

City of Tifton  
Called Meeting  
August 27, 2015  
1:00 p.m.  
City Hall Council Chambers  
130 E. 1<sup>st</sup> Street

**ATTENDEES:**

Mayor Jamie Cater, Jr.  
Johnny Terrell, Vice Mayor  
Wes Ehlers, Council Member  
Julie Smith, Council Member

Larry Riner, City Manager  
Rona Martin, City Clerk  
Rob Wilmot, City Attorney

Council Member Parrott was absent.

Mayor Cater called the meeting to order at approximately 1:05 pm.

**DISCUSSION OF CREMATORY AT 106 E. 12<sup>TH</sup> STREET**

Mayor Cater stated he called the meeting due to the importance of the topic and the need to discuss and hear from citizens in the area. Mayor Cater stated he wanted to hear people talk and not adhere to the five minute rule as it would be too restrictive. He requested a motion for such to defer the five minute rule. Council Member Smith moved, seconded by Council Member Terrell and unanimously carried to defer the time limit requirement.

Spud Bowen, 811 Murray Avenue, addressed Council regarding the crematorium. He stated there is quite a stir going on in his neighborhood regarding a crematorium being placed there. He stated the zoning is what it is, general business, neighborhood commercial, and residential professional. He asked that this be pulled out at the next meeting. He reviewed the HPC application stating it was not properly filled out. He discussed the architectural plan, and site plan. He discussed the roof pictures that were submitted and the fact that there was no smoke stack on the pictures. He noted the HPC's requirements for additional changes. He stated that site plans, architectural drawings and a parking plan are required. He stated none of those were done. He stated a parking plan was submitted on 8/21 for 15 parking spaces. He stated this was not correct as there were 3 additional spaces for staff, hurst etc., needed. He discussed the entrance that has to be cut into 12<sup>th</sup> Street, which requires approval of the Department of Transportation. He stated there were numerous issues and the application process was not followed. He asked for fairness and consistency. He discussed Georgia law requirements for places of assembly for over 50 people. He asked that the permit be pulled until everything is in and code is met. He asked that the rules and regulations be followed and this be stopped until it is taken care of correctly.

Council Member Smith addressed City Council at the podium. She read segments of Section 1.12 of the city charter as it relates to powers and construction of the city council. She read powers #22 dealing with nuisance; #24 dealing with planning and zoning; #36 special areas of public regulation; and #42 other powers. She read section 2.23 regarding emergencies in its entirety. She stated she had talked with the city manager and city attorney several weeks ago when she was concerned that this process had not gone according to the specified protocol for permitting and other activities. She was concerned about the parking plan. She stated she went to code enforcement and spoke with Mr. Shultz. She stated the parking plan was submitted later and did not know if it was legal or not. She stated it was disconcerting to her that the process was not followed. She stated she felt the protocol and procedure used to permit was not proper. She stated we have the ability to do something about it, to remand it back to the department. She stated she asked the city manager to admit the mistake and go back and fix it. She stated we have made a mistake in allowing protocol to be deviated from with regards to this permitting process. She asked council to please consider sending this back thru the process and make sure everything is followed to the letter of the law. She stated if that needs to be in the form of a motion, then that was her motion.

Mike Jones, 2010 Bateman Drive, stated Reflections Cremation and Funeral Service is properly zoned, licensed, and been in business for 1 1/2 years. He stated the only change going forward is we are adding onsite cremation care, which requires no new zoning, no additional zoning, or no change in zoning. He provided a packet of information regarding cremation and other South Georgia businesses performing cremation. He discussed a new facility in Warner Robins. He stated no one has come to them personally about their cares or concerns. He discussed and provided information on what he has heard are concerns over property values, emissions from cremation equipment. He reviewed an article/independent study from the industry in England. He reviewed a Georgia State Senate Study on Crematoria concluding that these machines are governed by EPD, state regulations and there are no concerns about cremation care. He reviewed their manufacturer information. He reviewed the city's table of uses on zoning. He reiterated what they are doing requires no zoning changes, etc. He discussed

the need for what they provide in the community. He stated many do not have the resources to pay \$2,500 to \$3,500 for direct cremation in our area. He discussed the service he provides to families who cannot otherwise afford such. He asked that they be allowed to do what legally has been approved, and continue to serve those families.

Gary Kincaid, 130 Springhill Drive, stated his concerns regarding the expansion on a 100' x 100' lot, lack of parking spaces and lack of landscaping plans. Mr. Kincaid discussed the fact that the permit stated the expansion was for a chapel and storage so he did not know about the crematory.

Rob Wilmot, City Attorney, addressed council from a legal standpoint. He reviewed the process for new projects and adding on to buildings. He stated on some occasions drawings are required depending on the scope of the project. He stated the international building code does allow building officials to waive site plans or construction documents depending on the scope of the project. He stated if it was a small project, plans would not be required, depending on a discussion with Environmental Management. He reviewed the requirements of Environmental Management prior to construction. He stated the historic properties have to obtain a certificate of appropriateness before the HPC. He stated the HPC's jurisdiction is on the exterior of the building. He stated they will look at the design guidelines and determine if the proposal will fit within the neighborhood. He stated the interior is not within the jurisdiction of the HPC. He stated the use of the property is a zoning issue. He stated that state law says a standalone crematory not connected with a funeral home has to be a 1,000 ft. from a residential district. He stated if a crematory is within the confines of the funeral home on its property or adjacent thereto, that 1,000 ft. rule does not apply. He further said that state law does not prohibit the crematory because it was going to be on the property of the funeral home. He stated the zoning in that area is neighborhood commercial which allows for funeral homes. He said based upon state law and zoning, the building was permitted. He stated based upon the drawings that were submitted to Environmental Management it was determined that a building permit would be issued pending a COA by the HPC. He stated this went before the HPC who looked at the plan and exterior and it was a unanimous decision to approve the construction. He stated that whether it was a crematory or not, was not an issue the HPC had to deal with. The building permit was issued. He reviewed his discussion with Council Member Smith's concern over parking and the fact that there was no parking plan submitted. Mr. Shultz addressed that with Mr. Jones to obtain a parking plan and also spoke with Danny Wallace for a determination of occupancy and as such a parking plan with 16 spaces was provided. He discussed the parking requirements and determined the plan was sufficient. He stated when the design went before the HPC there was no drawing on there for a chimney. He stated the HPC is concerned about roofing, chimneys, etc., and should have been addressed by the HPC. He stated Mr. Jones will need to go to the HPC and seek a COA for the chimney. Mr. Wilmot stated Georgia law provides that a person who seeks to use a piece of property, you cannot deny that person a building permit; once the regulations are in place and is properly zoned by ordinance, they have a vested right to use that property in accordance with your uses and your zoning. If a building permit is denied, the property owner has the right to file a writ of mandamus requiring a public official to do their job. He stated in his opinion, all of the requirements were met for the issuance of a building permit; had we denied the building permit, the property owner could have sought a writ of mandamus and would have prevailed. He stated based on his review of the law, ordinances and state law, this building permit has been properly issued and therefore construction should be permitted to continue with the caveat that further construction on the chimney should not be continued until a COA is obtained by the HPC. He discussed the Georgia State Senate Committee's Study and recommendations on the regulations of crematories and possible future legislation. He stated if going forward the council wants to do something different with the zoning districts you certainly can do that, but it cannot be applied retroactively.

Spud Bowen asked once again that the procedures and protocol for permitting the building, be followed. He asked that it be stopped until everything is approved.

Mayor Cater expressed his concern over the fact that the process was not followed and handled properly. He stated they should be required to go back and follow the process.

Jeffrey Daniel, 1000 Forrest Avenue, spoke as a member of the Historic Preservation Commission. He stated he wanted to speak to the procedure and protocol of items that come to the HPC Board. He stated if you require everyone who comes before the HPC to have drawings of what they want, you will have someone who wants a fence costing \$3,000 to have architectural drawings that cost \$20,000. He stated they look at each individual project. He stated this is not a large project like Colony Bank, but rather an addition to a building. He stated they did not get approval for the chimney which has to come back for a COA for that. He stated the HPC followed protocol.

Marx-Ann Myddelton, 2211 N. Park Avenue, Chairman of the HPC, stated the application came before them during a transition time in the city and we decided to hear it because at the time there were some issues and the department was not aware what needed to be brought forward. She stated the builder spoke about it. She discussed the notes written for the

finding of fact. She stated the chimney will have to be approved by the HPC as well as landscaping and also the materials to be used in the parking lot before the owner can go forward.

Rob Wilmot stated in order to get a CO the owner has to complete the project within all plans, so going forward, Mr. Jones will be required to make sure everything has been complied with prior to the issuance of the certificate of occupancy.

Council Member Ehlers asked about the parking plan. Mr. Wilmot stated that generally a parking plan should be submitted prior to a permit being issued, however, some have come later. He discussed a checklist that is being developed to assure all requirements have been met.

Council Member Smith asked since additional information was needed, is the project allowed to continue to move forward until all information is provided, or is the project halted until everything is provided. Mr. Wilmot stated it depends on where the project is. He stated if halting the project would damage the property, then you can continue on such as covering the rooftops to avoid damage. It would depend on where one is with the project. He stated building officials have the authority to issue stop work orders when work is being performed that is not in compliance the code or the plans and specs as submitted. He stated in this case, Mr. Shultz or Environmental Management has the authority to issue a stop work order as it relates to the chimney because there has been no COA issued for the chimney, there has been a building permit issued, and from the file, everything seems to comply with the code, even though the parking plan came later, it has been approved. He stated there is nothing, in his opinion that would authorize a stop work order on the entire project. Council Member Smith stated so the parking plan that was submitted later, was an approved plan. She stated this is also Hwy. 41, will there be a deceleration lane, is it permissible to use alley for access, etc. Mr. Wilmot stated there is nothing in the code that would require Mr. Jones to have an entrance or exit onto 12<sup>th</sup> Street. He stated however, from a practical standpoint, that makes sense. Further discussion was held regarding the parking plan. Mr. Davis stated they have received verbal permission from GDOT for access onto 12<sup>th</sup> Street. He stated they do not generally hold funerals on site. He stated they are proposing with GDOT that this be an exit only. Mr. Davis stated we are a licensed funeral service establishment thru the State of Georgia. He stated a standalone crematory is off site. Discussion was held regarding what a funeral service is required to have. Mr. Davis stated he's had four services in a year and a half at their site. Discussion was held regarding the issuance of the permit for construction. Mr. Wilmot explained the process that took place. Council Member Smith asked that since the COA is incomplete, is the construction permit invalid? Mr. Wilmot stated under the COA they can continue their work as approved by the COA, however the chimney is not approved. Mr. Wilmot stated the COA that is valid allows them to do those things. He stated they will have to go back to the HPC for a COA on the chimney. Council Member Ehlers asked if we can get the DOT's approval in writing. Mr. Davis said it is a verbal, and this is his information. Council Member Smith asked if it is possible that since during the transition in Environmental Management and things were inadvertently omitted, that we can send this back to do a thorough checklist of everything. Mr. Wilmot stated he has not looked up the revocation of a building permit, and Mr. Jones would have the right to appeal that. He then requested a few minutes to look it up.

Mr. Wilmot stated the land development code talks about enforcement and penalties. He read the following under Enforcement Authority: Upon determination by the Manager or his/her designee that reasonable grounds exist to believe that there exists any violation of any provision of this LDC, the building permit or a landscape plan, the Manager or his/her designee shall be entitled to take away, all or any combination of the following actions, or to cause such actions to be taken, as the Manager or his/her designee in his sole discretion shall determine to be appropriate: 1. Give written notice to the applicant, owner, developer, landscape contractor and/or other appropriate persons of the existence of such violations, the nature and extent of the violations, the actions necessary to correct the violations, and the time limit within which remedial actions must be taken; 2. Suspend or revoke any or all building permits and land disturbance permits issued; 3. Issue stop work orders in connection with any or all construction, work or other activity then being conducted upon the lot pursuant to any building construction license, permit, or any land disturbance permit which has been issued; 4. Declare any bond or security given pursuant to this LDC forfeited; 5. Institute civil proceedings to effectuate remedy of the circumstances giving rise to the violations; and 6. Take such other actions as are appropriate under the circumstances. He stated these are the available remedies to the manager to insure the construction is going in accordance with the plans. Council Member Smith asked if the manager meant Environmental Management manager or the city manager. Mr. Wilmot stated in this case it would mean environmental management. He discussed the process providing for rectifying the problems. He stated if Environmental Management sees a violation going on they have several choices such as going to the contractor and letting them know what is needed. He discussed the process for the chimney. Discussion was held again regarding the parking plan. Mr. Wilmot stated the plan should be amended to show the five foot setback for the driveway. Discussion was held regarding parking spaces in proximity to property lines. Council Member Ehlers clarified that even though the process was not followed correctly, it would not void the permit. Mr. Wilmot confirmed that. He stated the certificate of occupancy is the document needed to obtain occupancy and one has to meet all of the requirements in order to get a CO. He stated this is issued by the Environmental Management Director. Mr. Ehlers asked that if something happens and the exit is not approved, does this

void the permit and is it contingent on receiving approval. Mr. Wilmot stated it would not prohibit or void the permit, and from a legal point it would comply. Continued discussion was held regarding the 12<sup>th</sup> Street issues and parking plan. Mr. Jones stated the contractor received a verbal ok for egress on 12<sup>th</sup> Street from DOT. Discussion was held regarding ingress/egress off of the alley. Mr. Wilmot stated there is a regular meeting set for September 8<sup>th</sup> and you can take action then, or you can take action today. He stated the meeting was called to hear the concerns of the citizens and that has taken place. Mayor Cater stated he would need to look into the information and could not make a decision today. Council Member Ehlers stated he had no comment. Council Member Smith agreed with the Mayor's statement and asked that we continue to look into this to make sure everything is covered. Mr. Wilmot stated we are doing so and will continue to do such. Mayor Cater asked if it was state law to allow crematories in NC districts. Mr. Wilmot stated that is strictly a zoning issue for local authorities. Discussion was held regarding future allowances for crematories. After further discussion no action was taken at this time. Mayor Cater asked that everyone, including Mr. Bowen and Kincaid, be kept informed on this matter.

There being no further business, the meeting was adjourned.



J. G. "Jamie" Cater, Jr. Mayor



Rona Martin, City Clerk

