

Aiken City Council Minutes

WORK SESSION

January 28, 2019

Present: Mayor Osbon, Councilmembers Dewar, Diggs, Girardeau, Gregory, Price, and Woltz.

Others Present: Stuart Bedenbaugh, Gary Smith, Sara Ridout, Kim Abney, George Grinton, Susan Yates, Mike Przybylowicz, John Poole, Colin Demarest, of the Aiken Standard, and about 25 citizens.

CALL TO ORDER

Mayor Osbon called the work session of January 28, 2019, to order at 5:00 P.M. Mayor Osbon stated for Council discussion is stormwater and the election district plan.

STORMWATER RATE STRUCTURE

Wood

Stormwater Fees

Mr. Bedenbaugh stated since last fall, we have been working with our consultant Wood Environment and Infrastructure Solutions, Inc. on evaluation of our storm water rate structure and rate calculation formula called the ERU which is the equivalent residential unit. In 1992, Aiken was the first community in South Carolina to develop a storm water rate and the formula used to calculate the rate has minimally changed. Since 1992 a lot of issues have changed so the formula needs to be reviewed as well as some other things. This information will be used for additional Council discussions as we work on our FY 2019-20 budget regarding stormwater. The City borrowed to do some stormwater projects, and is using CPST and the Stormwater Fund to accomplish the capital project.

Wood, which is an environmental firm with an office in Columbia, has reviewed our rate structure and other elements and will offer recommendations to change the way storm water rates are calculated.

Mr. Bedenbaugh stated Andy Reese and Angela Vandelay are present to review their findings with Council.

Mr. Reese stated he was present to talk about two things that they are engaged in and the outcomes and outputs of the two things. He said Aiken has a legacy stormwater rate structure that was the first in the state and one of the first up and down the east coast. They were asked to look at the rate structure and at potential issues. He pointed out that how these things are set up has changed radically. He noted there have been 30 to 40 court cases. He said they were asked to make sure Aiken has an up to date rate structure that will pass mustard. Secondly, as we look at potential changes to the stormwater program, we need to understand what an updated or changed rate structure might look like in light of program changes.

Mr. Reese then reviewed the city's current rate structure. He said the general rule is that the more you pave the more you pay. He pointed out that when you take a forest and turn it into turf there is more runoff than there was in the forest. When the area is turned into a paved area, the peak flow goes up five or six times. The volume goes up two or three times. Pollution goes up two or three times. If there is not a system downstream to handle that, i.e. the public stormwater system, then either we have problems or the system might need to be upgraded and updated. As things develop, they age. He pointed out we are a lot smarter about what materials last a long time and which ones don't. He pointed out there were a lot of promises for corrugated metal pipe. He said we are left with a lot of rusting and collapsing corrugated metal pipe. Then we are looking at issues of stormwater that have to do with flooding.

Mr. Reese pointed out that the city's current rate structure for residences is based on the size of the parcel without regard to the size of the house or the driveway. He said the

idea is the variation is not so different that we need to measure each parcel. Most communities either have a flat rate or some tiers. He reviewed the city's current rate structure for residential and non-residential lots. He noted that if you know the size of a residential parcel, you can figure the amount of the fee. He reviewed the fee for non-residential lots, pointing out that lots are billed on the basis of open space and impervious area. He also pointed out that under the city's current system, schools, churches, golf courses and tracks are only charged for impervious area, not the green space.

Mr. Reese noted that when they reviewed the non-residential rate structure, they realized a mistake had been made. When the impervious area was calculated, they used the standard engineering factor for the amount of impervious area and runoff for residential. However, that number was for a whole residential neighborhood including roads, not just a residential lot. That means effectively that non-residential has been undercharged for the stormwater fee. He said he felt that should be corrected. He noted that the current fee is \$5.42 which is probably not a huge fee. However, going forward the city needs to be able to defend the fee in an engineering court of law with experts. The city needs to be able to back up what is being done.

Mr. Reese pointed out that under the current rate open space and non-residential are paying less than they should be paying relative to residential. The impact is underestimated. He said we could adjust open space and commercial to be in line. The residential charge factor per acre is 3 ERUs per acre. Based on the current undercharging of non-residential lots, we must increase the open space and impervious area charge factors. The open space charge factor needs to increase from 1.3 to 1.6 which is about a 23% increase. The impervious space charge factor increases from 5.7 to 7.3 ERUs which is about a 28% increase to correct the error. He then reviewed a non-residential charge example with the current rate and a corrected calculation. He suggested that we leave the residential rate as it is, but adjust the non-residential rate to the corrected rate which would give an increase in revenue.

In response to a question as to how a gravel parking lot fee would be calculated, Mr. Reese stated if a gravel area has traffic on it, it is a compacted area and is typically counted as impervious area. If it is decorative gravel and does not have much traffic, it is counted as open space. He pointed out that sometimes compacted gravel can be worse than a paved area for runoff.

Councilwoman Price stated in some areas there has been higher growth than others. She asked how an area is defined with the lack of development in some of the areas. Mr. Reese stated the fee is based on existing development, regardless of its age. You pay for it regardless. He stated one of the biggest problems is deterioration of the system that was constructed when those sites were built. There are charges that go with new construction as well, and they tend to balance each other over time. He stated when a new parking lot is built, the next month they begin paying a stormwater fee, just like a water and wastewater fee. There are basically three water utilities that serve every property, unless they are on septic. There is wastewater, drinking water, and stormwater. There is a public system that has to be paid for, maintained, and capitalized by the City for each of them. A water meter is used to measure water and waste water to determine the fee for the service, but stormwater is measured by estimating the runoff over and above runoff when there is a force. It is how much additional water is being sent downstream that the city has to accommodate somehow.

Councilman Woltz asked how often it is measured. Mr. Reese stated he did not know. Mr. John Poole, City Engineer, stated it is basically being measured during the building permit process.

Mr. Reese stated another issue is when private money is spent to create a public good, it should be recognized with a credit. When detention or green infrastructure is put in, stormwater is conserved and that needs to be recognized with a fee decrease. The current system does not take this into consideration. That needs to be added in so people who have detention ponds and maintain them get a credit. He noted that with the current fee system there is a mistake in the fee increase side, and on the fee decrease side there is also an issue. He said Aiken needs to provide credit for people who maintain their detention ponds.

Councilman Dewar asked if the City knew how many private detention ponds the City has. Ms. Susan Yates stated there are a couple hundred. Mr. Reese stated there are a lot of properties that could apply for this credit. The owners would need to bring the detention areas up to code before they would qualify for the fee decrease.

Councilwoman Diggs asked how the owners would know. Mr. Reese stated there is a code standard, and they can get an engineer to check it to make sure it is working properly. He stated those detention ponds were required for a reason, which is to reduce downstream flooding. If they are not maintained, they do not reduce downstream flooding. They slowly get filled with sediment and disappear. This plan provides an incentive to maintain them because the credit will cover the maintenance cost and then some. It is not a loss of revenue, but it is a gain of capacity in a system through upstream detention. It is a smart move and a legally smart move. You have to provide what's called "the right to refuse" to be a fee, not a tax.

Mr. Reese stated these are legacy rate issues. When Aiken's system was set up, it was new for stormwater utilities. Now there is a complete set of 10 standards to meet in the court. He stated secondly certain properties are exempted for the green space. He gave an example of a store with a big green area, and they pay for their impervious area and their green area. They sell the store to a church, and the payment for the green area goes away because it is a church. The church has the exact same runoff, but the fee is changed, not on the basis of physical runoff, but on the name or type of the property. This is not wise and potentially not legal. There have been about five court cases that have lost for doing that. He stated within the fee structure the fees cannot be reduced, but as a City, the City can step out and say the City, not within the fee structure, wants to recognize certain kinds of properties that are an extreme benefit to the community. It has to be recognized not with user fee money and not within the rate structure. The rate structure has to say the more you pave the more you pay. He stated within that structure Aiken also exempts golf courses, large open spaces, tracks, etc. Certain kinds of properties can be categorically exempt if they, as a category, look different from a runoff signature on a per acre basis than any other kind of property. He noted that golf courses and parks do. The reason is very little impervious area and very big green space. What they could do to reduce their fee is to subdivide the pervious area to a different parcel and leave the rest green, and they would be exempt. He noted that they should be exempt or otherwise the fee on their acres and acres of green space would be ruinous to their business. He noted that the runoff from green space is not what causes the most problems.

Councilwoman Diggs asked if nonprofits would get a break. Mr. Reese stated no because being a nonprofit does not make a difference in the runoff on the property. He pointed out that if you have to look at the tax records to see what the property is used for, you should not exempt it from the stormwater fee. Utilities have to be paid by the measurement of use of the public system and use is measured by runoff.

Councilman Dewar asked regarding fee or tax, if the property owner decides whether what they are paying is a fee or a tax. Mr. Reese stated when the courts look at it to see if they think it's a fee or a tax, one of the things they look at is if the City is using a right-to-refuse service through the use of credits or not. He stated if the City has no credits, then the court will call it a tax. The City has no authority to levy a tax based on pervious area. The City does not have authority to charge a tax on the basis of anything other than property value. The City needs to provide credits.

Mr. Reese stated the other issue that came up is when one property has a house with a yard, and the other just has a yard with no house, just green space. The one with a house pays a fee because they have a house, but the vacant lot does not pay a fee because there is no house on the property. He asked if that makes sense. The same rain and runoff comes off the vacant lot as it does on the lot with the house. However, because there is no house on the lot, they don't pay a fee. A lot of utilities do not charge a property that has no development on it because there is no value being earned. It is not a business and no revenue is generated from it. Normally plain open space does not get charged in Aiken and also not in most other places.

Mr. Reese stated the last issue is a good number of developed lots without a water account never get a bill, because the fee is billed on the water bill and they don't have a water account. This is a big issue. He noted that the rain water does not stop if the water or sewer account is not on. He said that needs to be changed.

Mr. Reese noted that the matter of credits for actions that reduce runoff, such as detention ponds, exempting certain properties for the green space part of the charge, and developed lots without a water account not being billed for stormwater fees are issues.

Councilman Woltz asked about golf courses being open space. He pointed out that golf courses are constantly dumping water on the course. He said he would assume that golf courses would not percolate as well as property that is not dumping water on their property. He felt a golf course would have more runoff than the parkways. He pointed out that golf courses are for profit-businesses. He noted that if they are not percolating as well as parkways why are they compared to a park. Mr. Reese stated at this point we don't differentiate open space from open space. He said there is more difference between a forest and lawn, than from a lawn and concrete. However, right now under the rate structure we don't differentiate if it is a forest or field. If it is green and is not impervious, we lump it all together. We don't differentiate it. There are some places that differentiate the kind of open space. He said there is great flexibility in how you determine your charge. The way you do it is determine what is driving your cost. How do you measure that in the real world. Is that something where measuring it is more trouble than the extra money you would get. He pointed out way back, Aiken picked a very simple impervious gross. He said that of the about 3,000 stormwater utilities probably 65% bill only on the basis of impervious area, just paved area, not gross area, or green space. Probably about 30% are like Aiken, billing on impervious and green space because they are saying it is not just runoff from the paved area that causes our pipes to be a certain size; it is paved and green areas.

Mr. Reese then reviewed the impact of proposed changes for the stormwater fee on revenue. He said the recommendation is a two step process. First, make sure all eligible properties are billed and billed correctly. Second, change from the legacy methodology to the fixed methodology where we have the different ratio. He said in Step 1 there are 605 residences that are not paying a stormwater fee and 254 business lots not paying. Mr. Bedenbaugh pointed out that most of those do not have an active water account. Mr. Reese stated there would be a 12% increase in revenue by charging these parcels a stormwater fee. He noted that Step 2 would result going from the 5.7/units paved to 7.3/units, etc. changes would result in another 10% revenue increase. Just on the basis of making those two changes without changing anything else Aiken would go from about \$1.2M a year to about \$1.5M a year in collections. This would just be fixing the things that clearly need to be fixed. If we left the fee at \$5.42 and we fixed the two items, Aiken would gain about \$250,000 to \$300,000 additional revenue a year.

Council then discussed the proposed changes for the stormwater fee with one question regarding how long it would take to make the two changes. Mr. Reese stated it would probably take two months to make the two proposed changes.

Mr. Bedenbaugh then discussed the Step 2 change. He said currently stormwater is funded by the \$5.42/ERU baseline formula. The formula brings in about \$1.2M in revenue. That includes our staffing costs for stormwater, paying what we have borrowed to date through the various borrowing mechanisms. It does not include projects that we pay for through the Capital Projects Sales Tax. Based on the directive of Council in terms of our infrastructure program, we do have added costs that we foresee in the coming years of about \$2.2M. If we proceed with these projects, the cost would require a rate going from \$5.42/ERU to \$7.90/ERU. This is something Council needs to discuss as we move into the budget process as to what direction Council would like for staff to go. The proposed change would affect residential and non-residential. He pointed out that the City has had two rate increases since the program began in 1992. The initial rate was \$2.80. In 2003 the rate increased to \$3.22 for 12 years. Then in 2015 the rate was increased to the current \$5.42. Instead of doing it all at one time, we could phase the rate increase in at about 10% a year or any other percentage Council would like to set. The bulk of the cost for the increase is for the rehabilitation and repair of the existing infrastructure. It would not be building new infrastructure.

Councilman Dewar stated he had no problems with the rate structure as it appears to be rational. He noted that it appears Council may have to look at the rates more than every five years. He said in looking at the numbers, it appears that it should be an annual review. He said he hated to go to the taxpayer for a 20% increase. He felt Council should look at the costs and rates annually.

Mr. Bedenbaugh stated a lot of the 800 properties that Mr. Reese had mentioned are unoccupied without existing water service or they are a vacant wooded lot. The issue is collection for those parcels. He pointed out that if a person is a water customer and the bill is not paid, the City cuts the water off. However, if the property is a vacant lot and the City sends a stormwater bill and it is ignored, the mechanism of collection is more difficult. He said the fee could be put on the tax bill potentially, but there are some complications there. He said this is something staff is looking at.

Councilwoman Price asked if the suggested recommendation was to make an increase to those who are paying utility bills. Mr. Bedenbaugh stated one thing staff will do and come back with a recommendation to Council is how we can collect from parcels that do not currently pay a water bill. People who pay a stormwater bill are city residents that have an active water account. Councilwoman Price noted that some cities collect fees through the property tax bill. Mr. Bedenbaugh stated that is something staff could look to do. He said staff is not asking Council to make a decision today. He said this is information for Council as we begin the process for preparation of the fiscal 2019-20 budget.

Councilman Woltz stated it seemed to him that it would be good housekeeping to correct the errors that had been noted by Mr. Reese. Mr. Bedenbaugh stated that would not require Council action, but the GIS personnel could help identify those issues and those changes could be made. Mr. Bedenbaugh stated he would report to Council when that issue is taken care of. It was noted that correction would result in an increase of 20% to 24% for some businesses.

Mr. Reese pointed out that it is kind of standard understanding now around the country, that a fee of around \$8 is a sustainable stormwater fee, depending on how the ERU structure is set up. He said if an increase is not made shortly, the rate for an increase will be more, as the infrastructure needs will increase because of decay of the system. The earlier rehabilitation of the system is done the more the City will be able to keep the cost down.

Mayor Osbon thanked Mr. Reese for his presentation and information on our stormwater rates. He noted that staff will look at what can be done to close the loopholes now, and Council will discuss the stormwater rates when preparing the 2019-20 budget.

ELECTION DISTRICT PLAN

4-2-1 Plan

6-1 Plan

Council Districts

Mayor Osbon stated the next item is a discussion of the Election District Plan.

Mr. Bedenbaugh stated Councilman Dewar has asked that we discuss whether City Council would consider changing our election district plan from the current 6-1 plan [Mayor elected at-large and six council members elected from single member districts] back to a 4-2-1 plan [Mayor elected at-large, two council members elected at-large and four single member districts]. The 4-2-1 plan was in effect from the early 1990s until 2013, when the 6-1 plan was implemented.

The implementation of the 6-1 plan initially came about after a November, 2011 referendum passed. The statistics were 931 in favor and 653 opposed. It was a 59 to 41 margin. Redistricting was in 2012 and was passed by Council in 2013. The first election that we had under the current 6-1 Plan was in November, 2013. Everyone on Council now has been elected under the current 6-1 Plan. With the 6-1 Plan versus the 4-2-1 Plan, under the 6-1 Plan each voter in the city can elect two of the seven seats, a single

member Council person and the Mayor. Under the 4-2-1 Plan, each voter elects four seats total, including the Mayor, the two at large Councilmembers, and their single-member district. The sense of the majority of Council at the time to switch to a 6-1 Plan was that after the 2010 census South Carolina was covered by Section 5 of the Voting Rights Act which required jurisdictions such as the City of Aiken to submit their voting plans to the U.S. Department of Justice for pre-clearance. Since 2011 the U.S. Supreme Court has struck Section 5 of the Voting Rights Act. However, we are still covered under Section 2 of the Voting Rights Act. We do not have to submit to the Justice Department for pre-clearance, but the Justice Department does reserve the right to come to the jurisdiction and potentially litigate with us if they believe what we are doing is unfair to the citizens. He said that is the issues before Council. He said Councilman Dewar had asked that Council discuss the matter and whether Council would want to consider going back to the 4-2-1 Plan or whether Council is satisfied with the current 6-1 Plan.

Councilman Dewar stated Council all supported the 6-1 Plan at the time. He said he thought they were told that if we did not adopt the 6-1 Plan we would be sued by the Justice Department. Council chose to go to the 6-1 Plan, and that was the right thing to do. He said he felt the 6-1 Plan diluted the power of the voter because now the voter elects two members out of the seven members of Council as opposed to four out of seven under the 4-2-1 Plan. He said he felt it was time to take a look at returning to the 4-2-1 Plan because it does increase the power of the voter. He said he would like to get a sense of Council as to whether or not Council feels we ought to consider going back to a 4-2-1 Plan. The process is if we bring it to Council and Council votes not to go back to a 4-2-1 Plan, then the citizens would then know what the process would be if there was a sense in the community to go back to a 4-2-1 Plan to increase the power of the voter. He said he had only discussed this matter with one other Councilmember over the past year. He said he had not discussed it with anyone else. He said he felt it would be the right thing to do. He said he would like to see Council vote on the matter even if it is defeated. In that process then if there was interest in the community in putting the matter on the ballot, the community could do it formally with a process.

Mayor Osbon pointed out that in 2011 there was a referendum to go to a 6-1 Plan, and it passed. He said he supports the 6-1 Plan. He asked why Council would bring the issue to a vote if there was not a majority of Council who supports going back to a 4-2-1 Plan.

Councilman Dewar stated if Council voted against considering a 4-2-1 Plan, then if the community wanted to vote on a 4-2-1 Plan, there is a way to do it.

Councilwoman Gregory stated she sees where Councilman Dewar is coming from. She said, however, she was wondering why we would want to go down that route. She was concerned that we might run into some litigation if we wanted to go back to a 4-2-1 Plan.

Councilman Dewar stated that in 2011 Council felt that under the situation that a 6-1 Plan was the right thing to do. He said the issue is would we still preserved two minorities on Council, and we would preserve two minorities on Council. It clearly was done when we went to the 6-1 Plan, and it would be done on a 4-2-1 Plan. He said we have always had two minority members on Council for the past twelve years.

Councilwoman Price stated several people have worked through this. She pointed out that William Clyburn was an at large minority member of Council. She noted that they have lived as at large members, in the 6-1, and in the 4-2-1. She pointed out that the 6-1 Plan was voted on by the city residents and was approved by the voters. She wondered why we would want to go back down the road of Council reconsidering what the voters decided on. She felt six years under the 6-1 Plan is a short time. She said she did not understand why we would want to revisit the matter. She pointed out that James Gallman, of the National NAACP, and Eugene White with the local NAACP, are present and they have lived with this matter for years.

Councilman Dewar asked if Councilmember Price was saying that if we went to a 4-2-1 Plan that it would be unfair to anybody racially in this community. He said if that is the way Councilmembers and citizens feel, he would surrender. He said he does not agree with them. He pointed out that it is a numbers game. He said it is a numbers game that comes out of Columbia. He said we have four districts that are apportioned to the point

so that in Districts 1 and 2 there are enough minority voters to insure their election. He said he would not be proposing the change if he felt it was a racial matter.

Councilman Woltz stated he also supports the 6-1 Plan. He said he felt it was the fairest thing for everyone. Under the 4-2-1 he felt some special interest group could control some of the voting.

Ms. Ann Willbrand pointed out there will be a census taken next year, and there will be new numbers in two years. She wondered why Council was discussing this now when we are looking at old numbers. She said she liked the 6-1 because she has a direct contact with a specific point person and the districts are smaller which means each Councilmember is responsible for fewer people. When you get in the at-large situations, like North Augusta, you have a situation where the at-large people are basically the jack-of-all-trades and master of none because they don't represent any constituency.

Councilman Dewar stated he did not want to press the matter if it is going to come across as a dilution of racial power in the City of Aiken which he does not agree with at all. He said he would never propose it if he felt that way. His basis is increasing the power of the voter. He felt it is more powerful to vote for four of the seven members than it is to vote for two of the seven members. He said if people don't agree with him that is fine.

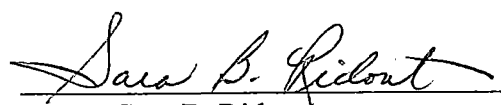
Representative William Clyburn pointed out that 44 years ago he was on City Council. He said in principle he agrees with Councilman Dewar. He said he hoped that Councilman Dewar will agree that changing the voting districts would not be the best thing. He pointed out that the citizens are satisfied, things are going well and things are improving. He said the race relationship is good so why would we want to disturb that. He asked that we try to keep our good relationships going and keep what the citizens approved.

Councilman Girardeau stated he felt it was good to discuss the matter. He said he had learned through the discussion why we are here and where we have been. He said he hoped we are getting better, but he felt it was worth discussing the matter and he had learned from the discussion.

Mayor Osbon noted that a lot of people had showed up for the discussion as it is important to a lot of people. He said he appreciated all the people coming out and being a part of the discussion and expressing their feelings on the matter and how important this issue is. He said those present have shown Council how the community feels on this matter. He pointed out that Council had shared with those present how they feel about the matter also.

Mr. Geoffey Alls stated he had listened to what Congressman Clyburn had to say and what Councilman Dewar had to say. He said in light of the diminishing number of African-Americans in the city, he felt that if we made a change at this point, it would seriously reduce if not eliminate the possibility of Councilwomen Diggs and Price being re-elected. He said we can see what the new census says and go from there. If we were to go to a 4-2-1 it would have a significant impact on Districts 1 and 2 compared to the other districts based on population of the city.

There being no further business, the work session ended at 6:10 p.m.


Sara B. Ridout
City Clerk