

Aiken City Council Minutes

March 18, 2002

Work Session with Aiken Corporation

City Council Present: Mayor Cavanaugh, Councilmembers Clyburn, Cuning, Price, Smith, Sprawls and Vaughters.

Aiken Corporation Present: Wade Brodie, Mike Anaclerio, Tim Simmons, Buzz Rich, Sam Erb, and John Wertz.

Others Present: Roger LeDuc, Bill Huggins, Gary Smith, Anita Lilly, Sara Ridout, Karen Daily of the Aiken Standard, and Josh Gelinis of the Augusta Chronicle, and 26 citizens.

The Aiken City Council held a joint work session with the Aiken Corporation to discuss issues regarding the proposed \$3.5 million loan to the Aiken Corporation and the proposed loan of \$935,000 to the Aiken Community Playhouse in connection with the building constructed on Newberry Street.

Mayor Cavanaugh called the meeting to order at 6:30 P.M. He stated the purpose of the meeting was to try to come to an agreement on issues discussed at the last Council meeting regarding the loans to the Aiken Corporation and the Playhouse.

Mayor Cavanaugh pointed out the Aiken Corporation had done a tremendous job and had worked on many projects in good partnership with the city. He asked Roger LeDuc to show some pictures of some of the projects that the Aiken Corporation had accomplished.

Mr. LeDuc gave a brief history of the Aiken Corporation stating it began in the mid-1990's when the city went through the strategic planning process. Under the Aiken 20/20 program \$3.5 million was raised by the community and \$600,000 went to the Aiken Corporation helping to establish economic development. He reviewed some of the projects of the Aiken Corporation: \$15,000 for Carriage House as loan to develop apartments on second floor; houses on Highland Park Drive; Parker project-parking spaces and condominium development and landscaping at rear of buildings on Laurens Street and Richland Avenue; Washington Group and Community Playhouse building on Newberry Street; two houses on Richland Avenue W. restored as single family residences; Chamber of Commerce on Richland Avenue W.; and spec building in Summit Business Park.

Mr. LeDuc presented a copy of a proposed ordinance for the \$3.5 million loan to the Aiken Corporation. He pointed out the proposed ordinance has the changes that Council adopted at the March 11, 2002 meeting which changed the interest rate and changed the loan from the banks. The other document to be discussed is the loan for the Community Playhouse and the proposed ordinance has changes which Council adopted at the March 11 meeting.

Mr. LeDuc stated the discussion at the last Council meeting was whether the loan should be for 4 ½% or 5%. The proposed ordinance sets the interest at 5%. He pointed out when the city makes loans internally it charges interest to be sure the city gets the same amount they would have gotten from the money had it been invested with the South Carolina Investment Pool. He said initially the city would take the difference between what they got from the State Investment Pool and what the city would receive from the Aiken Corporation and it would go into the General Fund. Currently the interest rate with the S.C. Investment Pool is 2.29%. At the last Council meeting Council decided that the difference between the 2.29% and the 5% interest (whatever interest rate charged) would be used to pay back the loan agreement with the Playhouse. He said the difference between the 4 ½% and 5% interest rate is that at 4 1/2% the loan will be paid back about 9 or 10 months quicker. The difference to the Playhouse over a 5 year period is about \$75,000. There is a significant difference in paying back and reducing the amount of the loan to the Playhouse at 5% interest.

Mr. Wade Brodie, Chairman of the Aiken Corporation, stated since the procedure had changed that any interest rate spread would go to the city to pay off the Playhouse loan, paying the interest first and then the principal, that the Aiken Corporation did not have a problem with the 5% loan since it would pay off the Playhouse loan earlier. He said the Aiken Corporation made a commitment to the Playhouse two years ago that they would not leave them with a lot of debt. He said this would help. He asked if a statement could be added that when and if the Playhouse loan is paid in full that the one-half percent would revert to the Aiken Corporation which in turn will be used to make payments on the mortgage. He said that way neither the city nor the Aiken Corporation gets any advantage as it all goes back into the project. This would mean that the interest would go to 4 ½% at the time the playhouse loan of \$935,000 was paid in full.

It was pointed out the agreement would be that once the Playhouse loan is paid that there would not be an extra one-half percent interest, but the city would continue to receive 1% interest over the S.C. Local Government Investment Pool interest rate. Mr. Brodie stated he could see renegotiating the loan in five years as the interest rates may change.

Councilman Cunning was concerned about the difference in interest rates being used to pay interest and principal on the Playhouse loan. He was concerned that this would not be going to pay down the principal on the city's loan on the Washington Group's portion of the building. He was concerned that paying interest on the Playhouse loan and principal and not paying towards the Washington Group loan was more risk to the city. He said he was fully in support of the interest carry of the loan for the Playhouse, but if the Playhouse is able to raise the principal amount why should the city assume that risk. He pointed out once the Playhouse principal is paid there would be no incentive for them to continue to raise funds to pay off the loan.

Councilman Smith stated he felt using the difference in interest from the Aiken Corporation loan would get the Playhouse loan out of the way quickly and would be a fair distribution. He said when that is done, the loan can be renegotiated to try to get the balance down for the Aiken Corporation.

Mr. Mike Anaclerio asked why the city would charge interest for the Playhouse loan. He pointed out they were raising funds for a building that will be owned by the city.

Councilman Smith pointed out he felt it was important that city funds that are used for loans are charged interest as if they are invested in the State Investment Pool. He pointed out the city pays interest when it loans funds internally so it was only fair to charge interest when loaning funds to others, otherwise, there may be other requests for interest free loans.

Mr. LeDuc summarized the discussion and said with the consensus of the, that at the Council meeting on Monday, March 25, 2002, the ordinance regarding the loan to the Aiken Corporation for \$3.5 million would contain the following in Section 2:

The minimum interest rate for this loan shall be 5% and the maximum interest rate for this loan shall be 7.5%. Interest shall be applied by the City first to reimburse the city for the interest its various funds would have received while investing in the South Carolina Local Government Investment Pool. Interest received in excess of the amount earned by the South Carolina Local Government Investment Pool shall be applied to the principal and interest of the loan made by the City of Aiken to the Aiken Community Playhouse as set forth in the ordinance. Once the loan has been paid in full if the interest rate is still under 4% within the S.C. Local Government Investment Pool any difference in funds up to the 5% level would be applied back to the principal on the Aiken Corporation loan.

Mr. LeDuc stated the next item for discussion was the ordinance which lends the money to the city to pay off the \$707,993 for land and site prep, the architectural and engineering fees, difference in the lobby and hospitality areas and other construction expenses and also for the loan of \$935,000 to the Playhouse. He said the only proposed change is listing where the \$50,000 which is not covered by the Aiken Corporation will come from. The loan will be for 5 years. The funds are not just for construction of the Playhouse, but also for equipping of the Playhouse. He said Larry Morris will be assigned as

Construction Manager for the Playhouse project. He will be holding weekly meetings at the Playhouse involving the contractor, the architect, the city and if necessary a representative from the Playhouse. The city would be authorized to make any changes up to \$1,000 without having to go back to the Playhouse. To cover any possible changes in the \$935,000. The Playhouse has a \$50,000 contingency. Any changes over \$1,000 will have to go back to the Playhouse for approval. The city staff will make a monthly written report to City Council on the status of the project. If there are any changes which would make a difference in the cost of the building, a request will be made to City Council before approval is made.

Mr. Brodie stated he would also like for the Aiken Corporation to be involved in the meetings regarding the Playhouse.

Mr. LeDuc stated another item which needs to be discussed is the question which has been raised as to what happens when Aiken Corporation finally gains total control of the Washington Group side of the building when the loan is totally paid off 15 to 17 years from now. In the ordinance for the loan to the Aiken Corporation for \$3.5 million in Section 1 the sentence reads: "As further consideration for this loan, the Aiken Corporation will enter an agreement with the City of Aiken that upon payment in full of the principal balance of this loan, the Aiken Corporation will cooperate with the City Council of the City of Aiken to determine how the revenue derived from this building, if any, will be invested."

Mr. LeDuc stated the key word is "cooperate with City Council."

Mr. Brodie stated in looking back over the projects that the Aiken Cooperation has been involved with the city, he felt that Council had been working with the Aiken Corporation and each had been cooperating. He said the Aiken Corporation had accomplished the projects with the cooperation of the city.

Councilman Smith stated he had gone back and read the Council minutes and the by-laws of the Aiken Corporation. He said they had done a good job and had been cooperative. He said his concern was that at some point in the future the Aiken Corporation will have a very large capital influx and probably none of the present people will be around at that time. His said his concern was that there will be a lot of funds and different Council and different Corporation members and cooperation is a loose word for that much money. He said previously he had used the word "control" without modifiers and it made it seem as though Council would be the control and the Corporation could not do anything without Council's approval. He felt there should be some kind of compromise language where the Aiken Corporation could still have free reign to create and think about projects, but any projects that would be funded from this \$3.5 million of the Aiken Corporation should have City Council approval. He said he was concerned about the future.

Councilman Cuning stated he felt there could be a statement that the funds would be set aside in an escrow account and that both groups would have to mutually agree on what the funds were to be used for before the project could go forward that the groups would come to some agreement.

This matter was discussed at length with some members feeling that the "control" would stymie the Aiken Corporation so that it could not go forward with projects. They felt it was important to keep Council informed of the work of the Corporation. It was pointed out that two members of Council are on the Aiken Corporation Board and have voting rights. It was also pointed out that Council has some control over the Aiken Corporation when the Corporation needs money from the city or services.

It was suggested that the Corporation could go to a super majority vote on any projects instead of a simple majority. That would mean that with a board of 9 members that 6 members would be required to approve a project instead of 5. It was suggested that if Council is going to take control over the projects and the funds they might as well disband the Aiken Corporation.

Councilman Cunning stated the suggestion was that projects supported with income from the \$3.5 million be brought to Council and Council and the Aiken Corporation would have to mutually agree on the development of these projects. He said he did not feel this was too much control.

Mr. Tim Simmons asked Mr. LeDuc to review the original purpose of the Aiken Corporation.

Mr. LeDuc stated when the Aiken Corporation was set up in the mid-90's there was a lot of discussion as to whether Council should or should not have control. He stated corporations have been set up both ways. In the mid-90's Council discussed the same problem Council is discussing now. He said, at that time, Council decided because of the ability of the Corporation to do projects quickly and possibly to get outside funding sources from foundations and grants that the city may not be able to get the Corporation was set up. He did point out however that those discussing the matter today probably will not be around when the loan is paid off. He stated the by-laws state that members can only serve 9 years so the original members will change shortly so the concern is what will happen 15 years from now.

Councilwoman Price stated various projects affect different areas so there are different feelings on the projects. She said whatever policy is decided must be good for every situation. She said presently Council and the Corporation get along and all want to do the right thing. She suggested what would be wrong with trying to work together and two bodies to agree.

Mr. Brodie suggested that why have the Corporation if they can't do what they were set up to do and questioned the effect of outside control on the group's 501(c) (3) status. He suggested that they would not be having the discussion if it had been up to the city to construct the building on Newberry Street. He said one reason the Corporation was created was that it could do things that the city can't do.

Councilman Smith stated he had suggested the following language. "As further consideration for this loan the Aiken Corporation hereby agrees that upon payment in full of the principal balance of this loan that they will cooperate with the City Council of the City of Aiken on how the revenues derived from this loan, if any, will be invested. Aiken Corporation will submit a detailed proposal for any planned investment to the Aiken City Council for its approval." Mr. Smith stated he did not feel this was telling the Aiken Corporation what to do, but was asking for information.

Mr. Tim Simmons pointed out that the only way the Parker project was accomplished was through the work of Wade Brodie spending 20 hours a day working with the property owners. He said it was wonderful when the Aiken Corporation and the citizens try to make something happen. He said the city would have to remain a resource for the Aiken Corporation to be successful. He said the Aiken Corporation was set up per the by-laws so that the Aiken Corporation could do a lot of things that the city could not do. He said a balance at that point was that 2 members of Council would serve on the Aiken Corporation Board. He said the checks and balances are there to insure that only sound project go forward regardless of who serves on the board. He said he sees no reason to change that at this point. He said a change could interfere with the separate corporate entity of the Aiken Corporation separate from the city and with the tax status.

There was much discussion about control of funds and projects of the Aiken Corporation. It was suggested that Council was talking about control of the \$3.5 million at this time, but it was felt they would be asking for control over any other funds in the future.

Mr. Brodie stated the feeling he was getting from the Board members was that Aiken Corporation does not want Council to have control over the funds. The only way not to have the control is to take the city out of the picture except for the \$1.4 million and bring the banks back into the loan.

Councilwoman Clyburn suggested the following: "As further consideration for this loan, the Aiken Corporation hereby agrees that upon payment in full of the principal balance of

this loan that it will cooperate with the City Council of the City of Aiken on how the revenues derived from this loan, if any, will be invested. Aiken Corporation will submit a detailed proposal for any planned investment to the Aiken City Council for discussion and input on all proposals.

There seemed to be a consensus of the group on the proposed wording. The group then discussed at length whether the Aiken Corporation's voting would require a simple majority or a super majority.

Mr. LeDuc summarized the discussion. He said the language agreed upon states the Aiken Corporation would need to have a super majority (2/3rds vote) to approve any project that would use funds from any money that is derived from this project in the future and City Council would still have the opportunity to review, discuss and have input on the project.

Councilwoman Price was concerned about use of the building and discussion on that matter. It was stated that the Memorandum of Understanding with the Playhouse still has to come before Council for approval.

\$27,948.89 is the exact payment to the City each month from LED from the Washington Group. We will pay interest first and then principle. LED will keep \$1,117 for a reserve fund. LED will also pay \$1,003 to the City for the land lease.

Mr. LeDuc stated some of the concerns he had heard. He said corporations like the Aiken Corporation have been able to accomplish many, many things. He said one of the concerns and something the Aiken Corporation has to wrestle with is that corporations like this become a life of their own as they become affluent and get more money. They get managers and staff. At some point in time as more and more development takes place the cooperation of the city and the Aiken Corporation has to be considered if it is to be successful. He said there have been tremendous successes. He also pointed out that the Aiken Downtown Development Association is under the umbrella of the Aiken Corporation and they have done a number of things. It is not just the Aiken Corporation, but also ADDA. He said a lot of good has been gained, but there has to be caution in the future as to where it is going and cooperation is essential as the city and the Corporation work together.

The meeting adjourned at 8 P.M.

  
Sara B. Ridout  
City Clerk