

SEPTEMBER 27, 2016

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

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

Mayor Hubbard called the meeting to order at 7:12 p.m.

The Pledge of Allegiance followed the invocation given by APD Minister Patrick Williams.

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

PUBLIC HEARINGS

Mayor Hubbard opened the public hearing for the following:

1. Special Approval #16-038: Cemetery - Mohammad Okashah/Applicant; request special approval for property located at 711 W. Highland Avenue; to establish a cemetery in the C-3 District

Using a power point presentation (copy on file), Paul Forgey, Planning Director, reviewed the application for special approval to allow the establishment of a cemetery in the C-3 District. He displayed maps of the area, land use map, etc., and discussed planning considerations, advising that special approval hinges on the ten criteria included in the Zoning Ordinance. He added that cemeteries are allowed in every zoning district, but the location may preclude approval; he reviewed the criteria, with which the application completely complies. He stated that the cemetery will be considered a form of open space and go to a mostly pervious, landscaped site, which reduces the onsite environmental impact. He briefly discussed the fence surrounding the site and advised that jasmine, a climbing plant, will be planted to help provide a buffer. The Planning Commission recommends conditional approval as follows: burials will be 1) inside a covered concrete vault and; 2) a minimum 6' depth, covered by dirt.

In response to Commissioner Postell, Mr. Forgey stated that there are no standards in Georgia for burials; he briefly discussed Muslim burials. He explained that the State code exempts cemeteries run by religious institutions and does not address how deep the deceased should be buried or in what they should be buried. He said that Code Enforcement will monitor the site and neighbors would probably complain should the cemetery not comply with the conditions, adding that there is no city or state oversight on cemeteries. Commissioner Postell asked if any complaints/concerns have been voiced by residents in that area. Mr. Forgey replied that concern and support were expressed at the Planning Commission meeting regarding the cemetery, adding that outside of the meeting no one has called to express anything, either one way or the other. In response to Commissioner Postell, he said that the Planning Commission does not calculate public support or opposition on any application. If he had to make a guess it would be 65-70% of those present supported the cemetery; 30-35% opposing it or expressing concerns. Those expressing concern did not voice opposition, they asked for more information. In response to Mayor Hubbard regarding his memo, City Attorney Nathan Davis explained that the Commission has a lot of discretion regarding rezoning applications, but the same does not hold true for special approvals. Because of the ten standards/criteria Mr. Forgey reviewed, which were adopted along with the Zoning Ordinance, the Commission's discretion is 'exhausted' and their votes must be based on the criteria. Commissioner Postell asked if the applicant is aware that the property is prone to flooding; Mr. Forgey replied in the affirmative.

Mayor Hubbard recognized the following individuals:

Mr. Umar Abdal-Aquil, 1119 Colquitt Avenue, a member of the Islamic Center of Albany, spoke in support of the application and discussed other cemetery property the congregation tried to purchase prior to purchasing the property behind the mosque. He mentioned a member who died a few years back and they had nowhere to bury him; he was finally interred in Orlando, Florida.

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He stated that they have agreed to the conditions placed on approval and have proven that they are 'keepers of the trust'. He urged for approval of the application.

Mr. Mohammad Okashah, 1023 Kiokee Creek, President of the Islamic Center, spoke in support of the application and explained the ritual of preparing the deceased for burial, which is the same as that of the Jewish faith. He stated that they agreed to the concrete vault and 6' burial, adding that he learned from the owner of Hunt Burial Vault that most vaults in Georgia are bottomless. Mayor Hubbard asked if that was part of the conditions placed by the Planning Commission; Mr. Okashah replied in the affirmative. He explained that the State of Georgia does not require vaults or specify any particular material, adding that a University of Tennessee study shows that green burials are much better than traditional burials and do not affect the water table. In reply to Mayor Hubbard, he said that they agreed to the conditions and have no problem with them.

Commissioner Howard stated that he attended the Planning Commission meeting and, referring to the vault, he said that most individuals are not aware that the deceased are not embalmed for Muslim burials, but rather the body is washed and wrapped. He asked Mr. Okashah to add further information. Mr. Okashah said that just as those of the Jewish faith, they wash and use two sheets of either cotton or linen material and wrap the body and place it in the grave. Commissioner Howard asked if someone of the Christian faith could be buried at the cemetery as long as they meet the criteria; Mr. Okashah replied that they would have to abide by the rituals of a Muslim burial, which would be a case-by-case Board decision.

Dr. Kenneth Fairbanks, 716 & 718 W. Highland Avenue, expressed concern about the effect a cemetery will have on his property (taxes and value); if approved he said that he will be back again next year asking the same thing. This is the first time a request of this nature has been made since he came to Albany 35 years ago. He said that Coach Hampton Smith has additional information the City needs to know.

Mayor Hubbard asked Coach Smith if he is on the Planning Commission; he replied in the affirmative, saying that he voted against it and explained his reasons for opposition. He discussed lime sinks in Dougherty County, drinking water coming from the ground, EPA condemning the Broad Avenue Bridge because of the Radiator Shop, pumping stations here, etc. He contended that the EPA, Code Enforcement and Health Department should have been involved because of the health hazard. He suggested that the Muslim Center chose another location in Dougherty County where there is no water.

Dr. Alma Nobles, 726 W. Highland Avenue, spoke in opposition of the application and asked if the Planning Commission specified that the vault would be a four-sided, enclosed, bottomless vault; she is worried about the contents possibly seeping out. She said she has the highest respect for the Islamic community and supports them having their own cemetery; however, she cannot support it being in the heart of Albany in a congested area. She discussed property she owns in that area and her concerns about the affect a cemetery would have on property values, flooding in that area and the possibility of the remains seeping out of the vault during a flood. She asked if the Planning Commission specified the type of vault, since there will be no oversight unless someone calls the City to complain.

Mayor Pro Tem Fletcher asked what the Center plans on using regarding the bottom of the vault.

Mayor Hubbard stated that her question would be the recommendations of the Planning Commission. Mr. Forgey stated that the Planning Commission did not specify, they said a concrete vault; during that discussion a Planning Commission member mentioned concern about animals digging up the remains, but a lid would prevent that. Mr. Okashah said that the Muslim community in Atlanta uses a bottomless vault; however, the effect on the water table is misinformation. He said his research, based on the study by the University of Tennessee, shows that there is nothing dangerous associated with burying a body naturally. Mayor Hubbard interjected that the Center agreed to the vault; the question is do they agree with a vault that is completely covered. Mr. Okashah said they can accommodate that condition and construct it with a bottom. Mayor Pro Tem Fletcher asked Mr. Davis to explain how the City enforces special conditions placed on an application. Mr. Okashah added that there are more than two

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cemeteries in Georgia which perform green, natural, burials. A private cemetery in Macon has burials without embalming, coffin, vault, etc.; it is not a new concept.

Mr. Davis said that he concurs with Mr. Forgey regarding the Center complying with the conditions; however, the City can bring injunctive action to halt the burial process if there is a failure to comply.

Former City Commissioner Arthur K. Williams, resident at 1408 W. Lincoln and property owner of 814, 816 W. Highland, expressed opposition to the special approval and suggested that a moratorium be placed on adding cemeteries. He asked that Planning Commission member Hamp Smith's comments of an all-enclosed vault (on six sides) rather than a bottomless side be reflected in the minutes. He said that if the Commission approves this application it would have to consider other churches wanting to establish their own cemetery and, with the number of churches in Albany, that would be ludicrous. He briefly discussed the capacity of the municipal cemetery at Riverside and asked if the City has an agreement with the State of Georgia to provide space for pauper burials; Mr. Davis replied that he is not aware of such an agreement. Mr. Williams said that his information shows that the City has the capacity for 500 pauper burials, but no further space outside of that. Briefly discussing the City's need to relocate its municipal cemetery, he said that this special approval application skirts the proper location of a municipal cemetery. He mentioned a site on McKinley, which would result in one solid block of cemeteries, thereby reducing property values in that area. He said that property value is a consideration, which was pointed out and suggested that approval of this application will lead to spot zoning, which he also opposes. When he was a Commissioner, he said that he chaired Public Functions, adding that citizens can also bring a lawsuit. He again requested placing a moratorium until Planning can bring back the location of a municipal cemetery, which is open to all faiths.

Mr. Woody Fields, 2010 W. Broad Avenue, Apt. 23, stated that he has lived in Albany for 30+ years and he is concerned that Mr. Forgey's presentation appeared to be biased. Referring to Oglethorpe Boulevard, as a main thoroughfare, is not attractive. Other cities facing the same issue take into consideration residences and the number of businesses. He suggested that approving the request to allow this cemetery institutes segregation; he mentioned the Hebrew/Jewish section of the municipal cemetery and suggested that the City allowing private cemeteries at any location in Albany, will open the opportunity for any group wanting to segregate themselves after death.

Commissioner Postell mentioned the lack of a quorum at the regular Planning Commission and subsequent called meeting; however, citizens did not return for the called meeting. He said that this body is integrated and needs to think and act accordingly; acting in a manner that segregates sets us back 300 years. He urged caution when taking action and said he has not been convinced to vote in favor of putting a cemetery in that location.

Mentioning Jackson v. Abercrombie, Commissioner Howard said that regardless of personal opinions, if the special approval request meets the criteria the Commission must follow the guidelines. He asked Mr. Davis to expound on the matter. Mr. Davis explained that Jackson v Abercrombie was a Georgia Supreme Court decision; it is over 40 years old, but has not changed and is still the law. He said that the ordinance creating the ten conditions is where the Commission exercised its discretion and are bound by the ten factors. He explained that special approval factors are separate and different from the rezoning factors; therefore, if an application meets the ten factors the Commission is bound by them. He said that was the reason for his memo was to alert Commissioners to the fact that they do not have discretion in special approval cases. As Mr. Forgey pointed out, the property is already zoned for this particular use. He stated that economic use/value are factors in rezoning, but not in special approvals. The Commission can amend the factors in the future, but tonight they are bound by them.

Mayor Hubbard stated that the Commission has never had discussions about cemeteries and asked if the law might allow them a set time to have discussion and come back. Mr. Davis replied in the negative, explaining that the applicant is entitled to a decision now. In response to Commissioner Howard, Mr. Davis agreed that should the application be denied and a lawsuit filed, the Commission has a slim to zero chance of prevailing in that case.

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Willie Ross, 916 S. Harding, said that he lives approximately a mile from the proposed site. He urged the Commission to carefully consider this request. He said he is a community leader and activist in that area and that he is fair and works diligently to help keep the neighborhood in order. He is concerned about drug activity there; if the police are unable to patrol Highland, how can the Muslim Center patrol it. On behalf of the neighborhood, he entreated the Commission to deny the request.

Additional discussion followed with Mr. Williams questioning the right to file suit and Mr. Davis explaining the ten criteria, which does not list property value as a consideration. Mr. Williams questioned whether the Commission can put a moratorium on special approval/conditions as it relates to establishing cemeteries, etc., with Mr. Davis explaining the process. Mayor Hubbard told Mr. Williams that the City does not have all the answers to his questions at this time. †

In response to Mr. Williams, Mr. Davis explained that the City has no legal basis to establish and enact a moratorium regarding special approvals.

Coach Smith asked Mr. Davis if he has checked with the EPA; Mr. Davis replied in the negative, adding that there is no State requirement to do so. Coach Smith countered that he thinks he should have and mentioned a building less than 100 yards from the site that is sinking. He said he feels that a soil expert, EPA, the Health Department and Code Enforcement should have been brought in since this decision will affect citizens in the future.

Hearing no further comments, Mayor Hubbard closed the public hearing portion of the meeting.

REPORT OF COMMITTEE OF THE WHOLE

Following the recommendation of the Committee of the Whole, Commissioner Marietta moved to approve the following Alcohol License Applications, seconded by Mayor Pro Tem Fletcher, the motion carried 6-1 with Commissioner Howard voting no.

1. Shantinathay Inc., d/b/a Satin Lounge, 2203 E. Broad Avenue; L. Davis/Agent; Liquor, Beer and Wine Consumption

Commissioner Langstaff mentioned an armed robbery at the following location a few years ago. Marshal W. Norman stated that the Winery closed the first part of the year and there has not been any further crime there. Commissioner Langstaff stated that only one instance of a robbery would not be enough to deny the application. Commissioner Marietta said he spoke with Mr. Patel today, who assured him additional security is being installed and then moved for approval, seconded by Mayor Pro Tem Fletcher; the motion carried 6-1 with Commissioner Howard voting no.

2. Hardeep 2016 LLC, d/b/a Bee Back Liquor, 2301 Gillionville Road, D. Patel/Agent; Liquor, Beer and Wine Package

Following the recommendation of the Committee of the Whole, Mayor Pro Tem Fletcher moved to approve the following Alcohol License Application-Transfer of Ownership, seconded by Commissioner Marietta, the motion carried 6-1 with Commissioner Howard voting no.

1. Gaoli Chen Inc., d/b/a Hong Kong Cafe; 2700 Dawson Road Ste.1 & 2; G.Chen/Agent; Beer and Wine Consumption; Transfer Ownership from Lin Yan Qing

Following the recommendation of the Committee of the Whole, Mayor Pro Tem Fletcher moved to approve the following Alcohol License Application- Transfer of Ownership, seconded by Commissioner Marietta.

2. AMER 786 Inc., d/b/a Neighborhood Grocery; 716 Johnson Rd; A. Aldumman/Agent; Transfer Ownership from Fnu Farhan Ulhaq; Beer Package

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Commissioner Howard stated that the store has been robbed numerous times within the past five years and asked what is required regarding security. Marshal Norman explained that they are required to install cameras and they are monitored by the Marshal's Division. Commissioner Howard asked if monitoring is on a yearly basis; Marshal Norman replied in the affirmative.

Hearing no further comments, the motion carried 6-1 with Commissioner Howard voting no.

Following the recommendation of the Committee of the Whole, Mayor Pro Tem Fletcher moved to approve the following purchase, seconded by Commissioner Langstaff; the motion unanimously carried.

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|----|--|-------------------|--------------|
| 1. | INFOTransit System, Luminator Technology Group, Plano, Texas | | |
| | | Total expenditure | \$176,099.00 |

Following the recommendation of the Committee of the Whole, Mayor Pro Tem Fletcher moved to approve the following purchase, seconded by Commissioner Marietta; the motion unanimously carried.

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|----|---------------------|-------------------|-------------|
| 2. | Hansen Technologies | | |
| | | Total expenditure | \$63,372.27 |

Following the recommendation of the Committee of the Whole, Commissioner Postell moved to approve the sale of two surplus Brush Trucks to Lee County Fire Department in the amount of \$15,000.00, seconded by Commissioner Marietta; the motion carried unanimously.

Mayor Pro Tem Fletcher moved to approve the following special approval application, seconded by Commissioner Langstaff.

1. Special Approval #16-038: Cemetery - Mohammad Okashah/Applicant; request special approval for property located at 711 W. Highland Avenue; to establish a cemetery in the C-3 District (**conditional**)

In reply to Commissioner Howard, Mr. Davis discussed the ten criteria as it pertains to the special approval request. Commissioner Howard stated that regardless of Commissioner's personal feelings, they cannot let them overrule the fact that the ten criteria should be the basis for how they vote and said he will vote in favor of this item.

Commissioner Langstaff stated that there was some confusion and asked that the conditions be clarified. Mayor Pro Tem Fletcher agreed and assured the audience that she will do her utmost to ensure that the applicant abides by the conditions. Mr. Davis stated that the conditions are that all burials will be a minimum of 6' in a six-sided concrete vault.

Commissioner Postell stated that the matter needs to be tabled at this time; he does not support the application, especially with the number of individuals speaking in opposition tonight; he so moved to table, seconded by Commissioner Coleman. The motion failed 2-5 with Mayor Hubbard, Commissioner Howard, Mayor Pro Tem Fletcher, and Commissioners Marietta and Langstaff voting no.

Mayor Pro Tem Fletcher called the question on the original, which carried 5-2 with Commissioners Coleman and Postell voting no.

RESOLUTIONS

Following the recommendation of the Committee of the Whole, Commissioner Marietta moved to adopt the following resolution, seconded by Commissioner Howard; the motion unanimously carried.

A RESOLUTION NO. 16-R174

Authorizing Settlement of Claims of Henry Cohen

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Following the recommendation of the Committee of the Whole, Commissioner Coleman moved to adopt the following resolution, seconded by Commissioner Marietta; the motion carried 6-1 with Commissioner Langstaff voting no.

A RESOLUTION NO. 16-R175

Authorizing settlement of claims re: Teresa Jones, et al.

Following the recommendation of the Committee of the Whole, Commissioner Howard moved to adopt the following resolution, seconded by Mayor Pro Tem Fletcher; the motion unanimously carried.

A RESOLUTION NO. 16-R176

Ratifying recorded Easement Agreements and Deed and approving Utility Easement re: 301 E. Oglethorpe Blvd. from TRC Broadway, LLC.

Following the recommendation of the Committee of the Whole, Commissioner Marietta moved to adopt the following resolution, seconded by Mayor Pro Tem Fletcher, the motion unanimously carried.

A RESOLUTION NO. 16-R177

Approving installation of Traffic Calming Measure re: 2200 Block of Golfcourse Drive

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

A RESOLUTION NO. 16-R178

Authorizing use of SPLOST VI funds for purchase of Refuse Trucks

Following the recommendation of the Committee of the Whole, Commissioner Langstaff moved to adopt the following resolution, seconded by Commissioner Coleman; the motion unanimously carried.

A RESOLUTION NO. 16-R179

Authorizing use of SPLOST VI funds for resurfacing various alleys

Following the recommendation of the Committee of the Whole, Commissioner Howard moved to adopt the following resolution, seconded by Mayor Pro Tem Fletcher; the motion unanimously carried.

A RESOLUTION NO. 16-R180

Authorizing use of SPLOST VI funds for structural steel addition re: Thornton Gym

Following the recommendation of the Committee of the Whole, Commissioner Marietta moved to adopt the following resolution, seconded by Commissioner Coleman.

A RESOLUTION NO. 16-R181

Authorizing use of SPLOST VI funds for Design Services re: Eames Sports Complex

Commissioner Langstaff stated that he wants to ensure that the City is working with Mr. Cook's company regarding baseball at the park and that it is conducive to the proposal, especially the intended purpose for travel baseball. He mentioned value engineering by the City at Gordon Sports Complex, adding that complaints were made that it was not conducive for the purposes

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the City had built it. The Commission is being asked tonight to authorize up to approximately \$414,000 for the design, and, with the multiple phases to complete the project, he said he is concerned about not having a solid agreement showing the amount the County will contribute. He commended on information he received that indicates the County intends to pay for half of the parking lot and totally fund the tennis facility, estimated at approximately \$3 million, adding that there are no separate restrooms or concessions at the tennis center. He suggested that the County share costs for the restroom and concession renovations, as well as in the design, i.e., he doesn't know the proper percentage of the shared costs, but he feels that they should share more than the current figures. When the last SPLOST was passed, he said he was under the impression that the City and County would pool their funds for this project. If the \$414,000 is approved tonight, he suggested that the County will be less inclined to share the costs, at least as far as the design aspect. He recommended that the City should present a proposal that the County pays 'x' amount, which would be the tennis center, parking and renovation of restrooms and concessions.

Commissioner Howard expressed concern regarding the \$7.0 million+ proposed for the project and agreed with Commissioner Langstaff's concerns on authorizing the \$414,000. He said he also has concerns on completing the project in phases and piece-mealing it.

Ms. Subadan explained that the pricing is estimates; the only actual firm cost is the fee for design; only after it has been designed and gone out for bid will the true cost be known. She said the County is very motivated and truly want this project and that she feels the shared costs can be laid out and a fair percentage for both entities is possible.

Commissioner Postell said he is ready to move forward with the project. Commissioner Coleman mentioned enthusiasm for projects in other parts of the City, which are done at breakneck speed and wondered about enthusiasm for projects on the east side. He said he finds it incredulous that recently the City approved, with no information, a \$281.0 million project, but are now worried about money. He also asked to move the project forward.

Commissioner Marietta stated that Ms. Subadan reassured him, by reiterating that the design could cost up to \$414,000 and said he also would like to move forward with the request to not exceed \$414,000. He then moved a substitute motion, seconded by Commissioner Coleman to include a trigger at \$186,000 so that the City Manager can stop the design contract if she sees that the County is not cooperating.

Commissioner Langstaff stated that the \$186,000 Commissioner Marietta mentioned for Phase I, includes the design/redesign of bathrooms, concession and parking lot that he feels the County should share in the costs. If that is paid for now, the County will have no inclination to chip in for the cost. As a joint project he said he feels the County should help with the cost of the design phase. Commissioner Marietta agreed somewhat and suggested that the City is responsible for recreation for the city and county areas and he hates to see more delays. Commissioner Langstaff countered that it would only be delayed two more weeks and shared costs can be discussed. He added that at some point, value engineering will result in something being cut. In response to Mayor Hubbard, Ms. Subadan stated that she has gone through the list and identified reasonable things she expects the County to partner with the City on, but the percentages will have to be negotiated. If she finds that the County is not being reasonable, she will bring it back to the Commission.

Mayor Pro Tem Fletcher expressed confidence in Ms. Subadan being able to negotiate with the County and moved to table until the next work session, seconded by Commissioner Langstaff; the motion failed 2-5 with Mayor Hubbard, Commissioners Howard, Coleman, Marietta and Postell voting no.

Mayor Hubbard called the question on the substitute motion to cap the amount at \$186,000 until the City Manager has an opportunity to determine the County's participation which carried 5-2 with Mayor Pro Tem Fletcher and Commissioner Langstaff voting no.

Following the recommendation of the Committee of the Whole, Commissioner Langstaff moved to adopt the following resolution, seconded by Mayor Pro Tem Fletcher.

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A RESOLUTION NO. 16-R182

Providing for the execution of an Intergovernmental Agreement with the Albany-Dougherty Payroll Development Authority re: WebstaurantStore, Inc.

Commissioner Marietta commended Justin Strickland for his role in helping bring jobs to our area, this has been a homerun for the EDC and he is proud of the City's investment.

Commissioners Howard and Coleman expressed concern regarding the job investment funds. The local high poverty/unemployment levels underscore the need to hire from Albany/Dougherty County. Mayor Hubbard stated that as Chairman of the Payroll Development Authority, she and Mr. Strickland will ensure that the City receives updates regarding the number of jobs that are created as they carry out the Memorandum of Understanding. Responding to Commissioner Howard's comment, Mayor Hubbard asked Mr. Strickland if any residency stipulations were placed on hiring employees. Commissioner Langstaff interjected that it is impossible to stipulate such a requirement. He added that this is an example of the Commission creating job opportunities through actions. A brief discussion ensued regarding the advertising of jobs that are created, putting more effort on building enrollment at Albany Tech, most companies hiring locally due to benefit they receive for doing so, etc.

Hearing no further comments, the motion unanimously carried,

Following the recommendation of the Committee of the Whole, Commissioner Langstaff moved to approve the following resolution, seconded by Mayor Pro Tem Fletcher; the motion unanimously carried.

A RESOLUTION NO. 16-R183

Providing for the execution of an Intergovernmental Agreement with the Albany-Dougherty Payroll Development Authority re: Mars Chocolate North America

Following the recommendation of the Committee of the Whole, Commissioner Langstaff moved to approve the following resolution, seconded by Commissioner Postell; the motion unanimously carried.

A RESOLUTION NO. 16-R184

Authorizing the use of SPLOST VI funds for purchase of Microsoft Enterprise Client Access Licenses and Server Licenses

There being no further business, the meeting adjourned at 9:02 p.m.

MAYOR

ATTEST

CITY CLERK