



Richland County Council

DEVELOPMENT AND SERVICES COMMITTEE

December 19, 2017 – 5:00 PM

Council Chambers

2020 Hampton Street, Columbia, SC 29204

COMMITTEE MEMBERS PRESENT: Yvonne McBride, Gwen Kennedy, Chip Jackson, and Dalhi Myers

OTHERS PRESENT: Joyce Dickerson, Bill Malinowski, Greg Pearce, Norman Jackson, Brandon Madden, Michelle Onley, Shahid Khan, Ismail Ozbek, Tracy Hegler, Jamelle Ellis, Shane Kitchens, Kim Williams-Roberts, Tim Nielsen, Dale Welch, and Larry Smith

1. **CALL TO ORDER** – Ms. Kennedy called the meeting to order at approximately 5:00 PM.
2. **APPROVAL OF MINUTES**
 - a. November 16, 2017 – Mr. C. Jackson moved, seconded by Ms. Myers, to approve the minutes as distributed. The vote in favor was unanimous.
3. **ADOPTION OF AGENDA** – Mr. C. Jackson moved, seconded by Ms. Myers, to adopt the agenda as published. The vote in favor was unanimous.
4. **ITEMS FOR ACTION**
 - a. Petition to Close Portion of Old Percival Rd./Spears Creek Rd. – Mr. Madden stated this item is a petition to close a portion of Old Percival Road and Spears Creek Road. The petitioner petitioned the court to close the road. The petitioner received no complaints from the adjoining property owners along that road. The Legal Department is seeking direction of Council to either approve the request to close the road and direct legal to answer the suit or not to move forward with legal answering the suit.

Mr. Smith stated, under the County's ordinance, if there is a petition filed to close to a portion of a County road that requires us to go through a process where we touch base with Emergency Services, the Sheriff's Department, and other County departments that may provide services to that area to see if the closure of the portion of the road would disrupt or interfere with the services they have to provide. We reached out EMS, the Sheriff's Dept. and Public Works and none of them had any objections to the request to close this portion of Old Percival Road.

Ms. Myers inquired if this portion of the road was used before the flood.

Mr. Smith responded that he did not know the answer to the question in terms of its use prior to this petition being filed.

Ms. Myers stated she would be interested to know if this is one of the roads that has not been repaired post-flood; therefore, would have been used but for lack of repair or money to repair.

Mr. Smith stated is the committee wants to forward this to Council without a recommendation he could have that answer before it comes to full Council.

Mr. Malinowski inquired as to who owns that portion of the road.

Mr. Smith stated it is a Count-owned road.

Mr. Malinowski inquired if the road is going to be assigned to one property owner as additional property.

Mr. Smith stated he does not know if the road is going to be deeded over or transferred, in terms of title, to anybody. It will just be closed, so there will not be any traffic that goes through that portion of the road.

Ms. Myers stated the petitioner would be petitioning to have it closed so it could be deeded to them. Is that not how it generally works?

Mr. Smith stated sometimes they would make that request. He did not see that in the write-up. He will also check on that.

Mr. Malinowski stated for clarification. In the write-up it says, "Petitioners contend this portion of Old Percival Rd/Spars Creek Rd has not been used in decades and is currently impassable by any vehicular or pedestrian traffic."

Ms. Myers moved, seconded by Mr. C. Jackson, to forward to Council without a recommendation.

Opposed: C. Jackson, Myers, Kennedy, and McBride.

The motion failed. The item will be retained in committee.

- b. Deed to the City of Columbia for water lines serving the Ballentine Branch Library – Mr. Madden stated earlier this year the library constructed the Ballentine Branch. Prior to opening, they requested to deed over the utility lines. In the interim, they requested temporary service to the City. At this time, we are bringing this back so that the water lines can be deeded over to the City for the library's services.

Mr. Malinowski stated the first line of the deed states "FOR VALUE RECEIVED" but no value is given.

Mr. Smith stated the way this usually works is we construct the line and then we deed over the line to the City because they are the only entity that provides water.

Mr. Malinowski stated they are the only entity that provides water to this location. He further stated on p. 1 of the Declaration of Covenant (p. 26 in the agenda packet) it states, "WHEREAS, Declarant is the owner of real property which is described on 'Exhibit A'" There was not an Exhibit A included in the agenda packet. He requested a copy of the exhibit when it comes to full Council.

Ms. Myers moved, seconded by Ms. McBride, to forward to Council with a recommendation to approve the ordinance deeding water lines to the City of Columbia servicing the Ballentine Library Branch.

In Favor: C. Jackson, Myers, Kennedy and McBride

The vote in favor was unanimous.

- c. Transfer Deed for Hollywood Hills Sewer Lines to City of Columbia Utilities – Mr. Madden stated this is a public infrastructure improvement project that took place in Hollywood Hills in District 7. We are requesting to transfer over the deed, by ordinance, to the City to provide sewer service to the community.

Mr. Malinowski inquired as to why we are deeding over sewer to the City if this is in the County.

Mr. Madden stated it is the actual lines that are being deeded over.

Mr. Khan stated the County does not have the sewer service in this area at this time. All of the sewer that is connectible for this project is owned, operated and maintained by the City.

Mr. Malinowski inquired if we establish sewer service in this area would this come back to us.

Mr. Khan stated he has not seen that in the past.

Ms. Hegler stated the County has an executed IGA with the City for this transfer to occur. The project was funded through Community Development. The IGA would have to be changed to make an amendment.

Mr. Malinowski inquired if the citizens will be charged the same rate as the citizens in the City and not two or three times like they do the water.

Mr. Khan stated the City of Columbia has a tariff, which varies within the City limits to outside the City limits and would apply in all cases of water and sewer.

Ms. Myers stated the County has some IGAs where they have asked to have those lines revert back to us at a certain point. In the IGA we are looking at now, there is no such standard language. Is that the way we are going to be doing it going forward or is this an old version?

Ms. Hegler stated this IGA pre-dates her, but anytime one is brought before Council in the future they could negotiate the terms.

Ms. Myers inquired if it would cause a slowdown in service for that to be added to our standard IGA. The County is going out building the infrastructure, paying to have all the pipes put in and then we deed them over essentially for free to the City of Columbia. Then the constituents in the unincorporated areas are charge 2 and 3 times what the citizens in the incorporated areas are charged for the same service.

Mr. Smith stated he believes the County can do that going forward. There probably needs to be some discussion and consideration regarding that because whoever has these that also requires you to maintain them, which comes at a cost. If Council, as a matter of policy, decides that it is in the County's best interest in those instances for us to retain that responsibility, as well as the maintenance responsibility, then we can see going forward if we can do that.

Mr. C. Jackson inquired as to whom the deed transfer came from.

Ms. Hegler stated the County initiated the project with the City. It was a mutual community development project.

Mr. Khan stated the City of Columbia has a defined covenant, which requires a transfer of infrastructure to them at no cost should they be the service provider in the area. They would not provide sewer service until the deed is transferred.

Mr. C. Jackson inquired if the service is currently being provided.

Mr. Khan stated it is new infrastructure and has not been connected. Until the infrastructure is transferred, the City will not provide the service.

Ms. Dickerson inquired if the water service is provided by the City of Columbia.

Mr. Khan responded in the affirmative.

Ms. Dickerson inquired if there are septic tanks in this area.

Mr. Khan stated that is an old area. Some are on the septic system and others are new development.

Ms. Myers moved, seconded by Ms. McBride, to forward to Council with a recommendation to approve the deed transfer for the Hollywood Hills Sewer Project to the City.

In Favor: Kennedy, Myers, and McBride

Opposed: C. Jackson

The vote was in favor.

- d. Council Motion: Revisit the 2002 Richland County Water Plan, and any updates, for providing water to unincorporated areas of Richland County and in conjunction with the future Lower Richland Sewer Project [MALINOWSKI and MYERS] – Mr. Madden stated the briefing document before the committee addresses the Lower Richland Sewer Project portion. Another briefing document will be coming in the next committee meeting addressing the additional portion of the motion. Staff is requesting action on moving forward with the soliciting a designing or engineering firm to design the Southeast Sanitary Sewer Program.

POINT OF ORDER – Mr. Malinowski stated the motion is about reviewing a water plan and updates for providing water service to unincorporated areas of Richland County and providing water service, in conjunction with, the future Lower Richland Sewer Project. It is not about sewer. He sees this as a backhanded way for staff to come in here because all of the recommendations have to do with sewer, but the motion is about water. We should not be discussing sewer or moving anything forward with sewer. If the information on water is not available, then it should stay in committee until we get it. The reason for “in conjunction with the Lower Richland Sewer Project” was if you are going to be putting the sewer in then maybe you can put both lines in at the same time. It was not to try to get the sewer passed or not passed. He believes if it is something to do with sewer it should be taken up separately.

Ms. Myers requested Mr. Madden to explain staff’s intent in regards to this item.

Mr. Madden stated staff’s intent was not to try to move forward or separate the motion out where we are not considering the entire piece. It was an effort to keep the motion moving.

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Mr. Malinowski stated the motion has nothing to do with sewer. The motion is about water.

Mr. Livingston inquired if Mr. Malinowski is making a motion to defer it in committee.

Mr. Malinowski stated he is not on the committee. He is requesting the committee to hold it in committee.

Mr. C. Jackson moved, seconded by Ms. McBride, to hold this item in committee until all of the information is gathered to clarify the concerns raised by Mr. Malinowski.

The vote was in favor.

- e. Council Motion: If Developers, Builders, etc. cause any hardship on any community due to poor workmanship or unapproved or unpermitted work of any kind that fails, all of their building permits should be pulled and the builder not allowed to build until they fix the problem(s). The homeowners, nor the citizens, should have to pay to fix poor workmanship [N. JACKSON] – Mr. Madden stated this is a motion brought forward regarding the County’s current ordinance. Staff is requesting direction from Council on whether to amend the ordinance or to proceed with the current ordinance.

Mr. C. Jackson moved, seconded by Ms. Myers, to forward to Council with a recommendation to approve the motion, but to amend the language to state, “the builder will not be allowed to continue until the problem has been solved” instead of pulling all of their building permits.

Ms. Myers inquired if there are any time limits attached to the amended language. For example, if a developer builds a retention pond and it lives its full life out and fails. At some point the homeowners’ association should have taken that over but it fails. According to the motion, if the HOA has not taken it over then the developer could be on 15 new projects down the road. We pull all of their permits associated with anything and mandate they come back and fix that one, which may or may not be their responsibility anymore.

Mr. Smith stated, at this point, if you have a developer, for whatever reason, that is not following the County’s guidelines, from a permit perspective, he thinks we can issue citations and give them a corrective plan, as it relates to that particular project. We have the ability to halt that project until such time as they have met the corrective plan. Now the question that is really being asked is, what about other projects and do we have the ability to halt other projects if they have not resolved the situation related to the citations on one particular site. He stated at this point the County’s ordinance does not speak to that issue.

Ms. Hegler stated she believes it is temporal and spatial. We do have enforcement, which has been added to the agenda since the last meeting. We have 3 different ways to enforce: Building Inspections, Land Development and Stormwater & Engineering. We do not currently, nor does she read it as saying they can, restrict permits from a developer or person on other projects that are by all other accounts in compliance. We are allowed to deal with a noncompliant site. What we are wondering about with this motion is the intent to broad it to other sites by the same developer. She does not know if that is standard practice anywhere.

Mr. C. Jackson stated his intent was to ensure that other projects being developed in accordance with the code and with no violation and restrictions are not prohibited from continuing while the one in question is being challenged.

Mr. Livingston stated staff’s recommendation is at Council’s discretion. That is true and obvious, but in issues like this he still wants to know what the professional staff thinks about the motion the

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Councilmember puts before us so he can make his decision based on a professional opinion. It would be helpful for him, before he takes action on this, for staff to say what they think will fix this or an alternative to look at.

Ms. Hegler stated she believes we have protocol that is standard and routine for dealing with noncompliant sites.

Mr. C. Jackson withdrew his motion.

Mr. N. Jackson stated you have good apples and bad apples. His motion was based on the developer who puts in infrastructure without approval from the County. When someone purchases a home they expect everything is working. They should not have to go back and spend more money out of their pocket or the County has to come and fix something that was not approved. When you have a developer for 10 years saying it is already there and he is not going to fix it and the taxpayers have to spend money to fix his mistake. Knowing what he did was wrong, he should not be able to build anything in the County until he clears up that problem. It is not fair for the citizens. For example, you purchase a house and then you are having flooding problems. The developer says it's the County's fault because they did not check me before and he got away with so he's not paying to do anything. However, he wants to build a 100 more houses next to property, but he has not paid for the mistakes he has made. Suspend all building permits from that developer until he does the right thing. We do it in other type businesses, so why should it be different in the development community. He stated they met for over 2 ½ hours in Legal with staff discussing the same thing. The developer did not have a permit to do what he did. Also, he built an entrance that was not supposed to be there and the Department of Transportation cannot close it.

Ms. Myers inquired if the remedy there is not a lawsuit. If the developer did not come to us to get the permit and we know nothing about it so our Planning Department cannot enjoin them from doing stuff, because we do not know about it, and there is some fault in it and the purchasers discover the fault, is not the remedy in the courts rather than the County. It is not something over which we had jurisdiction.

Mr. N. Jackson stated they came to the County and presented their development plan. The next thing you know it was executed. They built a storm drainage system and we did not approve it. We have no documentation that it was ever approved. He understands that the community could have a suit, but at the end of the day they are looking at us because they thought Richland County did their due diligence to make sure the developers did the right them. The citizens trusted us and went out and purchased the house and now there is a flooding problem because these guys played games and cheated the system.

Ms. Myers stated her response to that is the Planning Department did not approve it. Therefore, she would be nervous about taking that on because they essentially did something illegal and now we are the insurer of all acts across the County that touch or concern any building. That is so broad, we might get the County in trouble. There is a remedy for them through the courts.

Mr. N. Jackson stated whenever there is a problem with anything in the County our constituents, who we decided to represent, they are looking at the members of County Council to resolve the problems. They are not going to the court and asking the court what to do. They are telling us and we have a responsibility because we are the agency who approves these developments. If something slipped through the cracks, they are saying, "Well you are the elected official, what can you do about it?" Take their permits until they fix the problem. Your constituents will call you. That is why we are here to take the tough job and make the tough decisions.

Ms. McBride inquired if staff is familiar with a motion like this that is in place at this time.

Ms. Hegler stated she is sure this conversation occurs frequently because there is a legitimate frustration over the "bad apple". There are mistakes that get made and staff makes them as well. This was a time where maybe we missed the situation. Mr. N. Jackson is correct we cannot produce a permit for this project. However, in subsequent reviews it seems to meet our requirements. She believes the conversation happens in other jurisdictions.

Ms. McBride inquired if there were other counties that have such an ordinance.

Ms. Hegler responded she is not aware of any. She has seen places where they may grade their development community and have different processes.

Ms. McBride stated Mr. N. Jackson is saying the citizens are being punished and the builders have very limited repercussions from it.

Mr. C. Jackson stated he is not opposed to what Mr. N. Jackson has expressed in terms of citizens being taken advantage of. The reason he withdrew his motion is because it is his understanding Ms. Hegler outlined specific steps that are now in place that are different as a result of this problem that occurred in the past. He requested Ms. Hegler to reiterate what is different now about the process to try to ensure this kind of problem does not occur again and penalty and consequences for those builders.

Ms. Hegler stated she does not know if these requirements were in place at the time of the project that Mr. N. Jackson referenced. All she can hope is that we do not make the same mistakes again. We are not talking about a lot of these. Maybe they do not happen. In terms of a current, active project the temporal piece is important. She feels confident in the regulations we have for current, active projects. Our inspectors are out there weekly on an active project. When we catch a noncompliant situation, we have the protocol in place to deal with that. If the motion is based on a past project that has some concerns and has had some documentation issues that we cannot address, I think that is a different response and she does not know the answer to that other than potentially a lawsuit or some other policy direction Council wants to give in terms of past problems that may arise.

Mr. C. Jackson inquired if we are willing as an organization, if that type of issue is brought to our attention, regardless of the timeline, that the County would take the lead, as opposed to the citizens in terms of being the litigate in this process to address those issues. If for nothing more than to investigate the legitimacy of the complaint.

Ms. Hegler stated she believes that process is in place. If by all reviews, that we produce, we believe something is past and no longer in compliance, we can address that as well.

Mr. N. Jackson stated this is a subdivision that was designed and developed. Because of the consequences, we may have to spend \$300,000 to partially correct the problem because the developer said he was not going to pay for it.

Mr. C. Jackson stated he would hope that the SC Builders' Association would join in with the County when this type of investigation takes place and add additional pressure to those builders, as their professional organization and affiliation to say that, if in fact it has been validated as blatant disregard for the process, they would indicate in very strong terms to those builders and not simply leave it up to the County. Because them being a part of that and placing the builders on notice, as any other professional organization does with its members, would go a long way in terms of making

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sure they know and comply with the community and the County. But also comply with their moral code of ethics represented by that organization.

Ms. Hegler stated she has had those conversations with the SC Builders' Association, but we can make that more formalized.

Mr. C. Jackson moved, seconded by Ms. Myers, to table this until Ms. Hegler comes back with some specifics because he feels very strongly about the builders' association piece coming back and becoming more formalized and a part of this process.

The vote was in favor.

- f. Council Motion: HOA's operated by developers or management firms should be fined if due to their poor management, and not that of the homeowners, it causes a hardship on the homeowners or community. NOTE: There are improperly maintained detention ponds that have trees growing in them which causes flooding during a bad storm [N. JACKSON] – Mr. N. Jackson stated this motion is in regards to the same subdivision referenced in the previous motion. From his understanding, when you have a developer to build a subdivision they usually maintain control of the subdivision until all of the lots are sold. However, if they can hold on to one lot they can control the HOA. He believes that needs to be changed. The problem is when the developer controls the homeowner's association and the residents are paying into the association, but the developer or his manager is not doing what they are supposed to do to maintain the property and the detention pond. There are trees growing in the pond and when it rains it floods the community. The residents cannot get any relief, but they have to pay or be threatened with being taken to court and potentially losing their property. At the same time, the management company owned by the developer is not doing anything. The residents are calling and complaining that it is not right. He stated he needs some guidance from the Planning Department on what we can do.

Mr. Livingston stated for clarification the homeowners are not members or part of the HOA. It is totally governed and run by the developer.

Mr. N. Jackson stated until it is 100% sold.

Mr. Livingston stated the homeowners have no influence at all. All the decisions are made solely by the developer.

Mr. N. Jackson stated when you purchase the property you sign an agreement; however, they promise certain things they will do with the fee they are charging but it is totally by the developer. The homeowner take it over when it is 100% built out.

Mr. Livingston inquired of Mr. N. Jackson if he is worried about what happens before it is 100% built out.

Mr. N. Jackson stated that is correct because they can wait 10, 20 years and be forced to pay. The residents can pay, but the developer is not doing what they are supposed to do and the residents have no recourse. The developer threatens to take the homeowners to court and sell your property for what you owe.

Ms. Hegler stated if a HOA is violating any of our ordinances we do have protocol for citing the HOA. So if it is a situation where they are not maintaining the pond and we are regularly inspecting them as we should. We do have recourse against the HOA, as the entity responsible for that code compliance. If the motion is based on the idea that they are not performing some other duties that

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the County does not necessarily oversee with the homeowners, she stated that is usually treated as a private matter between the HOA and the homeowners. She further stated she does not know if it is 100%. The State regulates what the percentage is to turn over, but she does know it is high. If it is a question of poor management, which does not necessarily fall under the County's purview for review and inspection, it would be a policy direction Council would need to take to get involved.

Mr. Livingston would like to receive feedback from staff regarding HOAs.

Ms. McBride moved, seconded by Ms. Myers, to hold this item in committee for additional information.

In favor: C. Jackson, Myers, McBride and Kennedy

The vote in favor was unanimous.

- g. To simplify the emergency preparedness process in the future, I move that Richland County coordinate with the City of Columbia and other municipalities to identify different types of emergency shelters/facilities and certify them, meaning what is required and the readiness of the facility factoring in accessibility due to potential obstructions i.e. impassible bridges, roads, etc. Working with recreation centers, schools districts, churches and other civic centers to qualify and certify these facilities to accommodate citizens in need during certain crisis. In this process each certified facility would be updated annually. Working with Councilmembers willing to participate from each district would also improve the process. NOTE: Shelters to include overnight stay, storage and accommodate the Red Cross and other agencies. Facilities to include storage for distribution to designated areas [N. JACKSON] – Mr. Malinowski stated on p. 117 in the agenda packet the staff recommendation is as follows: "Council discretion, however, staff will continue to enforce current ordinances." He stated he is not sure if that is the correct recommendation for this item since the exact same recommendation is listed on p. 44 in the agenda packet. He inquired if there is another recommendation or is it just a duplicate.

Mr. Madden stated it is a staff error. Staff is currently working with the City of Columbia to identify what is being termed as a "calamity shelter". If it is the will of the committee, staff would request to allow us to continue the conversation with the City and incorporate the specifics in Mr. N. Jackson's motion and bring it back to committee.

Ms. Myers moved, seconded by Ms. McBride, to allow staff to continue the collaborative effort and bring back a report.

Mr. N. Jackson stated the reason for his motion is the last time the County had a significant weather event there was a list of emergency shelters. When we had the flood, Lower Richland High School was used as a shelter until the children had to go back to school. This time it was not available. The motion was to have staff talk to the school districts, Sheriff's Dept., etc. so the locations are certified, determine what certification means, What they need there, so they have something if there is an emergency. These shelters are certified and people know what they are getting and what they are doing prior to the emergency situation.

In favor: C. Jackson, Kennedy, Myers, and McBride

The vote in favor was unanimous.

- h. Council Motion: Direct staff to research changing the ordinance relating to water runoff so in the future it will require environmental studies and not allow any runoff that exceeds the current runoff

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from the undeveloped property. This motion should be reviewed/completed and provided to the Planning Commission no later than their June meeting [MALINOWSKI] – Mr. N. Jackson inquired if NPDES regulates this.

Ms. Hegler responded in the affirmative. Current standards and regulations required that the post construction runoff is not greater or exceed pre-construction.

Mr. Malinowski stated the last line of the “Background” states, “Staff plans to vet those standards with stakeholders starting in 2018, before submitting text amendments to County Council.” He stated stakeholders are important, but the most important stakeholders here are the residents that are inundated with water coming from development. If that is the case, they are the ones we need to listen to and not someone that says everything is going fine when they are not living there. He further stated he believes if we are going to have a meeting we need to allow the public an opportunity to appear at the meeting.

Mr. C. Jackson moved, seconded by Ms. Myers, to hold the remaining items in committee.

In favor: C. Jackson, Kennedy, Myers and McBride

The vote in favor was unanimous.

No action was taken on this item.

- i. Council Motion: I move that we re-allocate some of the funding we used to increase the general fund balance farther above the minimum policy amount that it already was, and given that the FY16-17 budget produced a surplus, to EMS [MANNING] – This item was not taken up.
- j. Council Motion: In future housing development or construction, houses built must be at a safe distance to prevent the transfer or being affected by fire. Fire retardant materials must be used or a safe distance must be developed separating the houses [N. JACKSON] – This item was not taken up.

5. **ITEMS PENDING ANALYSIS**

- a. Council Motion: Direct Legal to research what is required to enact a parking ordinance in communities/subdivisions [McBRIDE] – No action was taken.
- b. Council Motion: If an employee is in need of sick leave, any employee can donate that leave to a specific person and not just a sharing pool [MALINOWSKI] – No action was taken.
- c. Council Motion: Move to review the existing “cat” ordinance and remove the last sentence of the ordinance [PEARCE] – No action was taken.

6. **ADJOURNMENT** – The meeting adjourned at approximately 6:00 PM.