

# HOSCHTON CITY COUNCIL

## Regular Council Meeting

### MINUTES

January 12, 2009 at 7:00 p.m. at City Hall

A regular meeting of the Hoschton City Council was held January 12, 2009 at 7:00 p.m. in City Hall. Present were Mayor William Copenhaver, Council Members Richard Green, Jim Jester, John Schulte, Richard Shepherd, Tom Walden and Theresa Kenerly. Also present were City Clerk Kristen Smith, City Planner Wistar Harmon and City Attorney Thomas Mitchell. Mayor Copenhaver called the meeting to order at 7:02 p.m.

#### **REVIEW AND APPROVAL OF MINUTES OF PREVIOUS MEETINGS:**

COUNCIL MEMBER KENERLY MADE A MOTION, SECONDED BY COUNCIL MEMBER WALDEN, TO APPROVE MINUTES OF DECEMBER 4, 2008 CALLED COUNCIL MEETING AND DECEMBER 8, 2008 REGULAR COUNCIL MEETING.

The motion carried by a 6 - 0 vote with all members present in favor.

**APPROVAL OF AGENDA:** No Discussion.

**PETITIONS, COMMUNICATIONS, RECOGNITION AND AWARDS:** None.

#### **PUBLIC INPUT/DISCUSSION:**

Irma Denning, 85 Hunters Way, asked Council to entertain a simplistic plan for called meetings, in addition to posting on website and on city hall door, also send in a copy to all people that provide their email address the same notification.

#### **REPORTS OF STANDING COMMITTEES:**

##### **Water, Waste and Environmental Services**

Council member Richard Green reported no changes from Work Session report.

##### **Fiscal Resources**

Council member Tom Walden reported no changes from Work Session report.

##### **Public Works and Properties**

Council member Jim Jester reported not having had a meeting but would make a recommendation later in the meeting about the patching of East Broad.

##### **Public Safety**

Council member Richard Shepherd reported no changes from minutes given during Work Session.

##### **Planning & Zoning**

Council member Theresa Kenerly reported a Committee meeting held this day at 5:00 p.m. to discuss the electricity issue with Shannon Sells permit at 29 Oak Street and will discuss further later.

##### **Business, Commerce, and Economic Development**

Council member John Schulte reported no additions or deletions from Work Session report.

#### **REPORTS OF SPECIAL COMMITTEES AND/OR COMMISSIONS:**

Historic Commission President, Dianne Blankenship, presented a year end review also containing Mission Statement and Commission members. Blankenship reported the Commission bank balance as of January 12, 2009 as \$14,685.26. Commission held a fund raiser during the Hoschton Tractor Show in November 2008 raising \$450, submitted a check to Windstream in the amount of \$1,982.50, and paid \$1,000 for fill dirt. The outstanding expenses include the moving of the Darby Building by David Looper with a cost of \$3,000 plus \$250 for State permit. On January 8<sup>th</sup> Looper brought the Darby Building out of the hole, onto a piece of equipment and is almost ready for transport. State permit must first be obtained and anticipated move date is within the next week.

Council member Walden requested an estimated time line for work on the Darby Building after transported to new location. Blankenship reported, upon completion of positioning building in permanent location, temporary piers would be placed under it first. Next, sides would be repaired and wood has already been scavenged. Then caulk, primer, and paint completed. Piers will be replaced with bricks next and lastly a new roof on the building. Blankenship explained the outside temperature cannot be below 50 degrees to

1/08/2009

Hoschton City Council Regular Meeting: January 12, 2009 Minutes

paint and caulk therefore the time line is somewhat dependent upon the weather. Blankenship shared that the contractors for the work have cleared their schedule and are not taking on any other big jobs until completion of the Darby Building. Blankenship expressed her understanding and agreement that the building needs to be completed as soon as possible so it is not considered an eye sore and her commitment to do so.

**ADMINISTRATIVE ACTIVITY REPORT:**

Mayor Copenhaver presented the December 2008 report, a copy of which is attached in the official minute book.

**UNFINISHED OR TABLED BUSINESS:** None.

**NEW BUSINESS:**

**Reaffirmation of Appointed City Employees**

Mayor Copenhaver reported two appointed city employees need to be reaffirmed; Chief of Police, David Hill and City Clerk, Kristen Smith.

**COUNCIL MEMBER KENERLY MADE A MOTION, SECONDED BY COUNCIL MEMBER GREEN, TO APPROVE REAFFIRMATION OF APPOINTED CITY EMPLOYEES, BEING POLICE CHIEF DAVID HILL AND CITY CLERK KRISTEN SMITH.**

The motion carried by a 6 - 0 vote with all members present in favor.

**Request approval of updated Retention Schedule Resolution**

Mayor Copenhaver reported the need for updating the Retention Schedule for records retention of the city Hoschton. Copenhaver explained the updated Retention Schedule is patterned after other cities and puts Hoschton in conformity with the State of Georgia guidelines. The update allows the city of Hoschton to begin cleaning out records as time goes forward.

**COUNCIL MEMBER KENERLY MADE A MOTION, SECONDED BY COUNCIL MEMBER WALDEN, TO APPROVE THE ADOPTION OF THE UPDATED RETENTION SCHEDULE RESOLUTION.**

The motion carried by a 6 - 0 vote with all members present in favor.

**Request by Shannon Sell for permit at 29 Oak St to obtain power**

Council member Kenerly reported the Planning & Zoning Committee met today to review the request and permit approval issues with City Planner, Wistar Harmon. Kenerly stated the committee reviewed the request in an attempt to help Sells. Kenerly explained that if Harmon grants permission to have power then he also incurs the responsibility of that decision. Kenerly further stated that if Council votes to override Harmon then they would incur the same responsibility concern. Therefore Committee recommended denial of approving permit for electricity.

Wistar Harmon concurred that the denial is based on law whereby the house does not comply due to being an expired non-conforming use. Harmon further stated the house must be brought up to code prior to a permit being issued.

City Attorney, Thomas Mitchell, concurred with Harmon's explanation of denial. Mitchell further explained that especially since Sells has not officially applied for any type of permit the issue becomes an administrative function not a legislative function for council. Mitchell shared that with regard to negligent inspection laws, City Inspectors still have some governmental immunity as an employee, but if the code is clear that the permit should not have been issued or the inspector steps outside the code then there can be personal responsibility for any injuries that occur.

Council member Tom Walden stated he had attended the Planning & Zoning Meeting held that day and felt the consensus was if there is a way Sells could bring the building up to code then a permit could and likely would be issued. Walden further stated that Sells has not applied for a building permit and the fact is that administratively or to bring before the council a request for any relief would be in regards to a denied building permit. Walden shared that, per Hoschton zoning ordinance, the item that makes this so bad is that the house has been vacant for more than six months but if it hadn't been and electricity was still on then Sells would still have the right to operate the house as a non-conforming use. Walden requested Sells to explain why he didn't ask for a building permit to start with.

## Hoschton City Council Regular Meeting: January 12, 2009 Minutes

Mr. Shannon Sells addressed council stating he had bought thousands of building permits and had never bought a building permit for a house that was already up which is why he didn't ask for a building permit. Sells stated this is not a totally unusual situation if you've had power off for a long period of time the power companies want government entities to say it's okay to cut the power back on. Sell said the house had been vacant approximately six months and thinks that the six months is debatable. Sells further stated he initially approached Wistar in early to mid December '08 and had potential tenants coming to city hall possibly as early as November '08. Sells said that the city of Hoschton, when council adopted the RO zoning code, the city changed it to where Sells couldn't use it like this by making it a non-conforming use even when his last tenant was living in the house. Sells expressed that he didn't think the zoning should have gone in.

Council member Kenerly addressed Wistar Harmon asking if the zoning was not office and residential.

City Planner Harmon confirmed it is residential and office. Harmon further explained that the prior zoning, R-1, was much more restrictive and that Sells had much larger front and side yard requirements that he didn't comply with nor does he comply with the more lenient setbacks now.

Sells said the house wasn't a non-conforming R-1 when it was built and it's restrictions the city of Hoschton has put on it over the years that have made it non-conforming. Sells stated he agrees that if the day comes and the house is torn down and something new built then the new restrictions would apply. Sells also said that to think council or Wistar being personally responsible is typically the least of their worries because they are covered by insurance like other inspectors are and doesn't understand the difference with a new house built with sorry inspector, a lady falls down the steps, and breaks her leg with uneven steps then lady will sue everyone because that's just what happens.

Council member Kenerly asked Sells he thinks the electricity has been off for less than six months.

Swells said it is a debatable point.

Council member Walden expressed that the city has ordinances and if the city starts making variances to that ordinance then when does the city stop. Walden said the ordinance is written a specific way and is clear and understandable. Walden said that if Sells could provide evidence that when he initially approached Wistar the house had been unoccupied for less than six months then he believes Sells has a case.

Council member Green asked if Sells provided evidence that the power had been off less than six months does that override the safety issues.

Harmon explained a separate issue regarding this property and Georgia Power, being that Georgia Power originally supplied power to this house from the backside and have removed what they refer to as their fragile infrastructure for that and in order to reconnect the meter has to be relocated to the front of the house or adjacent to a public right of way for their access. This issue is what will require an electrical permit and that's where the city will be confronted with this issue even without the six month issue.

Sells stated Georgia Power had not communicated this issue with him.

Council member Walden asked if the property has not been vacant six months then is it Wistar's understanding that Mr. Sells may still operate the property as a non-conforming. Wistar stated the house could not because that is only one of many of issues. Walden asked Wistar he why would deny the permit if the house had only been vacant four months and then came in to request a permit to move the power to the front. Wistar explained that in order to allow Sells reattach power to the house it has to be done in compliance with the code which will require rewiring and Wistar understands the city would then have to bring all aspects of the house up to code. Wistar stated he may be incorrect in his understanding and willingness to be corrected. Wistar explained this has reached a situation whereby the property is not in compliance in multiple areas.

Thomas Mitchell, city attorney, confirmed that the multiple issues create various variables with the non-conforming use based on six months vacancy is only the first step in resolution of compliance issues.

Sells stated that if the restrictions would require him to rewire and various other costs to bring into compliance then he wouldn't be able to make enough rent off of it to pay those expenses.

1/12/2009

## Hoschton City Council Regular Meeting: January 12, 2009 Minutes

Council member John Schulte commented on the request that the city would be all better served if a broader plan of his area was submitted but thus far does not have a plan. Schulte stated he believes the request takes the city back in the wrong direction and sets the precedence for similar requests that the city doesn't want therefore my vote would be against it.

Council member Jester commented that he attended meeting and stated one item discussed was the street itself. Jester said he recommends council taking a hard look at the street and giving to the property owners or putting in sidewalks since there is a 70 foot right of way. Jester said this may be the time for the city to look at doing something to the street and consider using SPLOST funds to pave the street.

Council member Kenerly agreed with Jester and stated she feels bad for Sells having a piece of property that he is unable to use.

Mayor Copenhaver stated he believes Jester and Kenerly's comments are appropriate and thinks the city does need to work on it to get it looking better and into land that can be used.

Council member Shepherd recommended council consider utilizing the right of way on the street to pave a golf cart path.

COUNCIL MEMBER KENERLY MADE A MOTION, SECONDED BY COUNCIL MEMBER SCHULTE, TO DENY 29 OAK STREET FOR PERMIT.

The motion carried by a 6 - 0 vote with all members present in favor.

### **Recommend authorization for Mayor to execute the Local Emergency Operation Plan as approved by GEMA**

Mayor Copenhaver reported this Plan being the same as approved prior year only reaffirming it for 2009.

COUNCIL MEMBER GREEN MADE A MOTION, SECONDED BY COUNCIL MEMBER KENERLY, TO AUTHORIZE MAYOR TO EXECUTE THE LOCAL EMERGENCY OPERATION PLAN AS APPROVED BY GEMA.

Motion carried by a 6 - 0 vote with all members present in favor.

### **Request approval to place Elite Properties amendment of #3 on first read**

City attorney Thomas Mitchell reported the amendment to a zoning ordinance requires advertisement and public hearing because initiated by the government it doesn't require the same level of procedure if it had been requested by a land owner. Mitchell read the amendment being, Amend the zoning ordinance approved November 6, 2006 approving RZ-06-06, RZ-06-07, and RZ-06-08. Condition needs to be amended to reflect that the money was never paid by applicant but by subsequent owner so no issues arise in future with regard to title of property.

Council member Jester asked Mitchell to clarify that the change to the condition was to replace the first paragraph with the second paragraph as typed on the drafted ordinance. Mitchell confirmed.

COUNCIL MEMBER KENERLY MADE A MOTION, SECONDED BY COUNCIL MEMBER GREEN, TO PLACE ELITE PROPERTIES AMENDMENT ON FIRST READ.

Motion carried by a 6 - 0 vote with all members present in favor.

### **Recommend authorization for Mayor to execute Penn contract for utility billing collections**

City attorney Thomas Mitchell reported Hoschton's need to execute the Penn contract in order for the city to begin collection action against delinquent utility clients of the city. Mitchell explained only the contract was necessary and not an Ordinance because Penn is an independent contract and not a subsidiary of GMA.

COUNCIL MEMBER KENERLY MADE A MOTION, SECONDED BY COUNCIL MEMBER WALDEN, TO AUTHORIZE MAYOR TO EXECUTE PENN CONTRACT FOR UTILITY BILLING COLLECTIONS.

Motion carried by a 6 - 0 vote with all members present in favor.

Hoschton City Council Regular Meeting: January 12, 2009 Minutes

**Request approval of Water and Sewer rates adjustment proposal**

Council member Walden reported Fiscal Resources had reviewed the cit of Hoschton's water and sewer rates and recommended increasing the rates. Walden stated his recommendation of implementing the adjustments immediately.

COUNCIL MEMBER WALDEN MADE A MOTION, SECONDED BY COUNCIL MEMBER GREEN, TO APPROVE INCREASING FEES AS PROPOSED.

Motion carried by a 6 - 0 vote with all members present in favor.

**Request approval to award East Broad Street patching bid**

Council member Jester reported the three quotes received to patch and prep East Broad Street varied from \$19,900 to \$6,500 and \$3,875. The lowest bid was submitted by Souder's Asphalt and recommended awarding job to them.

COUNCIL MEMBER JESTER MADE A MOTION, SECONDED BY COUNCIL MEMBER WALDEN, TO AWARD EAST BROAD STREET PATCH AND PREP PROJECT TO SOUDER'S ASPHALT, INC. AT PRICE OF \$3,875.00 TO BE PAID BY ROADS AND BRIDGES S.P.L.O.S.T.

Motion carried by a 6 - 0 vote with all members present in favor.

**Request approval to surplus one (1) bullet-proof vest to be sold to Mount Airy Police Department for the amount of \$250**

Council member Shepherd reported the bullet-proof vest recommended for surplus was made specifically to fit Corey Allen who had resigned from the Hoschton Police Department to accept the Police Chief position with the city of Mt. Airy. Shepherd recommended selling the vest to Mt. Airy police department for \$250 based on the custom fit.

COUNCIL MEMBER SHEPHERD MADE A MOTION, SECONDED BY COUNCIL MEMBER SCHULTE, TO APPROVE SURPLUS OF ONE (1) BULLET-PROOF VEST TO BE SOLD TO THE MOUNT AIRY POLICE DEPARTMENT.

Motion carried by a 6 - 0 vote with all members present in favor.

**CLOSING COMMENTS:**

Council member Jester reminded Mayor, Council, and audience of the Public Works & Properties meeting being held Monday, February 2, 2009 at 4:30 p.m. to discuss future use of the vacant property on City Square. Jester stated he is working with Wistar to prepare a list of attendees who specialize in the real estate and development industry to invite for additional input.

**EXECUTIVE SESSION:** None.

**ADJOURNMENT:** Meeting adjourned at 7:58 p.m.

BEING NO FURTHER BUSINESS, COUNCIL MEMBER SCHULTE MADE A MOTION, SECONDED BY COUNCIL MEMBER KENERLY, TO ADJOURN.

Motion carried by a 6 - 0 vote with all members present in favor.

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**Respectfully submitted,**

**Kristen A. Smith, City Clerk**

**Attachments in Minute Book**

APPROVED:

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William Copenhaver, Mayor

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Kristen A. Smith, City Clerk

1/12/2009

## Hoschton City Council Regular Meeting: January 12, 2009 Minutes

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**Manner of Addressing Council.** No member, while the City Council is in session shall speak on any subject unless recognized by the presiding officer. Every speaker shall address the chair, and no member shall interrupt anyone who is speaking, except to call him to order or for explanation.

**Limitations on Addressing City Council.** Any person not a member of City Council who desires to address the City Council shall first secure the permission of the presiding officer, and then shall step up in front of the council, give his name and address in an audible tone of voice for the record, and direct his remarks to the City Council as a body rather than to any particular member, limiting such remarks to a reasonable time (**2 minutes per person/ 5 minutes per topic**) unless additional time is granted by City Council. Permission to speak is at the discretion of the Mayor and City Council. Persons wishing to bring subjects to attention of the City Council may do so either by providing the City Clerk or the Mayor with a written petition for presentation to the City Council at its regular meeting or by contacting the Mayor or any City Council member informally

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