

MOUNT PLEASANT TOWN COUNCIL
Special Council Meeting
Monday, April 1, 2019, 12:00 P.M.
Committee Meeting Room
3rd Floor - Mount Pleasant Municipal Complex
100 Ann Edwards Lane, Mount Pleasant, SC 29464

MINUTES

Mayor Will Haynie, Council Members Bob Brimmer, Joe Bustos, Kevin Cunnane, Kathy Landing, Tom O'Rourke, Jim Owens, Gary Santos and Guang Ming Whitley were present.

I. Call to Order

Mayor Haynie called the Special Town Council meeting to order at 12:19 p.m.

II. Public Comment

Jimmy Bagwell, 41 Vincent Drive, stated that he believes this is the 5th time he has addressed this issue. He understands that Council will be discussing the proposed hotel at the corner of Hibben and Royall Streets. He stated that there is so much opposition to this project in that neighborhood and for good reason. He said that it is not a proper location for this project and believes it would be a very disruptive thing for that neighborhood and would ruin their property values. He said he would like to ask a question. He said that if Council were allowed to vote on this in the first place, would they approve this project knowing what they know now. He said he would be willing to bet that there is not one person on Council that would vote for this project. He said it is not good for the neighborhood and should go somewhere else. He would like to let Council know how much he opposes it and thinks that there are a number of people in that neighborhood that oppose it as well. He said if it were not 12:00 in the afternoon, they would likely be here telling Council this. He asked Council to take a look at this project and does not know all the

legalities of the situation but does know that this is the wrong project in the wrong place.

Mike Tinkey, 208 Venning Street, stated that we are dealing with a quality of life in a very historic area and the balance between commercial and residential in an old historic area that predated cars and is very special to them both downtown and here. He said this can go either way depending on the decisions that are made. He said we are really at what is referred to as a tipping point and that tipping point is on traffic, safety and maintaining the residential character of the neighborhood. He said cars are now coming all the way up from Shem Creek, and are parking farther and farther into the neighborhood. He said Council heard in the last meeting some of the problems that are caused by this. He said the tipping point can really change for the rest of time, what happens to that neighborhood and the quality of life. He said issues such as noise and potential rooftop bars, trash, smoking, where homeowners can park, where they cannot, how far away they have to park, are all critical issues. He said Council's decisions really do have consequences. He said they are important and tough decisions many times, especially when there are legal issues. He said they make a difference for the future. He said Council made a courageous decision on making Pitt Street a two way street, because Council understood the fabric of the neighborhood and what it meant to everyone there. He said Council is doing a similar thing with street signs and making sure that the little things make a difference. He said big things also make a difference and this is a big thing. He said their neighborhood is almost universally against this project. He said just the show of force that people are coming out now at 12:00 noon. He said many of the neighbors would like to be here, but they have to work. He said he appreciates Council's service and hopes they will be courageous in this and keep moving forward.

James Scott, 415 Church Street, thanked Mayor and Council for addressing this issue. He said he lives approximately one block away from the proposed hotel and as Mr. Tinkey said, there is already a huge quality of life issue there. He said the parking, because of Shem

Creek and the parking deck that no one parks in, has created a huge spill over nuisance for all the residents that live around the area. He said last weekend he was on a neighbor's porch and watched two cars pull up, park and all walk to Shem Creek. He said they come all the way up Church Street, park down Live Oak, and this is not even during the peak wedding season at Mount Pleasant Presbyterian Church. He said add a wedding on a Saturday, Shem Creek and then a hotel, plus the Old Village Posthouse, and it creates a real nuisance for those that live in that area. In addition to the parking and noise, he has frequently picked up beer cans and trash on his sidewalk and he lives three blocks away. He said this project with Earl's Court and a proposed 25 room hotel is not going to alleviate this. He said the village at this time is under a great deal of pressure. He said adding a hotel will only exacerbate these problems. He would urge Council to do whatever they can to try and protect the neighbors in that area.

Carol Tinkey, 208 Venning Street, stated that she believes we have come to a time where many in the neighborhood are talking about trying to push forward to hear about the potential necessity for initiating residential parking permits in the neighborhood, as it has worsened over the years. She said the Old Village and Old Mount Pleasant have been very adversely affected, impacted by the overlay district. The streets are very narrow and do not accommodate the extra traffic and extra parking that has been forced on them. She said it is very difficult to hold the historical district to the modern standards and the Town needs to do everything in their power to protect the historical district. She said commercial buildings in the past have had alleyways that service them, and this is not the case any longer. She has a picture taken in front of her house on the corner of Venning Street and Pitt Street of two large trucks attempting to make a delivery and are blocking the street. She said what is happening now is vehicles are using Whilden Street as a side street, because there is work happening on Coleman Boulevard. She said she does not know how much better it may be when complete, because there is so much congestion. She said she likely has 200 pictures of traffic and parking

situations in the neighborhood. She asked for everyone to work together to preserve the residential character and save our historic district and the history of our community. She stated that it is our responsibility.

Hamlin O'Kelley, 652 Coleman Boulevard, stated that their firm represents Earl's Court, LLC, which is the owner of the property being discussed in Council's executive session today. He said that Council is here for legal advice, not to approve or disapprove a project of which a final decision was rendered by the Board of Zoning Appeals on February 25, 2019. He said they just received this order in the last week. As they have stated numerous times, and as some of the lawyers on Council would probably agree, any appeal of the Board of Zoning Appeals is dead on arrival. He said at the meeting last February, Board member Steven Wood moved to approve his client's request that the Zoning Administrator be over-turned. He said he was supported unanimously. He said five other members joined him in agreeing that his client had submitted their building application timely, that its vested rights were in effect and that the pure oil versus Columbia case controlled. He said all of the board members of the Board of Zoning Appeals, including Joseph Belton, Glen Cowden, Steven Duke, Barry Wolfe and David Rubin signed off on that order. He said at the March 12th Council meeting, he provided packets for Council with certain cases and code sections. He trusts that Council will review them, yet again, when seeking legal advice during executive session. He said the law and the case law provides that as an abuse of discretion standard, for Council to successfully appeal the decision of the Board of Zoning Appeals that was in his client's favor, and frankly it would be a herculean task. To provide that there is an abuse of discretion where there was a three hour hearing, numerous questions were taken and half of the people that spoke today came to that meeting and voiced their opposition at the same time. Legal documents were reviewed, case law was reviewed, so again, he does not know that anyone can say that the Board of Zoning Appeals in any way abused its discretion. He said any appeal of this matter does not

include an automatic stay which he is sure the Town's lawyers will tell Council that they will have to seek an injunction against his client and again as discussed at the last meeting, this will create a large bond. He stated that Council was discussing budgets in Committee meetings today and knows the Town is not flush with cash and a \$10 million dollar bond is not something that is inconsequential.

Ross Appel, stated that he is another attorney for the developer, Earls Court, LLC. He stated that he would like to discuss the Cassina lease issue. He stated that this lease and the related restrictive covenants were all approved by zoning and legal staff as meeting all applicable parking requirements last fall. He said this is what enabled Earls Court Properties to go before the Design Review Board. He stated that, of course, the DRB granted final approval and complete building permit applications were submitted prior to the end of 2018. The Town's Board of Zoning Appeals unanimously concluded that these applications must be processed, and they will be processed. He said after this vote, social media exploded. He said somehow the Save Shem Creek Group found out about the Cassina lease and proceeded to hammer the Cassina Group online. He stated that facing this duress and online bullying, Owen Tyler went online and alleged, without any support, that the lease was terminated. He added, "Guess what? The lease has not been terminated", and the Town's legal staff confirmed as much recently. He said that a unilateral termination is, of course, not legally effective and the Town has not received a notice of termination. He said, as such, there is no legal basis for denying this project. He stated that they are moving forward with permits. He stated that, "this is over". He stated that if somehow this lease is breached, they will not only pursue a multi-million dollar breach of contract action but will pursue all those responsible for tortuously interfering with their contracts. He stated that, finally, he would like to caution Council that it is a crime for elected officials and others to interfere with private contracts. He stated that as Council can tell, they are not giving up and not going away and urged Council to proceed

carefully and refrain from further undermining his client's property and contractual rights.

Vince Graham, 408 Hibben Street, stated that he owns the property. He said as a reminder, this property has been zoned for this use since 1949 when the Town first introduced zoning. He stated that Mr. Bagwell said that it is not a proper location and is the wrong project in the wrong place. He said perhaps he should have thought of that when he was on Council in 1979 and the Town affirmed the zoning for where it is today. He said the hypocrisy is overwhelming. He stated that he has jumped over every hurdle placed in his path. He said that Council knows he has a long track record in this Town, over twenty years, of doing quality work and he expects to continue to do so with this project.

Ben Traywick, 268 Quince Street, stated that Mr. Appel was referring, on this lease termination issue and the social media items, to the issues he raised in a letter that he hopes Council has seen on March 20, 2019, in which they found out from the lawyers for the Cassina Group, that they have terminated the leases. He said they sent a lease termination letter, not to the Town, but to the developer, which they have done. He asked for a copy of that letter and got stonewalled by both the Cassina Group and the developer's lawyers. He said the bottom line is that it is up in the air at this time whether the developer has access to the Cassina Group parking. He said without the Cassina Group's parking, the project is dead. He said there is a lawyer in this and leaving that aside and the fact that we are all having the wool pulled over our eyes and having the actual issues obscured, because the Town obviously has a right to know whether the leases have been terminated or not. He said this should not be controversial. He said we have a right to know and neither of the parties to the lease termination are letting us know whether that has happened. He said they have strong legal reasons to oppose the parking plan, which they have appealed both in the Board of Zoning Appeals and in the Circuit Court and believe they will prevail, because the plan is obviously not based on the ULI (Urban Land Institute), shared parking standards. He

said the threats from lawyers who are not advising Council, but are advising their own clients, are appalling and he would advise Council, which is not his role because he is not the Town's lawyer, to seek legal advice about the legal options that Council has and not give in to the appalling threats that are being issued by lawyers for the developer and demand that the Town have access to the information about the lease terminations before permits are issued and before further approvals are granted. He said that the Town has a right to know, because without that parking the project is dead.

III. Executive Session

Mayor Haynie stated that this item is to go into executive session to receive legal advice related to the Board of Zoning Appeals decision in case A-3-18 Earl's Court.

Mr. Bustos moved to go into executive session for the reasons stated; seconded by Mr. Owens.

Mayor Haynie stated that if Council does go into executive session, Council may take action on any item, including any subsection of any section, listed on an executive session agenda or discussed in an executive session during a properly noticed meeting.

All present voted in favor.

Council adjourned into executive session at 12:36 p.m.

Council reconvened at 1:31 p.m.

Mayor Haynie declared that no action was taken, and no votes were held.

Legal Advice

1. Legal advice related to the Board of Zoning Appeals decision in case A-3-18 Earl's Court

Mr. Bustos made a motion to proceed as discussed in executive session with Mr. Lindemann as outside counsel; seconded by Mr. O'Rourke.

All present voted in favor.

IV. Adjourn

There being no further business, Council adjourned at 1:32 p.m.

Respectfully submitted,
Barbara Ashe
April 1, 2019