

OCTOBER 23, 2018

REGULAR MEETING OF THE BOARD OF COMMISSIONERS OF THE CITY OF  
ALBANY, GEORGIA  
GOVT. CENTER – RM 100

PRESENT: Mayor Dorothy Hubbard  
Mayor Pro Tem Bob Langstaff, Jr.  
City Commissioners: Jon Howard, Matt Fuller, BJ Fletcher, and Roger Marietta  
City Manager: Sharon D. Subadan  
City Attorney: C. Nathan Davis

Mayor Hubbard called the meeting to order at 7:18 p.m., and, following a moment of silence and the Pledge of Allegiance, she instructed the audience on the policy to address the Commission, whether through Citizen's Comments or Speaker's Appearance Forms.

Commissioner Howard moved to approve the minutes of the previous meeting, seconded by Commissioner Fletcher; the motion unanimously carried.

#### RECOGNITIONS

Commissioner Marietta moved to adopt the following resolution, seconded by Commissioner Howard; the motion unanimously carried.

#### A RESOLUTION NO. 18-R168

Recognizing Albany League Baseball's 10 & Under All-Star Team as the 2018 Dizzy Dean World Series Champions

Judge Weaver thanked the Commission for recognizing this group of talented young men who competed in 22 tournament games to become the 2018 World Series Champions. He then recognized the three Asst. Coaches for their efforts as well.

Mayor Hubbard stated that she is proud of the team for winning the World Series and she proceeded to read the resolution (copy on file). She then presented a copy of the Resolution to team members and coaches.

At this time, Mayor Hubbard recognized former Mayor Willie Adams's presence and thanked him for his continued service to the City of Albany.

#### PUBLIC HEARINGS

1. Zoning Case #18-047 - Robert N. Brooks/Owner & Applicant; requests to rezone property located at 2610 Gillionville Rd. from C-5 to C-2.

Using a power point presentation (copy on file), Paul Forgey, Planning Director, advised that the request to rezone will expand the property for commercial use with the specific use not known at this time. He discussed the zoning history (and showed maps: surrounding zoning, surrounding land use and aerial view), planning, traffic and future land use considerations and advised that the Planning Commission recommended approval.

Commissioner Marietta stated that the citizens he spoke with seem to support this rezoning application.

Mayor Pro Tem Langstaff commented on not knowing what will be put on the property and asked if a restaurant/drive thru could be considered. Mr. Forgey explained the current C-2 designation, adding that a car sales lot can be placed there, but not an auto repair/body shop. Additional discussion followed with Mr. Forgey explaining that numbers were run on whether or not a restaurant would be burdensome with no challenges being defined.

2. Zoning Case #18-051 - SOWEGA Financial Services, LLC/Owner; Alfred A. Hosley/Applicant; requests to rezone property located at 1135 Gillionville Rd. from C-5 to C-2.

Using a power point presentation (copy on file), Mr. Forgey explained the current C-5 designation and advised that the request to rezone will allow for a used car sales lot. He

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discussed the zoning history (and showed maps: surrounding zoning, surrounding land use and aerial view), planning, traffic and future land use considerations and advised that the Planning Commission recommended approval.

Mayor Hubbard advised that no one had signed up to speak in support of or opposition to this, nor the first, zoning matter.

Mayor Pro Tem Langstaff asked if the location is already operating as an Auto Broker, with Mr. Forgey replying in the affirmative and advising that the owner is attempting to have the area properly rezoned. Discussion on the process followed, with Mayor Pro Tem Langstaff expressing concerns regarding the car lot being close to residential areas and asking if there is a limit to the number of cars that can be on display. Mr. Forgey advised that it can be limited by size (six-eight). Mayor Pro Tem Langstaff questioned other businesses in the area, etc.

Commissioner Marietta stated that he is in favor of the rezoning and that he feels it will be good for economic development as well as enhance the fight the blight initiative.

3. Zoning Case #18-054 - Pankajbhai & Jyotsnaben Patel/Owners/Applicants; request to rezone property located at 2402 Whispering Pines Circle from R-1 to C-2.

Mayor Pro Tem Langstaff stated that a citizen had requested that this item be rescheduled; however, he was told that she had signed up to speak. He then asked Ms. Whitney Knox Lee if she still wanted to reschedule this item or to continue. Ms. Lee asked that the item proceed.

Using a power point presentation (copy on file), Mr. Forgey explained the current R-1 designation and advised that the request to rezone will allow for a restaurant with drive thru. He discussed the zoning history (and showed maps: surrounding zoning, surrounding land use and aerial view), planning, traffic, and future land use considerations and the Comp Plan, advising that the Planning Commission recommended denial; however, he added that conditions were recommended by staff as follows: **1) Due to possible high traffic volume, noise and/or late hours of operation the following uses will not be permitted at this location: bar, night club, event centers, convenience store, and motor vehicle related services: 2) No access is allowed from Whispering Pines Circle. Driveway placement on Whispering Pines Road will be determined by the Director of Planning and the City Traffic Engineering Dept. 3) Applicant will engage services of acoustical (sound) professionals to design a sound wall that mitigates sound from the proposed development. The wall will extend along Whispering Pines Circle and Whispering Pines Road to a point determined by the Planning Director that will offer protection to 2500 Whispering Pines Road. The reasonable discretion of the Director of Planning and Development Services will control. 4) A landscape buffer shall be planted and maintained outside of the wall on private property. The composition of the landscape buffer will be determined by the Planning Director and the City Arborist. 5) The applicant will engage the services of lighting professionals to develop a lighting plan that will ameliorate any adverse effect of lighting on residential lots to the west. The type of lighting used should reflect the results of such study. The reasonable discretion of the Director of Planning and Development Services will control.**

Kevin Sproul, 2502 Whispering Pines Circle, spoke in opposition to the rezoning request, with reasons that include: noise level, traffic, etc., adding that he purchased his home in 1991 and the noise from the restaurants already there, along with garbage trucks collecting their refuse, competes with being able to hear his television. He asked that the Commission consider denying this re-zoning request.

(Commissioner Howard left the meeting at this time (7:54 pm) due to a call he received regarding a death in his family).

Representing the owners/applicants, Attorney Tim Davis, stated that his clients are willing to work with staff to come up with a solution to the property, including acceptance of the conditions that were noted. He mentioned that the property could be sub-divided and commented on traffic and noise concerns, advising that his clients are willing to work with staff

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on both issues. He addressed traffic access on Dawson Road and asked the Commission to consider the request to approve, adding that the owner's son has the franchise in Warner Robbins, with a payroll of approximately \$600,000.00/employing 50-60 people, etc.

Mayor Pro Tem Langstaff asked Attorney Davis if his clients would consider a less intrusive rezoning, and consider offices instead of a restaurant. Attorney Davis stated that this has not been discussed by his clients and that the restaurant is what they are requesting at this time. He stated that he and his clients will consider the denial of this application as a violation of their constitutional rights and handed the Clerk a letter for the file (copy on file).

William Dunwoody, 2413 Whispering Pines Circle, spoke in opposition to the proposed rezoning; however, he stated that he and the neighbors would be favorable to the C-5/office use rezoning. He commented on the lack of fencing/different fencing at another location that was previously rezoned, lighting, concerns, etc., and mentioned criminal activities that have occurred at businesses in the area this past year, adding that the traffic study was never performed.

Janie Eden, Director of Operations for Del-Taco, spoke in favor of the rezoning application, adding that her job is to oversee franchise operations. She spoke highly of Mr. Patel's son in Warner Robbins, one of her best, top performing franchisee, who operates that franchise with integrity and with care for employees and people of the community.

Michael Vasquez, operator of Del-Taco, spoke in favor of the rezoning application and commented on the 24/7 hours of operations, adding that only the drive thru will be open all night; however, security will be outside and the parking lot will be kept clean.

In reply to Mayor Hubbard, Mr. Vasquez discussed daily/nightly traffic which will be minimal.

Commissioner Fuller asked if they will abide by the restrictions/conditions that were discussed; Mr. Vasquez replied that he cannot speak to closing the operation early, that would be up to the owner and he cannot speak on his behalf.

Commissioner Fletcher commented on Taco Joe's, which is across the street and stays open until 4 a.m., adding that it gets noisy and crazy in the area late at night. She asked about cleaning-up in the area, etc. Mr. Vasquez stated that they want to make the community happy and discussed traffic at Krystal's, which also remains open late, adding that they will not have long lines; the items offered at Del-Taco allow getting through the drive thru without a long wait. Commissioner Fletcher commented on the traffic concerns currently in the area.

Brandon Inman, 2402 Whispering Pines Circle, spoke in favor of the rezoning application and stated that he is not employed by Mr. Patel; however, Mr. Patel had asked him to speak with the neighbors on his behalf. He explained that he lives in the area, but was met with hostilities, was threatened to have the police called and was threatened on social media. He agreed that traffic is a problem already, however, he said he does not feel it will create more problems.

Commissioner Marietta asked Mr. Inman if he had heard, while speaking with neighbors, of the verbal promise the original owner in the neighborhood had made that he would never turn the property to commercial use. Mr. Inman reiterated that it was difficult to speak with neighbors; however, he said that an elderly lady told him that the home was a landmark of the neighborhood. When Mr. Patel heard that, he decided to resurvey the property and leave the home intact.

In reply to Commissioner Fuller, Mr. Inman stated that his rent is \$1,000/month.

Whitney Knox-Lee, 2407 Whispering Pines Circle, spoke in opposition to the rezoning application and addressed comments from Del-Taco reps and Mr. Inman (including FB posts), adding that she does not think there is enough space in the area for cars to exit onto Dawson Rd., etc. She countered that Del-Taco has not worked with the community and said she opposes a fast food and convenience store in the area, adding that she has issues with the threats made by Attorney Davis.

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Mayor Pro Tem Langstaff asked Ms. Lee if she is ok with the suggested C-5 designation with Ms. Lee replying in the affirmative. Mayor Pro Tem Langstaff addressed the threat that Attorney Davis made, adding that the City receives [threatening] letters daily, etc. It is merely a formality that preserves their right to appeal negative decisions made by the Commission.

Mr. Forgey clarified that Family Dollar did not have the same conditions regarding fencing [as was mentioned by Mr. Dunwoody] and was built according to the conditions that were put on that rezoning application. He said he always recommends a sound study for fencing. Mayor Hubbard asked who monitors the fencing; Mr. Forgey explained that property owners are supposed to abide by the conditions and citizens can make reports to Code Enforcement.

There being no further questions/comments, Mayor Hubbard declared the public hearing closed.

APPOINTMENTS

1. One appointment to Albany Housing Authority for one year term ending November 2019

Mayor Hubbard stated that she will reappoint Sondra Aikens.

ORDINANCES

Commissioner Marietta introduced the following (first reading):

AN ORDINANCE NO.

Amending Sec. 4 of the Charter of the City of Albany to provide the City Manager with Purchasing Authority; Establishing Limitations

Commissioner Marietta then offered the ordinance and asked for adoption, seconded by Commissioner Fuller; the motion unanimously carried.

Mayor Pro Tem Langstaff introduced (first reading)

AN ORDINANCE NO.

Amending Section 26 of the Charter of the City of Albany to provide Limited Purchasing Authority to the Utility Board; Establishing Limitations

Mayor Pro Tem Langstaff then offered the ordinance and asked for adoption, seconded by Commissioner Marietta; the motion unanimously carried.

Commissioner Marietta introduced

AN ORDINANCE NO. 18-116

Amending the Zoning Ordinance and Map of the City of Albany to change the status of property located at 2610 Gillionville Rd., from C-5 to C-2

Commissioner Marietta then offered the ordinance and asked for consent to dispense with the second reading and asked for its adoption, seconded by Commissioner Fuller; the motion unanimously carried.

Commissioner Marietta introduced

AN ORDINANCE NO. 18-117

Amending the Zoning Ordinance and Map of the City of Albany to change the status of property located at 1135 Gillionville Rd., from C-5 to C-2

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Commissioner Marietta then offered the ordinance and asked for consent to dispense with the second reading and asked for its adoption, seconded by Mayor Pro Tem Langstaff.

A brief discussion followed with Mayor Pro Tem Langstaff expressing concern regarding the number of cars allowed on the lot, adding that he will defer to the Ward 4 Commissioner [Marietta]. Commissioner Marietta stated that the owner wants to comply with the zoning restrictions and that he will have only four-eight vehicles on the lot and there were no complaints. He agreed with Mayor Hubbard's comment that signs were posted in the area regarding the proposed rezoning.

Commissioner Fletcher stated that her concern is that there is no controlling how many cars will be in the area, adding that in the Gordon Ave., etc., areas, a lot of cars are parked in the residential area with zero control. Commissioner Marietta reminded Commissioner Fletcher that this is not an auto repair rezoning and with Mr. Forgey adding that it is for auto sales only.

Mayor Pro Tem Langstaff asked if the Commission can limit the number of cars with Mr. Forgey replying in the affirmative and Mr. Davis agreeing.

Commissioner Marietta moved to add a condition to the zoning ordinance that there can be no more than six motor vehicles for sale on the lot, seconded by Mayor Pro Tem Langstaff; the motion unanimously carried. Mr. Davis stated that he will get with the Clerk to make necessary amendments to the ordinance.

Discussion followed on the following:

AN ORDINANCE NO.

Amending the Zoning Ordinance and Map of the City of Albany to change the status of property located at 2402 Whispering Pines circle from R-1 to C-2

Mayor Pro Tem Langstaff asked Mr. Davis if the Commission can change the zoning designation from C-2 to C-5 to allow office space. Mr. Davis advised that it is the duty of the Commission to zone what's proper, and, in reply to Mayor Pro Tem Langstaff, he stated that it is proper to ask the applicant if they would consider the C-5 designation and commented on the possibility of adding covenants as conditions also.

In reply to Mayor Pro Tem Langstaff, Attorney Davis asked the owners/applicants if they were interested in the C-5 designation, but they are not. Mayor Pro Tem Langstaff asked that the record reflect that the owners were not interested in the alternate zoning to C-5; he then moved to deny the application, seconded by Commissioner Fletcher; the motion unanimously carried.

In response to Mayor Hubbard, Mayor Pro Tem Langstaff moved to excuse the absence of Commissioner Howard, seconded by Commissioner Marietta; the motion unanimously carried

RESOLUTIONS

Mayor Pro Tem Langstaff moved to table the following resolution. Hearing no second, Mayor Hubbard declared that the motion died.

A RESOLUTION NO.

Authorizing Execution of an Agreement that will continue with J. Anderson Davis of Brinson, Askew, Berry, Seigler, Richardson & Davis, LLP Law Firm re: Administration of Hotel/Motel Tax Class Action Litigation Funds

Commissioner Marietta moved to adopt the resolution, seconded by Mayor Pro Tem Langstaff for discussion.

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Discussion followed with Mayor Pro Tem Langstaff expressing concerns on the class-action lawsuit and paying this law firm, when other cities may not be paying anyone to represent them at this point and are just collecting the funds, adding that the courts assigns fees to attorneys, etc., and that the extended agreement for two years (to 2020) seems odd to him. He said that he has never seen it done this way in a class-action and suggested that the City had been receiving payments without approval; therefore, he feels something has happened.

Commissioner Marietta withdrew his motion to adopt the resolution, seconded by Commissioner Fuller; the motion unanimously carried.

In reply to Commissioner Fuller, Mr. Davis stated that there is no time issues with this item. Commissioner Marietta moved to table for more information, seconded by Mayor Pro Tem Langstaff; the motion unanimously carried.

Calling for a point of order, Commissioner Fuller suggested moving the last resolution forward to have more time to discuss the next item as listed on the agenda.

Mayor Pro Tem Langstaff moved to adopt the following resolution, seconded by Commissioner Fletcher; the motion unanimously carried.

A RESOLUTION NO. 18-R169

Adopting Major Fare and Service Change Policy for the Albany Transit System

Commissioner Fletcher moved to adopt the following resolution, seconded by Commissioner Marietta.

A RESOLUTION NO. 18-R170

Authorizing Execution of an Agreement with MetroPower, Inc.; Authorizing the use of \$6,500,000 MEAG Credits

Detailed discussion followed due to Mayor Pro Tem Langstaff expressing concerns with the agreement that was distributed in the agenda packets and receiving a revised version at the work session, and, whether to table the item and have a special called meeting or to continue with the meeting for in-depth discussion; the consensus was to continue with the meeting.

At this time, Mayor Pro Tem Langstaff proceeded to compare the two agreements as noted, specifically, I. General Conditions vs. what's incorporated in the RFP and amended by reference/leaving out details; II. Define 'work' as defined in the RFP/incorporating the RFP language into the warranty, i.e., LED light heads are expected to last ten years and if one goes out before then it will be replaced free of charge. In reply to Mayor Pro Tem Langstaff Jimmy Norman, Utilities Construction Director, and Scott Williams, with MetroPower, explained the scope of work/process of replacing bulbs within 24 hours of notification, etc.

Commissioner Fuller asked what happens if someone knocks a light out and if there is a \$200 charge each time. Mr. Williams explained the \$210 flat charge to replace bulbs in this case.

Mayor Pro Tem Langstaff clarified the warranty with Commissioner Fletcher asking how long to install. Mr. Williams commented on the 90-day time frame.

Commissioner Marietta asked if this item is time sensitive, with Mr. Davis discussing the performance bond. Ms. Subadan and Mr. Williams advised that the contract would have to be signed before the performance bond.

Additional discussion ensued with Mayor Pro Tem Langstaff clarifying the RFP/addendum controlling, liability/insurance and performance bond. Mr. Williams mentioned providing an AIA with Yvette Fields, Central Services Director, explaining the process of using AIA vs. performance bond. Regarding the cost of the performance as noted in section VI, Mr. Williams stated that it will be \$36,400. Mayor Pro Tem Langstaff questioned the 35% markup as noted in

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IX. (Additional Work) with Mr. Williams explaining the process. Ms. Subadan added that basically the 35% is a penalty if the City does not do what it is supposed to and MetroPower is forced to do it, they excessively mark it up. Mayor Hubbard asked that everyone be provided a copy of the RFP. Ms. Subadan said she will send it to include changes.

Mayor Pro Tem Langstaff continued with questioning the rates/charges, additional costs for non-warranty issues with Mr. Norman explaining the insurance that will cover charges/costs. In reply to Mayor Pro Tem Langstaff, he stated that lights [bulbs] being shot out is no longer the concern that it was years ago; he then clarified the process in place in case of other disastrous storms.

Hearing no further comments the motion unanimously carried to include the following modifications in the agreement as noted by Mayor Pro Tem Langstaff as follows:, incorporate by reference: the RFP, the addendum and the response to the RFP, which will control should there be a conflict and removing the language ‘except for those inherent in the quality of the work’ from the warranty as well as filling in the payment amount.

CITY MANAGER UPDATE

Ms. Subadan stated that Albany Utilities has hired its first female Electric Superintendent and introduced Renee Nichols. Ms. Nichols said that she lives in Albany is thrilled to be working for the City and expressed appreciation for this opportunity.

OTHER BUSINESS/ITEMS FOR FUTURE AGENDA

Commissioner Fletcher asked to get a copy of the AMI contract due to the immense nature of the issue.

Commissioner Marietta asked to acknowledge the volunteers for their efforts during the past week. Commissioner Fletcher added that the entire Board was engaged in some form or fashion to help the community and thanked them.

There being no further business, the meeting adjourned at 9:24 p.m.

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MAYOR

ATTEST

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CITY CLERK