

Aiken City Council Minutes

July 9, 2001

Present: Mayor Cavanaugh, Councilmembers Anaclerio, Clyburn, Cunning, Price, Radford and Sprawls.

Others Present: Roger LeDuc, Bill Huggins, Gary Smith, Larry Morris, Anita Lilly, Tom Galardi, Sandra Korbelik, Richard Pearce, Sara Ridout, Adam Burton from the Aiken Standard, Josh Gelinas from the Augusta Chronicle and about 30 citizens.

Mayor Cavanaugh called the meeting to order at 7:45 P.M. Roger LeDuc 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. He said there were several items to add to the agenda. Under New Business he said Item 7 needed to be added which is First Reading of an Ordinance to Option Property at Summit Business Center, and Item 8 – Consideration of Piece of Art in Park. Also, Mr. Clarence Brown had requested that his request for utility services at 711 Cushman Drive be removed from the agenda under Petitions and Requests for this meeting and tabled until the next meeting of Council. Also, under Petitions and Requests Mr. Jim Wetzel would like to address Council regarding the Woodside Phase III annexation and commercial zoning.

Councilman Radford moved, seconded by Councilwoman Price and unanimously approved, that Council approve the agenda as amended.

MINUTES

The minutes of the regular meeting of June 25, 2001, were considered for approval. Councilwoman Price moved that the minutes be approved as written. The motion was seconded by Councilman Anaclerio and unanimously approved.

ZONING – ORDINANCE 07092001

Woodside Plantation
Silver Bluff Road
Golf Course
TPN 00-159.0-01-343
Sidewood Development, LLC
Chukker Creek Road

Mayor Cavanaugh stated this was the time advertised for second reading and public hearing on an ordinance to rezone 23.10 acres of Woodside Plantation from RS-10 to Limited Professional (LP).

Mr. LeDuc read the title of the ordinance.

AN ORDINANCE AMENDING THE ZONING OF REAL ESTATE OWNED BY
SIDEWOOD DEVELOPMENT, LLC FROM RESIDENTIAL SINGLE-FAMILY (RS-
10) TO LIMITED PROFESSIONAL (LP).

Mr. LeDuc stated the developers of Woodside Plantation Phase III would like to rezone 23.1 acres of property from Residential Single-Family RS-10 to Limited Professional. The sole purpose of the rezoning of this property is to provide land which can be used for the 7th and 8th holes of the golf course which is part of Phase III. Only Limited Professional, Limited Business, and General Business allow a golf course by right and therefore the proposed zoning is under Limited Professional. The Planning Commission reviewed this at their June 12 meeting and unanimously recommended the rezoning from RS-10 to Limited Professional with the following conditions:

1. The applicant provide proof of recording of a plat creating a property line corresponding to the proposed zoning boundary.
2. That the remainder of Woodside Phase III be annexed.
3. That a deed restriction be recorded limiting the use of the property to a golf course only, enforceable by adjacent Woodside Plantation property owners as approved by the City Attorney.

The public hearing was held and no one spoke.

Councilman Anaclerio moved, seconded by Councilwoman Clyburn and unanimously approved, that the ordinance be passed on second and final reading to rezone 23.1 acres of property in Woodside Plantation Phase III from Residential Single-Family to Limited Professional with the conditions recommended by the Planning Commission and that the ordinance become effective immediately.

ANNEXATION – ORDINANCE 07092001A

Aiken Preparatory School

Hitchcock Parkway

Foxchase

TPN 00-106.0-02-001

Mayor Cavanaugh stated this was the time advertised for second reading and public hearing on an ordinance to annex the property of Aiken Preparatory School on Hitchcock Parkway.

Mr. LeDuc read the title of the ordinance.

AN ORDINANCE TO ANNEX TO THE CORPORATE LIMITS OF THE CITY OF AIKEN CERTAIN PROPERTY CONSISTING OF 40 ACRES OF LAND, MORE OR LESS, OWNED BY AIKEN PREPARATORY SCHOOL TRUSTEES AND TO ZONE THE SAME OFFICE/INSTITUTIONAL (O/I).

Mr. LeDuc stated the trustees for Aiken Preparatory School would like to annex 40 acres of land just west of Foxchase and south of Hitchcock Woods. The intent of the applicant is to construct the new campus of the Aiken Preparatory School, which will be relocated from its current site in old Aiken. The proposed zoning for this property is Office/Institutional which allows a school by right. Water and sewer for this property are available along Hitchcock Parkway and the only entrance to this property would be opposite Rinehart Way, which is the entrance off the by-pass to the Aiken Elementary School. The Planning Commission considered this at their June 12 meeting and voted unanimously to recommend that the property be annexed as an Office/Institutional zoning with the following conditions:

1. That there be only one driveway into the property and it be aligned with Rinehart Way.
2. That the applicant construct turn lanes into the property from Hitchcock Parkway.
3. That there be an untouched buffer at least 50 feet in depth along the boundary with Foxchase Subdivision.

The public hearing was held and no one spoke.

Councilman Radford moved, seconded by Councilwoman Clyburn and unanimously approved, that the ordinance be passed on second and final reading to annex 40 acres owned by the Aiken Preparatory School as Office/Institutional with the three conditions recommended by the Planning Commission and that the ordinance become effective immediately.

MALLARD LAKE – ORDINANCE

Pine Log Road
Robin Road
DevCom, Inc.
Detention Pond
Dedication

Mayor Cavanaugh stated an ordinance had been prepared for Council's consideration to accept Mallard Lake.

Mr. LeDuc read the title of the ordinance.

AN ORDINANCE ACCEPTING THE DEDICATION OF REAL PROPERTY OWNED BY DEVCOM, INC.

Mr. LeDuc stated Mallard Lake is a subdivision developed off of Pine Log Road and Robin Road and east of South Aiken High School. The developers DevCom, Inc. expanded the former detention pond and made it into Mallard Lake, which receives water from a very large drainage basin. This area drains water from an area as far west as Whiskey Road and includes most of the training tracks and extends east to Powder House Road. A large drainage ditch runs alongside the city's treatment facility on Pine Log Road and enters into Mallard Lake.

Since the water that drains into this lake encompasses a large area of the city and the homes in Mallard Lake, the developer has asked us to take ownership of this facility. Public Works has inspected it and is recommending acceptance of Mallard Lake.

Councilman Anaclerio moved, seconded by Councilwoman Clyburn and unanimously approved, that Council pass on first reading an ordinance to accept the deed of dedication for Mallard Lake and that second reading and public hearing be set for the next regularly scheduled meeting.

BUDGET – ORDINANCE

Amendment
FY 2000-01

Mayor Cavanaugh stated an ordinance had been prepared to amend the budget for Fiscal Year 2000-2001.

Mr. LeDuc read the title of the ordinance.

AN ORDINANCE AMENDING THE BUDGET OF THE CITY OF AIKEN FOR THE FISCAL YEAR BEGINNING JULY 1, 2000, AND ENDING JUNE 30, 2001.

Mr. LeDuc stated at the end of each fiscal year Council amends the budget to reflect any changes to the budget during the previous year.

A listing of all expenses within the General and Utility funds that need to be adjusted was presented to Council. This includes the purchase of the new fire truck and accessories associated with it, initial funding for the car take home program, unexpected repairs needed at the Municipal Center due to leakage in the roof, and the transfer of the air conditioning units, security and furniture additions for the new Public Works Building, funding for the Whiskey Road Study, and money to fund the Depreciation Account for Solid Waste. Some of the expenses for this budget adjustment comply with projects that have extended from one budget year to the next and are items that the staff discussed during the budget year with City Council.

Councilman Anaclerio moved, seconded by Councilwoman Price and unanimously approved, that Council pass on first reading an ordinance amending the budget for fiscal year 2000-2001 and that second reading and public hearing be set for the next regularly scheduled meeting of City Council.

ALCOHOLIC BEVERAGES – ORDINANCE

Hours
Closing
Wine
Beer

Mayor Cavanaugh stated an ordinance had been prepared for Council's consideration to amend the ordinance regarding hours of operation for establishments serving alcohol.

Mr. LeDuc read the title of the ordinance.

AN ORDINANCE AMENDING SECTION 6-5, 2001 CITY OF AIKEN CODE [FORMERLY SECTION 4-5, 1980 CITY OF AIKEN CODE] TO SET THE HOURS OF OPERATION FOR ESTABLISHMENTS SERVING ALCOHOL AND TO PROVIDE THAT THESE ESTABLISHMENTS MAY STAY OPEN AFTER THESE HOURS ONLY TO SELL FOOD AND NON-ALCOHOLIC BEVERAGES.

Mr. LeDuc stated Pete Frommer, Aiken's Public Safety Director, has received some requests concerning staying open after 2:00 a.m. to sell non-alcoholic beverages and food at establishments that serve alcohol. In 1999, City Council passed an ordinance which established 2:00 a.m. as the time to close alcoholic establishments to improve conditions in several neighborhoods. This has worked well except that some establishments would now like to have the ability to serve food and non-alcoholic beverages after 2:00 a.m. to their customers. This would mean that Public Safety will have additional enforcement considerations when enforcing this ordinance to make certain that only non-alcoholic beverages are being served, but the Public Safety Director has indicated that Public Safety is ready to take on that task.

Councilman Anaclerio asked if this meant that an establishment could be open 24 hours per day, to which Mr. LeDuc responded yes.

Councilman Anaclerio moved, seconded by Councilwoman Price and unanimously approved, that Council pass on first reading an ordinance to amend Section 6-5 of the Code to allow an establishment to stay open after 2 a.m. and to serve food and non-alcoholic beverages only and that second reading and public hearing be set for the next regularly scheduled meeting.

RESOLUTION

Easement
Mead Avenue
Whitney Trust Property
Deed
Drainage
Storm Drainage

Mayor Cavanaugh stated a resolution had been prepared to accept a deed of easement from the Whitney Trust for a drainage way across their property to Mead Avenue.

Mr. LeDuc read the title of the resolution.

A RESOLUTION AUTHORIZING THE ACCEPTANCE OF A DEED OF EASEMENT FROM THE WHITNEY TRUST.

Mr. LeDuc stated in order to improve the drainage along Mead Avenue, the Public Works Department feels we need to have a drainage way across the Whitney Trust property at the Polo Field. The Whitney Trust has agreed to donate this easement to the City in exchange for the cleaning of approximately 300 feet of ditch line around their track, which will in turn facilitate our drainage. This is a great cooperative effort by both the City and Whitney Trust, and we recommend approval of accepting the deed of easement from Whitney Trust in exchange for this work by the City. Mr. LeDuc stated that because the city would be expending city money on private property to clean the ditches,

the staff felt that the exchange of the easement for cleaning the drainage areas needed to be approved by Council.

Councilman Cuning moved, seconded by Councilman Radford and unanimously approved, that the resolution accepting a drainage easement from Whitney Trust in exchange for the cleaning of the drainage ditch on their property be approved by Council.

RESOLUTION

Public Education Partners

GALEF

Aiken 20/20

Mayor Cavanaugh stated a resolution had been prepared for Council's consideration in support of Public Education Partners.

Mr. LeDuc stated that in 1995, Aiken 20/20 through the Strategic Plan, helped created a strategy to move Aiken County to the forefront in economic and community development. From this, GALEF was established as an advocate and partner for public education and the business community to work together. Since then, the vision has grown and Public Education Partners was recently established to work with all of Aiken County to promote Aiken County as a premiere 21st century education community. They are working throughout the entire county and in particular are focusing on Pinecrest School in the City of Aiken concerning adult education, 4-K, and Last Chance programs. A resolution in support of the work of Public Education Partners has been prepared for Council's consideration. The resolution does not ask for any funding.

Councilwoman Clyburn moved, seconded by Councilman Sprawls and unanimously approved, that Council approve the resolution supporting Public Education Partners initiative throughout the county asking for business and education to get together to support education in general throughout Aiken County.

RESOLUTION

Arbor Terrace

Street

Dedication

Newberry Street

Mayor Cavanaugh stated a resolution had been prepared for dedication of Arbor Terrace as a public right of way.

Mr. LeDuc read the title.

A RESOLUTION DEDICATING ARBOR TERRACE AS A CITY STREET.

Mr. LeDuc stated Arbor Terrace is the street serving the new condominium development off of Newberry Street formerly known as the Parker Body Shop. For the past few years, City Council has been involved in the rejuvenation of the downtown area and through Aiken Corporation, the initiation of these new condominiums. Several of these units are now complete, and it is necessary for the roadway, Arbor Terrace, to be dedicated to the City in order for final record plats to be approved for each of these condominiums. Earlier, City Council accepted rights of way from the developer and the Johnson's, who own the building at the corner of Newberry and Richland, to provide for this right of way and improvements for this development. The other improvements are almost complete, including all curbing and asphalt with only the irrigation and landscaping remaining.

Councilman Sprawls moved, seconded by Councilwoman Clyburn and unanimously approved, that the resolution be approved accepting deed of dedication for Arbor Terrace as a public right of way and city street for future access to the parking lot and condominiums on the street.

SUMMIT BUSINESS CENTER – ORDINANCE

Option
Aiken Corporation
Rutland Drive
By-Pass

Mayor Cavanaugh stated an ordinance had been prepared for Council's consideration to option property at Summit Business Center.

Mr. LeDuc read the title of the ordinance.

AN ORDINANCE TO APPROVE AN OPTION TO SELL PROPERTY LOCATED IN SUMMIT BUSINESS CENTER.

Mr. LeDuc stated the speculative building at Summit Business Park, owned by Aiken Corporation, has a potential buyer. As a condition to the sale of this property, they would like to have the first right of refusal to purchase the property between the railroad track and the spec building. This would allow them to gain access to the railroad and to expand if ever necessary. The property would consist of 0.716 of an acre and would be subject to the stipulation that a drainage and utility easement be maintained adjacent to the railroad right of way.

Councilman Anaclerio moved, seconded by Councilman Radford and unanimously approved, that Council pass on first reading an ordinance to give first right of refusal to the potential buyers of the speculative building in Summit Business Park, to purchase 0.716 of an acre of land adjacent to the railroad track and that second reading and public hearing be set for the next regularly scheduled meeting.

ART

Public Art
Downtown
Aiken Downtown Development Association
Downtown Development Association
Parkway
Arts Committee
Barnwell Avenue
Morgan Street
Millstone

Mayor Cavanaugh stated Council needed to consider approval of a piece of art in a parkway.

Councilman Anaclerio, of the Aiken Downtown Development Association Arts Committee, stated the committee had been working for some time with the idea of bringing art objects into the downtown. He said one of the unsuccessful ventures was to put a statue in the intersection of Laurens and Richland Avenue. He said presently the Committee would like to go further out and identify some art objects related to the history of Aiken, particularly the agriculture history of Aiken. It was decided by the Committee that a very appropriate item would be to put a millstone in the intersection of Barnwell and Morgan Street. He said he had found a millstone about 36 inches in diameter and it would be put standing upright in a footing of concrete to show the history of Aiken being agriculture and the millstone would be symbolic of that. There would also be a small plaque identifying the millstone. He said he had found a millstone that would cost about \$1,000. He said he was asking Council to appropriate up to \$1,000 for the millstone. He said he was also trying to find a millstone of a historic nature and have it dedicated to the city. The Park Commission is aware of the proposal and they have given tentative approval of the millstone, but would like to have a drawing of the object and a specific location for the millstone.

Mr. LeDuc stated funds for the art could come from the Contingent Fund.

Councilman Anaclerio moved, seconded by Councilman Cunning and unanimously approved, that Council appropriate up to \$1,000 for the purpose of buying a millstone as an art object for the City of Aiken tentatively to be placed in the parkway at the intersection of Barnwell Avenue and Morgan Street.

UTILITY REQUEST

City Services

Water

Sewer

Cushman Drive 711

Brown, Clarence Jr.

TPN 30-041.0-13-002

Mayor Cavanaugh stated a request had been received for city services at 711 Cushman Drive from Mr. Clarence Brown, Jr. He said Mr. Brown had requested that the item be removed from this agenda.

Councilman Cunning moved, seconded by Councilman Anaclerio and unanimously approved, that Council table the request for city services at 711 Cushman Drive from Mr. Clarence Brown, Jr. until the next meeting.

FLAGS

Park Avenue

Chesterfield Street

Sons of the Confederates

Mayor Cavanaugh stated a request had been received for approval to fly four flags at the Confederate Memorial at Chesterfield and Park.

Mr. LeDuc stated that the Sons of the Confederates would like permission to erect four flags at the Confederate Memorial at Chesterfield and Park on Sunday, July 22 and for those flags to remain through Monday, July 23. This will be part of a ceremony which they will have Sunday at noon to celebrate the 100th anniversary of the Confederate memorial at Park and Chesterfield. Under the current Zoning Ordinance City Council has the approval right to state when any flags, banners, signs, etc. could be placed in the public right of way. He said Council has had only one other request come before Council since the ordinance was approved in 1999. He said this request was to place banners at the intersections throughout the city for the Character Program.

Councilman Anaclerio moved, seconded by Councilman Cunning, that Council approve the flying of four flags requested by the Sons of the Confederates, including the American flag, at the location of the memorial at Park Avenue and Chesterfield Street, and that the flags only be flown from noon July 22 and Monday, July 23, with the flags to be removed by sundown.

Mayor Cavanaugh stated Council had discussed the request at length in the worksession. He said there are several points that need to be considered. He stated he felt to allow the flags would be opening up the door on something that he was not sure Council should be doing. He said once Council agrees to fly flags of any type, then the door is open to all types of banners, flags, etc. He said another point that concerns him is that there is a certain part of the citizens that feel very sensitive about the Confederate flag. He said obviously there is a monument that had been there for almost 100 years. He said each year in May there is an event held in the parkway across from the Courthouse and they have their flags. He said he was very concerned about the matter, and he did not want to purposefully do anything that would cause a major part of the community to feel that Council is doing something against them. He said he would not support the motion because of that reason and because Council would be opening the door to any number and all kinds of banners and flags that some would not want to have in Aiken. He said this is a very sensitive issue. He said to allow the flags he felt could potentially cause Council problems in the future.

Councilman Cuning stated he seconded the motion and one reason is that this is the 100th anniversary of the monument. He said he would not favor erecting the flags permanently in any location. He said the allowance should be specific as it relates to the 100th anniversary. He said any request for other flags would have to come before Council.

Mayor Cavanaugh pointed out each May there is a Confederate celebration which has been going on for many years in the park across from the Court House. He said there is no attempt to say for that particular event that citizens can't bring the flags to the park.

Councilman Anaclerio stated that a door might be opened, but he felt that was why Council was elected—to make such decisions—to recognize the needs of the citizens whether pro or con and in each issue there is a unique judgement that Council has to make.

Councilwoman Price stated Aiken is very fortunate to have a community that works together. She said it had not always been that way and some on Council know some of the struggles. She said Council had worked hard to build relationships with races. She said she did not want to be a part of tearing down what had been worked on so hard to build. She said the symbolism is offensive to a good many people. She said she supported the right of the Confederate Memorial supporters to fly their flag and memorialize their day in their own way. She felt the way to do that is to fly the flags at the time they have their ceremony, but to place them in faces of others who have to see them as they ride by for more than 24 hours is not being sensitive to all the citizens. She said that is the reason she cannot support the flying of the flags at this time.

Councilwoman Clyburn asked that the members of Council consider that those who are from South Carolina and whose families and ancestors are from South Carolina were all a part of a Confederate state. She said some celebrate and some don't. She said we need to realize that now we are all Americans and we should remember and celebrate that. She felt if the flags are allowed that many people would be asking what can you do for me. She felt if allowed Council will get other requests. She stated Gary Smith had pointed out to Council what allowing the flags would entail. She pointed out there was nothing in the motion which would limit the flying of flags to a 100 year celebration. She said we can't say this is a 100 year celebration so it makes it special. She reminded Council that in 1961 the celebration that left the flag up for 39 years was a 100 year celebration. She said when the flag went on the State Capitol in 1961 it was 100 years later.

Mayor Cavanaugh pointed out that Gary Smith had informed Council that they could not dictate that they fly the American flag or any kind of flag.

Mr. Smith said when Council acts merely by suggesting something, Council votes as a body and a majority votes one way or another and really it has the effect of telling someone what they are going to say. He said in most everyone's mind we are talking about waving a particular type of flag, but the act of waving is actually someone's expression of speech and when Council says they have to do a particular thing you are telling them what to say. He said there is nothing wrong with waving the flags or setting the flags up at their ceremony, but when Council says it is all right to place the flag in the parkway Council is giving some credibility to that particular speech and if somebody else wants to do something similar Council has opened the door. He said the answer might be that this is a 100 year anniversary and a significant event, but who is to say that a 30th anniversary is not as significant. Mr. Smith stated the Supreme Court has stated that you can make reasonable time, place and manner restrictions, but you can't regulate the content of the speech. Mr. Smith said the Supreme Court has said the government doesn't have the ability to tell people what they can and can't say.

Council continued to discuss the matter of what Council can and can't do and if the flags are allowed that it would be opening the door for many other requests and Council would not be able to deny others. Some Council members felt that being a 100th anniversary should have some significance, but Mr. Smith stated who is to say that a 1st or 10th, or 30th anniversary is not just as significant for some event.

Mayor Cavanaugh called for a vote on the motion that the Sons of the Confederates be allowed to fly four flags at the Confederate Memorial at Chesterfield and Park Avenue on July 22 from noon to July 23 at sun down for their 100th anniversary. Those in favor were Councilmembers Cunning, Radford and Sprawls. Opposed were Mayor Cavanaugh and Councilmembers Anaclerio, Clyburn and Price. The motion was defeated.

Councilman Anaclerio stated if he could not identify what flags to be approved to fly then he was not going to agree with anybody flying a flag. He said he felt the Supreme Court had taken the privilege from City Council so he would not vote for any flags.

ANNEXATION – ORDINANCE 06252001

Woodside Plantation
Sidewood Development LLC
Richardson's Lake Road
Silver Bluff Road

Mayor Cavanaugh stated Mr. Jim Wetzel would like to address Council.

Mr. Jim Wetzel, 320 Huntington Court of Woodside Plantation, stated he wanted to address Council about the Woodside Plantation annexation ordinance passed by Council at the June 25, 2001 meeting. He said he was presenting a petition to the members of Council asking for a motion to reconsider their motion of June 25, 2001, annexing Woodside Phase III and amending that motion to conform to the ordinance specifically to conform the commercial use in that June 25 motion to a maximum of 26 ½ acres.

Mr. Wetzel presented a copy of his request to Council. He pointed out Robert's Rules of Order provide that a motion to amend may be made at the next regular meeting of a body that meets regularly such as City Council by anyone that voted for the motion at the last meeting. The motion can be made only by one of those who voted for the motion. He pointed out that Councilmembers Clyburn and Price could not vote.

Mr. Wetzel stated this was the fifth time he has raised the issue of the amount of commercial use to Council. Mr. Wetzel stated the motion passed by Council on June 25 has a very ugly background of avoiding the ordinances. Specifically the Planning Commission had no authority to pass on the motion because according to the ordinance they needed a traffic impact analysis, which they did not have. He said it was presented to Council and Council did not send it back to the Planning Commission. He said a traffic impact analysis was presented to Council, but he felt it was just a piece of paper and had no element of integrity. Mr. Wetzel also pointed out that he had attempted to get copies of the ordinance which was adopted by Council and also a copy of the developer's agreement adopted a few months ago, but they were not available to him yet.

Mr. Wetzel read from the Zoning Ordinance regarding commercial use. "A maximum of 5% of the total area of the proposed development is permitted to be devoted to uses other than residential development and open space." He said this is the law pertaining to PUD. He said the City Attorney admits that he has no law that supports a variation from that law. He said the city has no justification in deviating from the ordinance and has no basis for selecting 69 acres to be commercial use in the PUD. He said if the city's actions are ever challenged the whole ordinance annexing Woodside Phase III would be affected.

Mr. Wetzel asked that Council not take any action negative to Woodside Phase III, but amend the part of the motion of June 25, 2001, that pertains to commercial use and limit the commercial use to 26 1/2 acres, which is 5% of the proposed development being annexed in the ordinance of June 25, 2001. Mr. Wetzel asked that Council make a motion to reconsider the motion of June 25 and amend the motion to amend the commercial use area to not more than 26 ½ acres.

Councilman Cunning stated his concern about the proposal was what happens to the other green belt area. He asked couldn't the property then be developed into residential or something else. He wondered if the proposal would help or hurt. He said one of the reasons he thought the proposal that was adopted was better was because he had never seen a commercial area that had 69% of it green belt. He pointed out if the proposal

suggested by Mr. Wetzel is adopted and the commercial area is limited to 26.45 acres and the rest of the 69 acres used for some other use the city could be hurting itself by allowing the developer to do more than what is allowed by the ordinance adopted by Council. Councilman Cuning pointed out presently the developer cannot use any of the green belt except for what was specifically listed. He said he was concerned that only 26 acres might be zoned commercial and the developer then would want to develop residential around the area. Councilman Cuning stated what he liked about the ordinance which was adopted was that it listed specifically what the developer could do with the acreage and it had to be 69% green belt. He said he was concerned that the proposal may be creating something that will cause more developed than the ordinance adopted by Council.

Mr. Wetzel stated what Council had done was illegal. He said the developer had already agreed what he was going to do with the property so what difference does it make if it is taken out of a commercial use designation and placed in a residential use designation. He said the developer could say he would use that for open space. Mr. Wetzel said if there could be a designation of green belt in a commercial area couldn't there be a green belt designation in an area called open space or residential use.

Mayor Cavanaugh stated Council would like to try to answer some of the questions raised by Mr. Wetzel and asked Gary Smith to respond.

Mr. Smith pointed out recently Council revised the City Code and the old City Code said the City Council meetings were governed by Robert's Rules of Order. In the new City Code Council set up its own rules that are loosely based on Robert's Rules of Order, but they are written in more laymen's terms. Under the new rules a motion to reconsider can only be heard on the evening that the matter is being considered by Council. He said a motion to reconsider would have had to be done at the June 25th meeting. He said if Council chooses they could take some other options. He said any three Councilmembers can request that the item be added to a subsequent agenda. Another option is that Council can vote to suspend the rules which would require 5 of the 7 Councilmembers to vote in favor of suspending the rules and then they can vote to have the discussion. He said Council could do what Mr. Wetzel suggested, but they could not do it through a motion to reconsider.

Mr. Smith stated the tardiness in the Developer's Agreement and the annexation ordinance are his fault. He said Woodside did not want to annex the property until they were certain that they could negotiate an agreement that they felt was going to be something they would agree with so the Developer's Agreement had to come first. If Woodside could not agree with the Developer's Agreement then Woodside would have to make the decision whether to annex or not. That is why the Developer's Agreement came first. He said the property could not be zoned until such time as the annexation was approved and this is why the Developer's Agreement does not have the exhibits mentioned. The annexation ordinance has not been competed yet because he wanted to get the Council minutes and be sure that the annexation ordinance was in agreement with the minutes since the matter had been controversial.

Mr. Smith said it had been said that he admitted that he had no law that supports a variation from the law referring to the Zoning Ordinance. He said he felt this was a misunderstanding of the point he was trying to make at the last meeting. He said the issue to him was is Woodside Phase III the only development or is all of Woodside the development. He said there would be no provision to vary from the Zoning Ordinance. He said the issue to him is does the 5% apply to Woodside Phase III or does the 5% apply to all of Woodside.

Mr. Wetzel said his point is that Woodside Phase III is the proposed development and that is what was annexed. He said Woodside Phase I and II were annexed a long time ago. He said the subject for annexation was Phase III which was 529 acres and the 5% should be on the 529 acres. He said his question is why 69 acres can be zoned commercial.

Mayor Cavanaugh stated he thought Mr. Evans, Planning Director, had said he had looked at Woodside as a total development and the whole acreage was considered in figuring the 5% for the commercial area. Mr. LeDuc pointed out that in 1985 the Council minutes noted that the proposed development for Woodside would be over 2,500 acres and would have more than one additional phase. The 5% commercial was based on the original proposal that came to Council in 1985.

Mr. Wetzel stated he did not feel that acreage could be stockpiled in successive annexations except to make a reservation at the time of the original annexation so everyone would know what to expect in the future. He said the ordinance says 5% of the proposed development can be designated as commercial. He said Council is in violation of the ordinance.

Councilman Cuning stated 5% of 529 is 26.45 acres that can be used for commercial. He pointed out that under the ordinance adopted 21.39 acres would be developed for commercial. He stated he was concerned that Mr. Wetzel's proposal might allow more residential or other development in the green space. He said it seemed they were arguing the same point.

Mr. Wetzel again asked according to the way suggested by the City Attorney would another Councilman join with Councilmembers Price and Clyburn and make a motion to reconsider the motion.

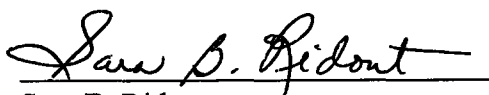
Mayor Cavanaugh stated he would suggest that Council receive Mr. Wetzel's comments as information and study the matter.

Mayor Cavanaugh stated regarding the traffic study, he sent the study to the SCDOT and asked them to look at it. He said there were some strange things in the study. He said, however, they looked at the report and they said as far as the traffic generation from the different types of buildings, etc. planned the numbers were on target. He said it was not just a piece of paper. It did have some good information. He said the SCDOT is going to do a study, and it will be completed by September 20, 2001.

Mr. Greg Teese, 189 Hunting Hills Drive stated he lives adjacent to the Moyer track, part of which is being zoned commercial and part of the land in question. He said as Council reconsiders the annexation based upon Mr. Wetzel's input, he would like for Council to think about a few other factors. He said the question came up as to whether the development in question is all of Woodside or simply Woodside Phase III. He said one way to determine what the ordinance applies to is who is the applicant. He pointed out that the applicant for Woodside and the applicant for Woodside Phase III are different entities which would tend to lend credence to Mr. Wetzel's argument that one can't stockpile the commercial right because it was done by different applicants. Also, the original proposal for Woodside is not the same as the current proposal. He said the Moyer track was not acquired by Sidewood until more recently. He said in addressing Councilman Cuning's concern, he said he would feel much better about City Council's ability to regulate the future use of the green space that is shown on the currently commercial track if that green space were not zoned commercial. He said future City Council's would have a hard time turning down a request to put a commercial structure on some land that's already been zoned by this Council to be commercial land. He said the best way to maintain control over it in the future is to give it a more restrictive zone than commercial. He said under a variety of uses allowable under the PUD Council could hold that as green space. He said Council does have control over the PUD.

ADJOURNMENT

There being no further business, the meeting adjourned at 9:05 P.M.


Sara B. Ridout
City Clerk