

REGULAR MEETING

November 25, 2002

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

Others Present: Roger LeDuc, Bill Huggins, Gary Smith, Ed Evans, Larry Morris, Anita Lilly, Wendell Hall, Richard Pearce, Sara Ridout, Karen Daily of the Aiken Standard, Josh Gelinas of the Augusta Chronicle and 105 citizens.

Mayor Cavanaugh called the meeting to order at 7:35 P.M. Mayor Cavanaugh led in prayer, which was followed by the pledge of allegiance to the flag.

APPROVAL OF AGENDA

Mayor Cavanaugh stated Council needed to approve the agenda. Councilwoman Price moved, seconded by Councilwoman Clyburn and unanimously approved, that the agenda be approved.

MINUTES

The minutes of the work session of November 4, 2002 and the work session and regular meeting of November 11, 2002, were considered for approval. Councilman Cuning moved that the minutes be approved as written. The motion was seconded by Councilman Smith and unanimously approved.

RECOGNITION

Boy Scouts

Troop 121

Mayor Cavanaugh recognized members of Boy Scout Troop 121 from St. John's Methodist Church, who were present to observe a Council meeting.

BOARDS AND COMMISSIONS

Appointments

Bryd, Wilkins

Bolton, Ronny

Brohl, Kay

Holland, James

Reynolds, Bill

Hall, Miles

Woltz, Ed

Brodie, Brad

Planning Commission

Brown, Marilyn

Environmental Committee

Boylston, Lee

Board of Zoning Appeals

Brooks, Robert

McGhee, Beatrice

Historic Preservation Commission

Sanders, Bernice

Radford, Sally

Accommodations Tax Committee

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

Mr. LeDuc stated Council has 27 pending appointments to boards and committees of the city before the end of December and ten appointments are presented for Council's consideration.

Councilwoman Vaughters has recommended appointment of Wilkins Byrd, of 434 Berrie Road SW, to the Planning Commission to replace Ronny Bolton. If appointed the term would expire December 1, 2004.

Councilman Sprawls has recommended reappointment of Kay Brohl, of 48 Cherry Hills Drive, to the Planning Commission with the term to expire December 1, 2004.

Councilwoman Clyburn has recommended reappointment of Marilyn Brown, of 660 Camellia Street NE., to the Environmental Committee with the term to expire December 31, 2004. She has also recommended reappointment of James Holland, of 328 Newberry Street NW, to the Planning Commission with the term to expire December 1, 2003.

Mayor Cavanaugh has recommended reappointment Lee Boylston, of 108 Sweetbay Drive, to the Board of Zoning Appeals with the term to expire December 1, 2005. He has also recommended reappointment of Bill Reynolds, of 505 Colleton Avenue SE, to the Planning Commission with the term to expire December 1, 2003.

Councilman Smith has recommended appointment of Miles Hall, of 149 Double Eagle Court, to the Planning Commission to replace Ed Woltz. If appointed the term would expire December 1, 2004.

Councilwoman Price has recommended appointment of Robert Brooks, of 157 Fairfield Street NE, to the Historic Preservation Commission, to replace Beatrice McGhee with the term to expire December 31, 2004. She has also recommended appointment of Bernice Sanders, of 1355 Congress Drive, to the Accommodations Tax Commission, to replace Sally Radford with the term to expire March 25, 2004.

Councilman Cunning has recommended appointment of Ed Woltz, of 524 York Street SE, to the Planning Commission to replace Brad Brodie with the term to expire December 1, 2004.

Mr. LeDuc pointed out that the ordinance regarding Historic Preservation Commission appointments calls for allowing the public opportunity to comment on any appointments.

Mayor Cavanaugh asked if any one would like to make any comments on the appointment of Robert Brooks to the Historic Preservation Commission. There were no comments.

Councilman Cunning moved, seconded by Councilwoman Price, that the following appointments be made: Wilkins Byrd to the Planning Commission to replace Ronny Bolton with the term to expire December 1, 2004; Kay Brohl reappointed to Planning Commission with the term to expire December 1, 2004; Marilyn Brown reappointed to the Environmental Committee with the term to expire December 31, 2004; James Holland reappointed to the Planning Commission with the term to expire December 1, 2003; Lee Boylston reappointed to the Board of Zoning Appeals with the term to expire December 1, 2005; Bill Reynolds reappointed to the Planning Commission with the term to expire December 1, 2003; Miles Hall appointed to the Planning Commission to replace Ed Woltz with the term to expire December 1, 2004; Robert Brooks appointed to the Historic Preservation Commission to replace Beatrice McGhee with the term to expire December 31, 2004; Bernice Sanders appointed to the Accommodations Tax Committee to replace Sally Radford with the term to expire March 25, 2004; and appointment of Ed Woltz to the Planning Commission to replace Brad Brodie with the term to expire December 1, 2004. This motion was approved by a vote of 6 in favor and 1 opposed. Councilwoman Vaughters opposed the motion.

REDISTRICTING – ORDINANCE 11252002VotingDistrictsCity Council DistrictsElectionCouncil Districts5-1-1 Plan4-2-1 Plan

Mayor Cavanaugh stated this was the time advertised for second reading and public hearing on an ordinance to approve a redistricting plan.

Mr. LeDuc read the title of the ordinance.

AN ORDINANCE CALLING FOR A REFERENDUM PURSUANT TO SOUTH CAROLINA CODE SECTION 5-15-30 ON THE QUESTION OF WHETHER THE METHOD OF ELECTION FOR CITY COUNCIL SHOULD BE CHANGED FROM FOUR MEMBERS ELECTED FROM SINGLE MEMBER DISTRICTS AND TWO MEMEBERS ELECTED AT LARGE TO FIVE MEMBERS ELECTED FROM SINGLE MEMBER DISTRICTS AND ONE MEMBER ELECTED AT LARGE.

Mr. LeDuc stated for the last couple of months City Council has been discussing a redistricting plan for the City of Aiken. Currently the City is under a 4-2-1 plan, and, due to the population increases we experienced in the 90s, we now need to redraw the lines so that there would be equal representation in each of the districts. Last year, the City hired Jim Holly, who worked on the 1988 4-2-1 plan and the redistricting plan that was completed after the 1990 census. He received a plan from the State of South Carolina which redrew the lines to represent the 4-2-1 plan, which was presented to City Council at the September 23, 2002 work session. At that meeting, City Council directed staff to place this plan on the next work session agenda. Council also asked that the plan be shown to the NAACP and other agencies that may have interest in reviewing it. At the October 14 City Council work session, the NAACP urged City Council to consider a 5-1-1 plan which they had drawn up. This plan would give District 1 a 59% and District 2 a 56.9% African-American voting population compared to the 4-2-1 plan, which would give each of the districts approximately 51.6%. The plan that Council approved after the 1990 census gave District 1 a 57.2% and District 2 a 52.6% African-American voting population.

If Council passes the 5-1-1 referendum, Council would in essence be giving the voters the opportunity in an upcoming referendum to choose whether they want to approve having 5 single member districts versus the current 4 districts for the City of Aiken. If Council approves this ordinance, the city will send the referendum question to the Department of Justice for their approval and also ask the State to draw up a 5-1-1 plan for review. Before the city could schedule the referendum, the Department of Justice will have to approve the question that would go before the voters. If the 5-1-1 plan were approved by the voters, then we would send the Department of Justice the implementation schedule and the redistricting plan map for their review and approval. If the voters defeat the 5-1-1 referendum, City Council would need to send the Department of Justice the 4-2-1 plan or develop an alternative plan for the citizens to approve.

City Council approved a 5-1-1 ordinance on first reading at the November 11, 2002, meeting which will allow the citizens to vote on this plan. This is second reading and public hearing of an ordinance to approve a referendum for a 5-1-1 redistricting plan for the voters' approval.

Mr. Jim Holly, Attorney, was asked to give an overview of the process for redistricting. An overhead of a proposed 5-1-1 plan by the NAACP was shown for review, as well as the voting percentages, which had been stated to be 59.29% African-American voting population for District 1 and 57.16% for District 2. Mr. Holly pointed out if Council approves the ordinance and the Department of Justice pre-clears it, there would be a referendum with the question of whether to change from a 4-2-1 plan to a 5-1-1 plan. There would be no map tied to the referendum. If the referendum passes, Council would

then draw a 5-1-1 plan and submit that to the Department of Justice for pre-clearance. He said the State Demographer was asked to look at the plan proposed by the NAACP and a concern they had about the plan under the applicable criteria was that the Highland Park neighborhood was divided with some being in District 2 and 3. It was suggested that the neighborhood not be cut and a change was proposed in that area. With the change to the Highland Park area, the standard deviation would be about 9.5%, with District 1's voting population staying the same and District 2 increasing to 60.37%. A proposed 4-2-1 plan was also shown to those present. He said the draft plan was to bring the deviation between the most populated district and the least populated district below 10%; however, it brings the minority percentages in Districts 1 and 2 down to about 51 to 52%. He pointed out a positive factor was that the City of Aiken grew by about 25%. The minority population in the city grew by the same number. However, there are fewer minorities in Districts 1 and 2. The growth has been throughout the city. He pointed out the community is more diverse, but it makes it more difficult to keep Districts 1 and 2 with minority voting age populations as a percentage well above 50%. He said a result of that was to enlarge Districts 1 and 2 to bring in more people.

At the request of Mayor Cavanaugh Mr. Holly then reviewed the reason and the process for the city having to redraw the district lines because of the new census figures and increase in population and the one man, one man vote rule and assuring that minorities are represented on Council.

Mr. Holly then reviewed a proposed time line if Council adopts the ordinance for a referendum for a 5-1-1 plan. He said by December 9, 2002, a package will be submitted to the Department of Justice under the Voting Rights Act to ask them to pre-clear the ordinance calling for a referendum. The Justice Department would have 60 days to respond to the request. If it takes 60 days the results would be received about February 10, 2003. Based on the ordinance and state election law, the referendum would have to be held between 60 and 90 days after the letter from the Justice Department. The suggestion is that the referendum be held between April 11 and 30, 2003. If the referendum is favorable, and the change is approved for a 5-1-1, then Council has to pass an ordinance adopting a specific 5-1-1 plan. That should be accomplished by the end of May for submittal to the Justice Department. If the Justice Department takes 60 days the results would be received by July 31, 2003. The City Code establishes by ordinance the opening of filing for city elections for City Council as the first Monday in August. He said the time frame is short, but possible. He then reviewed the time line if the referendum is not approved by the citizens and the options available. He also stated if a 5-1-1 plan is approved Council will have to approve an implementation plan to cause the least amount of disruption in the terms of present Council members.

Mayor Cavanaugh asked Mr. Holly to comment on the possibility of a 4-2-1 plan being pre-cleared by the Justice Department. Mr. Holly stated it was more likely that a plan with increased minority percentages would be pre-cleared than one that decreased the percentages. He said he felt there was less than a 50-50% chance that the Department of Justice would pre-clear the 4-2-1 plan as revised on first reading. He said however there were some strong arguments in favor of a 4-2-1.

The public hearing was held.

Mr. Michael Anaclerio, 306 Colleton Avenue, stated he felt a 4-2-1 would better serve the city than a 5-1-1 plan, because the 5-1-1 would condense the majority of the black population in Districts 1 and 2. He said he felt the intent was to have a broad distribution of all people throughout the city. He said he felt under a 4-2-1, even with the reduction to 51% and 52% of minority voting population, that a viable candidate in the black community could be elected even at large. He said any candidate has to start early and make themselves known in the community to get elected. He was also concerned about Councilmembers just being concerned about the needs of their district rather than the needs of the city as a whole with a 5-1-1 plan.

Representative Skipper Perry stated Aiken is a unique town and he pointed out the items that make Aiken unique. He stated for over 20 years Aiken has elected African-Americans at large to City Council. He pointed out Columbia, SC has a 4-2-1 plan which

was just approved last year. He felt a 4-2-1 plan better serves Aiken. He said there are two members of Council who care about the whole city not just their district. He said under the 4-2-1 voters in Aiken have the opportunity to vote for 4 Councilmembers—the two at-large, the Mayor and their district representative. He said this gives the voter the opportunity to vote for the majority of the Councilmembers, and yet the plan still protects the minorities. He felt the 4-2-1 plan was the plan that would best serve Aiken.

Representative Bill Clyburn, 664 Edrie Street, stated the 4-2-1 plan had been effective in Aiken in the past. He said, however, there has been a pattern of voters voting in a discriminatory way. He said he felt the 5-1-1 plan would be better for Aiken as it would ensure that there is diversity on Council. He asked that Council keep Aiken moving forward and do what is best for all of its citizens and support a 5-1-1 plan.

Mr. David Walker, 978 Old Jordan Road, stated he owned property in the city. He said he represents not only the NAACP, but also represents the concerned black clergy of Aiken County, the 4 sororities of Aiken County and the 4 fraternities of Aiken, and other city groups. He said the 5-1-1 plan is what the African-American community feels is needed. He said the 4-2-1 plan had served Aiken well. He said, however, the percentages in 1990 were bigger than under the proposed 4-2-1 plan. He felt there was no fairness or justice in that. He said the 5-1-1 plan gives the minorities the opportunity to elect a person of their choosing regardless of party or race. He said he was not sure that a minority could win with only a 51% of minority voters in the district. He said he was concerned about the future and ensuring that minorities could be elected to Council. He said the minorities have been able to work with the city and work out any problems. He encouraged Council to adopt the 5-1-1 plan for the best interest of the people of Aiken. He said they were not asking for another seat on City Council but only that minorities have the percentage to give the opportunity to elect a person of their choosing.

Dr. Bauer Vaughters, 227 Homestead Lane, stated he felt the 5-1-1 plan purposefully segregates people. He was opposed to the 5-1-1 plan and stated he hoped Council had an alternate plan after the referendum is completed.

The public hearing was closed and Councilmembers made comments.

Councilwoman Clyburn pointed out any plan would appear to be a segregated plan. She pointed out the 4-2-1 attempts to put a minority district into place. She reviewed the comments made by various Councilmembers at the last meeting. She stated the recent survey by USC-Aiken showed that Aiken voters voted along race and party lines about 80% of the time in this last election. She also pointed out that not all voters vote in an election, so even if there is a 51% minority voting population it may be difficult to get elected. She pointed out she had never voted against proposed housing projects based on the fact that they would be middle or high income owners and may not be voting for her. She had voted against projects when people living in the community were opposed to them. She stated until a couple of years ago the north or west side of Aiken has not received the attention from developers that the south had received. She stated the Justice Department had called her about annexations to the city and the fact that this may dilute the voting strength of minorities. She pointed out the 5-1-1 plan does not give the minorities another district, but gives another district in the white community and addresses the issue of commonality. She stated the proposed 4-2-1 plan does not have commonality. She said the 5-1-1 makes the districts smaller. She stated a Councilmember needs to work with the rest of Council and see what is going on in the rest of the city in order to be effective. She urged Council to consider the 5-1-1 plan and stated it is an attempt to keep diversity.

Councilman Cuning stated he felt the 4-2-1 plan would be the best plan for the overall citizens of Aiken and he could not support the 5-1-1 plan. He said he hoped voters did not vote because of the color of skin, but he did feel it was important which party a person belonged to.

Councilman Smith stated at the last meeting he had changed his mind regarding the 4-2-1 plan after review of the circumstances. He stated he felt 51.6% is too low of a percentage

to ensure a minority is elected. He felt the people should decide whether the city has a 5-1-1 plan.

Councilwoman Price stated she did not want the city to go backwards. She stated it was not easy for her to win election, and if it had not been for some influential support she felt she would not have won. She said Councilmembers today work together for the whole city and not just for their district. She said in working together Council has not mentioned district, race nor party, but looks at the issues. She said Aiken is a progressive city and includes all people. She asked that Council think about the future. She said the present minorities will not always be on Council, and she was concerned about those who may follow the present Councilmembers and ensuring that minorities will be represented.

Councilman Sprawls stated he felt it was important to have two at large representatives and that he would support the 4-2-1.

Councilwoman Vaughters stated she felt the 4-2-1 plan was a fair plan and that it was important that every citizen can vote for a majority of City Council. She felt the plan gave opportunity for citizens to run for Council that might not otherwise ever run, and she felt minorities could be elected at large. She stated she was very strong for term limits and she felt the more the city is divided into districts the more areas will be socked in and the less likely change will happen. She stated she wanted to see more people involved in city government, not fewer. She stated she felt the 4-2-1 is fair and she would vote for it.

Mayor Cavanaugh stated his theme when he ran for Mayor was Mayor for all. He stated he agreed that Aiken is unique and that is because of our relationships. His concern was what we want our relationships to be in the future. He said we have been able to work out any problems in the community and that is because we have diversity. He said he felt the 5-1-1 would be the best for the community and ensure diversity. He said he did not feel the 4-2-1 would be approved by the Justice Department. He said when looking at all the facts and figures he felt the 5-1-1 would give the diversity needed. He said if a referendum is held he would hope that the citizens would look at all the issues and the best plan for the future and for harmony in the community. He said he would support the 5-1-1 strongly.

Ms. Deedee Vaughters, 227 Homestead Lane, stated she did not feel Councilwoman Price had any problem campaigning against race lines, as she saw lots of signs in her area in support of Councilwoman Price. She said that is proof if you have a good candidate race doesn't matter. She said she believes in bi-partisanship, and she agreed that people do vote in line with their party.

Councilwoman Price moved, seconded by Mayor Cavanaugh, that Council approve the ordinance on second and final reading to call for a referendum as to whether the city should change its method of electing Councilmembers to a 5-1-1 plan and elect five members from single member districts and one member at large. The motion was approved by a vote of 4 in favor and 3 opposed. Those in favor were: Mayor Cavanaugh, Councilmembers Clyburn, Price and Smith. Opposed were: Councilmembers Cuning, Sprawls and Vaughters.

ZONING ORDINANCE 11252002A

Parking Off Street Parking Amendment

Mayor Cavanaugh stated this was the time advertised for second reading and public hearing on an ordinance to amend the Zoning Ordinance regarding off-street parking.

Mr. LeDuc read the title of the ordinance.

AN ORDINANCE AMENDING PARAGRAPH 4.5.1 OF THE ZONING ORDINANCE REGARDING OFF-STREET PARKING REQUIREMENTS FOR CERTAIN RETAIL DEVELOPMENTS.

Mr. LeDuc stated for over a year, City Council and the Planning Commission have been discussing the desire to reduce the number of required parking spaces needed for large commercial projects. Currently, the Zoning Ordinance requires 4.5 spaces for every thousand square feet of gross floor area. However, many times, the developer automatically increases this amount to 5 spaces or more per thousand square feet. For this reason, we have several shopping areas, like Hitchcock Plaza, containing Kroger and Kmart; Kalmia Plaza off of Richland Avenue, and the center containing the Winn Dixie off of York Street with parking areas which are never filled.

The Planning Commission, at their October 15, 2002 meeting, recommended reducing the number of parking spaces required from 4.5 to 4.0. They have also placed a cap at 4.5 spaces per thousand and are authorizing the Planning Director to increase the limit to 5.5 only if the developer can demonstrate that extra parking is essential. This would be accompanied by documentation from them comparing other projects which demonstrate that the extra parking is needed. These changes should reduce the amount of area that would be paved and therefore create more green space.

The public hearing was held and no one spoke.

Councilman Smith moved, seconded by Councilwoman Clyburn and unanimously approved, that Council pass on second and final reading an ordinance to amend the Zoning Ordinance regarding off-street parking for large commercial projects and that the ordinance become effective immediately.

CITY PROPERTY – ORDINANCE 11252002B

Babb House

Blue House

Chesterfield Street S 135

Mayor Cavanaugh stated this was the time advertised for second reading and public hearing on an ordinance to sell city property at 135 Chesterfield Street S.

Mr. LeDuc read the title of the ordinance.

AN ORDINANCE AUTHORIZING THE SALE OF REAL PROPERTY LOCATED AT 135 CHESTERFIELD STREET S. IN THE CITY OF AIKEN.

Mr. LeDuc stated that at a work session in September, City Council discussed the sale of the house the city purchased at 135 Chesterfield Street S. This property was acquired approximately a year and a half ago to facilitate the construction of the Washington Center for the Performing Arts. At that time, the owner offered the back portion of the property for \$50,000, or the entire house for \$140,000. The City decided to purchase the house and has used the majority of the back yard for the Washington Building. During the construction of the facility, the house was used by the contractor for their construction site office. With completion of the construction, the City no longer needs this facility.

Over the last eight weeks, the City has shown the house to six different individuals, and we have received two offers to present to City Council for the sale of this house, one at \$135,000 and the second at \$61,000. We recently had the house appraised at \$135,000 and the purchaser has agreed to fix the leaking roof and some other needed repairs at the house.

Staff is recommending to City Council to enter into an agreement with Brian Katonak, who would establish his law firm at this location, for \$135,000, with his fixing the roof. Also in this agreement, is a requirement that the house remain at this location, and that there would be no façade changes without the approval from the Historic Aiken Foundation. They would like to complete this transaction later this month so they could spend most of December renovating this property, since this is a slower time for his business.

The \$135,000 received from this house could be placed in a holding fund until City Council can determine how the money should be used. You have several options: 1) use the money to pay down the city's portion of the loan for the Performing Arts Theater, 2) use the money in cooperation with the Aiken Corporation on projects on the northside, or 3) use this money to continue the City's neighborhood renewal program on the northside.

The public hearing was held.

Mr. Wade Brodie, Chairman of the Aiken Corporation, stated several weeks ago when the matter came up on behalf of the Aiken Corporation he asked that Council set the money aside from the sale of the house and give the Corporation an opportunity to bring back a project for use of the money. He said the Corporation would like Council's consideration to set aside at least part of the funds to work on a project for the St. Gerhard's building.

It was the consensus of Council that the money would be set aside at this time and Council would discuss use of the money at a later date.

Mr. Brian Katonak, the purchaser of the property, asked that Council amend the proposed ordinance to sell the property to Blue Cottage, LLC rather than to Brian Katonak.

Councilman Cunning moved, seconded by Councilman Sprawls and unanimously approved, that Council amend the ordinance to sell the house to Blue Cottage, LLC rather than Brian Katonak and that the ordinance be passed on second and final reading to sell the property at 135 Chesterfield Street, S for \$135,000.

CITY PROPERTY – ORDINANCE 11252002C

Barnwell Avenue NE 208-210

Shine, Joseph

Mayor Cavanaugh stated this was the time advertised for second reading and public hearing on an ordinance to sell property at 208-210 Barnwell Avenue NE.

Mr. LeDuc read the title of the ordinance.

AN ORDINANCE APPROVING THE SALE AND CONVEYANCE OF THE
PROPERTY OWNED BY THE CITY OF AIKEN LOCATED ON BARNWELL
AVENUE IN AIKEN, SOUTH CAROLINA, KNOWN AS THE WHITE HOUSE, TAX
PARCEL NUMBER 30-069.0-04-021.

Mr. LeDuc stated in January, 2002, Council purchased this property and a yellow house next door. He said this was part of the renewal program that Council had asked the staff to go forward with. For several years Council has been working to bring up the standard of homes on the north side because of the complaints and concerns from several of the neighbors in those areas. The citizens were concerned about drug dealings, vagrants, fire hazards and the fact that the abandoned homes were bringing down the value of the properties in the area. For this reason, the city has spent over \$1 million over the last 5 years on 40 different homes to rehabilitate them. Within that process Council asked that these homes be bought on Barnwell Avenue. One of the homes was sold to Keisha Lloyd Kennedy and the white house is next door.

Mr. LeDuc stated for the past 10 months, the City has been trying to find an individual to convert the duplex at 208-210 Barnwell Avenue NE into a single-family home. The estimated cost to structurally repair and renovate this house has been estimated at 2-3 times its market value. Given the high cost to renovate the structure and convert it into a single-family house, no one has made an offer to buy it. For this reason, Council recommended the removal of this house and sale of this property.

The city has received two offers for this land, one to keep it vacant and to allow a possible swimming pool to be added on this property at a future date, and the second offer to build a house estimated to be well in excess of \$100,000. At the last work session Council received a copy of the house drawing and information concerning the

sale of the house to Mr. Joseph Shine for \$10,000. He has signed a contractual agreement to purchase this property for \$10,000 and to build this house within a one year period. The agreement states that he must have at least a 2,000 square foot house for a single family only, and that within 12 months he would obtain a building permit. If for some reason he decides not to build, the city has the first right of refusal to pay him back the \$10,000 for the property. The property has been appraised at the \$10,000 value which he offered. He has received tentative approval for financing of this home from a local bank, and is ready to begin construction upon Council's approval. Depending on his ability to purchase the vacant neighboring property, he may consider using the previous house design or build something of similar quality. He stated that the finished house needs to be maintenance free due to his lack of time to maintain the house once built.

The public hearing was held.

Mr. William McGhee, 217 Fairfield Street NE., stated his wife had written a letter to the City Manager regarding housing on the north side. He pointed out the Schofield Community Association and the incorporated Northside Historic Preservation Foundation had been formed. He stated the purpose of both of these organizations is to try to revitalize and preserve some of the character of the neighborhood bounded by Park Avenue, York, Hampton and Beaufort. He applauded the efforts to save the yellow house on Barnwell Avenue, however, he said the white house was a different story. He said in the report from the expert on preservation of historic properties from Columbia it was stated that many properties in that community should be preserved based on the architecture, character, etc. He said two in particular were pointed out, the yellow house and the white house. He said he did make an offer to purchase the white house, to renovate it, and maintain it as a duplex. He said his offer was basically for the lot, since it was the city's intention to tear the house down. He stated the area is zoned Residential Multi-Family High Density. He said he had a problem with the city not allowing someone to use the property as a duplex. He said the city had stated a requirement for the house is that it be owner occupied. He said the majority of the residents in this community are not owner-occupied, but are rental properties. He pointed out there are over 70 vacant lots in this area. He asked that there be an incentive to encourage citizens to build on the vacant lots rather than tearing down a house. He said if someone has to hire a contractor to do the work to renovate the white house, it probably would be costly. He stated, however, that he does a lot of the work himself in renovating houses. He said it appears that the city has decided they will make decisions on what property is demolished in that neighborhood without any regard to what the citizens are saying or without regard in involving the citizens in those decisions. He said the two associations that had been formed would work diligently to try to convince Council to stop demolishing homes in the neighborhood and to preserve some of the character of the community and retain some of the historic structures.

Mayor Cavanaugh stated he felt Ms. McGhee's letter was harsh and called the city insensitive to the community. He said the city had drafted a response to Ms. McGhee's letter. He pointed out over \$1 million had been spent in renovating over 40 homes in the community. He stated the city had established a program several years ago to get rid of many of the houses, at the owner's request, that were falling down and becoming crack houses. He said the city felt they were doing a service to demolish those houses. He said the city had been working with the Historic Preservation Commission in looking at the houses in the area. He pointed out property owners have rights as well, and this has to be balanced with other considerations. He said it was the city's decision that the best thing for the house at 208-210 Barnwell Avenue was not to renovate it as a duplex. He said it was felt it would be an improvement to have the lot as a single family residence, as it would be next door to the yellow house, which is being renovated as a nice residence.

Council continued to discuss the matter. It was felt the key to revitalizing the neighborhood is to get single family residential owner-occupied houses in the area. It was pointed out it was just impractical to rehabilitate some of the existing vacant houses in the area.

Mr. LeDuc pointed out over the last year and a half the city probably has only demolished two houses in the area. He stated the houses that were on the list for demolition were requested by the owners. He said the city has advertised these houses for sale for 90 days. He said the staff will be coming to Council within 60 days with a plan for an overall plan on what can be done on the entire northside. He said renovation is expensive, and it is a question of how much money the city wants to spend. He said in Mr. McGhee's neighborhood very few houses have been demolished, but in the entire northside about 45 houses have been demolished.

Mr. McGhee then commented that the city has spent about \$1 million in the area, but what the city is doing is creating an abundance of low income subsidized housing. He said this is creating a community that is specifically containment for low-income African-Americans. He said a diverse group has to be attracted to the community.

Councilwoman Vaughters stated she had looked at the white house, but felt it would cost too much to save the house. She stated she was interested in the design of the houses being built in the area and felt it was very important that new houses be designed to be compatible with the community.

Councilwoman Clyburn asked that Mr. McGhee work with the city and look at what the city was doing and help with suggestions with what needs to be done in the area.

Councilwoman Price commented on some community meetings in the Hampton Avenue area about six years ago and the comments the city received from citizens regarding abandoned houses, houses that were burned, and houses being used as crack houses. She said the citizens were fearful about what could happen. One of the concerns was to look at what could be done so the citizens felt safe where they were living. She said no one likes vacant lots, but a vacant lot is much better than an abandoned, burned house with crack dealers using them. She said demolition of the homes was a resolution. She said no one wants to destroy the character of a neighborhood, but wants to help build the northside to be a place of which we can be proud.

Councilman Sprawls stated, regarding the sale of the property on Barnwell Avenue, he was going to vote against it because he felt it should be sold to Ms. Kennedy so she could use it to extend her yard. He said Ms. Kennedy bought the yellow house on the corner of Barnwell and York and was hoping she could buy the lot next door to extend her yard.

Mr. LeDuc stated, in response to comments made, he would like to point out that during the last four years the city has removed about 45 homes. During this past year, however, the city put in 45 new single family homes on the north side. Next year, the city hopes to see 93 new units go up on the north side. He said the city had been trying to put up single family homes with homeownership so it would not be predominately rentals in the area.

Councilwoman Vaughters expressed concern about the design of the house that might be built and if the city had any control over the design.

Councilman Cuning moved, seconded by Councilman Smith, that Council pass on second and final reading an ordinance to sell property at 208-210 Barnwell Avenue to Mr. Joseph Shine for \$10,000 and that the ordinance become effective immediately. The motion was approved by a vote of 5 in favor and 2 opposed. Councilmembers Sprawls and Vaughters opposed the motion.

CITY PROPERTY – ORDINANCE 11252002D

Edgefield Avenue NW 906

Toole Hill

Community Development and Improvement Corporation

CDIC

Housing Authority

Mayor Cavanaugh stated this was the time advertised for second reading and public hearing on an ordinance to sell property at 906 Edgefield Avenue.

Mr. LeDuc read the title of the ordinance.

AN ORDINANCE APPROVING THE SALE OF PROPERTY OWNED BY THE CITY OF AIKEN AND LOCATED NEAR THE INTERSECTION OF TOOLE STREET AND EDGEFIELD AVENUE.

Mr. LeDuc stated earlier this year city funds were used to build a house in the Toole Hill neighborhood at 906 Edgefield Avenue NW. Due to its location the home can utilize our HOME grant funds and low interest loans available at private banking institutions. We have an applicant who is pre-approved by Wachovia to purchase the property, and they would like to utilize a 4% loan rate available through the Community Development and Improvement Corporation (CDIC), the development arm of the Aiken Housing Authority. In order to utilize the 4% fixed rate, the property owner must be the Housing Authority.

We have prepared an ordinance which would sell the property to the Community Development and Improvement Corporation. The sale would be finalized at the exact time as the sale to the home buyer. Therefore, if the sale falls through, the CDIC will not own the home, and it would remain a city property.

The public hearing was held and no one spoke.

Councilman Sprawls moved, seconded by Councilwoman Clyburn and unanimously approved, that Council approve on second and final reading an ordinance to approve the sale of a home at 906 Edgefield Avenue NW to the Community Development and Improvement Corporation who in turn would immediately sell it to a home buyer.

HISTORIC LANDMARK – ORDINANCE

McGhee Mile Track
Banks Mill Road 620
Landmark

Mayor Cavanaugh stated this was the time advertised for second reading and public hearing of an ordinance designating McGhee Mile Track as a Historic Landmark.

Mr. LeDuc read the title of the ordinance.

AN ORDINANCE DESIGNATING MCGHEE'S MILE TRACK LOCATED AT 620 BANKS MILL ROAD AS A LANDMARK UNDER THE CITY OF AIKEN HISTORIC PRESERVATION ORDINANCE.

Over the last two months City Council has had several opportunities to discuss alternatives to our current Historic Preservation Ordinance. In particular we focused on the downtown and residential neighborhoods on the north side. At an October 7, 2002, work session we discussed the Historic Landmark designations and how Council may want to treat a petition from citizens designating a property as an historic landmark. The state enabling law states that any historic landmark would need review by the Historic Preservation Commission for any changes, modifications and new construction.

Last spring a petition was brought before the Historic Preservation Commission asking for historic landmark designation for the McGhee Mile. The property owner stated at that meeting and subsequent meetings that he is not in favor of a Landmark designation for his property. The Historic Preservation Commission approved this petition giving them the ability to review plans for any new construction or alteration of existing structures. They would also review whether the proposed changes affected the historic or design integrity of the site or the criteria for designation as a Landmark.

As we discussed Council could consider other alternatives when making a Landmark designation or establishing new districts. For instance, when a similar petition was made by citizens concerning St. Mary's Church and surrounding properties, Council limited the number of structures that were included under the Landmark designation. In this case you could limit the Landmark designation to just the tracks or any portion of the property.

Last month Council met at the McGhee Mile to review the track facility. In particular they reviewed the brick barn that was built in the 30's and other structures that have been built at various times since then. Most of these structures are wood construction, except some dormitories that were built by the city made of concrete block and covered by stucco. He also showed us where the new restaurant is proposed, along with grooms quarters and the tack shop, which were approved by the BZA.

Council approved an ordinance on first reading which states the property would be designated as a Historic Landmark under the review of the Historic Preservation Commission. Council could either approve, disapprove or change the ordinance in whatever way you desire.

Since the October 28, 2002 meeting of Council, when the ordinance was passed on first reading, the attorneys for the two sides have met and have discussed the possibility of designating the two outside tracks as a Historic Landmark. However, the two sides did not come to an agreement on the matter.

Mr. LeDuc pointed out Councilman Smith had mentioned that he had a proposed amendment to the ordinance that he would like for Council to consider.

Mayor Cavanaugh gave a background on the history of the purchase and sale of the Aiken Mile Track (McGhee Mile Track), how the city got involved in the Mile Track and why. He said the track was built in 1936. In the 1988 to 1989 time frame the city bought the track. He said the city purchased the property because it was felt it was the thing to do at the time, because the property was to be sold for a housing development. It was felt the track was a part of Aiken's history and important to the city. The city bought the track so it could be preserved as a horse racing-training area and part of the Triple Crown. The city worked to improve the track and draw more trainers and horses, and by 1997 had improved the number of horses at the track from about 30 to 130. During that time the city knew it was not in the horse racing business, but the city did not want it to be sold for housing either. The city started advertising the track for sale sometime around 1992 to 1994, as it was felt the city could not stay in the training track business. In 1996 Mr. Bruce McGhee inquired about buying the track. The city sold the track to Mr. McGhee with conditions and restrictions in 1997, with one being that the track would remain a horse training or racing facility in perpetuity. Another condition was that the buyer would agree to allow the University of South Carolina at Aiken to conduct its spring race at the property as part of the Triple Crown. He pointed out the track is a commercial business and Mr. McGhee was concerned when he purchased it as to how he could make the track a profitable business. He pointed out besides the restrictions in the deed to Mr. McGhee, the track was put into the Horse District, which carries several restrictions. Also, when Mr. McGhee went to the Board of Zoning Appeals and asked for a restaurant, grooms' quarters, tack room, etc. the BZA added stipulations for these additions. He pointed out this makes three layers of protection or restrictions on the McGhee Mile Track. He said these restrictions make this track the most restrictive of the three horse tracks in Aiken. He also pointed out if Council approves the designation as a Landmark this will be the first time such a designation has been made against the owner's will as far as placing something in the historic district.

Councilman Cunning asked if the intent of the City Council at the time the track was sold to Mr. McGhee was to maintain the actual track as it was designed and constructed as of the date of the sale. Mayor Cavanaugh stated the intent was that the actual track be maintained as it was at the time of the sale.

Several of the Councilmembers stated the citizens were concerned that the deed did not specifically protect the track; it just mentioned a horse training facility.

Councilman Smith stated he would like to propose the following amendment to the proposed ordinance under Section 1 the fourth line after Register as a landmark: "is hereby amended to limit landmark designation to a specific portion of the property. The circa one mile long outer track, the circa seven-eighths of a mile long middle track and the area lying between them are hereby designated to the Aiken Historic Register as a landmark. With respect to these properties the Historic Preservation Commission shall

have the authority to do the following: review plans for alteration, construction, demolition or relocation to determine whether the proposed changes would affect the usability of the tracks as horse training and/or horse racing facilities or in any other way compromise the criteria for their designation as a landmark. Routine repairs to existing surfaces, fences, or rails shall not require review.”

Councilman Smith stated he felt the proposed amendment was minimal and it more clearly protects the tracks in perpetuity, as was stated was the intention of the original purchase contract. He said it would not require any additional work unless Mr. McGhee wanted to dig up the track.

Council discussed the proposed amendment.

Mayor Cavanaugh compared the restrictions of the Aiken Training Track, the Steeplechase Track, and the McGhee Mile Track. He pointed out the Training Track can be changed as there are no restrictions that the track remain a track. He stated there are already three sets of restrictions on the McGhee Mile Track. He was concerned about placing another restriction on the McGhee Mile Track that is not on the other two tracks.

Councilman Cuning stated he was suggesting that protection for the tracks be accomplished with an addendum to the contract. He pointed out it had been stated that the intent of Council at the time of sale was to make sure that the track would remain as a track like it was at the time of the sale. He said he did not feel the contract was clear about the tracks.

The public hearing was held.

Mr. Will Britt, Attorney representing Bruce and Janis McGhee, stated they had some major problems with the landmark designation. One problem was property rights, the use of the land by the property owner. When the McGhees bought the property they agreed to certain protections for the property. They agreed they wanted to keep the property as a standardbred horse racing facility. The deed contains a restrictive covenant that the property will be kept in perpetuity as a horse training-horse racing facility. He said the deed does not say you have to have a horse track. However, further in the deed it states the McGhees have to host the spring harness races every year. He said they can't host the harness races unless they have a track. He said in that sense the track has to be there; it can't go away or they would be in violation of the restrictive covenant they agreed to when they bought the property. He said there is no need for any further protection. He pointed out the Steeplechase track has no protection, but the owners of that track who were petitioners for the landmark designation for McGhee Mile and have participated in the hiring of the attorney to represent the petitioners, have expressed their desire to also host harness racing which is the "bread and butter" of McGhee's Mile. He said they have expressed their desire to be their main competition, yet they have no restrictions. He said if the city puts more restrictions on the McGhee Mile this would be putting it at a competitive disadvantage.

Council discussed at length the tracks and wanting to protect the tracks.

Mr. Britt stated the McGhees have no intention of getting rid of the track. He said they can't because they have to host the harness races there every spring. He said, however, they have to have some flexibility as a commercial enterprise to adjust to the commercial climates. He said in twenty years if the standardbred horse industry goes to the tank they have to be able to adjust without going to the Historic Preservation Commission, who may or may not grant their Certificate of Appropriateness to alter the track. He said Council today could not list all the different contingencies that may arise over the next 20 to 50 years and anticipate those and put them into one document. He said presently they have no intention of changing the mile track, but they have to have flexibility.

Councilman Cuning stated he was suggesting not to designate the Mile Track as a landmark, but just add an addendum to the contract that would outline that the tracks remain as they were at the time of the sale. He said this would clear up the contract. He said he was trying to be reasonable and trying to meet a middle ground.

Mr. Britt stated the problem is that landmark designation and further restriction is asking the Mile Track to be subject to more restrictions than the two other tracks and puts them at a competitive disadvantage.

Mr. Gary Smith, City Attorney, stated the deed does say that the property would be maintained as a horse training and/or horse racing facility. In order for it to be maintained as that facility one has to go back to what it was at the time Mr. McGhee bought it. You are maintaining what he had at the time he purchased the property. He said he did not necessarily see an ambiguity. He pointed out that Mr. McGhee's attorney tonight had admitted that he doesn't think there is an ambiguity in the deed and he thinks Mr. McGhee has to maintain the track.

Mr. Wes Smith, attorney, stated he was appearing on his on behalf, not as a paid representative for Mr. McGhee. He also reviewed the history of the track and how it was being marketed for a housing development, because it was difficult to develop it so it could be a viable commercial training facility. He said if the track is to be preserved it must be preserved as a commercially viable facility so that a person can expect to at least break even. He said if it had been developed as a housing development that part of the Triple Crown would have been lost. He said that fact entered into the language in the contract and deed. He said he did not see the ambiguity in the contract that Councilman Cuning was concerned about. He said he felt one had to look at the document in its entirety to determine what it means. He said the deed points out that the property must be maintained as a horse training and/or horse racing facility and shall be in perpetuity and binding on the grantee and his successors. He said if there has to be a horse racing facility there has to be a track. He also pointed out there was a right of first refusal in favor of the City of Aiken if Mr. McGhee decides to dispose of the property. He also pointed out when the property was advertised for sale from 1992 to 1997 only one offer was received. He said Mr. McGhee loves horses and harness racing and felt this could be an opportunity for him. He said he felt Mr. McGhee had all the restrictions and oversight he needed from the City of Aiken. He said when one is operating a commercial venture sometimes time is of the essence and the additional time and the uncertainty that it would take for Mr. McGhee to get approvals through the Historic Preservation Commission if the track is designated as a landmark could put him at a serious disadvantage. He said he felt any additional restrictions other than what is in the deed are unnecessary. He said he felt it would be unfair to allow people who have no direct economic interest in the success or failure of the track to require additional restrictions on the track.

Mr. Randy Warrick, Athletic Director of USC-Aiken and Harness Race Coordinator, stated he had worked with the City of Aiken and also worked with Mr. McGhee for the last five years for the Harness Races. He said he had seen them put more money back into the track to make it a better Harness Race Training Facility. He said they spend a lot of time and energy to make the facility work. He said he had heard many times that landmark designation would cost them money, and he did not feel they should have to do that. He asked why the question now for landmark designation. He urged Council not to support the ordinance for landmark designation.

Councilwoman Vaughters stated the reason was that there were many requests which frightened the neighborhood about what could happen in the area and that is the reason the matter came up.

Mr. Tim Holland, Assistant Athletic Director of USC-Aiken and co-coordinator for the Harness Races, stated he had worked with the Harness Races for the last 12 years both with the city and the McGhees. He said the McGhees had done nothing to diminish the track or the Harness Races with any of the improvements they have made. He felt they had made the Harness Races better each year. He said if the city wrote the contract to sell the property to the McGhees he felt it was wrong to change it now and the city should live up to the contract. He pointed out the economy is not the best right now, especially for higher education funding. He said the Harness Races are a great avenue for USC-Aiken to raise funds for the Athletic Department and the University and he would not want anything to be done to endanger the funding source.

Mr. Andy Pence stated Mr. McGhee was the person who convinced him to come to Aiken with his horse business. He said owning a horse business he felt he understood what Mr. McGhee is going through. He said in making improvements Mr. McGhee has done what he feels is best for the horses. He said the surface of the track is not there because it is the best for the people to look at, but is there because it is the best for the horses. He also pointed out the deed already states that the property can only be used for a training and racing facility. He said Mr. McGhee does what is best for the horses because that is what will make his business succeed.

Ms. Laura Anderson stated she came to Aiken because of the horses and what people here do for the horses. She said the operation of the track has to be a commercial enterprise. She said a statement had been made that they wanted Aiken to continue to be progressive. She said in order to be progressive limitations cannot be placed on the businesses that will bring people and the horses to the community. She felt to impose more restrictions on the track would be taking away Mr. McGhee's livelihood. She said there were many rumors in the community regarding the Mile Track and what Mr. McGhee plans to do. She said many people signed the petition because of fear of not knowing. She also stated tracks in other states are constantly changed and upgraded to keep in business. She said, however, many of the tracks had closed. She said it is very hard to keep a training facility open. She said if people were educated as to what Mr. McGhee is doing and why she felt it would make a lot of difference. She asked that Council not pass the ordinance for landmark designation.

Mr. Wade Brodie, 422 York Street SW, stated he felt Council should deny the landmark designation. He said he sees this as an effort to use the Historic Preservation Ordinance as a vehicle of control and he felt this would be a mistake. He also felt it was wrong to allow the designation without approval of the property owner. He said this issue brings up property rights. He said in the past no designation had been made against the objection of a property owner. He said character and fairness had been mentioned at this meeting. He said he felt fairness is a very important character trait and he did not feel it was fair to Mr. McGhee to designate the property as a historical landmark. He said the city has a contract with restrictions and should abide by the contract.

Mr. John Ozmint, attorney for the petitioners, stated he did not feel all tracks could be put on an equal footing and he did not feel other tracks should be considered at this time as this is not the issue before Council. He said he felt the issue is intent. He said it seems the intent of the contract to Mr. McGhee was to protect the track. He said it was not just to be a horse training facility or horse racing facility but the intent seems to be to protect the property. He said some Councilmembers had questions as to why Mr. McGhee would not agree to amending the restrictions in the contract or deed. He pointed out the contract only governs Mr. McGhee. It does not protect the track. He said if such an agreement were put in the contract it might protect Mr. McGhee and prevent him from doing something with the track, but it would not protect anyone he sold the track to. He said any future contract to sell the property would be between Mr. McGhee and the purchaser and only be subject to the restrictions in the current deed on the property. Mr. Ozmint stated there are two types of restrictive covenants and there is an example of both in the deed to Mr. McGhee. He said the first restrictive covenant is a restrictive covenant in perpetuity that runs with the land which states that the property must be maintained as a horse training and/or horse racing facility. Even when Mr. McGhee sells the property it must be a horse facility of some type. The second type of restrictive covenant is basically what can be done in a contract. It is a restrictive covenant that is not in perpetuity; it does not stay with the land. The next owner of the property is not governed by the two restrictions listed in Exhibit A of the deed to Mr. McGhee. He said Mr. McGhee granted the easement to the city for a pathway and Mr. McGhee must continue to allow the University of S.C. Aiken to hold the Harness Races on the track, but this is not binding on a future owner. He said the Historic Commission feels the tracks and the history of the tracks are important. He said Mr. McGhee can sell the Mile Track and the tracks are not protected. He said there is another covenant in the deed which is a conflicting covenant. He said as long as some portion of the property remains a horse training facility or horse racing facility Mr. McGhee can give a portion of the property to his wife or his children and no one can do anything about it. He said Mr. McGhee can cut the track up in portions. He pointed out it had been mentioned that someone with no direct

interest in property should not be complaining. He said zoning does this. It gives a person interest in property he does not own and gives the right to express a feeling about how property is proposed to be used. He pointed out again that a restriction in the contract only governs the relationship between the city and Mr. McGhee. A covenant in the deed that is not in perpetuity only governs the relationship between the city and Mr. McGhee. A covenant in perpetuity can be attacked and it would be in conflict with the covenant that allows Mr. McGhee to give his children any portion of the property at any time for any reason. He said the Historic designation has held up in court and this would protect the tracks. He said the issue is not what Mr. McGhee is going to with the land. It is about "what if." He said Council has to decide what their intent is if the horse industry goes bad. He said the best way to protect the tracks is by historic designation as a landmark.

Mr. Gary Smith, City Attorney, stated the deed does make it clear that as long as there is an Aiken Triple Crown there is going to be a race by USC-Aiken. He said this does not necessarily prescribe that when Mr. McGhee sells the property that it won't be there. It says as long as there is a race it will be there. In response to Mr. Ozmint, Mr. Smith stated he felt the last two restrictions in Exhibit A do run with the property. He also pointed out even if the property were designated as a landmark, it could be changed in the future. He said from that standpoint the deed is much more restrictive than a historic landmark designation.

Ms. Michelle Thaxton, Director of S. C. Landowners Association, stated she agreed with Mr. Gary Smith's interpretation of the deed. She pointed out Mr. McGhee does not want the additional regulation on his property and he should have property rights too. She said Mr. McGhee continues to make improvements to the property and has to have approval for these improvements. She said there is a question about possible takings in this matter. She said there are already two layers of restrictions on the property—the deed and the horse district. She said historic designation as a landmark would be another restriction.

Ms. Lucy Knowles, 1141 Two Notch Road and an attorney, stated she agreed with Mr. Ozmint that all the deed requires Mr. McGhee to do is to keep the property as a horse training facility and she was concerned about how it might be used in the future.

Mr. Elvie McDowell, 218 Jehossee Drive, stated he was a resident near the McGhee Mile Track. He said he was concerned about the intent of Mr. McGhee or future owners regarding the track. He said he would like to see the track preserved as a historic landmark for protection for the neighborhood. He said a lot of work is being done in his neighborhood and they are proud of it. He said he was President of the Governor Aiken Park Neighborhood Association where there are about 100 homes with about 300 people in the neighborhood. He said the Association asks City Council to designate the track as a historic landmark.

Mr. Larry McCullough, 1475 Lyon Drive, stated he lives near the Mile Track. In the past the track has been in bad shape. He said Mr. McGhee has done a wonderful job in improving the track. He said Mr. McGhee works hard on the track and has put his time and money in improving the track. He said he felt Mr. McGhee would continue to do a good job with the track and he did not see the value of a historic landmark designation.

Mr. David Nix, 1516 Pine Log Road, stated he grew up on Two Notch Road near the track. He said he was chairman of the Republican Party and he reminded everyone that one of the Republican beliefs is respect for personal and private property rights. He said he felt to designate the Mile Track as a landmark would be infringing on Mr. McGhee's property rights. He said he felt there was already protection in the deed with the restrictive covenants. He asked that Council not approve the landmark designation.

Ms. Jane Page, 240 Knox Avenue, stated it had been said there was a fee to come before the Historic Commission to request a Certificate of Appropriateness but there is no fee. She also pointed out some other comments which she felt were incorrect regarding the Historic Preservation Commission. She said the purpose of the historic district is so the property will be governed by certain regulations to maintain the character and history of an area. She felt the McGhee Mile Track needed to be governed by the Historic

Commission to maintain its historic integrity. She said there were concerns about the future of the property and she felt the property needed to be protected and preserved. She pointed out the petition for landmark designation was brought by citizens and citizens have a right to bring petitions to City Council. She said the citizens have the right to protect their property values and have a right to make sure certain restrictions are in place to govern the quality of our lives.

Ms. Deedee Vaughters, 227 Homestead Lane, stated she was President Elect of the Aiken Republican Club and she felt that good Republicans can still support property rights of individuals that border McGhee Mile.

Mr. Oliver Mowery, 775 Boardman Road, stated there were already restrictions in the deed regarding the track and he felt that Council should not approve the landmark designation.

Mr. Michael Brown, an equine veterinarian, stated he had lived and practiced in Aiken since 1989. He said there had been many changes in the horse industry and with the death of several prominent horse owners there has been a downward trend for the industry. Due to the increasing costs to maintain horses, the effect on the thoroughbred industry has been felt especially in Aiken and more particularly on the standardbred industry. He said the McGhees have invested in the Mile Track and have lost money. He said, however, they have also built more barns. He said the McGhees have a real commitment to the track. He said he had known the McGhees since his return to Aiken in 1999. He said Mr. McGhee had worked very hard in attempts to rebuild the training center for standardbreds when the industry has declined. Mr. McGhee has spent money to upgrade the facility and he is trying to reverse the trend of the facility. He said the requests for a track kitchen, more housing facilities, a laundry, and a standardbred tack shop are all facilities that are at other training facilities. These enhancements could draw more people to this facility. He said he could see no valid reason to designate the McGhee Mile as a historic landmark. He said since it is already in the horse district he could see no reason for it being designated as a landmark. He said if Mr. McGhee has said if more restrictions are imposed he will be forced to raise the fees for his facility, which in turn will lessen the chances that more horses will come to Aiken. He said this may eliminate the Triple Crown. He said if we don't have the horses, having the track means nothing. He said if the property is designated as a landmark the city may run the risk of losing a historic event in Aiken. He suggested the city work with Mr. McGhee and see if he can reverse the trend. He asked that Council do what is best for the facility and not succumb to the wishes of a few influential people who think they know best. He said he felt the city was lucky to have the McGhees run the facility.

Mr. Cecil Atchley stated he felt it was time to move on. He felt the McGhees had property rights and should be able to use their property as they see fit. He said he had respect and confidence in the McGhees. He asked that Council vote no on the landmark designation.

Mr. Bill Blalock, 1940 South Boundary, stated his property was the largest adjoining property to the McGhee Mile Track. He said the city had done a good job running the track. He said he felt the track is in good shape. He applauded Mr. McGhee and the work he has done in adding some things to the track. He said Mr. McGhee and his family work hard on the track. He said, however, that is not the issue. He pointed out his concerns and the concerns of the neighbors in the Governor Aiken Park subdivision. He said Mr. Brown had stated the McGhees had lost a lot of money in the track. He said this gives him concern as he wonders how much longer he can operate the track and that is a real concern. He said he felt this was a reason for Council to strongly consider the proposal by Councilman Smith. He felt the proposal would not cause significant additional cost for the McGhees. He pointed out designating or clearing up the restriction on the two outside tracks is not asking a lot. He said he was concerned about what Mr. McGhee might do to the property and how it might affect surrounding property owners. He said Mr. McGhee had never complied with the requirement to move the mobile home off the property. He said Mr. McGhee has somewhat of a history of not complying with the things he said he would do.

No one else spoke so Mayor Cavanaugh stated the matter was now for Council's consideration.

Councilman Smith stated a lot of pro and con comments had been received. He said he, too, had been a property rights person for many years, however, he does not feel the matter being considered is inconsistent with property rights. He said his proposed amendment is so minimal of any additional requirements on the McGhees. He said the amendment just reinforces what they say is in the deed and he didn't see why this should be a problem. He said he had tried very hard to come up with something that could be a compromise.

Councilman Smith moved, seconded by Councilwoman Vaughters, that the proposed ordinance be amended to read as follows under Section 1 the fourth line after Register as a landmark: "is hereby amended to limit landmark designation to a specific portion of the property. The circa one mile long outer track, the circa seven-eighths of a mile long middle track and the area lying between them are hereby designated to the Aiken Historic Register as a landmark. With respect to these properties the Historic Preservation Commission shall have the authority to do the following: review plans for alteration, construction, demolition or relocation to determine whether the proposed changes would affect the usability of the tracks as horse training and/or horse racing facilities. Routine repairs to existing surfaces, fences, or rails shall not require review."

Councilman Cuning stated his involvement in the matter was to protect the track. He said the amendment did not include the changing of the surface of the track as long as the track is recognized as a horse training track. He said his concern is that the track be protected. He was concerned about the comments by Attorney John Ozmint. He said he understands from Gary Smith that he feels the track is protected and has to stay a track and Mr. Britt, attorney for Mr. McGhee has stated he also feels the track is protected. He said he did feel that citizens were genuinely concerned about the track and what may happen to the horse industry and the track in the future. He said Mr. McGhee has worked hard and he did not feel the restrictions of the historic designation should be placed on the track. He said, however, if the track is covered and it must stay the same he can't understand why the McGhees would object to the amendment to the ordinance or to the deed to clear up the intent of the original deed to Mr. McGhee. He said his concern is the comments made by Mr. Ozmint and would the amendment do any good.

Councilwoman Clyburn asked how strong is the admission that the restrictions in the deed are all in perpetuity and the McGhees understand that. She said she understood the intent of the deed when it was sold to Mr. McGhee was that the restrictions were in perpetuity. She asked is the city protected.

Mr. Will Britt stated he felt the city was absolutely protected. He said there are restrictive covenants in the deed to Mr. McGhee and he said there are also restrictions from the South Carolina Parks and Recreation Department that the property must be used for outdoor activities. He said he felt the city had ample protection, including the horse district zone, even if the property is sold to someone else.

Councilwoman Vaughters stated she did not feel the proposed ordinance would hurt the property values of the track or be a big financial burden. She pointed out no buildings were proposed to be designated, just the track. She said she wanted to see the track be there. She said the neighbors care and their property rights matter too. She said property rights are on both sides of the line and the value of their property is important. She said all they are asking is that the track stay there, not to punish Mr. McGhee.

Councilman Sprawls stated he had had disagreements with some of the projects which Mr. McGhee has wanted to do on the property, but he doesn't feel the property should be designated as a landmark. He said Mr. McGhee is a small businessman, and he has to abide by the rules and regulations, but he doesn't feel the property should be a landmark. He said he did not want to force Mr. McGhee into the property being designated as a landmark. He said he would not want the burden placed on him. He said he would also like for the ordinance where 10 people can sign a petition to change somebody's property rights be abolished.

Councilwoman Price stated she had not always supported Mr. McGhee with some of his projects on the property. She said she was not in favor of forcing someone to annex to the city with the signatures of other property owners and did not want to force landmark designation on Mr. McGhee. She said the McGhee family all work hard to maintain the track.

Mayor Cavanaugh stated he could not support the amendment to the ordinance. He said he felt the track was well protected, as it had three layers, considering the Board of Zoning Appeals requirements, when they approved certain items. He said he applauded Mr. McGhee for working so hard in trying to make his business profitable. He said he felt the city was fortunate to have Mr. McGhee operating the track.

Councilwoman Clyburn stated she had visited the track twice. She said there had been comments about fairness and being in other people's places to see how it feels and doing what you would want done to you. She said the comments she hears is that the designation is for protection. She said she was going to have to rely on the attorneys that the city is protected. She said the McGhees work hard at the track. She said she was concerned about the impressions that the neighbors in the surrounding neighborhood have about the Mile Track and perhaps there could be some interaction so the neighbors could see what is going on at the track so they could understand what is being done on the track. She said she was not going to vote for the amendment or the landmark designation.

Mayor Cavanaugh called for a vote on the motion to amend the ordinance as moved by Councilman Smith. The vote was 2 in favor with Councilmembers Smith and Vaughters voting in favor. Mayor Cavanaugh and Councilmembers Clyburn, Cuning, Price and Sprawls voted in opposition to the amendment. The vote was 2 in favor and 5 opposed. The motion did not pass.

Councilwoman Price moved, seconded by Councilman Sprawls, that Council not pass the ordinance on second reading and that Council deny the designation of the McGhee Mile Track as a historic landmark. The motion was approved by a vote of 5 in favor and 2 opposed. In favor were Mayor Cavanaugh and Councilmember Clyburn, Cuning, Price and Sprawls. Opposed were Councilmembers Smith and Vaughters.

AUDIT – ORDINANCE

Fiscal Year 2001-2002 FY 2001-2002

Mayor Cavanaugh stated an ordinance had been prepared for first reading to accept the Fiscal Year 2001-2002 audited financial statements.

Mr. LeDuc read the title of the ordinance.

AN ORDINANCE ACCEPTING THE FISCAL YEAR 2001-2002 AUDITED FINANCIAL STATEMENTS AND AUTHORIZING THE VARIANCES TO THE FISCAL YEAR 2001-2002 BUDGET ORDINANCE.

Mr. LeDuc stated every year City Council approves the authorization of changes to the original budget. This is to reflect the spending needs during the fiscal year, which may vary per each individual line item. The audit presented by Cherry Bekaert & Holland at the work session showed all the changes to the 2001-2002 budget with respect to the anticipated revenue and expenditures and the actual revenue and expenditures. In essence, the audit is a reconciliation of what was approved by Council in May of 2001 and what was actually spent during that fiscal year.

For City Council consideration, this is first reading of an ordinance approving the fiscal year 2001-2002 audit and the variances to the 2001-2002 budget ordinance. Upon City Council approval this will be scheduled for second reading and public hearing at the next regularly scheduled meeting.

Councilwoman Price moved, seconded by Councilman Sprawls and unanimously approved, that Council approve the ordinance on first reading to accept the 2001-2002 audit report and that second reading and public hearing be set for the next regular meeting of Council.

COUNCIL ON AGING – ORDINANCE

Aiken Council on Aging
Barnwell Avenue
Morgan Street
Office Space

Mayor Cavanaugh stated an ordinance had been prepared for Council's consideration to convey city property on Morgan Street to the Council on Aging.

Mr. LeDuc read the title of the ordinance.

AN ORDINANCE APPROVING THE DONATION AND CONVEYANCE OF A PORTION OF THE PROPERTY OWNED BY THE CITY OF AIKEN LOCATED ON MORGAN STREET TO THE AIKEN AREA COUNCIL ON AGING.

Mr. LeDuc stated at the last work session the Aiken Area Council on Aging requested the City's donation of property at the southwest corner of Barnwell Avenue and Morgan Street. The .755 acres of land would be used to house their administrative offices. This property is zoned Office and is located in the Historic District. They would like to construct a new building of approximately 10,000 to 12,000 square feet, and the design would need to be approved by our Historic Preservation Commission. The property on the east is bordered by the Aiken Preparatory School, and on the south by the County of Aiken parking lot. Should the Council on Aging decide they do not need this property in the future the City of Aiken would have a right of first refusal on it.

For City Council consideration, this is first reading of an ordinance to give the Council on Aging .755 acres of land located at the southwest corner of Barnwell Avenue and Morgan Street. Upon City Council's approval, second reading and public hearing will be held at the next regularly scheduled meeting.

Councilman Sprawls moved, seconded by Mayor Cavanaugh and unanimously approved, that the ordinance be passed on first reading to donate .755 acres at the corner of Barnwell Avenue and Morgan Street to the Council on Aging to construct office space and that second reading and public hearing be set for the next regularly scheduled meeting of Council.

ALCOHOL – ORDINANCE

Sunday Sales
Hours

Mayor Cavanaugh stated an ordinance had been prepared for first reading to amend the Code regarding Sunday Alcohol sales.

Mr. LeDuc read the title of the ordinance.

AN ORDINANCE AMENDING SECTION 6-5, AIKEN CITY CODE, TO SET THE HOURS OF OPERATION FOR ESTABLISHMENTS SERVING ALCOHOL FOR ON-PREMISES CONSUMPTION.

Mr. LeDuc stated on November 5, 2002, a referendum permitting Sunday sales of alcohol passed by over a 2 to 1 margin in the City of Aiken. Since the referendum was approved by the citizens, we need to change Section 6-5 of the Aiken City Code which bans all Sunday alcohol sales by licenses for on-premise consumption establishments. It also limits alcohol sales hours on Saturday from 10 A.M. to midnight. We need to change these hours for Saturday to allow sales from 10 A.M. to 2 A.M. Sunday and from 10 A.M. to 2 A.M. Monday for those establishments obtaining the proper permit from the South Carolina Department of Revenue.

Until this ordinance is passed we have informed our Public Safety Department to limit any enforcement action to verifying that restaurants selling alcohol on Sunday have the necessary South Carolina Department of Revenue ABC permit. If they have obtained this permit, then they would be allowed to sell alcohol on Sunday until this new ordinance has been approved.

For City Council consideration, this is approval of an ordinance which allows Sunday alcohol sales and amends Section 6-5 of the Aiken City Code. Upon City Council consideration, second reading and public hearing will be held at the next regularly scheduled meeting.

Councilman Cuning moved, seconded by Councilman Smith, that Council pass on first reading an ordinance to amend Section 6-5 of the Aiken City Code to allow alcohol sales on Sunday and that second reading and public hearing be set for the next regularly scheduled meeting of Council. The motion was approved by a vote of 6 to 1. Councilwoman Clyburn opposed the motion.

PURCHASE CARDS

Resolution

Bank of America

Mayor Cavanaugh stated Council needed to consider a resolution approving the use of purchasing cards for employees of the city.

Mr. LeDuc stated yearly the City of Aiken acquires hundreds of thousands of dollars of small goods thru vendors throughout our area. We currently use a paper-based procurement process for these purchases and would like to change this process by using a purchasing credit card. Our current method is very bureaucratic, and a Purchase Order must be approved by several individuals before we are able to purchase goods at many of these vendors. Even with this approval process some of these vendors will not accept a purchase order, and we need to use a billing or cash system for these purchases. This requires a considerable amount of administrative time on the front end and the requirement to write checks to several vendors at the end of the month.

A recent survey concerning the use of purchase cards by the Government Finance Review Board stated that cities average per transaction savings is \$46.00 and reduces 5.4 days in the elapsed time from the need determination to receipt of the ordered goods. The city is recommending that selected employees receive these cards to purchase office supplies, operating goods, for maintenance and repairs of equipment, and other items as needed. Most employees would have a maximum limit of \$500 per card except for a few of our high level employees which could go up to \$1,000. This would provide a more rapid turn around of requisitions for our low dollar value of goods and the ability for us to reduce paper work and handling costs.

The State of South Carolina sponsors this program, which is handled by the Bank of America. For us to enter this program, City Council needs to approve a resolution authorizing us to obtain these cards. Each employee prior to receiving a card would need to commit to being responsible for the card and all their purchases. It would be necessary for them to sign a purchasing "Card Holder Agreement." We would block certain vendors and certain items could not be purchased with this card. All transactions must be accompanied by a receipt that would be turned in to the administrator of the program within three days. All card holders would complete a training program before being issued a card and the Department Head would sign off for each of these employees. Again, all card holders are responsible for the use of his or her card.

For City Council consideration this is approval of a resolution allowing the City of Aiken to enter the State of South Carolina purchasing card program handled by Bank of America.

Councilwoman Clyburn moved, seconded by Councilwoman Price and unanimously approved, that Council approve the resolution allowing the City of Aiken to enter the State of South Carolina purchasing card program handled by Bank of America.

COUNCIL MEETING

Meeting

Schedule

December, 2002

Mayor Cavanaugh stated Council needed to consider adoption of the December meeting schedule for Council.

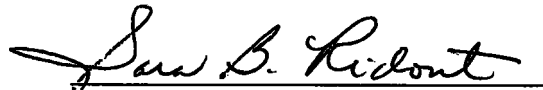
Mr. LeDuc stated the second meeting in December falls on Monday, December 23, 2002, and it has been Council's practice in the past to cancel the meeting just prior to Christmas.

For City Council consideration this is adoption of the December meeting schedule canceling the second meeting in December. With the extended holiday schedule we rarely have any issues that require your immediate attention, but if an issue should arise then we would schedule a special meeting for City Council.

Mayor Cavanaugh moved, seconded by Councilwoman Price and unanimously approved, that Council cancel the December 23, 2002, Council meeting.

ADJOURNMENT

There being no further business, the meeting was adjourned at 12:35 A.M.


Sara B. Ridout
City Clerk