'Byrne of the Aiken Leader, and about 35 citizens.

CALL TO ORDER

Mayor Cavanaugh called the meeting to order at 7:00 P.M. Councilwoman Price led in prayer, which was followed by the pledge of allegiance to the flag.

GUIDELINES

Mayor Cavanaugh reviewed the guidelines for speaking at the Council meeting. He asked that those who would like to speak raise their hand and be recognized and limit their comments to five minutes.

MINUTES

The minutes of the regular meeting of November 26, 2012, were considered for approval. Councilman Dewar moved, seconded by Councilwoman Diggs, that the minutes of the November 26, 2012, meeting be approved as written. The motion was unanimously approved.

PRESENTATION

Hopelands

Benches

Mayor Cavanaugh stated a donation had been made to Hopelands Gardens.

Mr. Pearce stated Tim Coakley, Director of Public Services, and Tom Rapp, Horticulturist, had a special presentation to make to Council that involved volunteers Tony Sealy and Dan Johnson.

Mr. Coakley pointed out a bench had been brought in for Council to see. He stated the bench is one of four benches that were made. He pointed out the city has many gifted volunteers. He stated the bench before Council was made by two volunteers—Tony Sealy and Dan Johnson. He said the wood for the bench came from a deodar cedar at Hopelands Gardens. He said the tree was a multi-trunk cedar, and one of the trunks died. He said the wood was preserved and the four benches were then made by volunteers.

Mr. Tom Rapp stated there are many large beautiful trees in Hopelands Gardens which were planted some time ago. In the early part of 2011 one of the deodar cedar trees near the Hall of Fame lost about one-third of the tree, which was a multi-trunk tree. About one-third of the tree just died. There was no sign that anything was wrong with the tree. Because of the beauty of the gardens and trees he said they wanted to do everything they could to save the rest of the tree. The part that had died was removed. He said he wanted to try to save what was left of the tree. He explained the process of what he did to try to save the tree. He pointed out the City has an air spade which aerates the soil without doing any root damage. He said this process worked, and the tree shows sign of recovery. He said this process was also done on another large deodar tree in the Gardens. At this time both trees seem to be doing well. He said Tim Coakley had the idea of the limb being used to make a bench. Mr. Rapp stated he made some calls, and Dan Johnson

said he would be glad to help with making benches. Mr. Johnson has a friend, Tony Sealy, who works with him on wood projects. Mr. Rapp stated the tree limb was large, and four benches were made from the limb. The four benches were placed around the tree which lost the limb. Mr. Rapp stated he was amazed at what Mr. Johnson and Mr. Sealy knew and what they could do to make the benches. He said Mr. Johnson could not be present at this meeting, but Mr. Sealy is present to talk about their work on the four benches.

Mr. Sealy stated he and Mr. Johnson are both retired electrical engineers and both have common hobbies, one of which is working with wood. He said it is much safer to have two people working in a shop with large equipment, and especially when working with large timbers like the limb from the deodar cedar tree. Mr. Sealy stated he and Mr. Johnson were pleased to be asked to make benches out of the deodar cedar limb. He said the wood has history, and to make something from wood that has a history is even better. He stated the City helped them some, as the limb was quite large. He pointed out the bench shown is just one section of the limb. He said the City helped with cutting the limb and moving it to the City Shop. He said pieces of the limb were taken to Mr. Johnson's workshop where they made the cuttings for the legs for the benches. The larger parts were left with the City for about 8 months. The City brought the wood back to them in late spring. It was taken to Mr. Johnson's workshop. Electrical hoists were used to move the logs around, since they were very large. He said to get the seat part of the bench flat a lot of wood had to be removed, and this was done with hand tools. He said electric chain saws, axes, planes, etc. were used to prepare the wood so they could use the sander to smooth out the wood. By making the legs and drying them in Mr. Johnson's shop, the legs held less moisture content than the large log, so when the legs are put in, they will expand and make a tight fit in the base of the log. He said they used a joint called a fox wedge, so when it is put in the probability of it coming out is close to zero. He said they used copper feet on the bottom of the legs so the moisture content would be reduced and give the City a bench which may last for many years. He said the benches will require some maintenance over the years, and he hoped the city would be willing to put some varnish on the benches. He felt the four benches would last for many, many years. Mr. Sealy stated if one counts the rings on the limb, they would find the tree is in excess of 100 years old. He said a plaque was made to go on the bench.

Council thanked Mr. Sealy for his and Mr. Johnson's work on the benches.

Mr. Coakley stated the four benches would be placed in the Gardens the first of the year, and they would be placed around the tree where the limb died.

Mr. Pearce stated his understanding is if the benches had not been built, the limb would have gone to the construction landfill.

RECOGNITION

Boy Scouts Citizenship Award

Mayor Cavanaugh recognized the Boy Scouts who were present from Troop 421.

BOARDS AND COMMISSIONS

Appointments Phillip Merry Don Broderick Design Review Board S.J. Paterniti Board of Zoning Appeals Jane Page Thompson Planning Commission

Mayor Cavanaugh stated Council needed to consider recommended appointments to boards and commissions of the city.

Mr. Pearce stated Council has 14 pending appointments to fill vacancies on different City boards, commissions, and committees. Three appointments are presented for Council's consideration.

Councilmember Diggs has recommended Phillip Merry for reappointment to the Design Review Board. If reappointed, Mr. Merry's term would expire December 31, 2014.

Councilmember Ebner has recommended Don Broderick for reappointment to the Design Review Board. If reappointed, Mr. Broderick's term would expire December 31, 2014. He has also recommended S. J. Paterniti for reappointment to the Board of Zoning Appeals. If reappointed, his new term would expire December 1, 2015.

Jane Page Thompson's name had been submitted at the last meeting for appointment to the Planning Commission, but Councilman Homoki informed Council that Ms. Thompson had withdrawn her name for consideration for appointment to the Planning Commission to replace Wilkins Byrd, who has resigned.

For City Council consideration is approval of three appointments to the boards and commissions.

Councilman Ebner moved, seconded by Councilwoman Diggs, that Council reappoint Phillip Merry and Don Broderick to the Design Review Board with the terms to expire December 31, 2014, and reappoint S. J. Paterniti to the Board of Zoning Appeals with the term to expire December 1, 2015. The motion was unanimously approved.

Councilman Dewar pointed out Mr. Paterniti is present at this meeting, and he thanked him for his service on the Board of Zoning Appeals.

Councilwoman Diggs recommended that Jason Price be reappointed to the Board of Zoning Appeals.

Councilman Dewar recognized Bob Besley, who was present, and thanked him for agreeing to serve on the Planning Commission. He stated he would like to nominate Ann Dicks to the Community Development Committee.

Councilman Homoki recommended that Robert Newburn be appointed to the Environmental and Energy Committee and that Dr. Kent Cabbage be appointed to the Planning Commission.

Mayor Cavanaugh stated he would like to recommend that McDonald Law be reappointed to the Design Review Board and that Mark Hudgins be reappointed to the Environmental and Energy Committee.

ANNEXATION – ORDINANCE 12102012

Ashok Patel

Naman Hotels

Ferrell L. Holley, Jr.

Charles Holley

Larry Holley

Whiskey Road

Stratford Drive

TPN 123-10-06-002 (po)

Mayor Cavanaugh stated this was the time advertised for second reading and public hearing on an ordinance to annex 5.96 acres on Whiskey Road at Stratford Drive, zone it Planned Commercial (PC) and approve a concept plan for the construction of two hotels.

Mr. Pearce read the title of the ordinance.

AN ORDINANCE TO ANNEX TO THE CORPORATE LIMITS OF THE CITY OF AIKEN CERTAIN PROPERTY CONSISTING OF 5.96 ACRES OF LAND, MORE OR LESS, OWNED BY FERRELL L. HOLLEY, JR. ET AL AND TO ZONE THE SAME PLANNED COMMERCIAL (PC) AND APPROVE THE PROPOSED CONCEPT PLAN.

Mr. Pearce stated Naman Hotels CEO Ashok Patel is back before Council with a revised, proposed development plan to build two new hotels--at a total economic impact of \$30,000,000--on a 5.96 acre tract of land on Whiskey Road at Stratford Drive owned by the Holley family. The land owners have also petitioned for annexation of this tract into the Aiken city limits.

Significant revisions to the plan heard by Council a couple of months ago include deletion of access onto Stratford Drive, addition of a frontage road parallel to Whiskey Road, reconfiguration of the parking lot to adjust for a single entrance from Whiskey Road, stub outs on the western and northern property lines to connect this tract to potential future developments, and a sidewalk to be included along Whiskey Road. There was considerable discussion about a prior plan that was presented. A copy of the Traffic Study was included in the agenda materials for Council's review.

The Planning Commission met November 13, 2012, and unanimously voted to recommend approval of the annexation application and concept plan. At the first reading of the ordinance, Council heard from leaders for two homeowners' associations in the area who are happy with this revised concept plan.

City Council unanimously approved the ordinance on first reading at the November 26, 2012, meeting.

For Council consideration is second reading and public hearing of an ordinance to annex 5.96 acres on Whiskey Road at Stratford Drive and to approve a proposed concept plan for the construction of two hotels on this tract.

The public hearing was held and no one spoke.

Councilman Homoki moved, seconded by Councilwoman Price, that Council approve on second and final reading an ordinance to annex 5.96 acres on Whiskey Road at Stratford Drive and approve the proposed concept plan for the construction of two hotels on the tract. The motion was unanimously approved.

WOODSIDE PLANTATION – ORDINANCE 12102012A

Concept Plan

Veterinary Office

Professional Suites

1395 Silver Bluff Road

TPN 107-06-04-008

Mayor Cavanaugh stated this was the time advertised for second reading and public hearing on an ordinance to amend the concept plan for Woodside Plantation and to approve a veterinary office in an office complex.

Mr. Pearce read the title of the ordinance.

AN ORDINANCE AMENDING THE CONCEPT PLAN FOR WOODSIDE PROFESSIONAL SUITES.

Mr. Pearce stated Woodside Development has applied to revise its Concept Plan for Woodside Plantation to allow a veterinary office to be included in its office complex. City Council approved a concept plan in July, 2012, for a professional/medical to include 16,000 square feet of professional office space.

Under the Zoning Ordinance, veterinary offices are considered retail and not office uses. Therefore, a revision to the concept plan must be approved by City Council.

The Planning Commission met November 13, 2012, and unanimously approved a recommendation to Council to approve this request.

Mr. Pearce stated there was a question at the November 26, 2012, meeting as to whether the veterinary office was to be in a particular building, Building B. He said he had a call from Mr. Pat Cunning and Mr. Cunning has indicated that they would want the approved use for a veterinary office for this executive park, but not just for the particular building.

City Council unanimously approved this ordinance on first reading at the November 26, 2012, meeting. For Council consideration on second reading and public hearing is an ordinance to amend the concept plan for Woodside Plantation and to approve a veterinary office in the Woodside office complex.

Councilman Ebner stated there had been a question and some concern that there would be no external kennels for the veterinary office. He said Mr. Cunning had stated there would be no external kennels for the veterinary office. He said also there would be solid walls around the office, and there would be no screen or wire in the walls of the building. It would be a totally enclosed building. He wondered if that should be in the ordinance of approval.

Mr. Gary Smith, City Attorney, stated his feeling is that in order for there to be an external kennel allowed to be built on the site, it would have to be in the concept plan. The concept plan does not show any external kennels. If they wanted to have some external kennels, they would have to come back to City Council for approval of an amendment to the concept plan. He said he felt it was not necessary to add a condition that there be no external kennels, as they would have to come to Council to amend the concept plan to have external kennels.

Councilman Ebner moved, seconded by Councilman Dewar, that Council pass on second and final reading an ordinance to amend the concept plan to approve the use for a veterinary office for the Woodside Professional Suites in the complex, not specific to Building B. The motion was approved unanimously.

At this point Councilman Dewar recognized Mr. Phillip Merry, who was present. He pointed out that Mr. Merry plans to run for the vacant Council seat. He expressed appreciation to Mr. Merry for his work on the Design Review Board.

Mr. Pat Cunning entered the Council meeting about 7:30 p.m.

Mr. Pearce pointed out Council had acted on the item regarding amending the concept plan to allow a veterinary office in the Woodside Professional Suites. He said Council approved allowing the veterinary office anywhere in the complex rather than just in building B. He asked Mr. Cunning if there were any plans for a kennel, or if there was to be exterior wire fencing. He pointed out Council did not approve any kennels.

Mr. Pat Cunning stated in the covenants which have been approved by the individual who bought in the complex no animals can be housed or kept outdoors. No outdoor kennels may be constructed or operated on the property.

JURY BOX

2013

Mayor Cavanaugh stated Council needed to consider approval of the 2013 City Court Jury Box.

Mr. Pearce stated each year Sara Ridout, as City Clerk, prepares a Jury Box, which, under state law, must be submitted to City Council for approval.

Under the Council-Manager city government model, City Council acts as Jury Commissioners for our City Court. Each year by law, Council must approve the preparation of the names for our jury box. The box contains two compartments--designated as Compartment A and Compartment B. The names of all registered voters and holders of a valid driver's license, or identification card, issued pursuant to state law, are placed in Compartment A. During the year jurors are randomly selected from this compartment and after selection for a particular term of court, the names are then placed in Compartment B. Therefore, the names are not selected again during that calendar year. We have a total of 16,002 names in the jury box.

For City Council consideration is approval of the 2013 City Court Jury Box.

Councilwoman Diggs moved, seconded by Councilman Dewar, that Council approve the preparation of the Jury Box for the Municipal Court for the year 2013. The motion was unanimously approved.

RESOLUTION-WOODSIDE PLANTATION 12102012B

Storm Sewers

Catch Basins

Phases I, II, and III

Dedication

Deed

Mayor Cavanaugh stated a resolution had been prepared for Council's consideration to accept storm sewer infrastructure in Woodside Plantation, Phases I, II, and III.

Mr. Pearce read the title of the resolution.

A RESOLUTION AUTHORIZING THE ACCEPTANCE OF A DEED OF DEDICATION FOR OFF OF THE RIGHT OF WAY STORM SEWER LINES, CATCH BASINS, AND RELATED EQUIPMENT FROM THE WOODSIDE PROPERTY OWNERS ASSOCIATION.

Mr. Pearce stated at the request of the Woodside Plantation Property Owners Association, Engineering and Utilities Department Director Larry Morris has inspected the storm sewers and catch basins in Woodside Plantation Phases I, II, and III. An initial inspection showed items needing correction. These concerns were corrected. He pointed out that the City has already accepted the storm water system Phase IV. Mr. Morris was requested by the Woodside Plantation Property Owners' Association to inspect Phases I, II, and III.

Larry's staff has inspected this infrastructure, and it is ready for approval for acceptance.

For Council consideration is approval of a Resolution to accept the storm sewer infrastructure in Woodside Plantation Phases I, II, and III.

Councilman Dewar stated that in Mr. Morris' memo it states that individual pipe runs between catch basins were not inspected. He wondered about those not being inspected.

Mr. Morris stated putting a camera through every foot of pipe in the area would be well beyond what they could do. He said the city did purchase a camera that would allow staff to visually inspect all of the catch basins and all of the piping coming in. They could see about 5 to 6 feet into the pipe. At the same time they could see daylight where there would be a catch basin at the other end to make sure there were no blockages. He said they were satisfied from what they saw that the system was in good enough shape for the City to accept all the storm sewers on right of way and off right of way in Phases I, II, and III.

Councilman Ebner asked if this would complete acceptance of the stormwater lines not only in Woodside but also some in Woodside Village and some from the new medical center. He said he understands that all those now tie into the Woodside Detention Pond.

Mr. Morris stated that is correct. He said the Village has separate detention ponds. However, the discharge from the pond is piped over into one of the Woodside Lakes. He said they were very clear with the Property Owners' Association that the City is not accepting the lakes or maintenance of the lakes, only the piping system that goes to the lakes.

Councilman Ebner stated this would then complete the stormwater. He asked if the sewer lines for Phases I, II, and IV were all done.

Mr. Morris, Engineer and Utilities Director, stated all the water and sewer infrastructure is eligible for acceptance. They are working on some new areas that have not been accepted. He said this completes the acceptance of utilities in Woodside.

Mayor Cavanaugh asked if the equipment used to inspect the catch basins was the same equipment used throughout the city.

Mr. Morris responded that the equipment used was specialized equipment. He said Woodside Property Owners' Association donated \$500 toward the purchase of the equipment. It is a camera that can be used to get very close. It basically has a fisheye lens so we can get a good look at the pipe. He said they were able to inspect the catch basins without actually going into the manholes. He said being able to do that helped tremendously so we did not have to do a confined space entry on each manhole. He said this equipment could be used for other stormwater work in the city. It cannot be used for inspecting sanitary sewer work because that takes a very specialized camera that is covered to keep the sewer materials from harming it.

Councilman Ebner moved, seconded by Councilwoman Price, that Council approve the resolution to accept the storm sewer infrastructure in Woodside Plantation Phases I, II, and III. The motion was unanimously approved.

INFORMATION

Holiday Schedule

Administration-Finance Building

Mr. Pearce stated City Hall will close at noon on Christmas Eve and will be closed Christmas Day, December 25, 2012. There will be no second Council meeting on the second Monday in December, which would be Christmas Eve, December 24, 2012. City Hall will also be closed New Year's Day, January 1, 2013.

Mr. Pearce stated the employees are in the process of moving into the Administration and Finance Building at 135 Laurens Street SW. The City Manager's Office should finish moving by Tuesday. The Finance Department will begin moving Wednesday and Thursday weather permitting. During this time citizens can continue to make payments at City Hall on Park Avenue until 5 p.m. Friday, December 15. On Monday, December 17, 2012, payments can be made at 135 Laurens Street SW. Signs have been posted about the move. The new drive thru will be activated on December 17, 2012. Citizens can drive thru and make their payment to a person. After hours there is a payment slot in the drive thru where citizens can drop their payment.

Municipal Association of SC Achievement Award Application

Mr. Pearce stated it is time to discuss submissions for the Annual Municipal Achievement Award. He said at the Department Staff Retreat several items were discussed. One item discussed was everything the city is doing to address the aging out of the baby boomer population, the formation of the Senior Commission, the Senior Tax Write Off Program, the programming for seniors, and volunteers. Staff is developing a

title for the program. He said we anticipate presenting to Council on January 14, 2013, more detail on the submission, which will be dealing with the aging population. He said there is a long list of programming and opportunities for seniors in our community where they can continue to contribute. He pointed out the benches made from the tree limb and the Geo Chemist who talked to Council about the city's water supplies on the southside of Aiken. He stated senior volunteers had helped pack the City Manager's Office for the move to Laurens Street. He said the theme is seniors and the senior and volunteer programs. He said Glenn Parker and his staff are working on completing the application form. He said January 28, 2013, is the date the applications are due to the Municipal Association of S.C.

Capital Sales Tax Project Timeline

Mr. Pearce stated staff had presented earlier in the fall a timeline for the capital projects. Some Council members expressed some concern about trying to follow the timeline. He presented a copy of a new timeline to Council for the second and third round of the one cent sales tax projects. He pointed out 016 is the account for the second round of one cent sales tax, which is the current sales tax. He stated 017 will be the third round of the one cent sales tax. He said there will be a discussion and presentation at the Horizons Retreat for City Council, which will be February 1 and 2, 2013.

Councilman Dewar asked if the timeline would be an agenda item at the next Council meeting for discussion if Council has questions.

Mr. Pearce asked Council to review the timeline and let him know if they have questions so the matter can be listed on the agenda for discussion. He said the timeline is a draft, particularly on the third round of one cent sales tax money. He pointed out Council had advanced funds for some projects such as the Administration-Finance Building renovation. He said in the ballot that the citizens approved for the second round of the one cent capital projects sales tax and in the third round of one cent sales tax, Council reserved the right to determine the order in which the projects would be completed. The citizens voted on the money. Council voted on the money. Council has prioritized the projects and has retained the right at any time to vote on the order of the projects to be completed. He stated this right was included in the ballot. He pointed out on the first round of sales tax the money would come in and project one would be done. Then the next money would be used for project two. He said this caused havoc as some things for a project may not be ready for some time and that would cause all the rest of the projects listed after it to be held up until that project could be completed.

Councilman Dewar stated he thought generally speaking the city would follow the list submitted for the ballot subject to the judgment that, if the next project on the list is not ready, then we can go to the next project on the list. He said we would not discriminately go to the last project on the list when we could have done a project listed earlier on the list.

Mr. Pearce stated the plan is to go down the list of projects on the ballot. However, he will come to Council at times for permission to go to another project when the next project is not ready. He pointed out the list of bids being received are listed for Council in the Issues and Updates and many are related to the Capital Projects Sales Tax funds. He said they intend to identify the bid as being an item on the Capital Projects Sales Tax list so Council will know what is being done and when.

City Attorney Report Email Use

Mr. Gary Smith stated he wanted to make a comment about an email correspondence last week. He said he wanted to remind City Council that he did not feel that it was appropriate for City Council members to use email as a way to communicate with each other as a group. He said he did not feel there was anything wrong with a City Council member sending an email to another Council member. He said sometimes a Council member may get an email from a citizen and that citizen has emailed all of Council. He

said it is easy to use Reply to All. However, he did not feel that was the appropriate way to respond to that citizen. He said he was not saying they could not respond to that citizen, but the Council members could respond to that citizen privately without including everyone in the correspondence. He felt that would be a better way for communication.

Councilman Ebner stated another thing to consider is that electronic communication is not only email, but twitter and texting. He wondered if it should be expanded to include electronics.

Mr. Smith responded that state law describes it as an electronic communication, so any form of electronic communication is included. He said he mentioned email as that happened to be the form that was used last week.

Councilman Ebner stated he felt this was important. He said another subject he would be asking to be included in the next agenda has to do with citizens being able to speak at Council meetings on a non-agenda item. He also asked if the City Attorney would make a statement to explain electronics communication.

Councilman Dewar stated he had had some problems with Facebook. He pointed out Facebook is one tool. He said the Municipal Association of SC gave out information at the last meeting on how to set up their Facebook account. He said if he puts something on his Facebook account, he does not have the knowledge that all of the other Council members will read it.

Mr. Pearce stated to address Councilman Ebner's issue about citizens expressing their concern at a Council meeting for an item that is not on the agenda, Mr. Smith might wish to respond. Mr. Smith just attended a MASC meeting for City Attorneys last week.

Councilman Homoki pointed out that on emails there are various options on addressing the email. He pointed out an option is bcc—a blind copy. He wondered if one uses bcc to everyone if that would be legal. He pointed out with bcc no one knows that anyone else received it.

Mr. Smith stated if there was an investigation he felt they would be able to look at your email and see that you blind copied everyone on Council. He said he felt that would be a violation of the Freedom of Information Act.

Mr. Smith stated the discussion at the MASC meeting of City Attorneys regarding items not listed on the agenda but discussed by citizens at a Council meeting was interesting. He said he initiated the discussion. He said there were over 100 municipal attorneys at the meeting. He said there was a presentation by the Executive Director of the South Carolina School Board Association. He basically addressed the group on the proper use of Robert's Rules of Order and how City Council meetings should flow. The Lambries versus Saluda County Council case came up. Mr. Smith stated he had advised Aiken City Council that he believed in light of the Lambries ruling that it was inappropriate to have an open ended agenda item that allowed public discussion of any item. He said there was discussion among the other municipal attorneys. Several agreed with him and others did not agree with him. There was no one in the room whose opinion matters more than anyone else's. He said however, one of the persons in the room whose opinion matters more to him than anyone else's is Danny Crowe's. He has been a long time counsel to the Municipal Association of S. C. He said Mr. Crowe agreed with him. He said this did not make him right or the others wrong, but it shows that there is a difference of opinion as to whether or not it is appropriate. He said his opinion is the most conservative opinion. He said he feels his opinion goes along with the court case. He said the matter is certainly subject to interpretation. He said as he views the opinion, the clear message to him is that the focus is on whether or not a citizen looking at the published agenda has full knowledge of everything that is to be discussed at a City Council meeting. It was pointed out that Greenville allows citizens to discuss matters at their Council meetings that are not listed on their agenda.

Mr. Smith stated from his perspective he is not saying that the citizens can't speak. We are asking the citizens to let Council members or the City Manager know that they want to speak at a Council meeting so it can be placed on an agenda under Petitions and Requests.

Mr. Smith stated he thinks the Lambries decision makes it clear that a citizen should be able to look at the published agenda and make a decision as to whether he wants to attend a City Council meeting to be heard on a particular issue that will be before City Council. He said one of the distinctions that the other municipal attorneys were making was they were not asking Council to vote on the issue, but just allowing the person to speak. Mr. Smith stated he gets the sense that some think that the position that he has taken means that we are denying the citizens the right to speak to the public. He said he was only suggesting that the agenda item listing should tell the citizens what Council will be talking about.

Councilman Ebner stated then if a citizen wanted to talk about the kennels in the Woodside item which was listed on the agenda, they would be allowed to speak. However, if a citizen wanted to talk about a pothole, that would not be appropriate since the item was not listed on the agenda. Mr. Pearce pointed out it would be appropriate if they sent a letter to him as City Manager asking that the item be placed on the agenda. Councilman Ebner responded that freedom of speech then does not apply.

Mr. Smith pointed out that the state legislature does not allow someone to come and speak on a matter.

Councilman Dewar stated he had looked at Council agendas from various cities throughout the state. He stated he had noted the one from Greenville, and they do have an item for comments from City Council members to make comments. He said the matter is an opinion, and Mr. Smith has said the matter is an opinion. He said, however, he would rather join the people who are more transparent to the community. He said Council would not know what they would discuss, but Council can't act on the matter anyway. He said Council can't act on anything that comes before Council that is not on the agenda. He said we talk about how we are going to govern, and then the other thing is how Council gets information. He said he feels Council should allow citizens to speak. He said, however, he cannot remember the last time a citizen had come to Council with a complaint, but he felt they should be able to do so.

Mr. Smith stated since he had issued the opinion he did not know of a citizen that wanted to speak to City Council that had been told they cannot speak.

Mr. Pearce stated he was not aware of anyone who wanted to speak to Council, but was not allowed to do so. He pointed out it is not the City Attorney's opinion. It is the City Attorney reporting to Council on a Court of Appeals opinion, which is a court order. He said that is a Court Order until that decision of the court is modified. He said it is the law until the order is modified by a higher court.

Councilman Dewar stated he felt Mr. Smith's opinion is an interpretation of the law and the order that was handed down by the Saluda County Appeals Court. He pointed out that Mr. Smith had stated that at the Municipal Attorney's meeting there were many that did not agree with his opinion. He said there is no one right answer.

Mr. Smith stated for Council to understand why he has the conservative opinion or view, the Freedom of Information Act does carry criminal penalties. He said the Court is saying the Saluda County Council violated the Freedom of Information Act because Council was not following the officially published agenda.

Councilman Dewar pointed out they got in trouble because they changed the agenda, not because they had public input.

Mr. Smith stated the court also talked in the opinion about the importance of the general public being able to look at the agenda and have a clear understanding of what will be discussed at the City Council meeting.

Mayor Cavanaugh stated that was a very important point. He said the citizens see an agenda and don't see an item on the agenda that they are interested in. However, the next day they find out that an item that they were interested in was discussed at the Council meeting. He felt having the items to be discussed on the agenda is a protection for the citizens so they know what is to be discussed at the meeting. He pointed out items to be discussed on the agenda have to be submitted on Monday before the Council meeting to appear on the agenda. He felt it was somewhat of a protection for the citizens to know what is to be on the Council agenda for discussion.

Councilman Homoki pointed out the mechanics. He wondered what is so sacrosanct about getting the information on Monday and sealing the agenda in concrete on Thursday. He some issues may come up between Thursday and the time Council has their meetings on Monday.

Mr. Smith stated state law has publication requirements and an agenda must be published at least 24 hours in advance of the City Council meeting so the public knows what is on the agenda. If an emergency comes up, there is a provision in state law that allows Council to conduct an emergency meeting without notice. However, it must be a true emergency.

Mr. Pearce stated it is not sacrosanct as much as it is the parameters that Council has adopted as far as how far in advance of the Council meeting Council wants the agenda packet. He pointed out, of course, staff has to coordinate and get everything written up. Several people are involved in preparing an agenda. A typical agenda involves at least a dozen people. He said it is the mechanics of trying to process the agenda. He said in his two years he was not aware of anything that has come up that had to be taken care of immediately as opposed to the next meeting. He said it is a matter of notice to be sure we have the agenda ready so people have notice of the meeting and what is on the agenda.

In response to a question from Councilman Dewar as to when the appeal will be heard since the Saluda County had appealed the decision, Mr. Smith stated he felt it would probably be at least a year.

Councilman Dewar stated it is frustrating to see some communities in the state be more open to their citizens and listen to them without taking action, and Aiken is so conservative that we don't listen to them unless they get the permission of the City Manager to be on the agenda.

Mr. Pearce stated it is not the permission of the City Manager. All the person has to do is submit a petition to the city so it can be included in the agenda packet. He said he had had conversations about that a great deal over the past two years. He said staff cooperates with people to get an item on the agenda so Council can hear it and vote on it or whatever is necessary. He said he works with the public a lot on these matters. He said he does not give permission; he just processes.

Credit Cards

Councilman Ebner stated he was pleased that the City was going to start accepting credit cards for payment of utilities and other transactions with the city. He asked about the collection fee. He said First Citizens Bank will not charge for setup, but most places charge a fee for a credit card transaction.

Mr. Pearce stated they will charge a fee. There has been a recent change in the regulations in the law that would allow the city to collect a service fee. Staff has discussed the service fee, and it is felt the charge will cover the city's cost. He pointed out the changes in the law came into effect the first part of November. He stated the city

has talked about credit card payments for twenty years, and finally we will be able to make it work and not adversely affect the city's revenue stream.

Councilman Ebner stated he did not want the city to lose any money on credit card payments. He wondered how citizens who can't speak at a Council meeting, will pay 3% to pay their bill. He said that is beyond his comprehension.

Councilman Homoki asked if the city would be charging the 3% service fee on the credit card payments. He wondered what happens to the excess or difference in the service fee for each transaction. He felt that the service fee would not be \$3 for every transaction. He wondered if there was an account for the service fee amount. He felt the charge would be a different amount for paying his taxes and paying his utility bill.

Mr. Pearce stated staff had looked at the matter carefully. He pointed out the cards that can be used will be Visa, MasterCard and Discover. He said the citizens would not be able to use American Express card, as their service fees are very high. He said the service charge depends on the type card used, such as rewards card, corporate card, personal card, debit card, etc. He said the fees vary so staff was looking at the matter to make sure the service charge results in the city recouping the city's actual cost for the credit card payment.

Councilman Homoki asked if the city would get a billing from the card companies or if the city would have to do their own calculations on the service fee.

Mr. Pearce stated the city will receive a billing from the card companies, and the city will audit the charges.

Employee Awards Breakfast

Councilman Ebner stated the Employee Awards Breakfast that was held on December 7, 2012, and it was a very nice event and went well. He said he knew that Ms. Alicia Davis was in charge, and he wanted to thank everyone for their part in the event.

Mr. Pearce thanked Sara Ridout for her part in preparing the lists for the service pins and the retirees, and being sure everyone is notified of the event. He also pointed out there was a committee for the event and there were several volunteers and the Department Directors were also involved. He thanked Mr. Parker and the Recreation staff for their part in cleaning up after the event.

Mr. Pearce stated staff had discussed a breakfast and wanted to try some new things. He said he appreciated Council working with staff on this matter. He said he had heard many positive comments all day about the event.

Pension Plan Report

Councilman Dewar thanked Mr. Pearce for the Pension Plan Actuarial Report.

Public Safety Employees

Councilman Dewar pointed out that Public Safety has been hiring a lot of people. He asked if staff could provide a listing of the number of authorized positions versus the number of current positions filled. He pointed out in hiring Public Safety Officers it sometimes takes up to a year before they are in a vehicle by themselves.

Mr. Pearce stated that is part of the accreditation requirements. It can take as long as a year and a half before an officer has completed all their training. He pointed out the city was very fortunate in being able to hire several people who had had law enforcement experience and had already been to the academy and were certified. He said a report could be made on the positions authorized versus the number filled.

Councilman Dewar stated he had previously asked the City Manager to provide some information at Horizons as to where the city stands financially, to look at the city's wages versus North Augusta, the State, the County, etc to make sure that Aiken is competitive and not losing people.

Mr. Pearce responded staff is looking at the request for information. He pointed out people always understand dollars, but the challenge is always identifying the value of the benefits. He said some places may have the dollars, but don't have the benefits. Some places may have the benefits, but they don't have the dollars. He said staff would do their best to make sure we are comparing apples to apples. There are departments that will have a hiring bonus, but then it is a plateau for many years. He said staff has to take a comprehensive look at the comparison.

Councilman Dewar stated he would like to know that what the City of Aiken is doing is the right thing. It may not agree with all the rest of the eight police agencies in the area, but it is defensible and we have established an environment that will retain our people. He said we don't want to train someone for a year and then lose them.

Mr. Pearce stated it can be a "greener pastures" issue. He said that is something that he and Chief Barranco discussed when he was first hired. He said they will be looking at this issue as part of the budget process and plan on addressing those concerns as part of the budget process. He said it would be helpful if this comparison could be done as part of the budget process or at Horizons.

Councilman Dewar stated it would be fine to have the information at Horizons. He said he liked the way it was presented at the Zero Based Budgeting because it was by department and slot. It made it very visible to see the man power. He said his first question was the positions and how many we have versus the number authorized. He said then if we could talk about the financial or compensation structure at Horizons would be great.

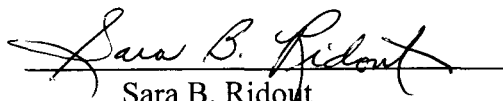
Councilman Dewar pointed out since employees will be moving out of the Municipal Building on Park Avenue, he wondered if Council would be involved in discussions of how the building will be reconfigured for the proposed new use for a Conference Center. Mr. Pearce responded that Council would be involved.

Councilman Dewar stated the Aiken Corporation used to give Council an update on Crosland Park, but the minutes from the last meeting only talk about the houses they own. It was pointed out the spreadsheet for the city houses in Crosland Park was not included with the Aiken Corporation agenda this time. Usually it is on the back of the Aiken Corporation report.

Mr. Pearce stated staff is in the process of interviewing for a Project Coordinator and are narrowing the field. He said once the new person is on board that information will be provided on a regular basis.

ADJOURNMENT

There being no further business, the meeting adjourned at 8:09 P.M.


Sara B. Ridout
City Clerk