

Aiken City Council Minutes

REGULAR MEETING

January 9, 2012

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

Others Present: Richard Pearce, Gary Smith, Stuart Bedenbaugh, Kim Abney, Ed Evans, Larry Morris, Alicia Davis, Glenn Parker, Tim Coakley, Pete Frommer, Charles Barranco, Ben Moore, Sara Ridout, Amy Banton of the Aiken Standard, and about 95 citizens.

CALL TO ORDER

Mayor Cavanaugh called the meeting to order at 7:01 P.M. Mayor Cavanaugh 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.

ADDITIONS OR DELETIONS TO THE AGENDA

Mayor Cavanaugh asked if there were any additions or deletions to the agenda. Councilman Dewar stated he would like to add discussion on the Municipal Building Expansion. Councilman Ebner stated he would like further explanation from the City Attorney on the October 24, 2011, meeting regarding the choice of two motions on the floor and the Mayor was allowed to choose a motion. He said he would also like an update on the Cracker Barrel restaurant opening. He wanted to be sure the City is ready for them to open. Councilman Dewar moved and Councilwoman Diggs seconded the motion to approve the agenda as amended. The motion was unanimously approved.

MINUTES

The minutes of the regular meeting of December 12, 2011, were considered for approval. Councilwoman Price moved, seconded by Councilwoman Diggs, that the minutes of the December 12, 2011, meeting be approved. The motion was unanimously approved.

PRESENTATIONS

Travis Griffin  
Public Safety  
C Shift

Mayor Cavanaugh stated Council had a very special presentation to make.

Mr. Pearce stated Public Safety Officer Travis Griffin was present with his family and the members of Public Safety C Shift. He stated that he and Mayor Cavanaugh had discussed Travis Griffin and the bravery that he showed on the night of December 20 when he and Officer Scott Richardson were shot.

Mayor Cavanaugh presented a Character award for courage to Officer Griffin for his bravery on the night of December 20.

Mr. Pearce then stated Character awards would be presented to all the members of C Shift, including Matt Comer, Jeffrey Bruckner, Jason Schoener, Christopher Lind, Demetrick Drumming, and Oliver Hadden joined by their Sergeant Tracy Seymour. He said they were receiving a Character award from the Mayor for responsibility and Lt. Turner and Sergeant Burgess will receive the Mayor's Character award for compassion. Mr. Pearce stated he had spent time with these officers on Tuesday night into Wednesday morning after the shooting and on several other occasions after the event. He said these

Public Safety Officers represent the best of the best in South Carolina, the Southeastern United States and in this nation. He said everyone should be exceedingly proud of what these individuals and what the Department of Public Safety did over the last month. He said there is no greater challenge and no greater people that have met that challenge than the members of the Public Safety Department.

Mayor Cavanaugh again thanked the officers for great support of the City and for keeping our citizens safe.

#### BOARDS AND COMMISSIONS

##### Appointments

Mary Ann Archibald

Environmental and Energy Committee

Henry Krippner

Board of Zoning Appeals

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

Mr. Pearce stated Council has 11 pending appointments to City boards, commissions, and committees. Two appointments are presented for Council's consideration and vote.

Councilman Dewar has recommended the appointment of Mary Ann Archibald to the Environmental and Energy Committee to replace Marsha Rodgers. If appointed, Ms. Archibald's term would expire December 31, 2013.

Councilman Wells has recommended the reappointment of Henry Krippner to the Board of Zoning Appeals. If reappointed, his term would expire December 1, 2014. The terms on the Board of Zoning Appeals are for three years.

For City Council consideration is approval of two appointments to the various boards and commissions as recommended.

Councilwoman Price moved, seconded by Councilman Ebner, that Council approve the appointment of Mary Ann Archibald to the Environmental and Energy Committee with the term to expire December 31, 2013, and the reappointment of Henry Krippner to the Board of Zoning Appeals with the term to expire December 1, 2014. The motion was unanimously approved.

Mayor Cavanaugh stated he would like to recommend the reappointment of Nancy Dukes to the Board of Zoning Appeals for consideration at the next meeting.

#### COMPREHENSIVE LAND USE PLAN – ORDINANCE

Land Use and Transportation Plan

Union Street Area Plan

Mayor Cavanaugh stated an ordinance had been prepared for first reading to amend the Comprehensive Land Use and Transportation Plan to incorporate the Union Street Area Plan.

Mr. Pearce read the title of the ordinance.

#### AN ORDINANCE AMENDING THE CITY OF AIKEN COMPREHENSIVE LAND USE AND TRANSPORTATION PLAN TO INCORPORATE THE UNION STREET AREA PLAN.

Mr. Pearce stated at the joint meeting with the Planning Commission, City Council members discussed as an action item the adoption of amendments to the Comprehensive Plan for the area of Union Street immediately adjacent to the Visitors Center and Train Museum.

Our consultant, Allees Collaboration, facilitated several public sessions for input from citizens and other interested parties. Also, a steering committee was involved in this process.

After this draft plan was prepared, it was sent to the Planning Commission for its consideration, in compliance with the provisions of the Zoning Ordinance. The Planning Commission sought informal public comment on the draft plan in an October Open House held in the City Hall Conference Center. This plan was also made available at our City website.

Further meetings and follow-ups were conducted, specifically with members of Friendship Baptist Church at the end of November. Notice signs were also posted in the study area [Fairfield to Kershaw; Richland to Park] about this public meeting. No further comments were received.

After this process, the Planning Commission met on December 13, 2011 and considered the draft plan. After a public comment opportunity at this meeting, the Planning Commission voted unanimously to recommend approval of the Union Street Area Plan. Notably, the motion to approve this plan specifically provided that ".....the suggested zoning boundary areas are not intended to be rigid, nor are they intended to be suggested with prejudice to any property owner or institution seeking an adjustment or modification of those suggested zoning areas."

In reviewing these materials and proposed ordinance, Council should keep in mind that this Union Street Plan is a policy guide to development on land in the city limits. Council will still retain the right to deviate from the plan in certain situations, if reasons are given for the deviation.

Mr. Pearce stated he had met with officials of the Friendship Baptist Church. He pointed out that the yellow highlighted portion of property shown on the map before Council represents property that is owned by Friendship Baptist Church. The church is located on Richland Avenue at Kershaw Street. The concern by the church members is that the current boundaries for the Union Street plan exclude property that the church owns. They are in the process of having plats prepared that will be recorded at the RMC Office. The concern is that there may be a different standard between both sides of the boundary line. The Planning Commission attempted to address that in their meeting through the motion that was adopted. He said he had had some follow up discussions with members of the church and also met with the Planning staff prior to this meeting. He said the church's concern is that the properties shown in yellow on the map before Council be included in the plan. He said there are a couple of ways to address this. The church is in the process of getting the plats prepared prior to the meeting on January 23, 2012. He said the Planning staff had reminded him that in the plan process the boundaries of the plan area had been posted to put neighboring property owners on notice of every property that would be within the plan. If it is Council's inclination to honor the church's request to include the yellow highlighted properties, Council could consider the ordinance on first reading at this meeting and then post the properties and have a public hearing on adoption of the plan by modifying the Comprehensive Plan at the meeting of February 13, 2012. This would give the opportunity to have the 30 day posting on all the properties to be considered within the plan and would provide a more specific boundary. Staff has the draft plan which Council has for this meeting. There would be some modifications, but Mr. Evans feels that could be done in house.

For Council consideration on First Reading is an Ordinance amending the Aiken Comprehensive Land Use and Transportation Plan to incorporate the Union Street Area Plan. If Council wishes, they could move to include the highlighted properties in the plan. The properties could be posted before the February 13, 2012, meeting to make sure we have provided notice of all properties that would be subject to the plan.

Councilman Homoki asked if there would be any financial responsibilities or burdens placed on the properties in the yellow area as a consequence of being included in the plan.

Mr. Pearce responded that the yellow area represents properties that Friendship Baptist Church owns. The church is already in the plan area on the left side of the boundary line. There would be no additional burden.

Councilwoman Price stated the issue is that Friendship Baptist Church owns the property on the left side as well as the yellow highlighted area. The proposed plan splits the property the church owns in half. The request for including the yellow highlight area is to avoid splitting the property owned by the church. The idea is to include all the property owned by the church in Union Street Plan.

Councilman Dewar stated he was present at the Planning Commission meeting, and the Commission was a little reluctant to get away from the specific boundaries that were made a part of the public input. They were reluctant to change the boundaries at this late date after the boundaries were posted and advertised. He did feel that it was not fair to split property lines of one land owner. He said if there is no concern that Council is deviating too significantly from the plan, he would have no problem with including all of the church's properties in the plan.

Mr. Pearce stated it is a valid concern. He said with the motion that was passed by the Planning Commission, Council would still live up to the spirit of the Planning Commission motion. He pointed out that the city would be able to provide the 30 day notice and post the properties if second reading of the ordinance was considered at the February 13, 2012, meeting.

Mayor Cavanaugh stated the plan is a guideline. If Council wishes second reading could be held on February 13, 2012, which would give time for the properties to be posted for 30 days to give notice to all people of the change. If there are any comments, Council could hear them at the February 13, 2012, meeting.

Councilman Ebner stated this was his first experience with the Comprehensive Use Plan and Transportation Plan. He pointed out in the Plan there are concept plans with designated buildings. There is a Land Use Plan, a Master Site Concept Plan for Union Street and Gyles Park. His concern was if Council would be approving the Concept Plan. He wondered what would happen if someone wants to change the concept plan, and if changes would come back to Council. He was concerned about what someone might want to do in the area in the future.

Mr. Evans, Planning Director, stated the Future Land Use map is typical of the Comprehensive Plan. It is typical to have a map showing Future Land use. The Master Site Concept Plan is kind of unusual for our plan. He said he could not think of anything comparable in any other part of the Comprehensive Plan. He said, however, the plan is conceptual. It is not an ordinance. It is not law. It is a guide. Council can go contrary to the plan as long as they give a reason for doing so. He said he could not think of a case where anyone would be locked into something shown on the map if they were proposing a development. He said it would be the zoning that would control what happens. As long as the zoning permits a particular type of use, they would be able to develop the property, even if it is not exactly what the concept plan shows. He pointed out again that the plan is a policy guide and not law. It is the Zoning Ordinance and Zoning Map that will control what can actually be done.

Mr. Gary Smith, City Attorney, stated in order to have a valid Zoning Ordinance, the state law says one must have the Land Use and Transportation Plan. He said this proposed plan is part of the Comprehensive Plan. The plan has to guide Council for purposes of saying which parcels of property will be zoned in a particular way. The Concept Plan is designed to guide Council to come up with the particular zones. He said if a property owner wants to rezone a parcel of property, before Council can approve the rezoning they must make a finding that the requested rezoning is in keeping with the Concept Plan. This is guiding Council through the process, but does not say this is what every piece of property must be.

Councilman Ebner stated his concern was that someone might call about a particular project, but may be told over the phone that the project did not fit the concept plan so there would never be the chance to make the request for the project. He pointed out this is a nice area and a lot of work has been done over the last few years. He said we want to keep improving the area. He said the citizens and the churches have been an aid to the city in improving this area.

Mr. Smith stated staff would not tell an inquirer that it did not fit the plan so it could not go there, but they would tell them if they have a particular request there are applications they would have to complete for their request, but they could not guarantee they would get the requested rezoning.

Councilman Dewar asked if everything in the red boundary on the map was approved for commercial zoning. Mr. Pearce responded it is, in concept.

Mr. Evans responded that part of the study area is zoned Downtown Business and part is zoned General Business. Both zones allow a wide variety of commercial uses. Even though this plan for the area shown in red on the map is adopted by ordinance, it is still a guide. It is not law. It points the way toward what possibly should be done with the Zoning Ordinance. What the plan shows might lead Council to amend what the Zoning Ordinance requires.

Councilman Dewar asked if someone wants to build in one of the areas, he wondered if they would have to apply to have the property zoned commercial. Mr. Smith responded that if the property is not presently zoned commercial, they would have to apply for rezoning.

Mr. Evans pointed out if someone calls asking what they can do on a particular piece of property, staff looks at the Zoning Ordinance to see what is allowed in the current zoning. He said they may tell them what the plan shows or recommends. The plan really does not require anything. It is the Zoning Ordinance that controls what they can do on a piece of property.

Councilman Dewar stated we are focusing on this area and want it to develop and grow. However, there may be some commercial businesses that some of the occupants of this area would not want to see in the area. He wondered how they have input to not have those kinds of businesses in the area. He wondered if Council approves everything that goes into the area.

Mr. Evans stated Council does not approve everything that goes in the area. What controls the area is the Zoning Ordinance—how the property is zoned and what the Zoning Ordinance allows as far as permitted uses. Whatever is allowed in the Zoning Ordinance for the particular zone can be built in the area.

Councilwoman Diggs asked Mr. Evans how difficult it would be to extend the boundary to include the area requested by the Friendship Baptist Church, and if it would cost additional money. Mr. Evans responded that it could be done and would cost additional money only if staff has to go back to the consultant for help with mapping. The thought is that GIS mapping could assist with the redrawing internally.

In response to a question by Councilman Dewar as to whether passing the proposed plan would obligate or authorize any spending by the city to implement it, Mr. Evans answered no.

In response to a question by Councilman Homoki regarding the zoning in the area, Mr. Evans stated the Zoning map shows Downtown Business and General Business zoning in the area. He stated the map is a more detailed plan providing direction as to what possibly should happen in the area. Theoretically, the Future Land Use map could be used to amend what the Zoning Ordinance allows.

Councilwoman Price pointed out there is a map that shows the existing land use and how it can be used now. There is also a future land use map. If these are compared with what the property is zoned for, it allows flags to come up if someone is submitting an application for a different use of the property. If there is a different use of the property, the property owners in the area will be informed that the property is being requested to be zoned something different and the properties will be posed.

Councilman Dewar then asked about parking. He noted that at the Planning Commission meeting there was some mention about parking on the median of the parkways. He said he had had a couple of calls on parking in general. He wondered if approval of the plan would approve a more congested area than exists now. If so, how do we address parking. Also, do we make sure no one parks on the parkways.

Mr. Evans stated the plan does not propose any parking in the parkways. There is no recommendation on parking. The plan shows some new parking on the interior of a couple of blocks. There would be some additional off street parking. The plan shows the concept as a recommendation. Council would have to take action, or a private developer would have to take action to make additional parking happen.

Councilman Dewar stated he understands St. Mary's is planning to build a church on Fairfield Street. He pointed out there are already several churches in the area. He wondered if there would be a parking problem on Sunday mornings. He wondered if St. Mary's could be able to build a church without some assurance there is enough parking.

Mr. Evans pointed out the property where the church is proposed to be built is zoned Downtown Business, which has no off street parking requirements. The General Business zone, which is the block immediately to the east, does have off street parking requirements. He said St. Mary's could build now with no off street parking. He said the intent of the Downtown Business zone is for a compact area with buildings close together for a walkable area. That is why there is no requirement for off street parking. The thinking is for on street parking.

Councilwoman Price stated she felt it would be difficult for St. Mary's worshipers to impact the area based on where Friendship Baptist Church is located. She pointed out the area in question at this time is Sumter Street, which is almost two blocks away from where St. Mary's Church will be. She said presently there is adequate parking now for the people who attend church and for Cumberland as well.

Mr. Wade Brodie asked if there was anything in the plan that would prohibit the enlargement of Gyles Park in the future. Mr. Pearce stated the Future Land Use Map shows mixed use immediately north of the Gyles Park. The park is limited by right of way to the west, east and south. There is nothing in the plan which prohibits expansion. He pointed out Gyles Park has the railway through the corner and the roadway boundaries.

Councilman Ebner pointed out there is a dedicated street between Gyles Park and the church property. If it were enlarged, the dedicated street would have to be changed.

Mr. Larry Ogletree stated he wanted to give some history of the area and Friendship Baptist Church. He said about 10 years ago Friendship embarked on a vision for 20 years from now. They called the program Vision 20/20. In the program they started looking at what they wanted to be and what they wanted to do to get there. He said they saw themselves building a campus. He said they may build a new sanctuary, a multi-purpose building, an educational building, a theater for presentations, classrooms, or a number of things on a Friendship campus. They felt the first objective would be to acquire some property so they could expand. They started the acquisition of property and bought the first piece of property in 2005, and a second property in 2006. He pointed out that it is not easy to buy property in the area because of absentee landlords who live outside the state, and it takes time to get signatures. He said the major purchases occurred in 2011 when they purchased four additional pieces of property. He pointed out these are the properties shown in yellow on the map of the concept plan. He pointed out the red line on the map basically divides the church property and would be putting the church property in two zones—Downtown Business and General Business. Presently they are planning to build a facility. He felt it would be difficult to build a facility to meet the requirements of two zones. He said after reading the concept plan they applauded it, because it will do what they plan to do as part of their 10 year plan. It would help clean up the neighborhood. He pointed out a lot of the homes deteriorate because of absentee landlords. The houses are in various states of decline. This also makes for a high crime area and homeless people. He said they have a project to clean up the area and provide educational facilities for the area. He said the church applauded the City's plan because they felt it would be a good marriage of the City's plan with the church's plan so they would all accomplish the same goal. He said that is why they made comments when they had the opportunity to comment on the Union Street Plan. Then they realized the proposed line would divide their property. He said the comment of the church was to ask

the City to extend the line for the boundary of the plan to Sumter Street to include all of their property, which would put all of their property in the Downtown Business zone. He said they do plan to provide some parking with the new facilities that they plan to build. However, it would be difficult to meet the requirements of both the General Business and Downtown Business zones. He said the church has engaged a surveyor to pool all of their properties to show exactly where the property lines are, so they would not be in violation of 2.31.b, which states City Council can't draw a line and have an adverse impact on property owners, as you have to follow the property line. That is supposed to be done by the time of second reading on the ordinance. When that is done the church's property line would be on Sumter Street. He said the church's request is that Council extend the boundary line for the Union Street Plan over to Sumter Street, so all of Friendship's property is included in the Downtown Business zone.

In response to a question by Councilman Ebner, Mr. Pearce stated for Council to do what Friendship is requesting Council would need to include in their motion the moving of the boundary line to include the area marked in yellow on the map.

Mr. Pearce pointed out that if second reading is held on February 13, 2012, that would give the City time to post the property and give citizens notification of the change in the boundary line.

Councilwoman Price moved, seconded by Councilwoman Diggs, that Council pass on first reading the ordinance amending the Aiken Comprehensive Land Use and Transportation Plan to incorporate the Union Street Area Plan, and that the boundary line for the Union Street Plan be moved to include the yellow highlighted properties owned by Friendship Baptist Church on Sumter Street. Also, that second reading and public hearing on the ordinance be set for February 13, 2012. The motion was unanimously approved.

Mr. Pearce stated second reading on the amended ordinance would be held on February 13, 2012.

Mayor Cavanaugh thanked the Planning Commission, Bill Reynolds and everyone who worked on the plan. He said this had taken a long time and a lot of people had spent a lot of time on the plan.

Councilwoman Price pointed out that Bill Reynolds had moved to Aiken in 2000, and almost immediately he became involved and volunteered for many projects. He has been extremely active since he and his wife moved to Aiken. She pointed out many things such as the Center for the Arts, Horse Play, Celebrate Aiken, etc. in which Bill Reynolds had a major part. She pointed out he had chosen not to continue on the Planning Commission. She said he had done a tremendous amount of work and had raised a lot of money for Aiken. She said Bill Reynolds needs to be applauded for all the work he has done.

#### GOVERNOR AIKEN PARK PLAYGROUND – ORDINANCE

General Fund Reserve Account

Local Option Sales Tax Capital Project

Mayor Cavanaugh stated an ordinance had been prepared for first reading to advance funding for the Governor Aiken Park Playground.

Mr. Pearce read the title of the ordinance.

AN ORDINANCE AUTHORIZING BORROWING FROM THE CITY OF AIKEN'S GENERAL FUND RESERVE ACCOUNTS AS OUTLINED IN THIS ORDINANCE FOR THE PURPOSE OF FUNDING THE PLAYGROUND EQUIPMENT TO BE CONSTRUCTED AT THE AIKEN CITY PARK LOCATED AT GOVERNOR AIKEN PARK.

Mr. Pearce stated Glenn Parker and his staff have finalized the design and inventory list for the playground to be built in the Governor Aiken Park neighborhood. He said there was no playground for Governor Aiken Park prior to 2009. He said the Recreation staff

had worked with the neighborhood in Governor Aiken Park and established a playground area with a basketball court, benches, and fencing. This additional money was discussed at Council's Horizons last year. In the third round of Capital Projects Sales Tax money \$50,000 was included to purchase additional equipment for this playground. Council requested this project be built ahead of the CPST III project schedule as a critical need in our community.

The anticipated cost for this installation is approximately \$50,000. Our plan is to advance these funds from our reserve accounts and then replenish the reserves when this revenue is received under the third round of Capital Project Sales Tax receipts, scheduled to begin early next year.

For Council consideration is approval of the expenditure of \$50,000.00 for the playground equipment to be installed in Governor Aiken Park.

Councilwoman Diggs moved, seconded by Councilwoman Price, that Council approve the ordinance on first reading approving the advance funding for the expenditure of \$50,000 for the playground equipment for the Governor Aiken Park playground. Second reading and public hearing on the ordinance will be held at the January 23, 2012, meeting. The motion was unanimously approved.

Councilman Dewar asked questions about the advance of the sales tax funds. He pointed out this was the fifth advance since the approval of the sales tax program. He asked when funds start coming in from the sales tax, would the initial money collected go to reimburse for the five projects in order of the advance of funding.

Mr. Pearce responded that the ordinance does not say that. The funds have to be repaid by the end of the Capital Projects revenue receipts. It is a seven year term. We will collect the Capital Sales tax over seven years. He said there is an incentive to retire the debt because we are paying interest on the loan. The way it is set up, however, we do have a seven year term to pay the money back.

Councilman Dewar pointed out the interest paid on the loan comes from the Capital Sales Tax monies. He was concerned about paying interest that long on the loan.

Councilman Ebner pointed out that in a few years the interest rate could be higher than it is today, and that could add to the cost of the project.

Councilman Homoki pointed out that if the money was not advanced, the money would still be in the reserves and would be earning the current interest rate, so there is really no impact on the city. He said this was a way to get the projects started. He said the city was not taking a penalty as a consequence of loaning money to the project.

#### EUSTIS PARK – RESOLUTION 01092012

Northside Redevelopment Project

Senior-Youth Center

Edgefield Avenue

Land Purchase

Aiken County School District

Local Option Sales Tax II

Mayor Cavanaugh stated a resolution had been prepared for approval to purchase approximately 1.17 acres adjacent to Eustis Park.

Mr. Pearce read the title of the resolution.

#### A RESOLUTION AUTHORIZING THE PURCHASE OF REAL PROPERTY LOCATED IN THE CITY OF AIKEN.

Mr. Pearce stated this property is near Edgefield Avenue just off Eustis Park Avenue and immediately adjoins the School District property. In the second round of Capital Sales Tax we had money set aside for the Eustis Park site development. Staff had extensive discussions and negotiations with the School District. When the School Bond



Referendum failed to pass, the School District did not have another place to go, so they were not interested in selling the entire tract to the City.

Mr. Pearce stated as part of pursuing the Northside Redevelopment Projects, a Senior-Youth Center is to be built at the Eustis Park facility on Edgefield Avenue in the Toole Hill section of Aiken.

We need more open space and a joint-use detention facility to prepare this site for construction of this Center. As part of this site preparation plan, funds were approved as part of Local Option Sales Tax II for land purchase and site development at this park.

Staff has determined several advantages to purchasing approximately 1.17 acres from the Aiken County School District. With this purchase, we will be able to provide better parking, protect more green space, and curb erosion and better handle storm water runoff on this site. This will give the opportunity to develop a joint detention area that would benefit the Tri-Development Center, Helping Hands, the School District and the City of Aiken. This section of the tract was appraised for \$36,800. The School District has expressed their willingness to sell this portion of their property for this price. The City is in negotiations with the School District to have access from Barnwell Avenue also. We need a resolution to take to the School Board saying that the City is willing to buy the property at a purchase price of \$36,800.

For Council consideration is approval of a Resolution to purchase approximately 1.17 acre from the Aiken County School District for \$36,800.

Councilman Ebner stated he was concerned about environmental issues. He stated the property had been occupied and is relatively low land. He was concerned that years ago chemicals may have been dumped on the ground. He wondered if the city was going to do some subsurface checks to see if there are any heavy metals, etc. Mr. Pearce responded that the City could do some checks.

Councilman Ebner stated he was a little concerned about stormwater containment being a little too broad. He said looking at the lay of the land basically there is a storm drain that collects all the water and it goes past the Eustis Park property now. He said he could see putting a detention pond in for any new improvements because the runoff for the water would be much faster, and it needs to be slowed down. He said he did not want to get into the City paying for collecting two or three square blocks of stormwater on the City property.

Mr. Pearce stated there is an opportunity to use green infrastructure, since this is a park facility. We do have a storm drain there which is quite old. We have had to make some repairs to it. This gives us an opportunity to take it over. It is not containment as much as it is abatement of the runoff.

Councilman Dewar stated the appraisal assumes that the site is environmentally clean. He asked if the city could check the quality of the environment quickly. Mr. Pearce responded that it could be done quickly. Money is available to do some environmental checks. This would be part of the site preparation.

Councilman Ebner moved, seconded by Councilwoman Price, that Council approve the resolution to purchase approximately 1.17 acres in the Eustis Park area from the Aiken County School District for \$36,800. The motion was unanimously approved.

MEDIATION AGREEMENT – RESOLUTION

Rhett Riviere  
750 Grace Avenue SE  
Board of Zoning Appeals  
Variance Denial  
Case Number 2010-CP-02-2683  
Common Pleas Court

Mayor Cavanaugh stated a resolution had been prepared for Council's consideration to adopt the Mediation Agreement in the matter of Rhett Riviere for 750 Grace Avenue SE.

Mr. Pearce read the title of the resolution.

A RESOLUTION APPROVING A MEMORANDUM OF SETTLEMENT IN THE  
CASE OF RHETT RIVIERE VS. CITY OF AIKEN BOARD OF ZONING APPEALS.

Mr. Pearce stated Rhett Riviere, the owner of 10 acres located between Grace Avenue, SE, on its northern boundary, Mead Avenue on its southern boundary, and Two Notch Road, SE, on its eastern boundary, applied to the Board of Zoning Appeals for a variance to our Zoning Ordinance. He specifically requested a variance to subdivide his 10-acre tract into a tract of 4.5 acres and another tract of 5.5 acres. Our Zoning Ordinance requires properties in the Horse District (HD), the zoning designation for this property, to be at least 10 acres.

Our Board of Zoning Appeals (BZA) denied his requested variance. He then appealed this BZA variance denial to the Aiken Court of Common Pleas pursuant to South Carolina law. Under our state law, when these decisions are appealed, the property owner, who is designated the Appellant, has the right to request court-ordered mediation before a Circuit Court Judge hears the appeal. Mr. Riviere has done so in this case, resulting in the October 25, 2011 Mediation Agreement.

Martin Harvey, an attorney in Barnwell, acted as mediator. Mr. Ben Moore, Marsha Banks, Rhett Riviere, City of Aiken staff and some members of the Board of Zoning Appeals attended the mediation. This is pursuant to state law. Throughout the course of the mediation Mr. Riviere stipulated that if the Board of Zoning Appeals would rescind its order that he be given the variance case, he would allow certain stipulations that would run with the land. These stipulations are included in the mediation agreement. These stipulations are: (a) that the property could be divided into two tracts 5.5 acres and 4.5 acres; (b) that the total residential component of the southern parcel would not exceed 900 sq. feet total; (c) a permit for any residential structure would have to be approved by the appropriate permitting boards; (d) Mr. Riviere agreed that he, nor any successors in interest in this property would have the right to request a change of zoning designation for either parcel; (e) The City of Aiken Board of Zoning Appeals reserves the right to strictly enforce all applicable zoning ordinance provisions; (f) the agreement was to remain confidential until approved by the Aiken City Council.

Mr. Pearce stated regarding the request to change the zoning designation, the property owner would waive the right to rezone the property to any other zoning designation. That does not mean that City Council could not change the zoning, but the rezoning could not be at the request of the property owner.

Mr. Pearce stated if Council approves the contents of the agreement an Order would be drafted for signature by the Circuit Judge. That would be recorded at the RMC Office so anyone searching the title to either parcel would know about the conditions regarding its development as well as the fact that it could not be rezoned.

Mr. Pearce stated there was some concern about how this affects other parcels. He said there is a stipulation in the agreement that applies only to this particular piece of property.

Before this mediation agreement can be made binding under state law, Aiken City Council, the governing body with authority over it, must first approve this Agreement in public session. Therefore, a proposed Resolution has been prepared for Council's

consideration.

City Solicitor Ben Moore has also prepared a memo explaining the work performed to date in this matter. He has pointed out several conditions being placed on the variance request to protect, in his view, this property remaining as commercial equestrian property for Mr. Riviere and his successors in interest. These conditions are on page 2 of the Agreement document.

If Council does not vote to approve this Agreement, this case will proceed to hearing before the Common Pleas Court Judge for review. The judge's scope of review is strictly limited to only determining if there is sufficient information on the record to support the BZA vote to deny the variance. However, the stipulated conditions in the Agreement are worth careful review by Council, keeping in mind city goals focused on preserving our historic equestrian areas of Aiken.

For Council consideration is approval of a Resolution to adopt the Mediation Agreement in the matter of Rhett Riviere (Common Pleas Court Case Number 2010-CP-02-2683).

Mr. Pearce stated Mr. Moore is present to answer any questions of Council. Our understanding of the current posture of this case is that it is on appeal to the Circuit Court. A mediation has been held according to law, and this mediation agreement has been reached. If Council approves the mediation agreement that has been reached, that would be put in an Order. That would end the litigation. There would be no further appeal and the property would be as stipulated in the order. If Council does not approve the mediation agreement, then the case would go on to Circuit Court to be heard by the Circuit Court Judge. That order would be subject to appeal to either the Court of Appeals or the Supreme Court whichever body has the right to hear it. Then, also, Mr. Riviere would retain the right to rezone the property at any time. The significance of this property not being rezoned is that it would remain HD. Even though the two parcels would be less than 10 acres, since it is in the Historic District by stipulation the Design Review Board would retain its jurisdiction. With the Horse District designation, if there is a proposed residential use for the property, that is a special exception approval under the Zoning Ordinance. That means if there is any residence to be built on either parcel, that would have to go through the Board of Zoning Appeals review process. If the property were later rezoned to some other designation, like RSS as other properties in the area are zoned, there would be no review by the Board of Zoning Appeals. A residence could be built there by right. He said Council needs to consider these matters in determining their decision as to whether or not to approve the mediation agreement. Mr. Moore can tell Council about the mediation process. Mr. Riviere is also present.

Mr. Ben Moore provided a basic map that showed the area for Council's information on the area. The red line outlines the entire property as it is now. The red dotted line shows approximately where the property would be divided into two lots. The smaller parcel with the "r's" would be the northern parcel. Currently there are two residences on that parcel. Those residences were there before the Horse District was created, so they are grandfathered and are there by right. The yellow outlines are the stables. The larger stables are on the southern portion, and that is where the current commercial operation is. In the southern portion there is a lot of open area that could be developed potentially, and the concern was how we could protect this and reach the goal of the Horse District, which is to promote and protect the commercial equine industry and limit any potential residential development, particularly in the southern parcel that has a lot of open area. He said they came up with 900 square feet as an idea to limit how large a potential residence could be. If stables were added, they would need some residential component for people who work in the stables. It is customary to have groomsmen's quarters and other type quarters built with the stables sometimes for people who will be taking care of the horses. He said they were looking, in the process of the mediation, for a way to allow the property to be divided, but still control its future development.

Mayor Cavanaugh asked Mr. Moore to speak about what happens if Council does not vote to approve the agreement. Mr. Moore stated the case is currently not appealed and Mr. Riviere would have the right to have the Circuit Court hear his appeal. Depending on the ruling both sides would have the right to appeal the Circuit Court's ruling to the Court of Appeals and then both sides would have the right to appeal that to the Supreme Court

of the state. It was pointed out that the judge's scope of review is strictly limited to only determining if there is sufficient information on the record to support the BZA vote to deny the variance. He said they are looking for some type of legal error, or whether the Board in a sense used its discretion in making its decision. He said the city would be arguing there was no legal error and there was no use of discretion. In response to a question as to how long the ordinance had been in effect requiring 10 acres for HD zones, Mr. Moore stated his understanding is that it goes back to 1998, when the Horse District was created. He said the idea appears to be to prevent the subdivision of land within the Horse District. The more property is subdivided, the more likely it can become residential.

Mayor Cavanaugh stated he understands what Mr. Riviere wants to do, but he was concerned that the City has an ordinance that properties in the Horse District must be at least 10 acres. By allowing something less, Council would not be following the ordinance. He said he understands the conditions that Mr. Riviere has put on the property, but he was concerned about the future of the property and the area. He wondered what would happen if others want Council to allow parcels less than 10 acres. He wondered what door Council might be opening. He was concerned that they might be setting a precedent if they allowed the subdivision of the property.

Mr. Moore pointed out that by right anyone can come to the Board and ask for a variance to subdivide. By right they can appeal the decision of the Board. By right they can all ask for mediation. These are rights that everyone already has. Mr. Moore stated allowing the creation of the two lots would not create a legal precedent where the Board or the City would be bound to grant a subdivision in another case. Mr. Moore referred to No. 3 in the mediation agreement, which states that the parties agree that the land use afforded Rhett Riviere under this agreement is effective only as to the real property which is the subject of the mediation, and this settlement sets no binding precedent as to other parcels of real property. Mr. Moore pointed out that state law 6-29-825(E) also states that any mediation agreement under the statute does not affect any other parcel of land or create any kind of precedent. This is not only a part of the agreement, but it is state law as well.

There was concern by Council that allowing the subdivision would be setting a precedent. Mr. Moore pointed out the legislature had said legally this cannot set a precedent.

Councilman Dewar asked Mr. Moore that as Staff Attorney dealing with Mr. Riviere's attorney, did he feel an obligation to try to come to some agreement with the attorney. He asked Mr. Moore's role in mediation. He said he was surprised that Mr. Moore had agreed to do what the Board of Zoning Appeals has said no to on several occasions. He wondered if Mr. Moore had felt an obligation to present an agreement to Council.

Mr. Moore stated the only obligation he felt was to negotiate in good faith, not an obligation to agree to something. In discussing this with staff the feeling was that some things and extra protection could be accomplished that could not otherwise be obtained. Those were the agreement that the property remain Horse District and also the limitation on the square footage of any residential component. Without the agreement the City does not have those protections.

Councilman Dewar pointed out the only area reviewed by the Court is whether or not the Board of Zoning Appeals was legal and fair in denying the variance. He said his understanding is that Council's option is to accept the mediation agreement or reject it.

Mr. Moore stated Councilman Dewar's understanding is correct. At this point the statute does not provide for further negotiations.

Councilwoman Price asked if all the properties in the Horse District were 10 acres or more. Mr. Moore responded the properties are not all 10 acres or more. Most are less than 10 acres, with the majority being in the 3 acre range. There are two large parcels.

Mr. Rhett Riviere distributed some papers showing the size of the lots in the area. Mr. Riviere stated during the mediation process he explained the request. He said two members of the BZA elected to come representing the BZA. Also present were Mr. Moore and Mr. Harvey. He said he explained everything to them, then he and his attorney left the room. The conditions that came back were not ones that he laid out.

They came back to him and said they would agree to the subdivision if Mr. Riviere would agree to the four conditions and he did. He said the conditions were written up and everybody signed the handwritten conditions. He said what he got back was more restrictive than originally agreed on, but he agreed to that as well. He said none of the conditions were what he laid out.

Mr. Riviere presented a slide showing the entire Horse District as far as the dirt roads. The second page showed the large parcels in the area, including the Whitney Trust and the Aiken Training Track. He pointed out these are not privately held properties, but are public or in a trust or corporation. The third page showed all the HD zoning only. He pointed out the lots were 4.3 acres, 3.5 acres, 1.3 acres, etc. He pointed out everything is under the 10 acre minimum. He pointed out the ordinance says the lots in the HD are to be 10 acres minimum. He stated in the privately held properties, there is only one property that is 10 acres and meets the minimum. All the other lots are well under the minimum. The average size parcel in the HD district is 4.3 acres. Five are under an acre. One is a 5.5 acre parcel. One is at 5 acres, one at 4.3 acres, 3.5 acres, one at 8.7 acres and then his at 10 acres. He said there is an ordinance on the books. He pointed out, however, if Council is worried about somebody else coming in and asking for a subdivision, there is no one with 10 acres to ask for a subdivision if you don't include the race track or the polo fields, which he felt should have a different zoning any way. He said he was the only one. He said he was the only one being held to the ordinance. Mr. Riviere stated the average lot in the HD zone is 4.3 acres. His parcel is the only 10 acre parcel. He said what he is asking for is not so far out of line with what is already there. He said in today's economy a business does not want a 10 acre parcel, but wants a smaller area. He felt the 3.5, 4.5, 5.5 acre parcels are much more in keeping with someone being able to come in and increase the equine business in the area. He said he was trying to conform with what is around him, not trying to step out of the norm.

Ms. Alice Howland stated she was not a permanent long time resident of the Horse District, but she had noticed the other properties in the area are not 10 acres. She said she had lived here for two years, and she did not see a problem with what Mr. Riviere would like to do.

Ms. Jane Page Thompson stated she was a direct neighbor to the Horse District. She stated as a member of the Board of Zoning Appeals, she had looked at this situation from many directions, listened to all sides and recognized the various motivations within this long going debate. Before she voted on this measure that is addressed in the Mediation Agreement, she researched the foundational documents from which Aiken develops all actions. She said she first read the City of Aiken Comprehensive Land use and Transportation Plan. The City Comprehensive Plan has 7 goals outlined under the General Objectives. They encourage the preservation of neighborhoods and discourage overdevelopment of the Horse District. The plan calls for the protection of appropriate commercial uses and defines functioning roadways and stormwater solutions to support uses in certain areas. It also requires appropriate design for specific areas and looks to accommodate minimal impact on areas when development occurs. The Comprehensive Plan also encourages the creation or improvement of existing recreational opportunities, but most relevant it mandates and requires that all decisions protect the horse-training business within the city and most importantly the Horse District.

Ms. Thompson stated secondly she reviewed the Strategic Plan. The Strategic Plan for the city takes the intentions of the Comprehensive Plan and puts them into action, along with the other facets that make up the city's guiding documents that have left a vibrant past and define a delicate future for Aiken. The Strategic Plan encourages diverse job creation among business uses like the horse industry. It calls for the revitalization of historic areas through planned modernization like the improvements and buildings being planned already by the City of Aiken, along with members in the Horse District on the Whitney Polo Field. But of utmost importance in regard to the issue at hand, the plan calls for the continuation of the contributions made by the Equine Industry and to identify ways to support and sustain that industry.

Ms. Thompson stated she had also reviewed the Zoning Ordinance, which contains the regulations set up to rule the action of the Comprehensive Plan and the implementation of the Strategic Plan. The purpose of the Zoning Ordinance is outlined in nine points at the

beginning of the ordinance. Among those provisions are light and air, prevention of overcrowding of land, to facilitate an attractive community, provide for the public safety and health, vehicles of growth and secure the public welfare. Relevant to the Mediation Agreement are the chief concerns of regulating and distributing the uses of residential and commercial purposes and to facilitate economic growth and business development.

While the Board of Zoning Appeals is restricted from granting a variance for the sole purpose of economic reasons or gain, the Zoning Ordinance sets forth economic growth and business development as one of its key purposes when coupled with other points relating to the purposes of zoning.

State laws and local government procedures look to protect land uses, and they look to ensure that no one property is impacted singularly by regulations or restrictions. Since the 10 acre parcel in question is the only privately owned parcel within the Horse District, it could be said that by forcing it to comply with the 10 acre minimum sets it up as singularly disadvantaged by the zoning.

As others have pointed out the horse classifications within the city Zoning Ordinance do not always meet the standards that have been set. For example, many of the downtown historic horse properties we see from the streets of Aiken are less than the 3 acre Residential Single Family Zoning requirements. Likewise, several of the key Horse District properties in the same area have been sold and turned into private dressage barns, personal winter residences and individual fox hunting stables which is the only other option for this property, and that future use is not in keeping with the commercial zoning intent of the Horse District. The paradox created by this situation sets our desire to voraciously protect and defend the existing Horse District boundaries without waiver against the logical concept that the players in Aiken's horse industry are changing, and in order to provide for that changing complexion within the industry a commercial enterprise that serves as the ambassador and bedrock of the horse training industry in Aiken should be given the opportunity to flourish in these modern times.

She said as an investor in race horses, a former tenant at the Aiken Training Track and as a next door neighbor to the district, she has felt this paradox and conflict of purpose keenly and knows that Council too have heard many comments on this topic over the years.

Ms. Thompson stated Aiken is always presenting challenges, growing and changing in various ways. We have seen Cot Campbell retire recently. We have seen Stonerside sell to Darley, which has built a new facility underway in Montmorenci. With the demolition of several track barns and the inadequate new stalls, our horse trainers have had to find other places to train. Some have stayed in South Carolina at Camden or Elloree, but many have moved out of state, and this is revenue that we cannot afford to lose in South Carolina. The horse racing tradition in Aiken should not be sacrificed over a simple line that already exists based on the current functioning of this property.

The proposed restrictions on the two parcels are more rigid than if the property stays whole and the Horse District zoning remains in place on both parcels, which keep them from having any other use but the horse industry. Holding on to the past would be noble if things in the racing industry were the same as they have been in decades past, but with more race tracks offering free stabling because of casino revenue and trainers losing owners due to the economy, the business of horses is changing.

Ms. Thompson stated Council should accept the mediation agreement in order to protect the future of Aiken's horse industry and our historic equine district. The mediation agreement is in keeping with the Comprehensive Plan, the Strategic Plan and the purpose of the Zoning Ordinance. It is in keeping with preserving the equine agribusiness that makes Aiken so special.

Ms. Thompson stated she was the one dissenting vote on the issue at the Board of Zoning Appeals meeting. She said she felt Mr. Riviere's property is a singularly disadvantaged property within the Zoning Ordinance. There was a lot of discussion about the timing of the implementation of the Horse District and Mr. Riviere's intent. She said she would not be present in support of the mediation agreement if she did not believe that it was vital to preserve the future of Aiken's horse district. She felt keeping the property as it is

would be detrimental to the horse district. She pointed out that six or seven parcels have been lost that were horse industry parcels. Those parcels are now not open to trainers coming in and bringing in outside horses and training them. Those parcels have been turned into things that don't relate at all to the horse racing culture. She felt the more we erode opportunities for people to rent stalls and have a place to train horses in the thoroughbred racing style, we erode the horse industry of Aiken and intent of maintaining the Triple Crown heritage of Aiken. She said dressage horses are beautiful and have a great purpose, but they don't run in the Aiken Trials or Steeple Chase races. She felt we were perilously close to losing our thoroughbred industry if we don't do something more to accommodate, modernize, advance and make available stabling opportunities that have been demolished because Council and other boards have agreed to allow older barns to get torn down for various reasons. The horse industry is expensive, and people have to go where they can afford to go. If we are losing people to other places that offer Casino money and free stabling if they race their horses on their tracks, we won't have those winter stabling horses. She felt the Triple Crown is something that we need to preserve.

Mayor Cavanaugh stated he was definitely interested in preserving the horse industry in Aiken, but he did not understand how agreeing to the mediation agreement will help the horse industry.

Ms. Thompson stated a hypothetical example is Dogwood Stables. She pointed out that Mr. Campbell has retired. Because the industry is changing that supported that barn, another owner may not be able to keep the facility open, and the barn may close. She stated Mr. Riviere has every right to sell his 10 acre tract to someone else who may want to build a large house on the tract. With special exception from BZA with specific criteria met, they could get an exception. If that happened we would lose that commercial barn in the Horse District. We would lose a commercial horse barn because someone wants to have a big 10 acre parcel with a large house. She wondered if that was the intent of the Zoning Ordinance, the Strategic Plan, and the Comprehensive Plan. She felt Mr. Riviere's property could turn into a large house and a big barn with a special exception. She pointed out this is hypothetical.

Councilman Ebner stated he has been involved with the Whitney Trust for the last two years, and there are a number of stables on their property. He pointed out that across the United States the thoroughbred industry has been decreasing, not just in Aiken. He wondered why someone would want to buy Mr. Riviere's property just for horses and not have a place to live on the property.

Ms. Jenne Stoker stated she was at the BZA meeting when they denied Mr. Riviere's request, so she understands a lot of the history. She said Ms. Thompson had brought up some points that she was not clear on. She said she did not believe there is a shortage of stalls at the race track now, so that is not an issue. She said she also felt there was no guarantee that, even if Mr. Riviere's property is divided, it will remain as a race horse barn. It might remain commercial, but there is no guarantee that if it is divided that the property will remain as a race horse barn. She pointed out she was concerned about Ms. Thompson's statement that it might be possible to get a special exception from BZA to build a mansion on the property. She said she has some concerns about the mediation agreement. She wondered if it would be absolutely binding and never able to be changed in any way.

Mr. Pearce stated that Mr. Moore mentioned that in his remarks. He said it was his understanding that the mediation agreement is something that is intended to run with the land. Whoever owns the land would be subject to the agreement. He said he had pointed out that if it is adopted by Council that it would be recorded at the RMC office just as we do with BZA orders presently. The mediation would become an Order in this case. He said the agreement states "successors in interest." He said his understanding of that is that heirs and assigns which means whoever owns the property is subject to the terms of the agreement forever.

Councilman Homoki stated he felt an agreement is only good until the next time you go to court.

Mr. Pearce stated the attorney in this case has stated the mediation agreement is binding on the owners of the parcel of land and applies to that parcel of land with no end date.

He said the way it is drafted it could not be changed in a legal process unless both parties would consent. The agreement is a binding order. He said he understands this is a binding agreement that applies to that parcel of land according to the City Solicitor and Staff Attorney Mr. Ben Moore. Mr. Pearce pointed out his initial remarks that if the agreement is in place, the HD designation means that whatever development takes place on the property it is subject to review by two review boards, which are the Design Review Board and the Board of Zoning Appeals. If the zoning is RSS you can have residential on the property by right. This particular property is not zoned RSS it is zoned HD. The agreement keeps the HD zoning, so the two review boards are involved.

Ms. Stoker stated she had more questions and wondered if the agreement would be bound to the HD restrictions as they are today, and what would happen if the HD restrictions change. If the HD changes would the restrictions on the property change or would it be held to the restrictions in effect today.

Mr. Pearce stated the way the agreement is worded, it says that Mr. Riviere nor any successor in interest in the property would have the right to request a change of zoning designation for either parcel. He said his understanding in the discussions is that whatever restrictions apply to the HD zone property will apply to this property. It is not frozen in time. It is the zoning designation that controls the use and development and design standards that apply to that particular piece of property. The property does not change. The property remains subject to the zoning restrictions for HD zone.

Ms. Stoker pointed out for clarification that Mr. Riviere can't request a change in the zoning designation, and the city reserves the right to strictly enforce all the ordinance provisions. She wondered if there was anything that prevents anyone from asking for another variance to the existing HD. She asked if the BZA was acting on the city's legal advice, then why is there a mediation agreement. She wondered if we were afraid to defend the BZA's decision. Also, she was concerned about the way the agreement was written and the confidentiality portion. It did not give people much time to prepare for this meeting. She also expressed concern that Tim Simmons, who lives in the area, did not know about the mediation agreement. She wondered how something this important can be confidential that you can't talk about it, but yet Council has to take action on it.

Mr. Moore stated the confidentiality portion is part of the statute that they had to honor. He pointed out it had to remain confidential, but the statute also requires Council to approve. The attempt was to honor the statute as much as possible and to make it public for Council's consideration. There was an obligation under the statute to keep it confidential until that happened. The zoning designation of HD is what Mr. Riviere would be bound to and his successors in interest bound by. They could not request that it be changed. They would be subject to HD conditions, but if the rules change as far HD, the property would be subject to whatever the rules are currently for the HD designation. The specifics, for the 900 sq. footage for the residential component on the southern parcel, would remain in effect regardless of how HD changed. That is a separate term that he is agreeing to. On the question regarding whether the Order by the Judge could be changed, he said both sides would have to go to a judge and ask for the order to be nullified. In essence there would have to be an overwhelming majority of Council as well as Mr. Riviere wanting the agreement undone. Only a Court could undo the agreement.

Councilman Homoki asked who could change the rules for designation of HD, RSS, etc. Mr. Moore stated that is typically changed by Council in conjunction with the Planning Commission. Councilman Homoki wondered if judgment by the judge would restrict Council from changing the designation of this property in the horse district. He wondered if Council would be prohibited from acting on that as well as Mr. Riviere. Mr. Moore responded that Mr. Riviere and his successors in interest would not be able to request a change, but Council would not be restricted. Council could change it.

Mayor Cavanaugh asked where the matter regarding the agreement remaining confidential until it came before Council came from. He said that was a concern because there needed to be time for everyone to have input if they wish. Mr. Moore responded that came from the state law.



Mr. Pearce stated there is nothing to prevent Council from carrying it over to another meeting if Council feels they need more input. Mr. Moore responded the legislature did not put a deadline when Council had to approve the agreement.

Councilman Dewar pointed out that timeliness is the case for every item on the agenda. He pointed out Council does not see the items available until Thursday or Friday and the meeting is on Monday. He said if it is an important item for a lot of people they have limited time to study the item.

Councilwoman Price stated she was struggling with the issue. She pointed out the matter had been before Council in the past. She said she wanted to come to terms of fairness in the issue. She pointed out that Mr. Riviere is the only one that privately owns 10 acres of property in the HD zone. She stated in looking at the other properties in the HD zone they range from 2 acres to 7.8 acres, with two large parcels being public use properties. She said she wants to protect the integrity of the horse industry, but she wants to be fair.

Councilman Homoki stated if Mr. Riviere is the only one that has 10 acres privately owned in the Horse District, perhaps the definition that it has to be a minimum of 10 acres should be changed. He said he hoped one day Council would take a look at all the requirements and what is allowed in the various zones.

Mr. Moore stated Mr. Riviere brought that issue to Council in October, 2008. He said ultimately Council may have to deal with what is the appropriate size, and why 10 acres is the minimum size in thinking about Mr. Riviere's situation.

Councilman Dewar pointed out the structure was set some time ago. He said every time there is an item on the agenda dealing with the Horse District, he wants to call the experts who are involved with equestrian matters. He said if they are interested in extending the matter to the next meeting, he would be willing to extend it. He felt Council needs to be very careful about what they do to one of the most sensitive industries in the community. He said he was not interested in changing the existing rules. He said the issue tonight is whether Council accepts the mediation agreement or not. He said if Council accepts it, he felt they would essentially be making changes that he felt a lot of people in the horse community do not want to see happen. He said if Council does not accept, then it goes to the next step, which is a review by the Court as to whether or not the Board of Zoning Appeals acted within the scope of their ability. He said he did not see a reason to not support the Board of Zoning Appeals. He said the decision was not unanimous, but they did carefully discuss the matter. He felt it was a tough issue to deal with. He said he was leaning towards supporting the views of the BZA on the issue.

Ms. Jenne Stoker stated even if Council wants to continue the matter, it might help to hear from the people present so everyone present can hear what others think. She pointed out one reason she felt the HD zone is 10 acres is that, if it were 5 acres, then financially splitting up the 30 acre and 40 acre tracts might be attractive, whereas if it were 10 acres monetarily it is not as attractive to divide the larger tracts. If it limits them to 10 acre divisions the large tracts will probably stay at 30 and 40, but if they can divide them into 5 acre tracts that may be more inviting.

Ms. Gail King stated Mr. Riviere is a personal friend of hers and she respects his rights to offer mediation and she appreciates the fact that he is willing to put restrictions on the property. However, this does not change the fact that if Council approves the agreement they would be overturning what the BZA recommended. She felt the BZA recommendation was a convincing one, and she felt it would be a pity if Council overturned their recommendation. She also felt approving the mediation agreement would be setting a precedent and would be opening the door for others to make changes in the district that those who live in the district don't want to see. She felt the citizens have the right to depend on the laws that are in place. The City should defend those laws. We have zoning for a reason. She felt Council should not undermine the zoning laws for one individual's request.

Mr. Ed Giobbe stated he lives on Grace Avenue and is an adjacent property owner to the property in question. He felt there were a number of issues that Council should consider which had been mentioned by Ms. King. Mr. Giobbe pointed out this issue has been before the BZA two times. Each time the BZA has said the request does not meet the

requirements for the granting of a variance. If Council were to grant this request, he wondered what kind of message that would send to BZA and to the citizens. He felt the message would be that if you don't like what the BZA decides, you come to City Council so you can get what you want. He felt it was the responsibility of Council to uphold the Planning Commission, BZA, etc. He said there is something called prevailing community sentiment. In this particular matter, the overwhelming sentiment of all the adjoining property owners (it is a matter of record) is that they are opposed to the subdivision of Mr. Riviere's property. He said it is a misnomer when you start talking about granting variances. This is a de facto of change of zoning. He felt it was ludicrous to say that you can take a 10 acre piece of property and divide it and still say it is 10 acres. He said the question that has not been answered is, "what is the primary reason for this request." He said there had been reasons in the past which had no relevance. He said this property has been for sale and is for sale now. The only reason this is going forward is to enhance the value of this property for the owner to be able to sell it for a higher price. He said City Council and its agencies are not in the business of changing zoning to enhance the value of the property in order to make it more valuable to enhance its sale price. He asked Council to reject this agreement. He said he would like to address a comment made by Jane Page Thompson and put it in the category of Little Red Riding Hood or Alice in Wonderland on Two Notch Road. All those "ifs" are ifs. He said we don't know what is going to happen in the future or what the BZA will decide. We don't know what Council or the Planning Commission will decide. He said to suggest that Council should accept the mediation agreement simply because in some future date some "rich individual" might want to put a mansion on the property is totally completely speculation. He felt Council should disregard the comments. He urged Council to deny the agreement and put it to rest.

Mr. Robert White stated he lives in the horse district on Orangeburg Street. He said he came in 2000 and came here for a sport involving horses that were not thoroughbreds. It is called sport horses. He said his daughter is a competitor and joined by a lot of other competitors in that sport. He said there is a shift going on in the horse district. Many of the facilities, his included, used to be very prominent thoroughbred barns. He said his is almost filled with sport horses. They bring tremendous economy to the area. A huge number of horses come from Connecticut. They pay very high boarding and training fees. It is a huge industry forming in the area. It is complementary to the thoroughbred business. To say the horse district relies on the thoroughbred business alone when there is a transition that is going on across the country is not true. He said we still seem to be attracting the sport horses. He said the Olympic team trains in Aiken. The polo industry has national matches in Aiken. He said several polo fields had been added since he came to Aiken. He said the whole industry is shifting. He said a lot of the thoroughbred facilities have been taken over by sport horses, and people spend a great deal of money and stay here. He said he stays in Aiken year round. He said the real issue on the table about the Riviere property is subdivision. The thing that bothers the members of the horse district is that Council is flirting with change, and no one can predict where that will go. He pointed out if this agreement is approved; he felt the large tracts would all be subject to subdivision. He said he felt approval would be setting a precedent. It may not be a legal precedent, but if approved it will have been agreed to by Council. He felt approval would be opening the door for other requests for subdividing. He pointed out the Horse District is a very sensitive, extremely fragile business. To make the change would not be in the best interest of the horse industry.

Mr. Rhett Riviere stated he is on the Board of the Aiken Track. People are asking to come to Aiken and we do not have stalls for them. He said since Stonerside was purchased by Darley, they have brought in a great number of horses, which has the individual operators wanting to come to Aiken, but they had to be turned away. They have set up somewhere else now. He said we don't have enough stalls for people who are asking now. He said we could put another 100 horses on the track if we had stabling for them. Mr. Riviere stated there had been mention that his barns could be for any kind of horses. He said he offered to have the barns that Stephens rents for race horses to remain for race horses only for the life of the race track and for a period of years afterward, so if it got rejuvenated afterwards the barns would still be there for race horses. The BZA representatives who were in the meeting stated no, that it should be for any horse.

Mr. Riviere stated the Mayor had asked how it would be different to have two parcels over one parcel. He said finding an operator or business that can work on 10 acres is difficult. He said dividing it for smaller businesses to come in and operate on smaller parcels without having to share the responsibility for a whole 10 acre parcel would be easier for increasing the equine business and industry, which is what the plan is about. He said that addresses one of Mr. Giobbe's comments, i.e. that it does not meet the requirements of the BZA. He said, however, it more than meets the requirements and intent of the Comprehensive Plan for the area to try to give more opportunity for the equine industry. He said comments had been made that the request would be rezoning. He said he had always said he wanted HD zoning. He did not want the zoning changed. Mr. Riviere pointed out Councilman Homoki had stated he felt Council needed to relook at all the zones. He said his request in 2008 was not specific about his 10 acres. It was about looking at the whole area and trying to find out how to address the whole area to help promote the equine industry and increase business.

Mr. Riviere said Ms. Stoker had concerns that dividing his property into two parcels would open the door for the 30 acres and the 35 acre Whitney Trust and the 80 acres of the race track to be divided. He said his purpose in coming to Council in October, 2008, was to look at the large parcels and try to come up with another zoning, so the race track could be no more than two parcels and the Whitney Trust property would be the base minimum. He said this was so no one could divide these parcels into 10 acre parcels. He said the race track could be 8 parcels under the present zoning. He said these were his concerns in 2008.

Mr. Riviere stated in response to Ms. King's comments about setting a precedent, in this case there could not be a precedent unless there was someone else singularly affected in zoning. He said it would not be setting a precedent, as there was no one else but him affected by this. He pointed out the HD zoning came into effect after he owned the property. He said he was never approached about the zoning. He said he had no idea about the zoning until he tried to divide his property. He said he has two children and wanted to divide the property into two parcels for them. He pointed out that Mr. Giobbe made a statement that the subdivision was for financial purposes, but there are no facts. He stated his property had been for sale for 20 years. He said the subdivision was not to raise the value of the property, but it would make it more available for business in the area. He said he did not know that defending or protecting another Board's decision is right without really looking at the situation. He said he could understand backing a Board's decision, but to do it just to protect it does not seem right. He pointed out he did not bring the conditions in the agreement or demand them. The conditions are what the two representatives of BZA and others of the mediation brought to him. He said he accepted the terms of the agreement because he was not trying to do anything to disrupt the property or the area. The subdivision would be more conforming with others in the area. He pointed out the size of the other properties in the area are much smaller than his 5.5 and 4.5 acre request for his 10 acres.

Councilman Ebner asked for clarification on the property being for sale for 20 years. Mr. Riviere stated it has probably been longer than that. He said it was for sale when his mother had the property. He pointed out at one time there was no zoning to protect the properties in the area. He said his mother bought the property because a developer wanted to divide the property into one acre parcels. She bought the property to keep that from happening.

Mr. Pat Paterniti stated he has served on the Board of Zoning Appeals for six years. He said Mr. Riviere had stated that everything in the HD should be 10 acres. Questions were asked about the size of properties in the area. He pointed out that the majority of the horse district lots are less than 10 acres. He said there is the Training Track, McGhee's Mile Track and several other large parcels, but most are less than 10 acres. He said he would suppose that when the zoning was designed that 10 acres was judged to be an optimal large lot to accommodate the commercial horse district. It is interesting that three-fourths of the RSS lots which are supposed to have a minimum acreage of three acres are less than three acres. He said half of them are less than one acre. He said the minimum lot designation means that it is the minimum requirement for subdivision. It is not the minimum size of a lot zoned a particular zone. He said there are many RS-15 lots that are 8,000 sq. ft. The minimum size refers to the minimum lot size for subdivision.

He said Mr. Riviere had been before the Board of Zoning Appeals twice and his contention was that he was under individual hardship because he has the only lot personally owned that was 10 acres. He said the argument would be the same if he had 9.5 acres or 19.5 acres. He said Mr. Riviere's lot happens to be the largest of the individual lots. He said if Council approves the agreement, the next person on the list is Mr. Riviere's brother, whose lot is 9 acres. He could have the same rationale. His lot is twice as large as most everyone else. He said why not approve that lot to be subdivided. He said Mr. Riviere came to the BZA in 2008. In order for BZA to approve an application it must meet six criteria. The BZA unanimously ruled that he did not meet the criteria, and his request was denied. He went to court on appeal. The Appellate Court upheld the BZA decision. He said the BZA will only be overruled in case of making a faulty judgment in terms of legality. After coming to the BZA and being denied the request and after being turned down by the Appellate Court, Mr. Riviere came to City Council asking for a subdivision. City Council turned him down. Mr. Riviere returned to BZA last year. It was ruled again that he did not meet the criteria. The vote then was 6 to 1 with Ms. Thompson voting against denying the request. He said the intention is to subdivide the property through mediation. Mr. Paterniti then reviewed a few comments in the mediation agreement. He pointed out the wording in the agreement that "Mr. Rhett Riviere and the City of Aiken Board of Zoning Appeals hereby accede and agree." He said this leaves the impression that the Board of Zoning Appeals agrees to the mediation settlement. He pointed out that the mediation settlement never went to the Board of Zoning Appeals for review in content and was never agreed upon by the members of the Board of Zoning Appeals. It is accurate in that legally Mr. Moore represents the City for the Board of Zoning Appeals.

Mr. Paterniti commented on the comments by Mr. Moore regarding the protection and extra protections that the mediation agreement gives the city. He pointed out the condition that the total residential component of the southern parcel could not exceed 900 sq. ft. He said that sounds like Mr. Riviere has a right to build on the southern portion of the property. He said he does not. Mr. Paterniti said HD does not have rights to build residences on HD property. That can only be by special exception. He said in his six years on the BZA there have only been two cases for special exception, and they were both denied. Another term of concern regards "heirs or successors in interest" not being able to request a change in zoning designation. He said if he bought the property he would go to court if he were told that he did not have the right to come before Council and request a zoning change, as that was given up in a mediation agreement. He said he questioned whether that could be valid.

Mr. Giobbe stated he would like to correct one comment that Mr. Riviere made that there was no demand for the large properties. He said that is not true. The Darley operation wanted the entire Training Track but the request was denied. He said it was not accurate to say nobody wants a big tract in the horse district.

Mayor Cavanaugh asked if there were any other comments and no one spoke. There being no comments, he said the matter was before Council for consideration.

Councilman Dewar moved that Council not approve the resolution adopting the mediation agreement in the matter of Rhett Riviere (Common Pleas Court Case Number 2010-CP-02-2683). The motion was seconded by Mayor Cavanaugh. The motion was unanimously approved to deny approval of the mediation agreement.

#### AIKEN CORPORATION – ORDINANCE

URS Building  
Promissory Note  
Interest Rate

Mayor Cavanaugh stated an ordinance had been prepared for Council's consideration to modify the URS Building/Aiken Corporation Promissory Note interest rate.

Mr. Pearce read the title of the ordinance.

AN ORDINANCE FOR THE NOTE OWED BY AIKEN CORPORATION TO THE CITY OF AIKEN REVISING LOAN REPAYMENT TERMS.

Mr. Pearce stated Wade Brodie, Aiken Corporation Chairman, is present to present a proposed revision to the loan they received from the City of Aiken for the URS building. He will provide the Executive Committee's reasons for this request.

At the October 24, 2011, meeting Council revised the economic development loan terms to modify the interest accruing on the note for the URS office building from a minimum of 4.0% to instead be 1.0% plus the monthly SCLGIP rate, to be determined monthly. At that meeting Council also voted to defer monthly payments of any interest amount between 1% plus SCLGIP and the 4% minimum amount, to be paid in full upon the expiration of the note on November 1, 2016.

In a letter from the Aiken Corporation, Chairman Wade M. Brodie, on behalf of their Executive Committee, is requesting that the deferred interest portion of this note be deleted, and that the interest rate on this note only be 1% plus the South Carolina Local Government Investment Pool rate (SCLGIP), as determined monthly, with no deferred interest, and to make this interest rate retroactive to October 30, 2011.

For Council consideration is first reading of an ordinance to revise the URS building note terms for the loan owed by Aiken Corporation.

Mr. Wade Brodie, Chairman of the Aiken Corporation, stated he would like to make a presentation to Council regarding the Aiken Corporation. He asked that as Council looks at the request that they please consider the following:

1. The working relationship with Council over the last 20 years.
2. Approval will allow Aiken Corporation to pay down the debt on the Railroad Depot at a faster rate.
3. Will allow the City to earn \$20,000 a year or \$100,000 over the life of the loan.
4. It would also satisfy the fairness issue by using the same terms as would apply to a City department.

Mr. Brodie stated two years ago the Business Department of USC-Aiken conducted a study of "The Economic Impact of the Aiken Corporation and the Aiken Downtown Development Association" on the City of Aiken. He reviewed some of the highlights from the study with a power point presentation. He pointed out the study indicated a total of 1,695 jobs could be attributed to the operations of the Aiken Corporation and the Aiken Downtown Development Association over the 20 year period. It also indicated a net effect on household incomes of \$34.816 million. The study further states that some of the economic measures reported by the study have a monetary value associated with them, such as \$82 million in gross receipts and \$5 million on property tax revenues. In conclusion, the report indicates that despite the effect that the Aiken Corporation and ADDA has on the size of the overall local economy and the City's economic performance, the members of these organizations are not taking a rest even today. In these days there were three committees in charge of downtown development, housing and executive committee. He said they are still actively involved in the City's life with the hope to further contribute to the local economy. Their devotion to the City of Aiken, their willingness to take on a new challenge, and hard work to overcome the obstacles, and successful outcomes that result from their efforts, are truly an inspiration and worth the recognition and thanks. The City of Aiken would not be beautiful, attractive, and a desirable place to live and work if it was not for the efforts of the members of the Aiken Corporation and the Aiken Downtown Development Association. The economic measures reported in this study are sure proof of all these accomplishments mentioned, and they speak volumes about the Aiken Corporation and ADDA. Mr. Brodie stated he would like to make the "Economic Impact of the Aiken Corporation and Aiken Downtown Development Association on the City of Aiken, South Carolina" report a part of the records.

Mr. Brodie stated that recent emails and newspaper articles with their misleading statements had called for the closing or disbanding of the Aiken Corporation. In light of these untrue statements he said he wanted to review the history of the Aiken Corporation and point out several important topics. He then presented the slides. Mr. Brodie pointed

out that in the late 80's one-third to one-half of the store fronts downtown were vacant. Bob Bradford expressed concern to then Councilman Fred Cavanaugh, which led to a meeting with business people. Out of that group came the creation of the Aiken Downtown Development Association. One of the first things worked on was streetscape. Some work was done on some houses on York Street to improve the area. He pointed out the development of the festival area on Newberry Street, which has created a lot of activity. A Tax Increment Fund District (TIF) was set up as a recommendation from the Downtown Development Association to come up with funds. A district was defined for the TIF. This process involves freezing the city, county and school district taxes at their present level, and any appreciation in value of the taxes on the property goes into the TIF District. Those monies are used to pay off the cost of infrastructure in the area. In the case of new buildings, 100% of the revenue goes into the TIF District. Over a 15 year period the revenue has become a tremendous amount.

Mr. Brodie pointed out the awards for the recognition of the downtown. He stated Carla Cloud, Executive Director of ADDA, and the group do an outstanding job. He said John Heaton is Chair of the ADDA. He pointed out Aiken had been designated as an All America City. He stated the City did a strategic planning process in 1993, with 300 citizens participating over an 18 month period. ADDA brought together the City, the Chamber of Commerce and the Economic Development Partnership to organize the Aiken 20/20, a fundraiser that raised \$3.5 million dollars. A lot of that money came back to the City with \$500,000 for the Airport Terminal Building and \$300,000 for streetscape, a total of \$800,000 from the Aiken 20/20 fundraiser. There were also public benefits from all the other projects which were funded.

Mr. Brodie stated part of Aiken Corporation's responsibility is economic development. A spec building was constructed in Summit Park, and it was sold. Aiken Corporation currently has a spec building for sale in Willow Run Park. He pointed out that two service stations used to be on the lot where the present Chamber of Commerce building is located. This project helped clean up two lots and provided a place on a major street for the Chamber of Commerce building. He pointed out that \$300,000 of Aiken 20/20 money went to the Arts Center, which has become an outstanding facility.

Mr. Brodie stated the Aiken Corporation was created in 1995 and is under contract with the City for certain purposes. It consists of the ADDA, Housing Committee and Executive Committee. Subcommittees include the Railroad Depot, African-American History and Cultural Center, and the Aiken Performing Arts Group. He pointed out the Aiken Railroad Depot now has its own 501(c)3 designation and now operates independently of the Aiken Corporation. The African-American History, Art & Cultural Center is a project that needs funding to be able to complete the project. Aiken Corporation helped the Aiken Performing Arts Group get started. They spun off, and they have their own 501(c)3.

Mr. Brodie pointed out two houses on Richland Avenue sat vacant for 15 years. The Aiken Corporation, through a loan from the city, bought the houses, renovated them and sold them at a profit. The City gave a lot at the corner of Hayne and Highland Park to the Aiken Corporation. Through negotiations with a local realtor, two townhouses were built on the property. Another major project was the removal of the Parker's Paint and Body Shop, which was located off Laurens Street. The Corporation bought the property through a grant from the City. The project involved the construction of townhouses on Laurens Street, a parking area for 40 vehicles, and townhouses on Newberry Street, as well as streetscaping in the area. Funds from these projects are used in the Housing Program. Another major project was moving the Community Playhouse downtown. Two old theater buildings were removed, and the Playhouse and the Washington Group (now URS) office building was constructed. This project brought 40 new corporate jobs to the downtown. It also brought a state of the art performing arts center, which had about 14,000 users of the facility last year. Progress has been made on preserving the African-American Cultural Center, with most of the outside work being done. There will be a fundraiser in the future to complete the inside of this building. He pointed out the lot at the corner of Richland and York Street which has been landscaped. Mr. Brodie stated the area of York and Union Street has a lot of historic facilities, including the African-American building, First Baptist Church, and Wesley Methodist Church. Another project

was the reconstruction of the Railroad Depot building which serves as the City's Visitors Center and the Train Museum. That facility has had more than 10,000 visitors.

Mr. Brodie stated the Aiken Corporation had set up a housing program with \$85,000. He said the Aiken Corporation had renovated about 12 houses on Chesterfield Street to improve housing in the area. Another project was developing apartments in the areas over the downtown stores. The Toole Hill area was another major project. This was a very run down area with dilapidated houses, crime and drug problems. This area has been improved tremendously. The Aiken Corporation had 10 houses, which have all been sold. With other organizations and groups working in the area, the total number of houses built or improved was about 50. The area now has homeowners who are proud of their neighborhood. Presently, the Aiken Corporation is working in Crosland Park to renovate houses. Presently they have about 80 options to purchase houses to renovate in Crosland Park.

Mr. Brodie asked that Council consider the remarks he had made in considering the Aiken Corporation's request to adjust the interest rate on the URS office building loan.

Mayor Cavanaugh stated he did not disagree with anything that Mr. Brodie or the Aiken Corporation had done. He said he had been involved with the Aiken Corporation from the beginning. He said he had served on the Aiken 20/20 Board. He said he did not know of any other group of volunteers that have brought about so much improvement in any town. He said to him that is not the point. He said he felt we owe it to our taxpayers to do what we said we would do, which concerns the 4% interest. He said Council had talked about this at length in a previous meeting. He stated he felt Pat Cuning had come up with a very good idea which 5 Councilmembers had supported. Mayor Cavanaugh stated the Aiken Corporation has a spec building that they are trying hard to sell, and it has been sitting empty for a long time. He was hoping they could sell it so they would have money to apply to the Aiken Corporation loans. He felt having the deferred payment of the interest would still give the citizens the proper amount of interest for the loan. He said he felt more emphasis needs to be put on selling the spec building. He said he could not vote in favor of the request to remove the deferred interest.

Mr. Brodie pointed out the request is to renew the Note. Over the last 10 years the interest rate has been changed. In most loans there is a maturity date. When that maturity occurs there is an opportunity to change the interest rate. Regarding the spec building, Mr. Brodie stated it had been his experience that there has been only one industry brought into the Aiken area that did not come from the State Department of Economic Development. He said the Aiken Corporation had been encouraged to build a spec building, as they were told if you did not have a spec building you lose 80% of your prospects that may come into the community. A spec building does bring people in. He said people are looking at the building now. He said the Aiken Corporation does want to sell the building.

In response to a question from Councilwoman Price, Mr. Brodie stated the request is to change the interest rate and delete the deferred interest portion of the note. This would free up money that the Aiken Corporation could use. He said the deferred interest that was added set up a reserve, and at the end of five years the Aiken Corporation would owe the City about \$300,000. He said that would be good for the City, but he did not feel that the City should be in the business of making money off the Aiken Corporation, when we are all trying to do the same thing, which is to improve the quality of Aiken. He said the ordinance adopted by Council would escrow the interest differential, the difference between 4% and the 1% plus the Local Government Investment Pool rate. What was adopted would take money away from the Aiken Corporation that they would have to use for other purposes.

Councilman Homoki stated the Aiken Corporation had done a lot of good work, and he supports what they are doing. The only thing is that there is a difference in the City using its reserve funds and paying interest to itself and loaning money to another organization. When the City borrows from reserve funds it is in house and no risk. The Aiken Corporation is not part of the city government. If the City takes a risk by loaning the



Aiken Corporation money, he felt Council owes it to the taxpayers that they get more than the Local Government Investment Pool rate.

Councilman Wells asked if the additional interest was deferred or if it was going into an escrow account. Mr. Pearce responded that it was deferred. Councilman Wells pointed out then that the Aiken Corporation would not actually pay the additional 3% interest until the end of the note. Mr. Pearce stated the Aiken Corporation could pay the interest at any time, but no later than the Note's maturity date. Mr. Brodie responded that the interest would run about \$4,000 per month.

Councilwoman Price stated Mr. Brodie and the Aiken Corporation had done an incredible job, and the evidence had been shown in the presentation. She pointed out that going back to 1990's the City would not have progressed the way it has without the Aiken Corporation. One of the greatest things Aiken has, besides a great staff, is great volunteers. She said the Aiken Corporation volunteers had been great. She said based on some of the comments that have been made about some of the volunteers, she did not know that she would have continued. However, these volunteers have continued even though being criticized. She said she wanted to commend Mr. Brodie for his vision and commitment to see things through. She pointed out Tim Simmons was another volunteer that had been through a lot with the Railroad Depot. She said she just sees what Mr. Brodie and the Aiken Corporation has done. They have done the City a favor. With the 4% interest, she said the Aiken Corporation will owe the City money in the end, and in the end, if they don't have the money, what happens. She said we may have to wait until the end to see what happens and how they can fulfill the commitment for the promissory note to the city. She pointed out that crime had been reduced as a result of some of the improvements that have been made. She said that is an added benefit, and we have also improved the standard of living. People who never thought they would own a home are now homeowners.

Mr. Brodie stated with the 4% deferred interest, it takes money away from the Aiken Corporation that can be used to do other projects. He said the money is a pittance compared to the benefits that have been given to the City over the last 20 years through the projects that he had reviewed earlier for Council.

Ms. Jane Page Thompson stated the state legislature has been discussing ways to increase the coverage for the short fall in the state pension fund. One way discussed was to look at doing a statewide add-on to create long term funding to help that pension fund. She said it is possible that the Local Government Investment Pool floating rate for South Carolina could have an add-on, much like the One Cent Sales Tax that we have locally. The state is looking for options for them to do that in the Local Government Investment Pool. She stated her point in bringing this up is that the floating rate may go up on the SCLGIP, and if the loan for the Aiken Corporation is 4% the City could lose money.

Mr. Pearce pointed out that he felt the city would not be leaving money on the table, because the interest rate is 1% plus SCLGIP. There is no cap on the interest; there is a minimum. The minimum is 4% now.

Councilman Ebner stated for the Aiken Corporation to be viable, the rate almost has to be capped somewhere between 4% and 5%. Otherwise, the Aiken Corporation can't pay their bills. The loan was set up at 7 ½%. Once you exceed 4% there is not enough money for Aiken Corporation to pay the bills. He said once the rate goes over 1% plus 4%, Aiken Corporation can't pay their bills. He said that is a calculation of what the \$28,000 a month will pay.

Councilman Dewar stated he thought 4% was the cap. It was pointed out 4% is the minimum.

Mr. Jet Beckum said the objection he had to the Aiken Corporation is not what they do. He said they have done some good things. He said he does not know where we have gotten the idea that the means justify the end. It seems that no matter how we get the money, if we do some good with it, it is okay. He said he disagrees with that. He said the Aiken Corporation needs to be accountable for the money they have borrowed. He



said when he borrows money they like to see collateral, a contract, an expiration date, and penalties that will incur if you don't pay the money. He said you run into problems when you start getting the government involved with so-called private corporations. He felt if the Aiken Corporation is to continue, that it should be open for view by all taxpayers. He said the taxpayers are funding these loans to the Corporation. He said when he ran for Mayor one of the things he talked about was the Aiken Corporation. He said he found no one that felt the Aiken Corporation was a good idea. Most people did not know what the Aiken Corporation was and they did not know what the relationship was between the Aiken Corporation and the City. He felt the Aiken Corporation should have their own money, and if they had to borrow money, they should pay it back on time. He said we need more transparency to the taxpayers regarding the Aiken Corporation.

Mayor Cavanaugh pointed out that the Aiken Corporation had not missed a payment on their loan.

Ms. Carla Cloud, Executive Director of the Aiken Downtown Development Association, stated one of the Aiken Corporation's mission statements is to support and enhance the quality of life in Aiken through support and initiation of appropriate development projects. She said there was also a joint resolution between the City Council and the Aiken Corporation, with three of the points being: 1. that the businesses and civic leaders comprising the Board of Directors of the Aiken Corporation have agreed to give of their time and talents for the good of their community, 2. The Aiken City Council pledges to seek and respect the business judgment of the leaders comprising the Board of Directors of the Aiken Corporation; and 3. That the City Council and the Board of Directors of the Aiken Corporation jointly resolve to begin a cooperative economic development effort led by the Aiken Corporation and supported by the City of Aiken to jointly undertake the planning activities required to identify the specific goals and resources necessary for success and to develop agreements that clearly identify the roles and responsibilities of each party in the endeavor. Ms. Cloud stated she knows that Aiken Corporation gets under fire a lot. She pointed out Mr. Beckum had stated that people don't think Aiken Corporation is a good thing. Then he stated they didn't really know what Aiken Corporation is. She felt it was an unfair statement to say people think it is a bad thing when they don't know what that thing is. She felt the biggest thing we have to do is to continue to try to educate people. She pointed out the Aiken Corporation is supposed to be a team partnership consisting of taxpayers. She stated the Aiken Corporation is not the same as a regular corporation that is out to make money. She asked that Council reconsider the loan agreement.

Mr. Mike Anaclerio stated if Council is interested in maximizing the return on their investments they should spend their time and effort and get away from the SC Local Government Investment Pool and hire an investment firm to maximize the investments. Mr. Pearce stated there is a state statute that guides how the City invests money.

Mr. John Heaton stated he was involved with the Aiken 20/20 fundraiser. He said there is some misunderstanding about the Aiken Corporation. He said when the Aiken 20/20 raised money, much of it was from private industry. It was pointed out that the City did invest money in the fundraiser. It was also pointed out that \$1.5 million came from SRS Westinghouse. He said the Aiken Corporation was not started strictly with a loan from the City. Mr. Heaton stated from the beginning the Aiken Corporation has been a partnership with the City. Mr. Heaton stated the Downtown Development Association is backing the request from the Aiken Corporation that the deferred interest portion of the note be deleted, and that the interest rate on the note only be 1% plus the SC Local Government Investment Pool rate. He said he felt the Aiken Corporation had been a lot more beneficial in the things that it has done and done things that the city may not have been able to get done. He pointed out that the Aiken Downtown Development Association is composed of volunteers with the exception of two people. He felt it greatly benefits the City to keep the Aiken Corporation. He said he had not met anyone personally that dislikes the Aiken Corporation. He said Council needs to look at the bigger picture, which is what Aiken Corporation has done.

Mr. Brodie pointed out that the City up fronted money to get the Aiken 20/20 fundraiser started.

Mayor Cavanaugh stated his point is that we started the loan for 10 years with a certain amount of interest. It was renewed by Council at the October 24, 2011, meeting. Now the Aiken Corporation wants to change the interest rate. He said his view is that he feels that it should not be changed. He felt it should remain at the rate adopted by Council in October. He said he did not know of anyone besides Wade Brodie that could have done what has been done in leading the Aiken Corporation. He said, however, he feels that the interest rate for the loan should remain at what was adopted in October.

Mr. Wade Brodie stated the agreement for the loan with the City is for five years and has been for five year terms. He said when that matures Council has the opportunity to change it, and the Aiken Corporation has the opportunity to request a change. He felt Council should consider in looking at the request that Council, a few years ago, used the interest differential to pay off the debt on the theater. He said there is precedent already for what he is asking Council to consider. He said he was asking that the interest differential be applied against the Railroad debt. He said the city records should show that several hundred thousand dollars of interest that was generated went to pay off the debt on the Playhouse. He said the interest rate was probably 5% and 2% on the Investment Pool. Mr. Pearce stated the interest difference was applied to the Playhouse from 2002 through May, 2006.

Ms. Colleen Reed stated she had been working on a grant. In that grant you are allowed to give \$18.66 per hour per volunteer. She pointed out in looking at those present at the Aiken Corporation meeting, which is about 20 volunteers, there are many, many dollars around the table. She pointed out these people give of their time every month. She pointed out we have the same thing at the ADDA meeting, with many more volunteers. She asked what is the work of these committees worth to the taxpayers. She stated the only way the ADDA happens with two paid people is because of the volunteers. The Aiken Corporation is done by volunteers. She said that means more to her than 3% interest or the difference being talked about. She said there was an implication that things within the Aiken Corporation and ADDA are secretive and there is no transparency. She said she differs with that and was insulted to hear that. She pointed out anyone is welcome to attend either meeting. There is a lot of planning and discussion and not always agreement. A lot of good ideas come out of these meetings, which are then brought to the city. She said she gets the feeling that people feel it is like a "good old boy network." She said she is living proof that it is not a "good old boy network." She asked that Council really consider the request of the Aiken Corporation. She felt it would benefit the Aiken Corporation and the City.

Councilwoman Price moved that Council revise the URS building note terms for the loan owed by the Aiken Corporation from 4% to 1% plus the monthly SCLGIP rates. The motion was seconded by Councilwoman Diggs.

Councilman Ebner stated he grew up on a farming ranch and worked in the corporate world doing projects. He said the opinions and comments he would make were his own and from his looking at the checkbook, etc. of the Aiken Corporation. He said he was in Aiken in the 1980's. He said he could see what had been done in the city coming back in the 2000's. He said he had been working in South Carolina since 1999. He said he supported Mr. Brodie coming to the meeting and making his request. He said he supported revitalization through organizations he has worked with, and that was one of his campaign supports. He said he would keep pushing, not only Aiken Corporation, but Habitat and others that he works with, to revitalize Aiken. He then read some prepared comments regarding the Aiken Corporation request to change the interest rate.

Councilman Ebner said the City/Aiken Corporation arrangement has accomplished numerous projects that enhance the quality of life in our city. There is no doubt that the upgrades and additions to the city facilities and structures have fostered desirable residential, commercial and industrial expansion. Many cities have similar public/private fund arrangements.

Projects prior to 2002 were completed with sound business practices. However, once the City/Aiken Corporation went into the commercial banking, commercial office rental, and re-creation of historic structures, then the project and financial management systems were not implemented.

Regarding the Railroad Depot, only \$38,000 in pledges remain outstanding. Thanks to the All Aboard Team, the collection rate has been a remarkable 98 to 99%.

City/Aiken Corporation is responsible for the Railroad Depot area construction interest bearing loan of \$832,000 above pledges. City/Aiken Corporation has one income stream to cover all expenses. It is \$28,000 monthly from the URS lease. Eight thousand dollars of that is used to pay Aiken Corporation expenses. City/Aiken Corporation requested to split the remaining \$20,000 URS loan payment with \$10,000 going to the City URS interest and principle loan and \$10,000 going to the Railroad Depot loan. A loan interest rate reduction from 4% to 1% plus LGIP was also requested.

City Council passed the proposed split of the \$20,000. Then, when the lower interest rate of 1% plus LGIP was passed, an escrow was set up to capture the “loss of income to the city” due to lowering the interest rate.

Councilman Ebner stated that during the City Council discussions he made a motion and it was seconded requesting a continuance for the purpose of gathering additional information on the rate change. At this point, the City Attorney ruled that the Mayor does not have to act on a motion if he does not choose to. The ability of the Mayor to not act on a motion and second may be legally correct. However, to call the Council to vote on a subject without the facts is not a positive way to represent the citizens of Aiken.

This resulted in the passing of the motion to set up an escrow account. Councilman Ebner stated he voted for the motion understanding that the escrow account was interest bearing and that we, the City’s taxpayers, would not lose any money.

Following up the next day Councilman Ebner stated he called Mr. Cunning, proposer of the escrow account, to verify that interest would be accrued. Mr. Cunning stated, “No interest would be accrued.” Councilman Ebner then called the City Manager and he also stated, “It would not accrue any interest.”

Councilman Ebner stated his position is that the City taxpayers not lose any money during the pay off of the URS and Railroad Depot loans regardless of the interest rate.

Councilman Ebner stated this is a request to the Mayor and City Council to make the appropriate changes to the October 24, 2011, ordinance so the City taxpayers do not lose money.

Councilman Ebner presented the following calculations to Council for consideration. He said these were his numbers after going through the checkbook statements for the last four years for the Aiken Corporation. He also reviewed this with a number of people on the Board.

Aiken Corporation Loan Calculations  
Estimate Amounts to be Verified  
City Council Meeting on January 9, 2012

A. Calculations for Railroad Depot loan repayment		
1. Railroad Depot loan amount as of November 30, 2011		\$ 659,000
2. URS payment of \$10,000/mo for 60 months on 5% loan		-530,000
3. Balance on November 30, 2016		\$ 129,000

- B. Calculations for repayment of escrow balloon note for interest difference of 4.00 – monthly variable rate of 1% + LGIP
1. Escrow account could be about \$215,000 after five years
  2. Lost interest to Aiken citizens at current rate \$23,000 to \$26,000 in five years
- C. City would have to renew loan approximately 36 months to pay off loan and escrow by 2019.
- D. Pay off of URS loan based on \$10,000/mo at 4% for 8 years, then \$20,000 at 4% until payoff
1. Loan balance on November 30, 2011 \$1,895,000
  2. Payment for 8 years 820,000
  3. Balance 1,005,000
  4. Years to pay off balance at \$20,000/mo 4 yrs 7 months
  5. **Total years to pay off 12 yrs 7 months**
- E. Pay off of URS loan based on \$10,000/mo at 1.27% for 8 years then \$20,000 at 1.27%
1. Loan balance on November 30, 2011 \$1,895,000
  2. Payment for 8 years 912,000
  3. Balance 983,000
  4. Years to pay off balance at \$20,000 4 yrs 3 months
  5. **Total years to pay off 12 yrs 3 months**

Councilman Ebner stated that as of the end of November the Railroad Depot loan amount is \$659,000. Five years at \$10,000 a month at 5% of the loan value gives Aiken Corporation \$530,000 to pay against the loan. The balance in 2016 would be \$129,000. The escrow account in five years would be about \$215,000. The problem is that if it is not interest bearing, the lost interest to the taxpayers at the current rate is \$23,000 to \$26,000 in five years. He said the City should not be losing even \$1 on this. He said something has to be modified to get that other interest on the escrow account. He said if you maintain it on there it will take another three years to pay back the escrow. He pointed out on D. and E. is the difference in the pay off at the two interest rates for the URS loan of \$1,895,000. It amounts to four months with a difference in interest rate. There is not a lot of money to change hands either way. He said his belief is that within two to three years the interest rate will escalate. So when you consider what we are doing tonight, we want to be sure the taxpayers aren't losing any money on this escrow account. He said we need to consider that as we vote tonight.

Mayor Cavanaugh asked how that could be done. Councilman Ebner responded that Council either has to put the interest at 4% or at 1% plus LGIP. To charge interest on the escrow account gets you to the 4%. He said it is a matter of when you pay it. He said he likes his money today, but if you pay it off later, it is in cheaper dollars. He said as long as the City gets its total money at the end, it can be done in five years or can be done by the month. It makes no difference, but he does not want the taxpayers to lose money.

Mr. Pearce stated he was seeing these calculations for the first time at this meeting. He said Council has the option of passing this on first reading, and that would give staff time to do the calculations. He said if he had had the information before tonight, the information could have been gathered for Council for this meeting. He said if Council wants to pass it on first reading, second reading would be scheduled for January 23 and that would give staff time to review the calculations.

Councilman Ebner stated the calculations could be made more accurate because he had used some averages. The idea is that it is still between \$23,000 and \$26,000. He felt we could not lose money for the taxpayers.

Councilman Dewar stated he did not understand the comments about \$23,000 to \$26,000 in lost interest to the taxpayers at the current rate. He said if the ordinance is passed with 1% plus LGIP, he felt the city would be losing a few hundred thousand dollars that

belongs to the taxpayers. He said it is within Council's authority to do it, but he felt it would be taking \$300,000 that the Aiken Corporation is obliged to pay to the taxpayers and disposing of it. He said the proposal is about as bad as what Council did at the last meeting, when Council took \$884,000 which was paid for the property on Newberry Street and threw it away to buy the bank building. Councilman Dewar stated he wanted to address a comment. He said he had never called for the closure of the Aiken Corporation. He said he simply said if we can't get better financial management, then the Aiken Corporation should be disestablished. He said he stands by that. He said he did not call for the closure of the Aiken Corporation. He said the two big projects that the Aiken Corporation had done that he had looked at had had financial problems—the Playhouse and the Railroad Depot. He said he had looked at the loan and studied it in great detail. He said the City Manager had given him the payment history. He said he noted lots of problems with late payments, wrong interest rates, etc. He said the City Attorney had ruled that every time Council renegotiates the loan, they basically have accepted the status of whatever happened before. He says it is clear there can be no novation unless that is the intent of both parties. He said he did not recall seeing in an ordinance that Council is accepting that everything that has happened up to the point of time in renegotiating is okay.

Councilman Ebner stated if someone could put the information in plainer English and show the exact numbers, he would be all for it. He said he just wanted to be sure that the City loses no money at the end of the loan whenever that time is--5 years from now or 8 years from now.

Councilman Dewar stated if Council changes the interest rate from 4% to 1% plus LGIP, he felt the City would be losing money. He said it would be a few hundred thousand dollars.

Councilman Ebner stated with no escrow the City does not get the interest money. He said it would probably be in the neighborhood of \$300,000. However, the way it is set up now money would be put in the escrow account that is non-interest bearing.

Councilman Wells stated we keep referring to an escrow account, but he thought there was no escrow account. He said if there is no escrow account, it can't earn interest. Mr. Pearce stated there is just a deferred interest payment. It could be paid at any time but no later than the maturity of the note.

Councilman Homoki stated it seems that someone who is knowledgeable on financial stuff should work out some kind of schedule so that we do set up an interest bearing account. Then that would be a balloon payment at the end. At least we would not be losing the interest of 4% for 5 years.

Mr. Pearce stated it would take an ordinance to do that. He said we are working off the ordinance that Council passed on October 24, 2011. It would take a change from the prior ordinance.

Councilman Wells stated if they have to set up an escrow account to put the additional interest in, they may as well pay it to the City of Aiken now. He said it was his understanding that it would be a deferred interest payment that came at the end of the original note from which the City is still getting the additional 2.7%. He said we are still gaining that interest. It is just coming at the end of the note instead of coming with the payment on the note.

Councilman Dewar stated the money in the account gets no interest. He said it would be \$60,000 over the next year. The \$60,000 could be in that account. It is like having money in the bank and getting no interest. It is money going into the account, but it is not accruing any interest at all. It is just a future obligation.

Councilman Wells stated at least it is an obligation, instead of dismissing the obligation and going to the 1%. He said there is no additional interest nor is there any interest on escrow.

Councilman Homoki stated the numbers should be the same. He said his understanding is that if the Corporation paid the City back and then put aside \$1,000 a month and then paid interest on that, they might as well pay the principle and the \$1,000 and the interest on both. He felt it would have to be restructured.

Councilman Dewar stated it did not have to be restructured, we could live with the terms approved in October. It would not be ideal.

Mayor Cavanaugh asked Councilman Ebner what was wrong with the terms approved in October.

Councilman Ebner stated what Council approved on October 24, 2011, did not account for the interest lost on the escrow account. It is a non-interest bearing account. He said his assumption had been to put the money there and it would draw interest. At the end of the day the taxpayers do not lose any money. However, as it sets now the City will lose the amount of interest on the escrow account every month. It would be 2.7% divided by 12 times that amount of money every month.

Councilman Homoki stated that could be considered interest on the interest.

Councilman Ebner stated he took the approach that he did not want the City to lose any money. He said how we get there, he would let the rest of Council decide.

Mayor Cavanaugh stated Council needed Councilman Ebner's expert advice to help them understand.

Councilman Ebner stated he and Councilwoman Price, as well as the City Manager, are members of the Aiken Corporation. He said his original thought when it was brought up at Aiken Corporation is that it is all city money in the end and it all goes to benefit the City. In the beginning he objected to Mr. Brodie asking for the 4%. Then he talked to a number of the members, and they said it is still all city money however it gets spent. True the city would not get that interest back, but if you don't invest the money in the Aiken Corporation to pay this off, you still only get the LGIP interest. Now, with Mr. Brodie's proposal the city gets 1% more for your money than you would get if it just stays in the bank. He said he concurs that 4% is more than 1%, but his logic is that he would go for the lower amount so you get the loan paid off and the city gets its money back sooner. The lower the interest rate the faster the city gets its money back. He said that is his logic. He said he still does not want the city to lose any money how ever Council does it.

Councilman Homoki stated the city would not really be losing money. It is just the opportunity costs. Councilman Ebner responded that as it is set up today the City would lose the interest on a nonbearing escrow account. He said that is the same thing you do on a home mortgage with the escrow taxes and insurance. It is non-interest bearing. Mr. Pearce pointed out what Councilman Ebner is calling an escrow account is the deferred interest in this case. Councilman Ebner stated it is the deferred interest in this case, but the word escrow account was used at the meeting. Mr. Pearce stated it is just a deferred interest account which does not collect interest. He said it is just a future obligation that could be paid off at any time—next week, next month, next year, etc.

Councilman Ebner stated if the spec building is sold, the loan will be paid off immediately

Councilman Dewar stated if Council votes for the motion, they are giving away about \$300,000 of taxpayer money. He said how about checking with the people to see if they want to give it away. He said he did not want the taxpayers to lose money.

Councilman Ebner stated you are giving it away to a city benefit. It is a give away, but it is giving away for something that benefits the city. He said if it is not done at that amount, you will get .37% or whatever it is today. He said he could argue the figures all day, but he does not want the city to lose money on a non-interest bearing account.

Mayor Cavanaugh stated he hears what Councilman Ebner is saying, but he wondered what his suggestion was.

Councilman Ebner stated as it stands today with all the "hullabaloo" we have gone through, he did not think the City would lose money at 1% plus LGIP, because if the money doesn't go to pay this off for the benefit of the city and the taxpayers, you will get .33% for it. It is not the same as getting 4%, but nevertheless he felt it was a benefit to the City to do what has been requested.

Mr. Pearce stated with Councilman Ebner's point being the City is still getting 1% more than what the City is getting on the escrow money that we do have.

Councilman Ebner stated that would clear us out and in five years you will be changing the note again anyway, because you have a 5 year note with URS.

Mayor Cavanaugh asked Councilman Ebner if he was sure that this is the best way to go as far as the City is concerned and not lose money. He said he does not want the City to lose money.

Councilman Ebner stated these were his figures. He said he felt City Council deserves to have figures put together by another party whether it is the city treasurer or someone to verify his numbers. He felt his numbers were very close.

Councilman Homoki asked Councilman Ebner if he had looked at the difference if they were paying 4% interest.

Councilman Ebner stated there was \$215,000 difference rather than \$300,000. He said this is what the City would not collect in five years in interest. He said one could say that the \$215,000 still goes to a good cause for the City. It goes to pay down on a facility that the City already has, being the Visitors Center and Railroad Depot.

Councilman Homoki stated Councilman Ebner is saying that if they pay 1.32% on the loan the City would be better off not having an escrow, just put everything into the principle and let them pay 1.32% all the way through and forget about the deferred payment.

Councilman Ebner stated that then in 5 years you will have to renew the note again if the spec building is not sold, as that is the only income that Aiken Corporation has.

Mr. Pearce stated to be clear the motion that has been made is not 1.32%, it is 1% plus the LGIP, which changes from month to month.

Mayor Cavanaugh stated he would support what Councilman Ebner has suggested. He asked that city staff check Councilman Ebner's figures before the next meeting.

Councilman Homoki stated if the loan goes through at 1% plus LGIP, what would be the difference. He stated the City would get a lump payment on the end of the loan.

Councilman Dewar stated the City never gets the lump payment, as the note gets renegotiated. They don't have the money to pay it, so the loan gets renegotiated.

Mr. Pearce pointed out that over 10 years the loan has been paid down from \$3.4 million to \$1.8 million. It has consistently been paid down.

Councilman Ebner pointed out that if the Aiken Corporation does not sell the spec building, we will still have the deferred interest account that has to be paid off.

Mr. Pearce pointed out that in 5 years we would be looking at a balance of about \$1 million.

Councilman Ebner pointed out that a concern is what will the interest rates be in the future. He said now the rates are almost zero in the Federal Government. He felt shortly

inflation would attack us in a few years. He pointed out 1% plus LGIP may be a bargain in three years. We may be getting 5% or 6% at that time. He pointed out we were getting that just a few years ago. He said he was taking the chance that the City may get all our money back and more.

Councilman Dewar asked that by the next City Council meeting if staff could give Council a figure on the difference of what we get paid if it is 1% plus LGIP or the 4% plus LGIP. He asked that be figured for the duration of this loan which is 5 years. He wondered if Council could have those figures and an explanation of how they were computed so they could understand them. He said his position is that we are spending \$200,000 to \$300,000 more than we need to on the loan by revising the interest terms on the loan as requested. He also asked that staff check Councilman Ebner's figures and compute the interest if we kept the deferred interest account.

Mayor Cavanaugh pointed out that Councilwoman Price had moved that Council revise the URS building note terms for the loan owed by the Aiken Corporation from 4% to 1% plus the monthly SCLGIP rates. The motion was seconded by Councilwoman Diggs.

Mr. Pearce stated the motion was to revise the existing note that Council approved on October 24, 2011, with the deferred interest to only 1% plus the SCLGIP over the term of the note.

Mayor Cavanaugh called for a vote on the motion. The motion was approved by a vote of 5 to 2. Councilmembers Dewar and Homoki opposed the motion.

#### ADDITIONAL ITEMS

Councilman Ebner stated because of the late hour he would wait until the next meeting to discuss the items he had requested to be added to the agenda.

#### MUNICIPAL BUILDING EXPANSION

Councilman Dewar stated he had some questions about the Municipal Building Expansion. He said he voted against it because he did not want to feel rushed. He said his question now is that we took money out of the Capital Projects Sales Tax to buy the Brinkley property on Newberry Street. We did that for the purpose of Municipal Building expansion. He said it has been decided that we are not going to use that property for expansion of the Municipal Building. He wondered if we are obliged to take money out of our budget to replace this money for purchase of the Brinkley property.

Mr. Pearce stated no. He said it had not been said the city was not going to use the property on Newberry Street. We are using a portion of the Municipal Building Expansion money for the bank building purchase and upfit. That leaves a balance of \$1.5 million. The City had already bought the Newberry Street property several years ago. The Newberry Street property was not bought with Capital Projects Sales tax money. The Brinkley property was bought out of the General Fund budget over a three year period. He stated the Newberry Street property is an asset. Presently we are using it for the Community Policing offices.

Councilman Dewar stated there was no way the City would spend \$900,000 for the Newberry Street property now. Mr. Pearce stated he agreed in the present market. He said we are using present day information. The Newberry Street property was purchased with past information. He pointed out when the Newberry Street property was purchased the bank building on Laurens Street was about \$1,750,000.

Councilman Dewar stated because of the high price of the bank building years ago, the city bought the Brinkley property. He said we wanted to make sure City Hall stayed downtown. He said he had no problems with the Capital Project Tax funds designated for Municipal Building Expansion being used to buy the bank building. However, he wondered if it was a proper use of the money to renovate the Park Avenue building to build meeting rooms for economic development that would not necessarily house staff.



Mr. Pearce stated he checked with the City Attorney before proceeding with bringing any of the requests regarding the buildings to Council. The City Attorney stated the use of the funds would be appropriate.

Mr. Gary Smith, City Attorney, stated the language of the Capital Projects Sales Tax Referendum talked about the Municipal Building Expansion. It did not go into detail as to what kind of rooms would be in the Municipal Building. It was just general terms about expanding the Municipal Building.

Mr. Pearce stated the reason for the additional action for the Municipal Building was the input from the business community about needing meeting space in the downtown. The bank building became available for \$750,000, so this gave the opportunity to have additional office space, and then use the current first floor of the Municipal Building on Park Avenue as meeting space.

Councilman Dewar asked if the Capital Projects Sales Tax money for Municipal Building Expansion could be used to complete the refurbishment of the Council Chambers so the meetings could be televised and increase the transparency to the citizens.

Mr. Pearce stated all that could fall under Municipal Building Expansion.

Councilman Dewar asked Mr. Pearce if he would be willing to do that or would Council have to request it.

Mr. Pearce responded that he was not prepared to answer the question until there is more information about the cost of the renovation of the first floor of the building and what we are going to do with the other property. He said we are limited by budget. He said he would not commit to individual aspects of the Municipal Building project until we have cost estimates, scope of work, and the information needed to know what the priorities are.

Councilman Dewar asked if all that would come to Council. He said he wondered if he needed to get the item on the agenda for discussion. He said he was asking whether or not we could use Capital Sales Tax funds designated for Municipal Building Expansion to renovate the Council Chambers to televise the Council meetings. He said he would like to televise the Council meetings.

Mr. Pearce stated staff could keep Council apprised of the status. He said he had answered Councilman Dewar's question and that the Capital Sales Tax funds for Municipal Building Expansion could be used to renovate the Council Chambers for televising the Council meetings. However, he said he would not commit to using money for televising Council meetings because he does not have enough information to make individual item commitments at this time.

#### CRACKER BARREL

Aiken Mall  
Whiskey Road

Mayor Cavanaugh stated there was a question about the Cracker Barrel restaurant.

Councilman Ebner stated his question was whether the road at Cracker Barrel would be ready by the time they open on January 27.

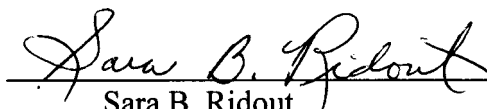
Mr. Pearce stated the information he has, and that Mr. Morris verified today, is yes that the road will be ready by the opening date. He said, however, that is subject to weather and unforeseen circumstances. He said the fiber optic cable is being installed to be able to hook up the new control box for the traffic signals. We have a commitment from the contractor to get the asphalt down on the road. He said if something changes he will let Council know.

Councilman Ebner pointed out this is a Right to Work state, but he has not seen anyone out there on weekends making this happen.

Mr. Pearce stated they were working on this past Saturday. He said they were not working on Sunday, but were working six days a week.

ADJOURNMENT

There being no further business, the meeting adjourned at 11:05 p.m.

  
Sara B. Ridout  
City Clerk