

Aiken City Council MinutesREGULAR MEETING

June 25, 2012

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

Others Present: Richard Pearce, Gary Smith, Stuart Bedenbaugh, Larry Morris, Alicia Davis, Jeff Metz, Charles Barranco, Tim Coakley, Ed Evans, Kim Abney, Sara Ridout, Amy Banton of the Aiken Standard, and about 10 citizens.

CALL TO ORDER

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

GUIDELINES

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

MINUTES

The minutes of the regular meeting of June 11, 2012, and the Executive Session of June 18, 2012, were considered for approval.

Councilman Ebner stated one of the agenda items at the June 11, 2012, meeting was how a Council person could get an item on the agenda. He said he was turned down on one item which was controversial. He wondered if that should be on the agenda again or if he should communicate with the City Attorney and City Manager later. The other item was some information people had requested about the Ridge at Chukker Creek. He pointed out the bond was discussed, and it was mentioned that it covered landscaping. He felt it did not cover landscaping.

Mr. Pearce stated the bond covers the easement. Mr. Morris had looked at the bond. It mainly covers infrastructure, but it covers the easement and preparation of the easement, according to the concept plan. It is felt there are some funds available. Staff has been in contact with the developer, and the developer is prepared to replace the dead landscaping, and the concept plan calls for landscaping at the borders because that was removed. He pointed out there is a hillside area and below the detention area where weeds are growing and there is no plant installation there. It is anticipated that by the end of October that work will begin. He pointed out some pine trees have been lost. He said he had toured the Ridge at Chukker Creek from the Woodside side of the fence. He said he now understands more clearly what the Millers were describing at the June 11 meeting.

Councilman Ebner stated the clarification he was asking was whether the bond covers the easement. Mr. Pearce stated it does cover the buffer area. Mr. Pearce stated he has a memorandum regarding information on the Ridge at Chukker Creek which he has given to the Millers.

Councilman Dewar stated it was his understanding that the Ridge at Chukker Creek would be on the agenda at the July 9, 2012, meeting. Mr. Pearce stated the item could be on the agenda. His understanding was the main issue was the planting along the border between the Ridge at Chukker Creek and Woodside. There is a plan forward for that. If there needs to be a discussion with the developer, we need to verify if the developer will be in town on July 9.

Councilman Dewar stated his concern is with the bond and what the bond provides coverage for. He said he was not sure the developer needs to be present. He said if Council wants to wait until the developer can be present, that would be fine. However, he would like the matter on the agenda as soon as possible so he could have a clear understanding of what the bond is.

Mr. Pearce pointed out Mr. Morris is present, and he could speak to the scope of the bond.

Councilman Dewar stated he was confused with Councilman Ebner's comment that he wanted something on the agenda, but it was not put on the agenda.

Mr. Pearce stated the item was the Ridge at Chukker Creek, and the item was to change the concept plan. He pointed out the City Attorney had said that Council had not changed any concept plans on its own motion. He said the developer had been brought in about a year ago, and the developer was very clear that he did not want to change the concept plan. That is why we wanted to have the follow up conversation with the developer. He may be misunderstanding what we are looking for. Mr. Pearce stated his understanding is that we are looking at the buffer area between the two subdivisions more than an equestrian trail and that no more of the buffer zone be cleared. He said they feel that is something the developer will be very amenable to, since the stormwater erosion is what keyed the riprap installation in the subdivision, and is something that Mr. Evans, Mr. Morris and Mr. LeDuc discussed years ago.

Councilman Ebner stated he felt the item should be on the agenda as requested by Councilman Dewar. Then Council could discuss the bond.

Councilman Dewar stated he was not interested in changing the concept plan. He said his concern is that he thinks there is a disconnect between what the Council approved concept plan is and what the staff seems to think is going to happen at the Ridge at Chukker Creek.

Mr. Pearce stated there were some administrative amendments to the concept plan.

Mayor Cavanaugh asked if staff could have a listing of all the administrative amendments to the concept plan at the next meeting.

Councilman Dewar moved, seconded by Councilman Ebner, that the minutes of the June 11 and June 18 meetings be approved as submitted. The motion was unanimously approved.

PRESENTATIONS

Certificate of Achievement for Excellence in Financial Reporting

CAFR

Finance Department

Mayor Cavanaugh stated Council would like to recognize the Finance Department for receiving the award for the GFOA Certificate of Achievement for Excellence in Financial Reporting.

Mr. Pearce stated he was very pleased to report that the city has received another Certificate of Achievement for Excellence in Financial Reporting for the 20th consecutive year. Dennis R. Locke, CGFO, Finance Director for the City of Spartanburg, is here to present this certificate. Mr. Pearce stated receiving this award is no small feat, and a lot of credit goes to Kim Abney, Finance Director, and her staff.

A Certificate of Achievement recognizes our efforts to make sure that our city audit is clearly presented in a format that is both simple to understand and provides accurate information for anyone reviewing our Comprehensive Annual Financial Report [CAFR].

Mr. Dennis Locke, of Spartanburg, stated the award is given each year to municipalities who meet very rigorous guidelines for financial statements, and it is an honor for the City of Aiken to receive the award 20 years in a row. Because the award is received one year does not mean there is a guarantee for the next year. The city has to continue to meet the guidelines of the standards that are made by the board. Those standards can change quite drastically each year, and there are changes that cities have to incorporate into their financial statements. He said it is a great honor that the State GFOA and the National GFOA present the award to City Council for 20 consecutive years of getting the Certificate of Excellence Award.

Ms. Kim Abney thanked Mr. Locke for coming from Spartanburg to present the award. She pointed out Mr. Locke is the state representative for the Government Finance Officers Association and the Finance Director for the City of Spartanburg.

Council thanked Ms. Abney and her staff for the excellent job they do.

RETIREMENT PLAN

Pension Plan

Employee Benefits

OPEB

Mayor Cavanaugh stated Mr. Warner Anthony was present to review for Council the Other Post-Retirement Health Benefits (OPEB)--Retiree Health Insurance.

Mr. Pearce stated Warner Anthony is present to review for Council some information about our Other Post-Retirement Health Benefits (OPEB)—Retiree Health Insurance. The item is for information and not an item for vote by Council.

Mr. Pearce stated Mr. Anthony was here about a year ago and talked about employee benefits, specifically the Pension Plan and Other Post Employment Benefits (OPEB). Under our existing plan retirees are entitled to health insurance benefits until age 65. Council has expressed throughout the budget process concerns about the pension plan, specifically Other Post Employment Benefits (OPEB), the health insurance benefits payable to City retirees who qualify for City retirement benefits. He said, looking at the national media, you see comments about local, county, state, and federal government retirement benefits and unfunded future liabilities. He pointed out the State of South Carolina has worked with their Pension Plan and the Teri Plan. Anticipated shortfalls with the state retirement are about \$15 to \$16 billion dollars, which is a tremendous future responsibility. The Legislature feels they have dealt with their immediate needs for funding the pension plan; they did not address Other Post Employment Benefits. Several years ago, and before it was legally required, the City of Aiken began making contributions to a trust fund. Once the funds have been paid in they have to be used to pay for health insurance benefits and cannot be used for any other purpose. With the establishment of the trust fund and through our audit process and the budget process we have had several questions about whether we have an unfunded future indebtedness and liability to employees who retire and qualify for the benefit. He stated Warner Anthony is the city's plan attorney and has done a great job reviewing the applicable federal laws and the applicable Government Accounting Standards Board regulations. With the advent of Government Accounting Standards Board regulation of these future payable benefits, under GASB45, and questions we have received, Attorney Anthony will share with Council actions we can take now to ensure we will be able to pay them. He pointed out two standards had been issued today, and they will affect how the audit is prepared, the numbers you will see in the audit, and what we are required to show in the audit. Initially, when GASB45 was talked about, it was very unclear how much local governments should be putting into the trust fund for these future benefits. Many governments did not put any money into the fund. The staff at the City of Aiken did not do that. Council worked with staff and approved contributions to the OPEB account, and as a result we have funds on hand. We are working to make sure we have the proper amount of money for this anticipated future expense. With the questions that Council had, we wanted to bring Mr. Anthony back to talk with Council about OPEB and answer questions and also give Council a presentation of some approaches we believe will make

the amount of money being contributed to the special trust account very helpful. We believe that actions can be taken with our plan this summer to more realistically calculate what our future obligations will be. Warner has some immediate steps that can be made now that will help our actuaries this summer drill down to a more accurate contribution amount for these OPEB payments. More accurate contribution rate determinations will, we believe, save taxpayer dollars, better ensure what benefits our retirees will be paid, and ensure we will have adequately funded our future obligations. His memo with these immediate steps was provided to Council for review.

Once we receive the actuary calculations for OPEB for FY 2012-13 [anticipated this Fall], we will provide this update to City Council and confirm the amount we will contribute. Council has approved a contribution in the General Fund of \$150,000 and in the Utilities Fund the amount is \$50,000. This amount is in line with contributions made in the past. The reason we reduced the amount is that we believe some of the actuarial assumptions can be modified and will result in a savings to the taxpayer. He said he had provided a memo from Mr. Anthony and also provided a review of the benefits that Mr. Anthony discussed last year with Council.

Mr. Anthony is prepared to answer questions about our OPEB--health insurance for retirees plan.

Mr. Anthony stated he would like to review the retiree health benefit program and what was done from the beginning in 2006, what has been done since that time and what is proposed to be done this year. Then he would like to discuss some retirement plan issues, some open issues, make some clarifications and give more data on the retirement plan. He said when he finishes the retiree health program he would take questions on that program. Then he would discuss the retirement plan.

Mr. Anthony stated that in 2004 GASB released GASB45, which said that public employers for the first time would have to start accounting for retiree health benefits. Prior to that time, Aiken was working on a pay as you go system. They paid for the retiree medical benefits each year, and expensed it that year. There was no liability and accounting. It was a relatively minor amount. There were a few number of retirees. When GASB45 was release in 2004, we realized it had to phase in and did not become effective for Aiken until 2009. However, at that point City management and City Council asked that we look at what the impact would be. In 2006 an actuarial study was prepared under GASB45 showing you what would happen under the existing plan if no changes were made. At that point, upon seeing the liability, the expense, and the growth of the plan, it was determined that the city could not continue its program unchanged, and that the numbers were too big to be in the financial statements. At that time it was decided to use a July 1, 2006 cutoff date. Anyone hired before July 1, 2006, would remain under the existing retiree health plan. For those hired after July 1, 2006, if they retired prior to age 65 they could purchase retiree health benefits but they would be required to pay 100% of the cost of those benefits, including any implied subsidy. Requiring them to pay 100% of the cost, there would be no GASB liability. Basically the City froze its GASB liability with respect to its employees. No new employees would cause any occurrence of any GASB liability. He pointed out that on June 30, 2006, there were 317 full time city employees who would have been eligible to grow into retiree health benefits. The benefit was frozen at 317 people. With turn over as of June 19, 2012, there are 322 full time employees, but of those 322 employees only 188 of those people were hired before July 1, 2006. Only 188 of those people are eligible for retiree health benefits. This one change alone has already reduced the potential group of eligible people by over 45%. This change had a big impact. There is no GASB liability for anyone hired after July 1, 2006. Once people reach age 65 and retire, regardless of when they were hired, the City still makes available a Medicare supplement benefit. They pay a portion of this benefit based on years of service, but the Medicare supplement benefit is a very minor cost in the overall scheme. He pointed out the City made the big change, but every year the committee reviews the actuarial report. They look at what is being done and look for ways to tweak the program. The City has multiple health plans that employees can join, based on their date of hire. Under the rules that were in existence, when an employee took early retirement they were eligible to continue the health plan they were in. Then, when the employee got to be 65, they could continue a health plan.

The City then decided that at age 65 everyone would be moved to a Medicare supplement plan. That also reduces the cost to the city. He pointed out that the Med 100 plan had a per capita cost of over \$12,000 per person. The Medicare supplement has a cost of about \$5,000. He pointed out that moving people from the Med 100 to the Medicare supplement is a huge savings. He said that change became effective July 1, 2012. People were encouraged to move to the Medicare supplement, and those who did not move were all moved on July 1, 2012. That will also have an impact on lowering the City cost. Also, at the time it was intended that people hired after July 1, 2006, would pay 100% of the cost for their medical coverage if they took early retirement. By counting 100% of the cost, that included what is called implied subsidy cost based on an age bracket. Presently a city employee age 25 pays the same cost as an employee age 55 for medical coverage. Under GASB45, we have to age bracket, and those older people have a higher cost. It was discovered the actuary was counting the implied subsidy in the calculation of cost. A change was made in the plan to make it clear that by paying their full cost the implied subsidy was included. He stated this was a little change, but a little change to lower the City's liability. He said the big item for lowering the liability is that many of those 188 people who are eligible are long service employees, and many of them eligible for the Med 100 plan. We have looked at the idea of saying when the employees retire they will not be eligible to continue the same plan they are currently on, but they must go to the Med 1000 plan or possibly the Med 500 plan. That would lower the per capita cost in terms of calculating costs from \$12,000 to about \$5,000. That could have a big impact and possibly lower the cost \$1 million on this item alone. However, before this is done, we will ask the actuary when they do the valuation this year to cost that change. When we know what the real savings are, a decision will be made on that change.

Generally what is happening is the Pension Committee who supervises the plan has the actuary report and is looking at the plan every year and has a good handle on what it costs and what changes can be made. When someone asks what we are doing about the GASB liability, we can show them what we are doing. We looked at it when it first became effective. We made plan design changes, and we have continued to make plan design changes. We know what our costs are. We are funding some of those costs, and we are working to control and manage our costs for our Post Retirement medical expenses. He said we feel we are in good shape on this plan. Mr. Anthony asked if there were any questions.

Councilman Dewar asked for clarification on early retirees and those retiring at 65 and the benefit.

Mr. Anthony stated the employees have to qualify for the benefit. If an early retiree doesn't have the service years, they are not eligible to pay for the health benefit. He stated after age 65, in order to qualify, the employee has to have 20 years of service to get the benefit. If an employee retires at 65 with only 15 years of service, they are not eligible for the Medicare supplement benefit. An employee who is 55 with 28 years of service pays 100% of the benefit until they are 65. Then at 65 the retiree goes to the Medicare supplement.

Councilman Dewar stated he understood Mr. Anthony to say that the Medicare supplement costs \$5,000. He said he had had a Medicare supplement and it just paid what Medicare did not cover. He wondered if the City plan was beyond that. He pointed out it is only about \$1,200 for Medicare itself, and to have a plan that costs \$5,000 to supplement seems high.

Mr. Anthony stated no. The \$5,000 is the per capita cost which includes claims and a portion for the stop loss insurance. The actuary has said \$5,000 is the per capita cost based on claims. He said he had not looked at the Medicare supplement plan specifically, as he is not involved in that. However, based on the cost, he felt it was a little richer than a basic Medicare supplement plan. He said he could get information on the Medicare supplement plan. He said he had not been involved in negotiating any of the individual plans. He said he understands the cost includes not only the insurance, but the overhead

for running the program. He pointed out the City is self-insured, and that is what they are paying which includes claims.

Councilman Ebner pointed out that when age 65 is reached regardless of years of service does the retiree transfer to Medicare, and does the City pay the supplement.

Mr. Anthony stated if someone takes early retirement and they don't have 28 years of service, they are not eligible for the health benefit. Because they retired before 65, when they turn 65 they still will not be eligible for the health benefit. If an employee retires at age 65 with at least 20 years of service they would automatically go on the Medicare supplement. If a person retires early after 55 they have to have 28 years of service. The deal is that if the employee takes early retirement they have to elect for the retiree coverage. If they don't, they can't come back and elect coverage.

Councilman Ebner asked if the money that goes into the trust fund can be used for other items or does the money continue to build up.

Mr. Anthony stated the idea is to build the fund up. The reason is that you get a break on the interest assumption used for discount purposes. GASB45, unlike the GASB rules on retirement plans, have an interest assumption that you must use if you do not fund it. The interest assumption you must use if you do not fund it is the same interest that the City would get on its un-invested cash, which is generally less than 4%. Those entities that are not funding GASB are having to use a 4% discount rate. GASB says if you fund it, then you can use the discount rate, whatever is earned in the trust. You have to fund it 100% to use the full discount rate. If you fund it 50%, you can use 50% of that discount rate. Presently we are trying to build the trust up to allow us to use a larger discount rate to have a lower liability. He said if the City wanted to use the money, they could use the money at any time. The plan is not to use the money until the trust builds up enough to generate the discount we would like to see. Then it can be used.

Councilman Ebner asked if this was true for commercial companies like IBM or DuPont. He felt this would be a lot of money for them to have to put in.

Mr. Anthony responded commercial companies have different rules than the GASB rules.

Mr. Anthony then reviewed the retirement plan. He said he first would like to correct an earlier comment that he made that may have been misunderstood. He said when he spoke to Council earlier and stated that Aiken should be proud of its retirement plan, as longer service employees could retire with 80% to 90% replacement ratio. He said he did not mean to imply that the retirement plan itself provided this benefit. He said he was talking more from an HR standpoint rather than a finance standpoint, saying the way we approach employees is to say if you work here for your career that they will receive 80% to 90% of their salary at retirement. That 80% to 90% includes Social Security benefits, for which the employees pay a portion. The plan formula itself provides a retirement benefit of 34.4% of final average earnings, which is on base pay after 20 years of service. It provides a benefit of 54.6% after 30 years of service. The 80% to 90% he mentioned is not what the plan provides. It is the totality of retirement benefits when Social Security is added to the plan benefits. The plan itself is providing anywhere from a high 30% to 55% of pay for people between 20 and 30 years of service. He said he thought that some people may have misunderstood and thought the plan itself was providing a replacement ratio of 80% to 90%.

Mr. Pearce stated he had heard Mr. Anthony describe the retirement plan as more like a three-legged stool. The individual has their savings account, their Social Security, and then the pension payment.

Mr. Anthony stated the way we try to explain the plan to new hires is that if they work for the City their entire career, they will be well taken care of in their retirement. He said he was not saying the plan pays all of it. The person has Social Security and their own savings. At the level the plan provides when the other components are added the retiree

will hit the 80% to 90% ratio. The City, however, is not paying for an 80% to 90% retirement benefit in the plan.

Councilman Dewar asked Mr. Anthony to explain the Social Security subsidy.

Mr. Anthony stated the Social Security is not a subsidy, but a form of benefit. The plan provides under the formula a benefit based upon the employee's years of service, times a factor of 1.8% for the first 20 years of service, times the final average pay which is base salary averaged over three years. Multiplying those provides one a dollar benefit that the plan then provides to the employee that is payable to the employee for life. For example, consider if someone is entitled to \$1,500 a month under the plan formula for life. The plan then says for that person that they can receive that money in various optional forms of payment, all of which are the actuarial equivalent to \$1,500 a month for life. To determine an actuarial equivalent, you have to know a life expectancy and you have to know an interest rate. We are calculating different present values of money, and time value of money. The employee could say they don't want the payments for life, but want the payment for their life and their spouse's life. You have to look at the actuarial tables; say the life expectancy is 23 years. The joint and survivor life expectancy is X number of years. The table has a factor that is multiplied times the present value of a life only annuity. It says the \$1,500 a month if you want it payable for the employee and 100% for the surviving spouse is reduced to \$1,300 per month. The employee would get that for their life and the life of the surviving spouse. Mr. Anthony stated the Social Security benefit is a different calculation. It basically provides an early payment of a larger amount and a payment of a smaller amount at a later time. He said that calculation cannot be done with a calculator, a program is needed. He said the Social Security benefit only applies if the employee is taking early retirement before age 62. We say the employee is taking early retirement, and when they get to be 62 we are looking at the earnings, and we estimate that the employee will get \$1,000 per month. For example, based on the formula at early retirement, the employee is entitled to \$1,500 per month for life. When the employee reaches 62 they would get \$1,500 plus another \$1,000 for a total of \$2,500. The employee says they are retiring five years early and does not want to live on \$1,500 for five years before getting to the \$2,500. The employee says they would like to have \$2,200 for life. We enter into the calculation what the estimated Social Security benefit would be. We calculate how much the actuarial equivalent is that could be paid to the employee for the next five years and then pay the employee for life thereafter so the level amount the employee would get from the City plus Social Security is the same. We may say we can pay the employee \$1,800 a month for the next five years. Then when Social Security kicks in the amount will drop to \$800 a month. The employee would get \$1,800 per month for the first five years. When the employee reaches the age of 62 they would get \$1,000 from Social Security and \$800 from the retirement plan. The employee still gets the \$1,800. What the employee is getting from the plan is still the actuarial equivalent of the basic benefit. The employee would not be paid more or less, based on time value of money and the interest rate used. They would just be getting the money sooner. It is like a mortgage. If a person gets a fifteen year mortgage, they will pay more per month than if they take a 30 year mortgage. It is an acceleration of the form of payments at the beginning, but reduced payments at the end, so the totality of the payment is still the present value of the benefit. The employee would not be getting any more or any less money.

Councilman Homoki asked what happens if Social Security gives a cost of living and if it affected the City's payment.

Mr. Anthony stated a Social Security cost of living increase would not affect the city payment, as the calculation assumes a fixed dollar amount. The Social Security cost of living increases are the employee's. The cost of living does not affect what the employee gets from the plan.

Mr. Anthony stated he wanted to visit the issue of the actuarial assumption and funding of the plan. He said this had raised a number of questions. He said he wanted to give some background information. One reads a lot in the paper about comments of other people, interest rates, etc. He said one should make sure that what they are reading really

compares to the City's situation. He said he would go through the City situation. Frequently what one reads in the paper is rhetoric by others who are posturing themselves for another group, particularly in looking at California, the Mid-West, New York and any states that have public employee unions. Most states with public employee unions have joint trustees. There are union trustees and trustees appointed by the state. The setting of the actuarial assumptions is normally a trustee function. When they get ready for collective bargaining and they start broadcasting to the unions to not come asking for extra money, they start making public statements about the need to change interest rates, etc. They want to broadcast the message that they are in bad trouble. He felt a lot of what we see is people broadcasting their message of being tough on negotiations and not wanting to increase benefits. He felt this does not apply to Aiken. He said the City controls their plan and the goal is to assure that the funding is level and that current taxpayers are paying their fair share and that you are not shifting any burden to future taxpayers, and that current taxpayers are not overpaying by paying too much so future taxpayers don't have to pay. He said he wanted to show Council how the Committee had evaluated this and some of the standards. He said he wanted Council to understand funding and how we look at it. He wanted Council to understand the actuarial concepts and the accounting concepts.

The actuary has basically said that the assumptions he uses and his approach is to try to set the contribution as a percent of pay. The approach used is to try to keep the contribution level as a percent of the covered payroll. With these assumptions, as the payroll goes up, the contributions go up. The City's contribution has generally been between 10% and 12% of the payroll. The actuary has said as long as we contribute that, and if our assumptions work well, on a long term basis if the City contributes that percent of payroll every year, they are paying their fair share for the current expenses and amortizing some past service liability. Mr. Anthony said he wanted to compare what Aiken has done, what other public plans have done and why some of the other plans are in trouble and why he felt Aiken is not in trouble. He pointed out two recent studies--one by the Pew Center in June, 2012, and the other by Boston College Center for Retirement Research in May, 2012. Both studies address why the public plans are in trouble. Generally there are four reasons why they are in trouble. One, they took contribution holidays and did not contribute to the plan when money was tight or they wanted to use it for something else. He pointed out that for a plan for a government entity there is no legal or retirement plan requirement, unless state law imposes one, that requires you to contribute to the plan, so state and other governments could take a contribution holiday if they wanted to. Second, they also increased benefits and frequently increased benefits assuming that market gains were going to pay for them or they did not have some understanding of what the true costs of the increased plan benefits were. Thirdly, they also allowed overtime pay, bonuses and extra compensation right before retirement to be counted towards the benefit. This is called spiking. The employee benefits were going up above what the actuaries assumed because of increased compensation right before retirement. Fourth, when the market crash and investment losses occurred, it was like an accumulation of all the things they were assuming just went south, and it accelerated the losses.

Mr. Anthony stated Aiken during this time never took a contribution holiday. At one time, from an accounting standpoint, the plan was 102% funded, but Aiken did not take a contribution holiday and still contributed 10% of pay. Aiken has never taken a contribution holiday and has continued what the actuary has said. He said he compares Aiken to the turtle and not the hare. It has been slow and steady as it goes along. Aiken has never increased plan benefits. The basic benefit plan has remained the same. We have not increased benefits, but have kept the plan benefit where it was. There has never been any spiking because the plan benefit is based on base salary—the last three years average base salary. There is no opportunity for spiking. There are no increased benefits because of overtime in the Aiken plan. He said he would go over what happened when the market crashed in 2008. Aiken's investment losses were not as bad for Aiken as it was for other plans, and Aiken has recovered. Mr. Anthony read a statement from the Pew Study which he felt shows what has happened. "Keeping up with the annual required contribution is perhaps the most effective way that states can responsibly manage their long term liabilities for public sector retirement benefits." He said that is a slow and steady plan, never taking a contribution holiday.

Mr. Anthony stated he wanted to look at the Aiken plan and what Aiken had done on the funding. He said generally the Retirement Committee gets an actuarial report every year. It is done as of the end of the fiscal year, June 30. It is normally delivered in the fall or winter following the end of the fiscal year. The actuarial report is reviewed. Aiken's goal has been to be at least 80% funded. The Pew Center, Boston College, and National Association of State Retirement Plan Administrators all say that if public plans are at least 80% funded they are in good shape. Aiken's goal has been to move above that, but that has been their minimum. He said he wanted to go over some numbers for funding. However, before that he wanted to talk to Council about the difference between the actuarial numbers and the accounting numbers. He said he would give Council both actuarial funding and accounting funding. They move in opposite directions because they are two different purposes. The actuary is looking at a long-term on-going plan concept. He is saying what happens to the plan on a long-term basis. The accounting profession is saying they look at a fixed date. At that date they look at what it is. They are very different concepts used in valuing these issues. Both approaches have value, but one needs to understand both and needs to look at both. It is funding versus financial reporting, and between the two you can get a blend and you use both to get a comfort level of where the plan is.

Mr. Anthony stated he wanted to give Council some numbers. He went back to 2004, as the City changed actuaries in 2004. He said he has all the reports of the prior actuary in the format that is easy to find the numbers. From an accounting standpoint the two items we have to look at are market value of assets and the interest rate. From an accounting standpoint we have used, since 2004, a 7% interest rate for valuing for accounting purposes. For accounting purposes the accounting number is a footnote in the financial statements. It will change. From an actuarial standpoint, the actuary uses 8% interest and views assets using what is called a smoothing method. Accounting looks on June 30 what the assets were then. The actuary uses a 5 year running average of the assets so they don't have spikes, but smooth it out. The value of the assets used by the actuary for determining funding is smoothed over a 5 year average. When the assets go up and down in value the actuarial value and accounting value numbers will never be the same. In 2004 from an accounting standpoint the City plan was 96% funded. From an accounting standpoint the plan was 83% funded. Assets went up a little more the next year so actuarially the plan was 87% funded and from an accounting standpoint 99% funded. In 2006 assets increased. The actuarial value was 87% funded and accounting 96% funded. In 2007 actuarial 93% and accounting 102% funded. At the high point of 2007 the City had about \$18.6 million. At the low point during the reduction in the stock market there was \$13.9 million in assets. With the market meltdown the City lost about 25% of the value of the assets. Both the 2008 and 2009 valuations reflected the loss. In 2008 there was only a small loss. In 2008 we had an actuarial 90% funding and accounting 92% funding. In 2009 is when the big hit came, because of the fall of the fiscal year. From an accounting standpoint the plan went from 92% funded to 69% funded. However, because of the smoothing on the actuarial side we went from 90% funded to 85% funded. That was the low side. In 2010 there was a positive return. Assets starting going back up, and from an actuarial standpoint the plan went back up to 80% funded, and from an accounting standpoint the plan went up to 71% funded. In 2011 there were even higher returns and the plan was back from an accounting standpoint up to 81% funded. However, from the actuarial standpoint in 2011 we dropped off the sixth year, which was a good return so the funding from an actuarial standpoint went down to 74% funded. The assets as of May, 2012, were a little over \$21 million. The assets were at \$18 million, went down to \$13.9, and now the plan is back up to \$21 million. The plan has basically recovered from the loss, but has not recovered from the missed earning assumptions, which will take another couple of years. However, from an accounting standpoint at \$21 million the plan is back above 80% funding. From an actuarial standpoint the plan will probably be under 80% because of the smoothing, because we have not gotten rid of the bad years over the five years. He said the point he wants to make is that when there were good years, the Committee said they wanted to keep contributing at the same percentage pay; they would not take a vacation holiday, and not change the interest rate. He said they wanted to keep the slow steady pace in the good years and got through the bad years. He felt the plan is working. He said he would give Council an idea of what the real returns have been. He said since 2004 if you take the annual return each year, add them

and divide by the 8 years, you come out with 7.99%. If you take the value of what \$1 was at the beginning of the time and track that through the earnings each year so you show the compounding effect, there has been a 102% return and divided by 8 there is a little over 12% return. He said the actuary says 8% seems to be a reasonable amount. The plan has never hit exactly 8%. During those 8 years there was a 16.5% return, 12%, 6%, 15.5%, -3%, -18%, 10%, and 25% return. He said there was no 8%, but we look at an average and on a long-term approach.

Mr. Anthony stated he would suggest showing these figures every year. They don't usually appear in the financial statements, but they can be shown on a chart every year so Council can see where the funding is on an actuarial standpoint and on an accounting standpoint so Council can be comfortable that the approach being used is fair to the current taxpayers. You don't want to over pay, but you don't want to under pay. We want to be able to tell the current taxpayers that they are paying their fair share for this year. Mr. Anthony asked if there were any questions.

Councilman Dewar stated he would accept the offer to provide the charts showing the funding on an actuarial and an accounting standpoint.

Ms. Abney pointed out that the actuarial reports are shown in the CAFR. Mr. Anthony stated he could also show the accounting reports, so Council could compare the two reports.

Councilman Ebner stated he compared the figures Mr. Anthony gave to those in the audit. He said the figures are difficult to bring together. He wondered how the three reports would say the same thing. Mr. Anthony responded that they would not. The reports were from two different professions, under two different standards, showing two different items. He said the reports don't say the same thing, and it is impossible to reconcile them because they have different standards and rules they use. He said one has to understand the two and between the two get comfortable of where we are going with the plan.

In response to a question as to which report one would use to start seeing trouble coming, Mr. Anthony stated you start seeing trouble coming when there are contribution holidays and not contributing to the plan. He said when you get under 60% funding and contribution holidays there is a problem, because money is not in the plan and you have to double down on the contributions which makes it very difficult in this environment for public units to do.

Councilman Ebner asked what report he should use, the annual report from Finance or from the auditor to feel good about the plan. He pointed out the auditor in reviewing the audit last year said we were looking at \$16 or \$18 million with the current plan on the OPEB benefits.

Mr. Anthony pointed out OPEB is different. He said that amount is about right on OPEB. He pointed out he was talking about the retirement plan. He said the actuarial report will give one the present value of accrued benefits to date. That would mean that if you ended the plan today, this is the dollar amount required to pay all the benefits as they come due. The actuary also gives one the present value of future benefits, assuming continued service, and assuming continued cost of living increases. He said take the present value of current benefits and then compare that to the two asset values, the fair market value and to the smoothing value. He said look at both funding numbers, the accounting and the actuarial. As long as they are moving in the right trend, you are okay. All the studies show that in a typical government plan 60% of the monies used to pay benefits come from earnings. Contributions are only 40% of the monies for benefits. The earnings on the long-term are the important item. When the 2008 losses occurred the Committee increased the contributions and moved it up 1% of pay. They increased the contributions slightly to help with the funding. They are relying on what has happened on a long-term basis to work towards getting out of the issue. It is working.

Council thanked Mr. Anthony for coming and explaining the plan and answering questions.

BOARDS AND COMMISSIONS

Appointments

Dr. Jack Benjamin

Arts Commission

Andrew Bouknight

Building Code Board of Appeals

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

Mr. Pearce stated Council has 4 pending appointments to fill vacancies on different City boards, commissions, and committees. Two appointments are presented for Council's consideration.

Councilmember Diggs has recommended the appointment of Dr. Jack Benjamin, a Professor of Visual and Performing Arts at USC-Aiken, to the Art Commission to represent the education category. If appointed Dr. Benjamin would fill the position of Keisha Lloyd-Kennedy who has resigned. His term would expire April 11, 2014.

Councilmember Price has recommended the reappointment of Andrew Bouknight to the Building Code Board of Appeals. If reappointed his term would expire May 12, 2014.

For City Council consideration is approval of two appointments as recommended.

Councilman Dewar moved, seconded by Councilman Wells, that Council appoint Dr. Jack Benjamin to the Arts Commission with the term to expire April 11, 2014, and reappoint Andrew Bouknight to the Building Code Board of Appeals with the term to expire May 12, 2014. The motion was unanimously approved.

Councilman Homoki stated he would like to nominate John Horvath for appointment to the Housing Authority to replace Kent Cubbage who has resigned.

Councilman Wells stated he would like to recommend the appointment of Butch Roberson to the General Aviation Commission to replace Craig Jarvis.

Mayor Cavanaugh stated these nominations would be on the next agenda for consideration.

REZONING – ORDINANCE 06252012

1103 Richland Avenue E

Benjamin Timmerman

Real Estate Development Partners, LLC

TPN 121-11-01-001

Mayor Cavanaugh stated this was the time advertised for second reading and public hearing on an ordinance to rezone property at 1103 Richland Avenue E. from Light Industrial [LI] to General Business [GB].

Mr. Pearce read the title of the ordinance.

AN ORDINANCE TO REZONE CERTAIN PROPERTY CONSISTING OF 1.24 ACRES OF LAND, OWNED BY BENJAMIN TIMMERMAN, III, ET AL FROM LIGHT INDUSTRIAL (LI) TO GENERAL BUSINESS (GB).

Mr. Pearce stated Real Estate Development Partners, LLC has petitioned to have property at 1103 Richland Avenue E. rezoned from Light Industrial [LI] to General Business [GB]. The partners include Steve DuFour and Benjamin Timmerman. They want to

redevelop a vacant building on the east side of town that used to be a wholesale plumbing supply business.

The Planning Commission reviewed this request at their May 15, 2012, meeting. They have unanimously approved this request with the following conditions:

1. That proof of recording of a restrictive covenant at the Aiken County RMC Office forever limiting the intensity of development of the entire 1.24 acres, so that the net new vehicle trips to be generated is fewer than 3,000 trips per day, be submitted.
2. That the applicant execute an agreement with the City listing all conditions and that the agreement be recorded at the RMC Office prior to the rezoning taking effect.
3. That all conditions be met within 180 days.

A copy of Planning Commission Chair Wilkins Byrd's memorandum regarding their review of this rezoning application was provided for Council's information.

City Council approved this ordinance on first reading at the June 11, 2012 meeting. For Council's consideration is second reading and public hearing of an Ordinance to rezone 1103 Richland Avenue E. from Light Industrial [LI] to General Business [GB] with the conditions recommended.

The public hearing was held and no one spoke.

Councilman Ebner moved, seconded by Councilwoman Diggs, that Council approve on second and final reading the rezoning of 1103 Richland Avenue E. from Light Industrial (LI) to General Business (GB) with the conditions recommended. The motion was unanimously approved.

ANNEXATION – ORDINANCE 06252012A

2805 Catawba Street
Timothy Boyce
TPN 104-19-33-011

Mayor Cavanaugh stated this was the time advertised for second reading and public hearing of an ordinance to annex property at 2805 Catawba Street into the City Limits and to zone it Single Family Residential [RS-15].

Mr. Pearce read the title of the ordinance.

AN ORDINANCE TO ANNEX TO THE CORPORATE LIMITS OF THE CITY OF AIKEN CERTAIN PROPERTY OWNED BY TIMOTHY BOYCE AND LOCATED AT 2805 CATAWBA STREET AND TO ZONE THE SAME RESIDENTIAL SINGLE-FAMILY (RS-15).

Mr. Pearce stated Timothy Boyce, the owner of property, at 2005 Catawba Street, has applied to annex his property into the Aiken City Limits. It is contiguous to properties already within the city boundaries on its East and South property lines.

The Planning Commission has reviewed this annexation petition and voted unanimously to recommend that this address become part of the City of Aiken limits, and zoned [RS-15]. Planning Commission Chair Wilkins Byrd has prepared a memorandum about their review of this annexation request.

City Council approved this ordinance on first reading at the June 11, 2012 meeting. For Council consideration is second reading and public hearing of an ordinance to annex 2805 Catawba Street into the Aiken City limits and zone it Residential Single-Family, [RS-15].

The public hearing was held and no one spoke.

Councilwoman Price moved, seconded by Councilman Wells, that Council pass on second and final reading an ordinance to annex 2805 Catawba Street and zone it Residential Single-Family (RS-15). The motion was unanimously approved.

AIRPORT – ORDINANCE

Hangar Lease

BusAv/Del, Inc.

Victory Aviation Services, Inc.

Mayor Cavanaugh stated an ordinance had been prepared for first reading to assign the BusAv/Del, Inc. hangar lease to Victory Aviation Services, Inc.

Mr. Pearce read the title of the ordinance.

AN ORDINANCE APPROVING THE RE-ASSIGNMENT OF A LEASE BETWEEN BUSAV/DEL, INC. AND VICTORY AVIATION SERVICES, INC.

Mr. Pearce stated David H. Mosier, President, BusAv/Del, Inc. has contacted the city seeking the reassignment of their hangar lease at the Aiken Municipal Airport to Victory Aviation Services, Inc.

As he explains in his letter, after the death of Dale Phelon, this group has undertaken the deaccessing and sale of various assets, including their hangar lease at the airport. Provisions of the existing lease require City Council approval of this reassignment. In conversation with representatives of Phelon Corporation, it is our understanding that Victory Aviation Services would potentially be interested in locating additional planes at the airport.

For Council consideration is first reading of an ordinance to reassign the BusAv/Del, Inc. hangar lease at the Aiken Municipal Airport to Victory Aviation Services, Inc.

Councilman Ebner asked if the lease was for land and building. Mr. Pearce responded the lease was for the hangar located on city property. It was pointed out they have two hangars, with one located on city property and one located on property leased to the FBO.

Councilman Dewar moved, seconded by Councilwoman Diggs, that Council pass on first reading an ordinance to reassign the BusAv/Del, Inc. hangar lease at the Aiken Municipal Airport to Victory Aviation Services, Inc. and that second reading and public hearing be set for the next regular meeting of Council. The motion was unanimously approved.

COUNCIL MEETINGS

Schedule

July and August, 2012

Mayor Cavanaugh stated Council needed to consider the City Council schedule for meetings for July and August, 2012.

Mr. Pearce stated as we begin another summer, Council has not typically scheduled second meetings in July or August to allow folks to schedule their summer vacations. We are again suggesting that we not hold the fourth Monday City Council meetings on Monday, July 23 and August 27, 2012. If some important issue comes up, we could always go ahead and schedule a second meeting during either month, if needed.

For City Council consideration, is cancellation of the fourth Monday Council meetings in July and August, 2012.

Councilman Dewar moved, seconded by Councilwoman Diggs that Council cancel the fourth Monday meetings in July and August, 2012. The motion was unanimously approved.

Airport

Fixed Base Operator

Mr. Pearce stated Council had wanted to meet with the FBO at the Aiken Municipal Airport. He said he had talked with the FBO, and he would be available on Thursday, July 26, or Friday, July 27. He asked what date Council would like to meet with the FBO.

Councilman Dewar stated he did not care if the meeting was in the Council Chambers or at the airport. He said his interest is discussion so Council can understand the structure of the airport and contracts at the airport.

Mr. Pearce responded that the land at the Airport is all city property, but the city has a long term lease with the FBO for a portion of the airport property. He stated his understanding is that the purpose of the meeting is for Council to have a better understanding of the FBO's role at the airport, the set up of why we have an FBO, why the city does not run the airport and an opportunity to see the facility. He pointed out runway lights and the ILS system have been installed. Meeting at the airport would be an opportunity for Council to see the improvements at the airport.

Councilman Dewar stated that before the meeting he hoped we would have a chance to see how other local airports operate. i.e. how much they charge for fuel and rent.

Mr. Pearce stated Councilman Dewar had sent a memo requesting information, and the intent is to provide the information in advance of the meeting so everyone would have that information.

There was discussion as to whether the meeting should be held in the Council Chambers or at the Airport. It was pointed out that Council had wanted a standalone meeting regarding the airport as it was felt it might take a couple of hours. After discussion Council set the meeting for Thursday, July 26, 2012, at 4 P.M. at the airport.

Aiken Society for Prevention of Cruelty to Animals

ASPCA

Mr. Pearce stated the ASPCA plans to open their facility the first of August and Council and their spouses are invited to a tour of the facility on Thursday, July 19, 2012, at 5 P.M.

Joint Planning and Council Meeting

Mr. Pearce stated he had an inquiry from the Chair of the Planning Commission asking that Council schedule the joint Council and Planning Commission meeting. A suggested meeting date is Monday, July 16, 2012, at 5 P.M.

THE RIDGE AT CHUKKER CREEK

Mr. Pearce stated he had a memo to distribute to Council regarding follow up information on the Ridge at Chukker Creek. He said staff will be following up with the developer. The matter will be on the July 9, 2012, Council meeting.

BOOK

Mr. Pearce stated he had distributed to each Councilmember a book by David Kennedy. He said he had spoken to many of the Councilmembers regarding a trip that he and Chief Barranco took to High Point, North Carolina. High Point has used David Kennedy's model for addressing violent crime in the community. He said they have committed

fifteen years to their efforts and have very actively involved the community. They have reduced their crime rate by 52%. He said he would be talking about the material later in the summer and meet with some focus groups. It will take community participation for the effort to succeed. Officials from High Point, including the community volunteers, are willing to come to Aiken this fall and give a presentation of the High Point model and what has worked for them.

COURT CASE

Freedom of Information

Lambries v. Saluda County Council

Agenda

Amendments

Mayor Cavanaugh asked Mr. Gary Smith, City Attorney, to update Council and the press on a recent court case that appears to affect municipalities.

Mr. Smith stated recently the South Carolina Court of Appeals came out with an opinion in the case of Dennis Lambries v. Saluda County Council. In that case Mr. Lambries filed suit in the Saluda County Court alleging that County Council had violated the Freedom of Information Act because they engaged in the practice of amending their agenda during a public County Council meeting. The municipal attorneys around the state have been somewhat divided on this issue. There are some municipal attorneys who believe that as long as City Council is meeting publicly that City Council has the ability to amend their agenda if they desire. He said that had been the position that Aiken has used since he had been City Attorney for fifteen years. The other line of questioning is how would the public know what Council will be talking about if the agenda is changed at the meeting. He said that is the more conservative approach to making sure that Councils comply with the Freedom of Information Act. He said the opinions of the municipal attorneys were fairly evenly split on the matter. He said the Court of Appeals answered the question last week regarding this matter when they came out with the opinion. They erred on the side of ensuring that the public was fully aware of everything Council would be doing. They decided that if Council posts an agenda which is required by law that once Council goes into the Chambers to conduct business that Council cannot add anything to the agenda for discussion that the public does not have knowledge about. One of the things the Court says is that the provisions of the Chapter talking about the Freedom of Information Act must be construed so as to make it possible for citizens or their representatives to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings. When they answered the question where they say you cannot allow amendments to the agenda during a public meeting, they admit that this is a close question because no provision in the Freedom of Information Act appears to prohibit such action. However, to allow an amendment of the agenda regarding substantive public matters undercuts the purpose of the notice requirement in Section 30-4-80. A narrow construction of FOIA may support the position that so long as regularly scheduled meetings are open to the public, they are conducted in compliance with FOIA. However, such a construction would be inconsonant with the agenda notice requirement for regularly scheduled meetings and would go against the instruction that the FOIA is to be liberally construed. They make it clear that public bodies should not modify their agendas. The agendas should be published for the public to see. He felt this opinion would require Council to make a small change to how business is conducted. He said he was assuming Council does not want to change their long standing practice of allowing the public to speak. He said the new case requires that if someone wants to speak at a Council meeting, they need to let the City Manager know that they want to speak and why they want to speak so it can be placed on the agenda so the public has adequate notice of what will be discussed during a City Council meeting.

Councilman Dewar stated he has a problem with that. He pointed out it had been a bad month for the South Carolina courts. He said we started out with the Supreme Court and their nonsense disenfranchising so many thousands of voters in the state and the removal of candidates from the ballot who want to run for office. He said Council is an elected body, and he felt any citizen should be able to come to the Council meeting and talk to

Council. He pointed out Council has not had a lot of people ask to speak on something not on the agenda. He stated there seems to be a conflict with the conservative and liberal wording because you are talking about supporting the Freedom of Information Act, but we would be telling the public they can't talk to Council until they go through the process of getting on the agenda through the City Manager. He said he grew up in a town where people could talk at a public meeting. He said he had never seen a Council that would not accept input from a member of the public. He said if someone has a complaint against the city they may have to wait for several days until they get on the formal agenda to appear before Council.

Mr. Smith stated in looking at the Court of Appeals opinion the focus is not on what the individual citizen wants to say. It is focused on whether the entire public in looking at the agenda would have knowledge of what will be discussed at a public meeting.

Councilman Dewar suggested we could put on the agenda "Public Comment." He stated it could be to the point that we need to have everything in writing before the Council meeting. He felt this was too conservative of an opinion.

Mr. Smith stated the question would be what is the public comment about.

Mayor Cavanaugh pointed out there was public comment at the last Council meeting. He said that points out why he feels that adding public comment to the agenda is not right. He stated someone talked about an issue with someone's property and things not being done. The owner of the property was not present to hear the complaints and did not know the issue would be discussed. He felt that was not right. He felt that when an issue or situation is to be discussed that both parties should be aware that the matter is to be discussed. He said there is nobody on Council that wants to hear the public more than him. He said he had been saying it for 27 years. He said he had taken pride in saying we have never turned a person out that wanted to speak to Council. He said others do feel the same way. However, the law is the law. If this is the law, then we need to move forward. He said he personally felt the opinion is a good idea because we don't want things to happen as they did at the last Council meeting. He said the matter at the last meeting points out the problem with allowing persons to be added to the agenda for comment.

Councilman Dewar stated the citizen who came to the last meeting and made comments had been complaining to Council for eight years about her problem. He said the citizen was complaining about the fact that Council approved a concept plan and for eight years she has been looking at a project which violates what she thought was going to happen.

Mayor Cavanaugh stated he felt the owner of the property should have known that there would be discussion on the issue so he could have been present.

Councilman Dewar asked then if a citizen calls the City Manager and wants to be on the agenda, does the City Manager have to say wait until he can get in touch with the other person to see if they can be present before placing an item on the agenda. He wondered how that would be handled.

Mayor Cavanaugh stated he felt when someone asks the City Manager about being on the agenda that the City Manager has to understand what they want to talk about and whether it involves other people who may need to be present at the meeting.

Mr. Smith stated the City Manager controls what goes on the agenda. He pointed out you could envision something like the Mayor has talked about where a person may want to be on the agenda to talk about a specific item. The City Manager may want to make sure City Council gets a balanced opinion about things and may want someone else to speak on the same subject. He said City Council may want to modify their rules of procedure to include specific provisions about putting people on the agenda in light of the change to the agenda because of the court ruling.

Councilman Dewar stated he felt we should inform the citizens how the process would work.

Councilman Homoki asked how the mechanics of the agenda would work. He stated the agenda is usually published on Thursday. He wondered about the responsibility to publicize a new agenda. He stated the agenda is in the Aiken Standard on Monday. He wondered if the City Manager would have to keep the press informed of changes. He asked what happens if a citizen comes in on Friday and wants to be placed on the agenda for comment. He asked how one is notified of an agenda change. He also asked about the process if a person or Councilmember wants to get something on the agenda, and how other persons involved might be notified of the item being on the agenda.

Mr. Smith responded that the Council agenda is posted on Thursday. At that time the agenda is basically locked.

Mr. Pearce stated there would be no agenda changes. Once the agenda is sent out on Thursday, that would be the agenda for the meeting.

Councilman Homoki pointed out that at times people wander and make comments that are not on the topic being discussed. He wondered if it was the Mayor's option to say the person is out of order.

Mr. Smith stated the Mayor could say the person is talking about something not on the agenda and that if they wanted to talk about that subject it would have to be added to a later agenda.

Mr. Pearce stated for a person or Councilmember to get something on an agenda, the request and information need to be in the City Manager's Office on the Monday before the meeting. It takes time to gather all the information and publish it for Council. He pointed out citizens have a constitutional right to petition government for redress of their grievances. He said, however, staff needs to give notice to the public that the person will be at the Council meeting to discuss a matter. If a person just comes to a meeting and starts talking about a matter no one knows about it except the people at the meeting. There are regulations for emergency situations and emergency meetings.

Councilman Dewar asked if it was possible to ask the Court of Appeals for clarification on their decision and if they intended to make it more difficult for the public to address Council.

Mr. Pearce stated the parties to the suit would have to ask for clarification.

Mr. Smith stated he felt in their opinion they admitted it is a close call, but they are in favor of making sure the public is fully aware of what is to be discussed at a meeting.

Mayor Cavanaugh felt it would not be a problem once we start the process.

Mr. Pearce stated based on Council's concerns and comments from the City Attorney, if a citizen wants to address Council at a Council meeting they should have information to the City Manager's Office by 5 P.M. on the Monday before a Council meeting. The person could either email or bring a written request to the office for the agenda. The information should include their name, what they want to speak on, and their contact information.

Councilman Dewar stated he felt that is not what would happen in some cases, especially if someone else needs to be contacted that the matter will be on the agenda.

Mr. Pearce stated in the case of the Ridge at Chukker Creek, the request was to change the concept plan. The concept plan was adopted by ordinance. To change an ordinance requires an ordinance. Before an ordinance can be voted on Council has to give public notice of the ordinance. He said that was the problem with the previous request. He said he understands now the request has changed. He pointed out he had stated when the

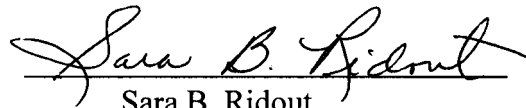
Millers were in the Council Chambers the Ridge at Chukker Creek will be on the agenda for July 9, 2012. The developer will be notified of the matter being on the agenda. The developer may have an understanding of what the Letter Credit covers. He said staff has an understanding of what the Letter of Credit is. He said his sense is that he would rather have the affected parties in the room so Council does not hear just one side. However, if a citizen wants to come in and state a grievance, we have to understand that is one perspective on a particular concern or issue and there may be other relevant information before Council would take any action. He felt it was better to have all parties concerned present at the same time so all hear the same thing and have the same information.

Councilman Dewar pointed out that Council had never been empowered to take action on an item not already on the agenda. He stated people coming in and talking is a listening only and no action is taken because the item is not on the agenda.

Mr. Pearce stated he felt it would be good for all to know that a person is coming to a meeting to discuss a matter so all interested can come and hear the comments. He felt that it is just part of the transparency of what will be happening at a Council meeting.

ADJOURNMENT

There being no further business, the meeting adjourned at 8:43 p.m.


Sara B. Ridout
City Clerk