

Aiken City Council MinutesREGULAR MEETING

March 11, 2013

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

Absent: Councilwoman Diggs

Others Present: Richard Pearce, Gary Smith, Stuart Bedenbaugh, Glenn Parker, Charles Barranco, Tim Coakley, Ed Evans, Larry Morris, George Grinton, Sara Ridout, Amy Banton of the Aiken Standard, Andrew O'Byrne of the Aiken Leader, and about 20 citizens.

CALL TO ORDER

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

GUIDELINES

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

RECOGNITIONS

Mayor Cavanaugh recognized Russell McElroy from Troop 126 South Aiken Presbyterian Church, who is working on his Eagle Scout badge.

He also recognized five members of the Leadership Aiken County Class who were present at the meeting.

MINUTES

The minutes of the regular meeting of February 25, 2013, were considered for approval.

Councilman Ebner stated he would like to get some clarification of the second sentence on page 22, fifth paragraph--"He said the city does have some control in this matter as the city wants the roads to be developed according to city regulations. The developer has stated that he is going to meet city regulations." Councilman Ebner stated the data that Mr. Morris collected, and which Mr. Pearce included in the February information to the residents, does not have all the compaction tests that are required in the city specifications. He said his concern is how the regulations can be met if we don't have all the tests required. He pointed out that over sewer lines the city specifications require compaction as the sewer line is back filled. He stated there are no test reports available on that. His concern is how the developer can meet that requirement of the regulations if no tests were made.

Mr. Pearce stated staff is meeting with the developer this week so that question will be asked at that time.

Councilman Ebner stated he felt that was very important. He stated in his previous experience with roads, not only in Woodside but in other places, that after about 4 to 7 years the road begins to depress in the middle of the sewer line. He felt it was an important point, and if we don't have the tests how do we get there.

Councilman Ebner stated also he had asked about some test wells and the developer stated some test wells were driven, but the data from the test wells was not forthcoming from whoever drilled them. He said it had to be some professional outfit. He said the

test drills were drilled in the road to see if there was water under there. He said that is still an open question.

Mr. Pearce stated he did know that they took some core samples about three feet deep. He said at the meeting this week they will be looking at that also.

Councilman Ebner stated the other clarification he wanted to make was that once the proposal is received from the developer and the city has the independent person look at it, there is a sentence in the specifications that says the city can ask for other tests. He said if the city asks for the tests, the city may have to pay for them. He felt, however, there needs to be some tests made independent of what CSRA did. He felt that was very important, and they need to be in the right place. He said a good consultant would know where to go and get those tests. He said these questions were some clarifications that may be important when we get the proposal document from the developer.

Mr. Pearce stated he had discussed the matters with staff, and that is the intended approach. He said we have to get information in hand before we know what our next steps will be.

Councilman Dewar stated he thought the developer knew the tests they were going to do and was going to do the tests. Then the city would take the test results and give them to an independent expert. Mr. Pearce stated that was the approach.

Councilman Ebner stated he felt that a qualified consultant will ask to see the test results and right now we don't have those. They were supposed to be made as the road progressed. He said he would be interested in seeing the results on April 22, 2013.

Councilman Ebner moved, seconded by Councilman Homoki, that Council approve the February 25, 2013, minutes as submitted. The motion was unanimously approved.

#### BOARDS AND COMMISSIONS

##### Appointments

Catherine Thomas

Arts Commission

Mayor Cavanaugh stated Council needed to consider appointments to the various boards, commissions, and committees.

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

Councilmember Ebner has recommended that Catherine Thomas be reappointed to the Arts Commission. If reappointed, her term would expire April 11, 2015.

For City Council consideration is approval of one appointment to the Arts Commission.

Councilman Ebner moved, seconded by Councilwoman Price, that Catherine Thomas be reappointed to the Arts Commission with the term to expire April 11, 2015. The motion was unanimously approved.

Councilman Dewar stated he would like to reappoint Stephen Mueller to the Accommodations Tax Committee.

Councilman Ebner stated he would like to reappoint Tina McCarthy to the Accommodations Tax Committee.

Councilman Homoki stated he would like to reappoint Regena Brackett to the Accommodations Tax Committee and Sharon Brown to the Arts Commission.

Mayor Cavanaugh stated these recommendations would be on the agenda for the next meeting of Council.

#### ANNEXATION – ORDINANCE

Dale Pederson

Andrea Wells

912 Banks Mill Road

TPN 121-19-08-005

Mayor Cavanaugh stated this was the time advertised for second reading and public hearing on an ordinance to annex 0.5 acres owned by Dale Pederson and Andrea Wells located at 912 Banks Mill Road and Zone it Limited Business (LB).

Mr. Pearce stated he had received an email from Susan Hook, who has asked that this matter be carried over to the May 13, 2013, meeting of Council.

Councilman Homoki moved, seconded by Councilwoman Price, that Council carry this item over at the request of Susan Hook to the May 13, 2013, meeting. The motion was unanimously approved.

#### STATE INFRASTRUCTURE BANK

Agreement

Intergovernmental Agreement

Road Projects

Hitchcock Parkway

University Parkway

Dougherty Road

Mayor Cavanaugh stated Council needed to consider approval of a State Infrastructure Bank Intergovernmental Agreement.

Mr. Pearce stated the State Infrastructure Bank has forwarded the Intergovernmental Agreement that must be signed prior to the city making any draws against the \$13,500,000 award they made last year. He said he had provided Council with a link to the original application to the Infrastructure Bank. Several projects had been talked about which involved the Hitchcock Parkway widening, University Parkway widening, and turn lanes on Dougherty Road. However, there were many other projects included in the original application that was made to the State Infrastructure Bank a number of years ago. Those projects in today's dollars total \$101.9 million. The agreement that was included in Council's agenda packet is for \$13 million that the State Infrastructure Bank is providing. \$900,000 of that goes to the turn lanes on Dougherty Road, a portion to Hitchcock Parkway widening, and a portion to the University Parkway widening. As part of the 2010 Capital Projects Sales Tax Referendum, the citizens approved \$4 million for the Hitchcock Parkway widening and \$3 million for the University Parkway widening between Richland Avenue and Trolley Line Road. At this time we don't have specifics on the projects, but we are in the process of putting together some concept plans so we can have public meetings. With the Hitchcock Parkway widening there have been concerns after the November, 2012, public information session that SCDOT held at South Aiken High School. They have met with their consultants. Council has a letter coming from Ron Patton of SCDOT explaining that they plan to have another public information session. It is anticipated that will happen sometime in the summer as far as trying to keep the Hitchcock project within the right of way boundaries. He pointed out there is not a final design for any of the projects at this time. A concept plan with the level of service studies that our on-call Traffic Engineer Roger Dyar provided and updated with 2010 figures was presented when we appeared before the State Infrastructure Bank in December, 2011. The subcommittee appeared before the full board in January, 2012, and the board approved the \$13 million. In order for the city to receive this grant money, which does not have to be repaid for the projects, the city has to sign the agreement. If it is not signed, the city will not get the \$13 million.

The City Attorney has reviewed the proposed agreement, which is the standard one used by the State Infrastructure Bank in administering the grants they have awarded.

Mr. Pearce stated what is needed from Council is approval of the signing of the agreement by the Mayor. They do require the Council body to approve the document and have the designated authority for the local governing body sign the agreement.

For Council approval is the Infrastructure Bank Intergovernmental Agreement for projects consisting of the Hitchcock Parkway widening, University Parkway widening and Dougherty Road at Whiskey Road intersection improvements.

Councilwoman Price moved, seconded by Mayor Cavanaugh, that Council approve the Infrastructure Bank Intergovernmental Agreement for the projects as indicated.

Councilman Homoki stated his understanding is that there is not a concept plan in place for the projects and that it is still fluid as far as the design goes, buying extra property to go outside the right of way, or restricting the projects totally inside the right of way. Mr. Pearce stated his understanding is correct. He said there was a public information session in November, 2012, at South Aiken High School. SCDOT showed for the Hitchcock Parkway project that they were going outside of the lines. The residents in the area were very concerned that some backyards will go, some will lose their pools, and some lose a corner of their house if that design is used. There was a good turnout at that meeting. There was a lot of follow-up emails and other meetings and information shared with DOT. The latest letter from Mr. Patton shows that they are focusing now on going back within the existing right of way. What they showed in November was a worst case scenario.

Councilman Homoki stated he felt we need to make a point to alert the public on how they can make their voices heard. He asked if there would be any more meetings by DOT where people can correspond. He said a lot of people feel that they put comments in, but they just get ignored.

Mr. Pearce stated the comments will not be ignored, and there will be an opportunity for more public input because there is no design at this time. There has only been a concept plan. A good thing about the November meeting is that there was such an overwhelming outpouring of information that now DOT is going back to their consultants and saying they need a concept plan that works within the existing right of way.

Councilwoman Price stated the reason she made the motion to support the agreement is because the statement was made that there is no final design for the project at this time.

Councilman Dewar asked if the city was bound by anything by approving the agreement.

Mr. Gary Smith, City Attorney, stated the city would be bound by the terms of the agreement.

Mr. Pearce stated the city is committed to doing the projects. He pointed out the city has the One Cent Sales Tax money to go toward the projects. He said the city would be required to spend the One Cent Sales Tax money, and the STP funds that the ARTS Commission has designated for the project as well.

Councilman Dewar pointed out some areas of concern in the agreement. He said there is a sentence that states "the city shall be responsible for all engineering, right of way acquisition, and construction of the project." He said he felt that was not normal for projects.

Mr. Pearce stated with the State Infrastructure Bank money so many times the projects are new construction. These projects are widening of existing South Carolina highways. The city does not have to have the SCDOT build the portion of the Hitchcock Parkway widening with the State Infrastructure Bank money. The city can hire a traffic

engineering firm to design it and build it. Whether DOT does the project or whether a private consultant with an engineer of record does it, the city is ultimately responsible for the project to make sure it is done. They don't want to advance money for design and have the projects just stop.

Councilman Dewar asked if the city hires an engineer whether the money for the engineer comes out of the money from the Infrastructure Bank. Mr. Pearce asked if he was referring to the Hitchcock Parkway widening, and Councilman Dewar stated we could to make it easier to talk about one road. Mr. Pearce stated for the Hitchcock Parkway widening, DOT has URS Engineering doing the entire design from Silver Bluff all the way to Highway 1, and that is with the STP money. Additional funds will be needed to actually build the project. Councilman Dewar asked if that stipulation should be in the document. Mr. Pearce stated he had had that discussion with them. He said, however, if we want the money from the Infrastructure Bank we have to sign the agreement form. He said whether it is DOT or a private consultant, that will be done. He said for the Eastgate Extension we had the contracts, and they did the construction and the city supervised it.

Councilman Homoki asked whether it is the city's responsibility and whether Council will approve the final concept plan for what happens on Hitchcock Parkway. Mr. Pearce stated the plan would definitely be brought to Council, and there would be a public hearing. He said the city has One Cent Sales Tax money for the project, and Council reserved the right to put the projects in order. He said there is a lot of public interest. He pointed out that in the letter from Mr. Patton, Council would see that DOT is concerned that the city is trying to do an independent track with the project. He said the city is not, but we are trying to make sure that the public has every opportunity to provide input. He said we don't want the public and citizens to think they are being ignored.

Councilman Dewar asked if they would not get URS to design the project until the community approves the plan. Mr. Pearce stated it would be in two stages. They do a concept plan. Once we have had the final public hearing on the concept plan, then they actually design the road. It was pointed out the concept plan would be presented for comments this summer. Mr. Pearce said it was good that they had the public information hearing early in the project because they were coloring so far outside the lines.

Ms. Carole Pincavage, Vice President of the Church Council at St. Paul Lutheran Church located on SC 118, stated she had a question regarding the Intergovernmental Agreement under Definitions where it defines the project. It talks about the scope of the work set forth in the application. Her question was what is the scope of the work in the application regarding Hitchcock Parkway. She wondered if it is defined in any way to stipulate that it needs to be four lanes, etc.

Mr. Pearce stated it was defined as a road widening project. He said he had not found where there was a number of lanes provided. He said presently it is a two-lane road so it is possible that the Infrastructure Bank is thinking it is a four lane project. He said no scope of work was turned into the State Infrastructure Bank. There was a general description of the project. With the concern of the residents, the church, and the commercial businesses that came out to the public information session, at this point there is no defined scope of work because we are trying to figure out the concept for the widening project. With the State Infrastructure Bank the city is not locked into building a certain kind of road by any means. To the extent that we work on a concept plan, we get public input, and if there is a project that is different from the description that the city submitted to the Infrastructure Bank, we would go back to the Infrastructure Bank and get a clear delineation of what the exact scope would be.

Ms. Pincavage stated then by signing the agreement it doesn't say that the city has to commit to whatever was in the proposed plan. Mr. Pearce stated the real purpose of the agreement is that they don't want to give the city money for a road, for example, widening Hitchcock Parkway, and then the money is drawn against and then we have a widened Whiskey Road instead. The agreement is project specific. He said there is no

scope of work at this time because it has to go through the process of public input and the design.

Ms. Pincavage stated St Paul's Lutheran Church had expressed their concerns about the road in other forums. She said she wanted to make sure that in terms of the document that the application did not have specifics in it about how wide the road would be, etc. Mr. Pearce stated it doesn't. He said the city did a comprehensive presentation in the submission that was done in 2007-08. At that time we talked about the Northside, Highway 19, the 118 By-pass from SC 19 all the way around to Whiskey Road, south and west and then back east. They talked about Anderson Pond Road, and that project has been completed. Talked about connecting Whiskey Road with Powderhouse Road and with Centennial Drive. Talked about Dougherty Road and a Corridor Study which has been done on this project. There were a number of projects which added up to \$101 million. We are talking about many years of project work. We focused on the initial three as projects that we had talked about the longest and put those in first. The Infrastructure Bank Subcommittee and full Committee were very complimentary that, not only had some of the projects been completed, but that the citizens had voted for the One Cent Capital Projects Sales Tax money to provide a local match. That is why the grant money came to Aiken because the citizens had spoken in favor of the projects and also had voted in favor of committing local funds to the projects as well.

Councilman Ebner stated he had sent a list of questions to Mr. Pearce, and he had answered those questions. He asked for a few clarifications. He said he could understand why the Bank would want the city to be in charge of the project. He said if you have to obtain right of way and have to use eminent domain, that becomes a political nightmare. He felt that would be a very important thing when it comes back to Council for approval. He pointed out in the agreement "the design and construction specifications and standards must be approved by SCDOT." He wondered if the city can have SCDOT do the whole job, or is the city required to do something else. Mr. Pearce stated SCDOT can do the project, but SCDOT does not have to do the project. He said budget would be an issue if we go that route.

Councilman Ebner pointed out that Hitchcock Parkway has three bad places, with one being at Cold Creek Nurseries at SC 421. He said since he had been here they have repaired it twice, but it continues to go down. There is another problem at Houndslake Road. It keeps falling in. His concern is with SCDOT and budget control and management of projects. He said their standards do have to be met. He was concerned that they take the position that we have to do everything as they say. The second thing is where it says that the city will cover any extra costs. Mr. Pearce stated that would be the city's match. Councilman Ebner asked if the city could hold a contingency back for the project, such as 10% of the \$28,000,000. He stated road projects historically become an issue because you never know when you start digging what you will find. He asked how the city could be sure that we don't mortgage a future Council.

Mr. Pearce stated Council can't bind future Councils. There is an existing budget. The scope of work will be critical. As far as the retainage, the city has done that in contracts with the city before.

Councilman Ebner stated when we get into authorizing the agreement, how do we word the agreement that we are looking to have at least a 5% to 10% retainage. Mr. Pearce stated we have done that on other public projects. He said we could provide that detail when it is time to sign the contract whether we go with DOT or go with a private consultant who would have an engineer of record. He said as long as the road gets built and meets DOT specifications, the Infrastructure Bank does not get into minute details, but want to make sure that when the draws have been made against the Infrastructure Bank Money, there is a road they can say the money went into that road. Councilman Ebner stated he was concerned about mortgaging the future. He wondered how binding something Council does would be for 2018, etc. He was concerned about future money. Mr. Pearce stated we need to make sure we stay within budget. Councilman Ebner wondered if there was a mechanism for that. Mr. Pearce stated we have a finite set of

money to spend so you negotiate through the contract. The budget influences the scope of the project. The project does not influence the expenditure of money.

Councilman Homoki stated if we don't really know the concept, how do we know the cost will be \$28.5 million. He pointed out that many government projects seem to expand. Mr. Pearce stated the cost is estimated at this point. Once we have the final concept that will determine the construction estimate.

Councilman Ebner asked if Council can mortgage future City Councils to say that in CPST 4 we would ask for more money. Mr. Pearce stated it would be available, but that Council would have to vote on it.

Mr. Gary Smith, City Attorney, stated a future City Council may decide not to have a CPST 4 as well as the citizens.

Councilman Ebner stated he supports the agreement and feels that with the discussion at this meeting, we can definitely discuss the cost control of these projects with whoever does the projects.

Mr. Pearce stated the Infrastructure Bank has had local governments who have turned money back to them after a project was completed. He said it can be done. He pointed out the City of Aiken has established good will with the State Infrastructure Bank. He said we have had good support from local manufacturers, the Chamber of Commerce, County Council, North Augusta City Council, and our leaders. He said we want to make sure that we continue this good will for future projects.

Councilman Ebner stated money is always a concern. He said the projects are so far in advance that there could be a new Council and others by the time it goes through. He said we don't want to squander that during the present terms of service.

Councilwoman Price stated for clarification she wanted to be sure that the minutes state there is no contractors or consultant services that have been selected for the expenditure of the funds at this time. Mr. Pearce pointed out there has been some initial work with some licensed professionals. He said there probably have been some expenses as far as the work to be done on the Hitchcock Parkway widening. He said we have begun design work on the Dougherty Road turn lanes. We have started with an initial concept plan for University Parkway as well. These funds would be used for that. It was pointed out that there is no bill at this time from an entity that Councilwoman Price is involved with.

Mayor Cavanaugh stated Councilwoman Price had moved, seconded by Mayor Cavanaugh, that Council approve the Infrastructure Bank Intergovernmental Agreement for the projects as indicated. The motion was unanimously approved.

#### CITY ATTORNEY

##### Role

##### Responsibilities

Mayor Cavanaugh stated that Gary Smith, City Attorney, would report to Council on the role and responsibilities of the City Attorney.

Mr. Smith stated Mr. Pearce had contacted him and advised him that there was a request from Council regarding his authority as City Attorney. He said there was concern specifically about his authority to issue legal opinions as they may relate to city responsibilities and City Council responsibilities. He said he had given Council a memo that was included in the agenda packet. He pointed out that in the memo he had summarized a couple of what he felt were the pertinent city code sections that deal with his responsibilities as City Attorney. Section 2-68 of the City Code says one of his responsibilities is to give opinions upon questions of procedure, form and law to any member of Council. Section 2-285 talks about the duties of City Attorney. Subsection 1 says the City Attorney is the chief legal advisor to City Council and all offices,

departments, boards, commissions and agencies of the city and all officers and employees of the city in matters relating to their official powers and duties, and in that capacity may communicate directly with the Council and those offices, departments, boards, commissions, agencies, officers and employees. Subsection 2 also says the City Attorney shall advise the City Council, its committees, the City Manager or any other city officer upon all legal questions arising in the conduct of city business. He said he reads that section as being very broad, and he would summarize it by saying that his role as City Attorney is to make sure that the actions that City Council participate in are in accordance with state law. He said that is what he tries to do. He asked if there were any particular questions that he could address regarding that. He said this is where he gets his authority as City Council's City Attorney.

Councilman Dewar stated he had raised the issue. He said this was his sixth year on City Council and the subject of the duties and responsibilities of the City Attorney had never come up. He said in his first term there were not many opinions issued as he recalls. He said Council received some guidance when there was some conflict. Some members of Council were on boards and commissions and Mr. Smith provided expert advice on how Councilmembers should conduct their duties as members of Council, and if Councilmembers get in a bind in terms of how the procedures should be conducted in Council meetings Mr. Smith acts as parliamentarian. He said there have been two rulings in particular that he has not liked. He said that had raised the issue in his mind as to what are the functions of the City Attorney.

Councilman Dewar pointed out that in the memo to Council there is a caveat on the top which states that it is classified as "Privileged and Confidential Attorney Work Product, not subject to disclosure pursuant to the South Carolina Freedom of Information Act as Exempted by 30-4-40(7)." He said he had put the essence of Mr. Smith's two most recent opinions in his email and hoped he was not violating the law in doing that.

Mr. Smith stated City Council is his client. All clients enjoy what is called Attorney-Client Privilege. He said he was not allowed to disclose what Council tells him when he gives advice to Council on matters. He said Council enjoys the privilege by maintaining the sanctity of that privilege. He said as he is representing a public body, it is difficult to keep all of his advice to Council secret as some of the things he tells Council will get out to the public and they have to get out to the public because Council is doing the public's business. He said in the perfect world everything he told Council would be kept secret, but when we represent public bodies that is not always the case for obvious reasons.

Councilman Dewar stated then written opinions given to Council can be disseminated, but Mr. Smith would probably prefer that it not be done in this form. Mr. Smith responded "correct."

Councilman Dewar stated that for this meeting, the only item on the agenda with no backup provided to the public was information on the City Attorney rules and responsibilities.

Mr. Smith stated his understanding of the question was where the City Attorney gets the authority to issue opinions. He said he does not sit in his office thinking of opinions to send to Council. He said typically what happens is that either a Councilmember calls him on the phone or a member of city staff, or the City Manager calls him when a question comes up. When a question comes up if it is something he feels is important to address with Council he will do that by way of a memorandum.

Councilman Dewar stated the issue resulting from his visiting Public Safety was particularly disturbing to him because he had made three visits and then all of a sudden he gets an email from the City Attorney that says he could not do that. He said there was no discussion, no phone call, or anything. He said he felt that was not a proper process. He said in the memo given to Council on the duties and responsibilities Section 2-285 uses the word advisor as providing advice to City Council. He said that raises the question as to how obligated is Council to accept the advice if they receive advice as a body that is disturbing or not disturbing. In any event, should Council, or are they able

to, vote on accepting the legal advice. He asked how does Council deal with the legal opinions. He said he felt none of Council agrees with Mr. Smith's opinion on the ruling of the agenda issue where the public can't come in and speak on a subject that is not on the agenda, even though Council knows they can't do anything but listen. He asked if there is a way for Council to say to the City Attorney that they understand how he feels about the matter, but Council wants to let the public come in and speak to Council without a week's notice, etc.

Councilman Homoki stated he felt they need an engineer's point of view of the law. He said the Attorney gives Council advice. It is the best advice that he knows based on precedent, recent rulings, etc. When he tells Council that they should not have the citizens come to speak at the Council meetings without being on the agenda, Council can ignore his advice at their own peril. He said you can't line up Council and have Council agree to have a free flowing agenda. He asked if Councilman Dewar was saying that Council should have a vote to have an agenda that is free flowing where Council can entertain ideas.

Councilman Dewar stated he feels that any citizen should be able to walk into a Council meeting and be able to speak and make a comment about city operations. He said that up until that ruling a citizen could do so. He said Councilman Homoki might feel that the citizen should have to strictly comply with the City Attorney's opinion. He said he was just asking the question as to whether Council is required to accept the opinion, should Council discuss accepting the opinion, should Council vote on accepting the opinion, or as has been done in the past should Council recognize that it is the legal opinion of Council's advisor and Council accepts it and moves on.

Councilman Homoki stated what he would prefer is that Council have an agenda item for citizen comment but no action taken on the matter. If an issue arises out of the citizen's comment, then it gets published in a subsequent agenda. Councilman Dewar stated that is what Aiken County, Greenville, and others do. Councilman Homoki stated Council could ignore the City Attorney's ruling at their own peril.

Mr. Smith stated he understood the purpose of this agenda item was to talk about where he gets his authority to issue his opinions. He said he learned a long time ago that you don't tell elected officials that what he says is what goes. He said ultimately Council does have the ability to vote on any issue that Council wants to vote on. He said he can recommend based on what his years of experience would recommend to Council, what his understanding of the law says, etc. He said ultimately it is just a recommendation or his legal advice. He said Council has the ability to vote contrary to what he has advised and Council does so at their peril. He said he could be right or he could be wrong. He pointed out that in the particular case regarding items on the agenda, the Court of Appeals made it very clear that they were taking a very limited view of a liberal reading of the state statute to prohibit additional conversation outside of the agenda. The Court of Appeals made it very clear that that is what they were doing. It is on track to be heard by the Supreme Court. It does take from a year to two years to work its way through the process. He said it is still on the list of cases to be heard by the Supreme Court at some point in the future. He said it would be a matter of Council voting to discuss their agenda and whether they want to pass rules in the City Code about how the agenda works. He said he felt it was important to remember that citizens are not prohibited from talking, but a procedure is set in place to enable them to talk. That does provide the city with an opportunity to make sure that when they have the City Council meeting where the citizens talk that people are present who can address the issues that they may bring up in an intelligent way.

Councilman Dewar stated if Council wants to visit the issue and vote on the matter as a body would that require a memo to the City Manager to put the item on a future agenda. Mr. Smith stated that is correct and that is true of anything Council does. He said if Council wants to do something a particular way, there is a way to do it. It may be by resolution or by ordinance. He said he would be happy to provide Council with the advice they need on how to make that happen.

Mayor Cavanaugh stated for a point of understanding what would be the worst case scenario if Council did that with the Court case as it is now.

Mr. Smith stated the thing that bothers him the most and the reason he gives very conservative advice about the Freedom of Information Act is that it carries criminal penalties. Criminal penalties mean one goes to jail. He said if he is right and Council is wrong and Council decides to go contrary to his advice someone could put them in jail for violating state law. He said he would rather give Council very conservative advice that keeps Council out of jail than give Council the advice that they want to hear that lands Council in jail.

Councilman Dewar stated he recognizes that Mr. Smith's advice has been very conservative, and in his opinion in a couple of cases too conservative. He said with regard to sending this issue to the Attorney General for an opinion, he wondered if that was something Council should have approved or if that was within the City Attorney's field of responsibilities to do so.

Mr. Smith stated he interpreted the language in Section 2-285 paragraph 1 to give him the authority as the chief legal advisor to City Council in matters relating to their official powers and duties, and he believes that the memo fell under that paragraph and also for him to advise City Council upon all legal questions arising in the conduct of city business. He said he was aware that Councilman Dewar was not happy with the opinion, that he issued in the memorandum. He said he did not want him and Councilman Dewar to be crosswise with each other. He said the only way he knew to arbitrate the issue was to get the Attorney General involved who can issue a formal opinion that is searchable. He said he had searched the Attorney General's opinions and did not find where they had previously ruled on the issue.

Councilman Dewar stated that was interesting because the day before he had called the Attorney General's office, identified himself as a member of Aiken City Council, and asked the question about getting an Attorney General opinion on a matter of Council operations. He said the attorney he spoke with said he had to get approval of City Council. Then the next thing he got an email from Mr. Smith which said he had sent a letter to the Attorney General office requesting an opinion on the matter. He said that was a concern to him.

Mr. Smith stated the Attorney General may reject his letter. He said in going back through his computer he found that he had asked for about three opinions from the Attorney General, and had not asked for one in a long time. He said there is no formal procedure on the website to tell you how to request an opinion.

Councilman Dewar stated there are issues related to that which he thinks bears significantly on Council carrying out their responsibilities. He said the memo makes it clear that any official dealings Council has with the city go through the City Manager. He said there is no doubt about that. He pointed out that once a year Council evaluates the City Manager. He wondered if the evaluation would be based strictly on what the City Manager tells Council. He said obviously the memo says Council members can't go visit Public Safety at their shift change even to thank them for a job well done or visit people on site without the City Manager or his blessing.

Mr. Smith stated to answer that question, he would suggest that we wait until we get the opinion from the City Attorney to see what it says. He said he has no idea when the Attorney General may respond to the request. He said it won't be years, but should be soon.

Councilman Ebner stated it is supposed to be within 30 days on a simple opinion. He said he had asked for some opinions on some other issues in the neighborhood. He said any elected official can ask for opinions.

Councilman Dewar stated if an opinion is coming, and it involves a member of Council, Council should have the courtesy of being involved before it is sent off to the state or

probably before it is issued. He felt there should have been a closed door session about his conduct, which was obviously considered as a violation of law. He said he did not know who asked for the opinion, but he did not. He felt it would have been a courtesy for him to have been involved.

Mr. Pearce stated Gary Smith asked for the opinion under the City Code.

Ms. Jane Page Thompson, 240 Knox Avenue, thanked Council for allowing public comment on any item on the agenda. She said she had a comment on the matter. She said her concern when she read both Councilmember Ebner and Dewar's emails about what Council would discuss at this meeting really rose in her heart because Freedom of Information and the dialog that our elected officials have on behalf of the citizens, with the departments over which they determine a budget, and over which they govern are integral to Council's ability to determine whether the operations and functions of the city are going the way the voters have voted Council to guide them. While the opinion of Attorney Smith is probably a very conservative, if not rigid one, she believes state law 5-13-30, where it talks about the duties of municipal elected officials, probably is the most important. She said Council employs the City Manager. Council adopts and reviews the budget. Council has the power to inquire into the conduct of any office, department or agency of a municipality. She said Council has the right to form an investigation as to the municipal affairs and give the public information concerning them. She said Council can provide for the independent annual audit of the books, for the general health and welfare of the municipality in accordance with the state statutes, etc. She said Council is also charged by state law 5-13-100 to evaluate, create, change, establish, or abolish any department, agency, or office under Council's purview. She said the state law gives Council the right to do their job as elected officials, which is to determine whether or not the money that the taxpayers entrust with the city is being spent wisely, whether or not the departments that serve the public good—sewer, water, finance or whatever they may be—are functioning to the level you expect them to do. She said that is Council's right, duty and mandated by state law. She said she did not believe that any City Code can supersede what the state law defines as Council's duties. She encouraged Council to not accept the opinion of the City Attorney when it comes to Council doing their duty, assuming their obligations, to meet with public safety, and to go into the departments that are under Council's purview to make sure at the end of the year that the check and balance is there. She felt the check and balance is vital and important, especially after state law cautions when a Council chooses the Council-Manager form of government in the State of South Carolina. She encouraged Council to remember that they serve the people and the taxpayers of the City of Aiken. She said if that means they have to go down to Public Safety for a shift change to give those officers encouragement, especially after what has happened in the last year and a half, then she applauds Council for doing that. She said that means Council will go visit the wonderful guys at sewer and water when there is a water main break on Sunday morning to encourage them and thank them for their overtime. She said that is Council's job. She said she felt that no opinion from the City Attorney should stop Council from doing their job as elected officials who were elected to serve the citizens. She felt that City Council could adopt the provision that County Council has at the bottom of their agenda, which is any public concerns that the public wishes to bring forward for consideration at future Council meetings. She encouraged Council to add public comment at the end of the Council meetings and encouraged Council to keep doing the job that the citizens elected Council to do, which is encourage the city employees, to monitor problems, to budget and plan effectively and not let a City Attorney opinion, that may be too conservative, keep Council from representing the people that elected Council, especially since given the Voting Rights Act, the citizens now have reduced representation on Council. Because of the Voting Rights Act the city has gone to a 6-1, and she felt she has lost representation. She said now she is being told by the City Attorney that even her Councilmember can't go check on a department that she has had a problem with. She said that is not what a representative republic is all about.

Mr. Pearce stated what he was hearing from Ms. Thompson is that she wants Council to fulfill their statutory duty as the state has said. He said state law provides that under a Council-Manager form of government that Council members are not to direct city employees, but they are instead to work through the City Manager. The other point is

that to the extent that the City Attorney is seeking an Attorney General opinion, while Ms. Thompson has her heartfelt beliefs that she has shared with Council, certainly there is some credence in seeing what the Attorney General has to say for the state of South Carolina.

Ms. Thompson stated absolutely, but pointed out that the Attorney General is giving the bureaucratic response to that side. The Attorney General is upholding what the state department wants and procedurally adheres to. She said with reference to CEO with the city, actually the City Manager acts as the COO. He is employed by the CEO, which is the Mayor, and the Board of Trustees, which is the Council to do a job. She said she understands Council cannot direct the actions and performance of duties of employees. She said going down to Public Safety for a shift change is not directing the city department. That is going down there to monitor what they are doing.

Mr. Pearce stated the point is that we do have the Attorney General looking at the matter and looking at state law. He is the elected official as the legal representative for the state. He said he did not share her opinion that he would give a bureaucratic answer. They will interpret state law and have a staff that does research. He pointed out that to him the Attorney General has no involvement in the matter and would provide an impartial opinion. As far as the operations since he became City Manager, the size of the agenda packets has grown tremendously because there is a lot more information in the agenda packet for every meeting. He said he has tried to share immense amounts of information. He said Council has a Horizons Retreat every year. He said there are issues that come before Council and staff members speak to those issues. He said staff has provided a great deal of transparency. He said the City of Aiken had been recognized by the Comptroller General as being one of the most transparent cities in the state. He said we want to continue that and want to make sure we do the right thing and the legal thing.

Ms. Thompson pointed out there is the Appellate Court to appeal an Attorney General opinion if they take away the individual constitutional rights.

Councilman Homoki stated both Ms. Thompson and Mr. Pearce had referred to having possibly an agenda item for citizen comment, but it was being mixed with FOI. He said the matter where Council has to work through the City Manager and comments on the Council agenda are two different issues. He felt that both had sort of blended those issues. He stated Ms. Thompson had argued one way of putting comment on the agenda and that has nothing to do with the set up of the city and it being run through the City Manager.

Ms. Thompson stated she was addressing opinions given by Mr. Smith to City Council. One is that citizens are not allowed to discuss an item brought to Council meetings unless there has been prior notice to Council through Richard Pearce a week ahead of time. She pointed out that at times citizens will have an issue that comes up the day of a Council meeting, and they need to come to Council to discuss the matter. The provision they have in the County Council is that they put an agenda item at the end of the agenda so the citizens have the right come talk about a matter. It will not be voted on, but the citizens have the right to bring the matter up. She said the opinion that Mr. Smith had issued is that Council does not have the right to add items to the agenda or allow citizens to bring up a matter in a public meeting, or to go observe and monitor what happens in the city. She said state law says Council has every right to do that. Council can't tell them what to do or give them orders, but Council can monitor them.

Councilman Homoki stated if he wanted to monitor a department, he would tell the City Manager that he wanted to go to Public Safety and that he wanted to monitor operations for two days. Ms. Thompson stated Council has the right to do that and does not have to tell the City Manager.

Mr. Pearce stated we have asked for an opinion from the Attorney General to get that clarified. He stated the agenda lists an item for Petitions and Requests, and if people have a petition or request it will go on the agenda under that section of the agenda. He said the reason for the week in advance is the physical act of putting the information

together and getting it to the public so everybody knows what the person is going to talk about. He said everybody should know from the agenda packet what Council is going to talk about at the Council meeting. He said it is to treat everyone the same way.

Mr. Smith pointed out that, under the city's way of doing this, City Council could have a complaint put on the agenda by a citizen and City Council could actually vote on it at the next Council meeting, which is quicker than how County Council does it. If one complies with the agenda rules, an item could be heard and voted on by City Council quicker than by County Council.

Councilman Dewar stated he wanted to make it clear that he felt every member of City Council understands that Council has no authority whatsoever to direct the actions of staff. He said had there been coordination with the Attorney General opinion that went to Attorney General Wilson, he would have tried to point that out. The initial statement was that he went to Public Safety. It did not accuse him of directing staff. He said there is a question as to oversight versus direction. He said he did not know of any of Council that has directed staff. He said that was not to say that he had not had a conversation with a member of staff and asked questions. He said Council is not going to direct the action of staff. It is just part of the oversight responsibilities.

Councilwoman Price stated she wanted to be sure she understood what Jane Page Thompson wanted Council to consider. She asked if she was asking that Council reconsider adding public comment to the agenda. She asked if she was talking about having problems with garbage collection and coming before Council with the complaint.

Ms. Thompson stated County Council does that. They take comments from the public, but take no action on the requests. They bring dialog to Council that they might not otherwise know about.

Mr. Pearce stated City Council has a section for requests from citizens under Petitions and Requests. The citizen does need to present the request in advance so everybody has the same notice about the items that will be on the agenda. He pointed out Aiken County is set up completely different from how the City of Aiken is organized under state law. He pointed out that staff gets many calls for constituent service that staff handles. He said many of the citizens express happiness in getting results, but it is not 100%. He said there have been citizens that have come to Council and shared their opinions on different city operations and their experience with them. He said there is business to transpire at the City Council meeting, and if there is something that the City Manager's Office can help the citizens with we would like to have the opportunity to try to help them. Usually that takes care of the matter. If it is something that needs to go further, the citizens have sent their letters in and Council has been willing to hear from them at a Council meeting. He said there is no need to add anything. There is already a process for the comments.

Ms. Thompson stated she did feel that citizens need to have the least barriers for access to the representatives as possible. She felt that was something they need to keep in mind.

Mr. Pearce stated constituents have contacted their Councilmembers through the website. He said he had had every single member of Council contact him with a constituent concern. Not a single time in the two years as City Manager, no time in 2 years as Assistant City Manager, and not the prior 10 years as the City Solicitor and Staff Attorney had he had anyone say they had a hard time reaching a Councilmember. He said Council had made themselves available to the citizens. He said Aiken is a model city in the services that are provided. He said we get comments many times that where they lived before they did not get treated like they do in Aiken, and they are happy to be in Aiken.

Ms. Thompson stated she felt we had a great process in the past and some of the opinions have changed how that process worked. She said she was expressing concern that Aiken not lose ground.

Mr. Pearce stated the City Manager's Office is open from 8:10 AM to 5 PM five days a week and would be more than happy to help citizens with any need or concern they have.

Mayor Cavanaugh asked if any Councilmember had had any citizens come to them with a concern that could not at least be given to the City Manager and probably 90% of the time resolved in the present process, or if the process had been bad for them and they were not able to get what they wanted. He said he had never had a citizen come to him under the present process and say they can't get a problem resolved because they can't come to Council unless they get on the agenda. He said that had not happened that he was aware of. He said it had been his experience over the years that our citizens have not been hesitant to talk to our Councilmembers and the Mayor. Council quickly jumps on the items and, for the most part, gets them resolved. If not the matter, is on the next agenda because the Councilmember puts it on the agenda. He said the matter is still being considered and is going to the Attorney General for a ruling. He said the citizens still have the same path to City Council that they have always had except the matter of getting an item on the agenda. The citizens can still get on the agenda by letting the City Manager know a week in advance of the agenda going out to City Council. He said he did not feel that the present process is detrimental to the citizens.

Councilman Homoki asked if there was a restriction on the citizens going directly to the department from which they need some action. Mr. Pearce responded that the departments take citizen calls all the time.

Ms. Debbie Nix, 808 Woodward Street, asked if the opinions of the City Attorney written to City Council are available under the Freedom of Information and if citizens could request copies of the information.

Mr. Gary Smith, City Attorney, stated he believes that the advice that he gives to City Council is subject to the attorney-client privilege. The Freedom of Information Act makes an exemption for legal advice given to City Council. Councilman Homoki asked if the Councilmember could release the information. Mr. Smith stated he felt the advice that he gives to City Council is privileged. The legal advice is privileged just as in any other situation. The privilege should be maintained not only by him, but also the members of City Council. He said, however, he had admitted that the information gets out at times. He said his advice to Council is supposed to be private.

Councilman Ebner stated he thought there were some issues that come up on which the City Attorney issues an opinion that make a difference in which way Council votes or takes action.

Mr. Smith stated he issues opinions in public sessions and in private sessions. He said it is hard to claim privilege if you are issuing advice in a public session.

Councilman Ebner stated if the City Attorney sends Council an email on a particular public item that a Councilmember has asked about, the "privileged and confidential" statement is on the top of the email. He pointed out the matter may have been asked specifically for a citizen so Council needs to respond to the citizen and give them that opinion.

Ms. Nix pointed out the Mayor had always allowed people to speak and said that she would always appreciate the Mayor for that even though they had had their differences. She asked what if a Councilmember goes to the Public Safety Department and wants to get some information. The Chief does not like it and calls the City Manager. The City Manager asks the City Attorney to render a decision. She said that raises questions. She said Mr. Pearce is not an elected official. He makes the agendas and gives information to Council. He is paid to do that and that is under the form of government that has been chosen by Aiken. She said she was trying to tell Council what the citizens might think. She pointed out FOIA is huge. She said we don't have it in South Carolina. She said South Carolina is the 7<sup>th</sup> most corrupt state in the United States. She said the Mayor's legacy was the openness that he has given at the Council meetings, even when he did not necessarily want to. She said this is a real concern for her and the feel and spirit is

wrong. It is controlling and not free. She felt this is how the people will feel when this is known.

Mr. Pearce stated he had met with several citizens who wanted items on the agenda. He said he did not control the agenda, but he is responsible for getting notice to Council what they will be talking about at a particular meeting. He said staff meets with Council in an annual retreat and talks about objectives and goals on which Council votes. He said he had said from the start as City Manager that when Council is making a decision, he wants to make sure they are making an informed decision. He said he does not tell Council how to vote, and that is not a role of the City Manager, but he is responsible for making sure that Council has as much information as possible. He pointed out the agenda packets had gotten much bigger, with more information.

Ms. Nix stated people that she has talked to have said that they don't know what is on the agenda as they don't get an email about the agenda or see it in the newspaper.

Mr. Pearce responded that the agenda is on the website and the listing shows all the agenda items and information from the departments. The agenda is provided to the newspaper, and they publish the listing in the newspaper.

Councilman Dewar pointed out that the issue on the agenda for this meeting regarding the role of the City Attorney was not in the newspaper. Ms. Banton, of the Aiken Standard, pulled up the page from the internet and noted that the petition and request was included on the information for the agenda.

Councilman Ebner stated he would use the Capital Projects Sales Tax as an example. He said they went along battling back and forth as to who had authority over the operation of the projects as well as the financing and how they should be done. He said it took a while to get down to the point and whether Mr. Smith was wrong in his interpretation. He said he had a different opinion than the City Attorney on this matter. He said the auditor had the same opinion that he had. He said a couple of others had come up and most of the time something that the City Attorney rules on during the meeting sounds all right. He said another example was the Gem Lakes petition. He said he wanted that to be a resolution on the agenda. He said it took a while for that opinion to get clarified. He said he wonders if it would be better if there is discussion or disagreement on how we should operate, that Council should continue an item on the agenda to give Mr. Smith time to look up a matter. He said during a meeting he can't always look up an item in the law books. He felt there are times when things might need to be continued to allow research to be done on a matter. He said there have only been about three matters in his three years on Council that it really made a difference to him. He said in going back to Councilman Dewar's issue in going over to Public Safety, he said in civilian life versus government, one of the first things one would do if someone is violating a rule you would call them and tell them they are doing wrong and write them up next time. He felt that maybe something that needs to be done if Council is seen doing something wrong, is to give them a call because most of the time they probably are not aware it is wrong. He said he would like to ask a question on the future Gem Lakes matter. He said a consultant will be hired by the city, and he would need to talk to the consultant to find out exactly what he is doing. He said if he does not know some of the answers, he will get a geologist or somebody to look at the data. He asked how he would be able to look at the data. He stated presently he is not getting any data. He said there will be data coming out that will be critical to say whether the road is built right or not. He said he wanted to be able to have access to the data. He said he did not necessarily need copies of the data, but wanted to be able to read it and ask questions of the consultant. He said if the city can't be present, he wanted to know if he needed to ask permission to talk to the consultant off line with just the City Attorney and City Manager versus a city employee.

Mr. Pearce stated staff has always made city documents available to Council. He pointed out Councilman Ebner has made numerous trips to his office for documents. Councilman Ebner stated that in this particular case he would like to talk to the contractor directly. Mr. Pearce stated we should let the city get the report from the developers and find out what the scope of the work is going to be. He said he would not be able to answer the

question at this time. He said, however, staff knows that is a concern of his. He said on the Capital Projects Sales Tax projects he wanted the record to be clear that in his discussions with Councilman Ebner that he had always said that Council reserved the right to determine the order of the projects. He said that was on the ballot. He said whatever differences he might have had with the City Attorney, he wanted to point out that he had met with Councilman Ebner and discussed the matter with him several times. He said he was clear about Council's role. Councilman Ebner stated it took a while to get the answer. Mr. Pearce stated that sometimes it takes a while to get the answer. Mr. Smith stated he thought his answer was that it had to be in conformance with the ballot. He said the ballot gave City Council the right to change the order of the projects.

Councilman Ebner stated that according to the auditor, City Council was supposed to monitor the projects. Mr. Pearce stated Council does that through the budget process. Councilman Ebner stated in the past they did not. Mr. Pearce pointed out that there has been an annual audit in the past that talked about the Capital Projects Sales Tax. Councilman Ebner stated there is nothing in the records that show where Council authorized the previous City Manager to overrun projects. He said there is nothing in the records. Mr. Pearce stated this is getting off what we were talking about. Mr. Pearce stated he was trying to reiterate for the record that he is more than willing to hear Council's concerns. He said if Council needs information, he will be glad to get it for them. He said he had spent hours, weekends and nights getting information for Council. He said he would continue to do that to get information for Council.

Councilman Ebner stated he had asked specific information about Gem Lakes. He said he needs to talk to the people who put the data together. He said that is his request, and when we get to that point after he sees it, he will put it in writing.

#### INFORMATION

##### Leadership Aiken County

Mr. Pearce stated that Leadership Aiken County will be held in the Council Chambers on Tuesday, March 12, 2013, at 8:30 A.M. Council is invited to the meeting. They have a presentation by local officials so the class would want to hear from Council.

##### Municipal Association of S.C. Award

Mr. Pearce stated he had received a letter from Miriam Hair of the Municipal Association of S.C. He said the town of Blackville had won in the Public Service category award for their volunteerism.

##### Personnel Turn Over Rate

Mr. Pearce stated Councilman Dewar had asked for the turnover rate in the city. He said that information had been provided in the Human Resources report for the first six months of 2012. He said for full-time employees the turnover rate was 10.77%. He said Alicia Davis is a member of the Society for Human Resources Management, and that organization says typically the turnover rate is about 10%.

##### SC Department of Transportation

Mr. Pearce stated Council will be receiving a letter from the SCDOT from Ron Patton regarding the letter that he had sent to Mr. Patton concerning the Hitchcock Parkway widening.

##### Fresh Market

Mr. Pearce pointed out that if Council goes down Whiskey Road they will see barrels and cones set up. Public Safety has put those in place to see if we can direct traffic to the traffic signal once Fresh Market opens next week. He said that will be measured to see if

something permanent needs to be done to direct traffic to the shopping center. He said the Aiken Estates Neighborhood Association is particularly interested in this matter, as well as City Council.

#### Personnel

Councilwoman Price asked why the personnel report showed the turnover rate for six months rather than the entire year. Councilman Dewar pointed out that staff had already provided the turnover rate for the last six months of the year. This report now shows the first six months of 2012.

Councilwoman Price asked if the city was in litigation from any terminated employees. Mr. Pearce responded we were not.

#### Planning Commission

Councilman Dewar stated he became aware yesterday that the Planning Commission is having a worksession on Tuesday, March 12, 2013, at 4 p.m. They will take comments relating to the definition of kitchen and the length of a building. He said this had been discussed in the past. He said he always thought a worksession was for the benefit of the members of the Council or Commission so that the staff could make them aware of certain issues that arise. He felt it was odd that they would have a worksession and take public comment and then go out the very same day before the public and repeat the whole process. He said he was not sure why the Planning Commission was taking public input in a worksession. He said some people were upset at the last Planning Commission worksession when they were not allowed to present any testimony.

Mr. Pearce stated he did not know, but he could find out why they did it that way. He said it really probably should be called a special meeting. He said no decisions should be made in the worksession, but it should be an opportunity for public comment at the special meeting.

#### Arts Commission

Councilman Dewar stated he was concerned about the Arts Commission and thought he might be losing his member of the Arts Commission because she is frustrated about the lack of attendance. He said he would like for the Council members to check to see if their appointees have been attending the meetings. He said his representative went to one meeting and was the only one that showed up. The meeting was set at 8 a.m. to accommodate the other people. He said he raised the concern to ask fellow Council members to look at the attendance of their appointees.

Mr. Pearce stated that he and Councilman Dewar had discussed the matter a few times, and he had shared with him that there were a couple of members that had missed two meetings in a row. Staff personally contacted them. He said Glenn Parker could comment on the matter. He said staff does not want volunteers to be frustrated because there is important business for people to do on the committees and commissions.

Mr. Parker stated there were a couple of members that missed two meetings in a row. They were sent a registered letter and staff has heard from both of those members. He said a meeting is scheduled for Tuesday morning, and he expects the members to be there except for one member who recently had surgery. He said there is one opening on the commission.

#### Public Safety

Councilman Dewar stated he had two items regarding Public Safety. He said at his request the City Manager had sent a police report on something that happened on Whiskey Road on March 1, 2013. He said he would ask for more details in an email.

Councilman Dewar stated he was confused on the staffing of Public Safety. He said he understands that once the city hires a Public Safety Officer it takes 48 weeks to train them. He said there was something that states there are 4 officers on solo patrol. He wondered how that could be because there were so many vacancies. Four graduated from the Police Academy. He pointed out that at one point the city was down 24 officers out of 82 authorized positions. He said he was not critical of the City or Public Safety. He said he felt Public Safety was doing a wonderful job. He said he wanted to make sure that they have all the personnel that they should have. He said he was not being critical of what staff was doing to replace the 24, but he was upset that we had 24 vacancies. He said he hoped we would not relax our training standards and continue with the 48 weeks of training, if that is determined what is needed, and recognize that we will have a shortage in Public Safety for a period of time.

Mr. Pearce stated we had talked about this matter several times. He pointed out Chief Barranco was very clear at Horizons that the city was not relaxing any standards. He said there is some delay as the personnel have to go through the Fire Academy and the Police Academy in order to become qualified under the accreditation standards under which we operate. He pointed out that the Aiken Public Safety is one of three in the state that is an Agency of Excellence from the accreditation authority. He said we have the proper training in place. He said the city does not have 24 vacancies. He said there were 8 vacancies. Applications for the 8 vacancies were closed out on March 4. He said there were 106 applications for the 8 vacancies. They talked to over 25 people. There were veterans. He said some who have worked for Public Safety in past years want to come back. He said depending on who is hired, the city may not have those delays if they are already certified. He said he had met with the Director of Public Safety numerous times over Council's concerns, and we believe we have the mechanism in place to not only fill the vacancies, but to also keep the high caliber of the officer on the road. He said we are working through the vacancies we have experienced. He said we knew some of the vacancies were going to happen because of retirements and discussed that at Horizons and Council before the retirements took effect. He said he felt Public Safety had done an excellent job in preparing for the vacancies, filling the vacancies, and making sure we have the quality of Public Safety service that the citizens have come to appreciate.

Councilman Dewar stated he and the City Manager have a different definition of a vacancy. He said he defines a vacancy as not having a fully trained officer to meet responsibilities. He said he was not sure 8 was the right number of vacancies if you define a vacancy his way.

Mr. Pearce stated the number of open positions were 8. There were 106 applications for the positions. There were 25 well qualified individuals who were talked with. Interviews were conducted last week. He said staff is encouraged and wants to run a good operation. He pointed out Council has the Human Resources report. He said turnover in local government is a fact of life, and we do the best we can with the requirements we have to meet. He said he felt Public Safety is doing a fantastic job.

Councilman Dewar stated he felt they were doing a good job also, and he was very supportive of Public Safety. He said he was supportive to the point that he wants them to have all that they need to have.

Mr. Pearce stated as City Manager he was informing Council what is being done and updating Council about the vacancies that we do have and the fact that there are quite a good number of qualified people who want to work for Public Safety.

#### ADJOURNMENT

There being no further business, the meeting adjourned at 8:45 P.M.

  
Sara B. Ridout  
City Clerk