

October 25, 2005

COUNCIL PROCEEDINGS

Special meeting.

The forty-seventh meeting of the City Council of Charleston was held this date convening at 8:40 a.m. at 75 Calhoun Street.

A notice of this meeting and an agenda were mailed to the news media October 21, 2005 and is made available on the City's website.

PRESENT

The Honorable Joseph P. Riley, Jr., Mayor; Councilmembers Morinelli, Gallant, Gilliard, Waring, Evans, Tinkler, and Bleecker --- 8.

Councilmembers Fishburne, Shirley and George were out of town. Councilmember Lewis was working.

The meeting was opened with prayer by Councilmember Evans.

Councilmember Evans led City Council in the Pledge of Allegiance.

Mayor Riley welcomed everyone to this special City Council meeting and expressed his particular appreciation to City Council for adjusting their schedules in order to attend this meeting.

The Mayor then briefly stated that the purpose of this meeting was to give second and third readings to two bills and approve a contract for the purchase of real property. He commented that the first matter pertained to the Planned Unit Development (PUD) for the property located at 627 Maybank Highway, Bohicket Road and Angel Oak Road.

Mayor Riley noted City Council at the last meeting had approved an amended version of the PUD bill which was before Council at that time. He said specific additions had been made to what had come from the Planning Commission which had included a 75-foot buffer on Angel Oak Road, 150-foot conservation zone and a requirement that the Commercial Corridor Design Review Board (CCDRB) approve the buildings in the interior roads as well as those on the highway.

Continuing, the Mayor commented that the proposed developer/purchaser had submitted a revised PUD which included the three requirements City Council had put in the bill at the last meeting. He noted Interim Director of Planning and Neighborhoods Christopher Morgan would be outlining this information in his presentation. He said Mr. Morgan would also be discussing an additional slight change the City's staff had recommended just to be sure that the minimum requirements of the City's PUD ordinance still apply.

The Mayor stated separate from that there would be a bill to provide for the issuance and sale of a general obligation bond anticipation note and a contract of sale for the purchase of real estate between Sea Island Health Care Corporation and the City of Charleston.

He explained this proposed bill up for first reading would approve the mechanism for the City to borrow the money and purchase the land from Sea Island in the event that the contract of sale between River Birch and Sea Island is not consummated as they planned. He noted if that contract is consummated then the City's bond anticipation note and contract of sale would not be needed because the land would have been purchased by River Birch pursuant to the requirements of the PUD.

Council then considered the bill up for second reading pertaining to amending the Planned Unit Development for 3627 Maybank Highway, Bohicket Road and Angel Oak Road (*Johns Island - Sea Island PUD*) (52.41 acres) (TMS #279-00-00-142, 248 and 309).

Interim Director of Planning and Neighborhoods Christopher Morgan directed Council's attention to two versions of the PUD documents. He commented there were two versions because staff had received the copy from the applicant late the day before this meeting and had done a cursory review of it. He said staff felt there were a couple of things that needed to be addressed and he directed attention to the document with the cover sheet which staff recommended.

He indicated the document prepared by Forsberg Engineering and Surveying and said River Birch Management, LLC had prepared the other document. A copy of each of these documents is on file in the office of the Clerk of Council in the meeting folder of this date and copies of each are available in the Department of Planning and Neighborhoods.

Continuing, he explained that the applicant had agreed to the 150 foot conservation zone on all sides of the Angel Oak and he pointed out the page in the document where Council could find this information. He said they had also agreed to the 75 foot buffer zone along Angel Oak Road which could be found in the southeastern corner of the PUD document.

Mr. Morgan noted there was also language within the document itself that River Birch would agree to the CCDRB review over the entire development. He stated because of the timing in the receipt of these amendments Mr. Morgan said staff had felt it was appropriate to include a provision to be sure there would be complete compliance with all PUD guidelines in the City's Zoning Ordinance.

He then directed Council's attention to page 3 in the document and read "to the extent the provisions herein are inconsistent with the minimum Planned Unit Development standards as set forth in the City of Charleston Zoning Ordinance the minimum standards in the City's Zoning Ordinance shall control." Mr. Morgan expressed his understanding that the applicant had agreed to that language.

He went on to say that the only difference in what staff was presenting and what the applicant had distributed was some technical illustrations at the rear of the document. He noted these would be addressed through the City's technical review process.

Susan Smythe, Esq. spoke on behalf of the applicant and stated that they had agreed with the language and the elimination of the drawing of the alley right-of-way. She said the language regarding the 150 feet and the 75 feet not because the applicant had agreed to it but because that was what Council had passed at the previous meeting.

She said the applicant would like time to request a change with respect to the 150 feet and the 75 feet buffers. She commented that the applicant believed he was offering something better to meet the City's stated objectives. She said she did not know the appropriate time to discuss this, but she said she would like to do so.

Mr. Morgan responded the staff recommendation had been and Council had voted to approve the provision for the 150 foot deep conservation zone on all sides of the Angel Oak. He stated his understanding that the applicant was talking about 50 foot deep vegetative buffers. Ms. Smythe directed Council's attention to the document labeled *Development Guidelines*

Planned Development District Sea Island Comprehensive Health Care Corporation prepared by River Birch which was dated October 24, 2005. Mr. Morgan had referenced this document earlier in this meeting.

She said this document showed the changes between what Council had seen at the previous meeting and what was before them at this meeting. She referred to the bottom of Page 6 of the referenced document and explained the differences. She commented that the City had voiced concern about visibility of the development from the live oak. She talked about the Planning Commission meeting when the applicant had asked for the 150 foot request on the northern boundary to be substituted with a requirement for the applicant to plant a 50 foot dense buffer along the boundary of the park. She restated that the applicant felt that would better address the City's concerns for there to be visual protection of the park from the development. She asked Council to consider this and go back to the boundary that had been in the 2001 PUD which she said this Council had adopted.

She commented that the request was for the conservation zone to be only 75 feet from the park boundary as it had been in 2001. She noted at the last meeting no science had been presented that the 150 feet was needed for the protection of the live oak. She said the document included a provision that "all issues related to the live oak would be decided by a team of experts." She said the developers had agreed to this and she read the last paragraph on page 5 of the applicant's document.

She commented that she was trying to make two points. She said her first point was that the 150 feet was not required to protect Angel Oak. She stated there was a good mechanism in the applicant's document which would make sure that no development anywhere would have any adverse impact on the health of the oak.

Ms. Smythe then spoke of the City's objective to have a visual buffer and said that was the reason given for asking for the 150 feet. She referred to two photographs that had been presented at the October 18, 2005 Council meeting. She referred to the 75-foot buffer and said the applicant wanted to suggest replacing the 75-foot buffer with a 50-foot planted buffer which she said would be much better to meet the City's objective than the 150-foot buffer would be. She directed attention to the large exhibit again and showed the location of the applicant's proposed 50-foot buffer. She said the existing buffer was not a particularly visual buffer and noted the architect had suggested replacing the undisturbed 75-foot buffer with a planted 50-foot buffer which she commented would provide better visual protection.

Mr. Morgan said he had not expected the applicant to come back on the requirements. When Mayor Riley asked if he was just finding out about this, Mr. Morgan replied affirmatively and said staff had been under the impression that an agreement had been reached regarding the requirements Council had approved at the previous meeting.

He noted that the City's staff includes a number of experts that deal with buffers on a daily basis. He expressed the staff's confidence that the City's requirements would be much more appropriate. He reiterated that the applicant was asking for development to be allowed within 50 feet of the Angel Oak tree property. He also talked about the photographs Council had seen at their previous meeting and said supplemental plantings would not do justice to the Angel Oak that the 150-foot buffer would. He asked Council to support the PUD requirements as they had at first reading.

Councilmember Bleecker referred to the language presented in the River Birch document regarding a hydrologist and a tree specialist. She wanted to know if this requirement was the same in both of the PUD documents.

Mr. Morgan spoke of the need to go beyond the health of the tree and the need for Angel Oak to be in the midst of an area that is basically undisturbed forest. He talked about the concerns that going within 50 feet of the tree even with supplemental plantings would take away from the original character of the tree's location and the way the tree would be viewed.

Assistant Director of Parks Matt Compton rose to comment that the applicant's proposal for the 50-foot buffer would include 25 feet on the City's side of the tree. He talked about the experience of the tree both under and around it. He expressed concern about restricting the space which he said could actually take away from the park. He commented that the natural view from the undeveloped land surrounding the tree was a much better buffer than could ever be constructed by man.

Councilmember Bleecker moved to give second and third readings to the subject bill in accordance with the staff recommendations contained in the City's PUD document Ms. Smythe commented that the acreage was incorrect in the City's version and restated the requirements. When she asked Mr. Morgan if he agreed, he responded that he would be more comfortable with the City's version with the corrected acreage amount. He noted staff had not received the corrected acreage until late in the day yesterday.

Mr. Morgan again stated his opinion that staff would be more comfortable with the City's version with corrections made to the acreage. He commented that staff would work with the applicant to make the changes in the text.

Ms. Smythe stated the City version still had the 50-foot buffer in it and she said Mr. Morgan had stated it should not be in it. She noted the applicant's version made it clear that the access would come through the fire station. She commented that this had been discussed with staff and with legal. She remarked that staff wanted this to be clarified so there would be no question about this.

The Mayor spoke of the importance of the details involved in this matter. He explained that Council had two things before them. He then held up Version 4 of the Sea Island PUD Amendment prepared by River Birch Management, LLC and he also held up the document prepared by Forsberg Engineering and Surveying.

Continuing, he directed Council's attention to the bill before them for second reading which would amend the PUD for 3627 Maybank Highway, Bohicket Road and Angel Oak Road (*Johns Island - Sea Island PUD*) (52.41 acres) (TMS #279-00-00-142, 248 and 309) as set forth in Exhibit A attached to the document.

Mr. Morgan expressed his understanding that the applicant was referring to information located on Page 5 of the City's version.

Mayor Riley asked for clarification of Exhibit A as referenced in the subject bill. Mr. Morgan identified the Site Plan or map which was the last page of the document. When the Mayor then asked Mr. Morgan to identify the document, Mr. Morgan replied that it was the last page of the City's document and he believed it was also the last page of the applicant's document. The Mayor restated his understanding of Exhibit A and asked if the 52.41 acres was the correct acreage. Mr. Morgan replied that the overall acreage was correct. Mayor Riley again referred to the portion of the title of the pending bill which read "52.41 acres (TMS #279-00-00-142, 248

and 309) as set forth in Exhibit A, attached hereto and incorporated by reference herein.” Mr. Morgan responded that this was the City’s version of the ordinance. When the Mayor asked Mr. Morgan if the document prepared by Forsberg Engineering was part of the referenced Exhibit A, Mr. Morgan replied affirmatively. The Mayor then asked Mr. Morgan if the map was also part of Exhibit A and Mr. Morgan again responded in the affirmative.

Mayor Riley asked if the information outlined by Ms. Smythe was contained in the document labeled as Version 4 from River Birch and Mr. Morgan replied affirmatively. The Mayor asked about the proposed changes.

Ms. Smythe rose to state that one of the changes pertained to the obligation to plant the 50 foot dense vegetative buffer and she said this had been eliminated. She expressed her understanding that the City had agreed this should be eliminated.

When Councilmember Bleecker asked if Council could accept these changes, Mr. Morgan replied affirmatively. He spoke of the late e-mail information that had been received the previous day and said staff would be fine with eliminating this item. He explained there was a reference if the applicant is providing a 150-foot deep conservation zone the additional 50-foot buffer would not be necessary because the 150 feet would serve the same purpose. Mayor Riley concurred.

Ms. Smythe then referred to another change. She noted the additional sentence in the applicant’s Version 4 of the document and read “primary access from Bohicket Road shall be as shown in the original PUD document across land currently owned by the City of Charleston as its fire station property.” She stated that the applicant wanted to be sure there was no misunderstanding and that everybody was in agreement about this. Mr. Morgan commented that City staff was comfortable with that location.

The Mayor asked if this specified how far into the development that property goes or if only that this would be the primary access to Bohicket Road. Ms. Smythe directed attention to the map, which she believed to be the last page of both versions, and said the access could be seen on the map. She noted that it was only shown along the adjacent outparcels.

When the Mayor asked if this was all that this referred to and not to the interior alignment, Ms. Smythe agreed. Mr. Morgan restated staff’s position that this would be an appropriate location for the road. He noted that obviously the easement issues would have to be worked out with the City because this would be on City property.

Mr. Morgan reiterated that staff would be comfortable with these two changes.

Councilmember Bleecker asked if there was still a difference between the 75-foot versus the 50-foot. Mr. Morgan replied that he thought the applicant had been expressing concern about the geometry of the site and he said City staff was more concerned about the Angel Oak. He went to the exhibit and showed the location where the applicant had recommended putting a 50-foot buffer. He explained that staff felt it was more important to have a 150-foot conservation zone which would preserve the character of the forest around the Angel Oak. He reviewed the applicant’s recommendation for a 50-foot buffer rather than the 75-foot buffer staff had recommended. He also indicated the location of the subject buffer on the exhibit map.

Councilmember Bleecker stated her understanding of both the City’s recommendation and the applicant’s request.

In response to a question from Councilmember Bleecker, Ms. Smythe replied that the applicant had felt obligated to draft a document which included what Council had approved at its previous

meeting. She said it was not what the applicant wanted, but it was what Council had passed. Councilmember Bleecker asked Mayor Riley if she should reword her motion to give second reading to the subject bill including the adoption of the City's version of Exhibit A with the amendments for Items 1 and 4 of the River Birch Management Plan.

Councilmember Tinkler seconded the motion.

When Councilmember Bleecker asked the Clerk of Council if she understood the pending motion, the Clerk repeated that the motion was to give second reading to the pending bill including Items 1 and 4 from the River Birch application.

Ms. Andrews added that it would also include the deletion of Item C on the City's version of the document.

Councilmember Bleecker repeated her motion to give second and third readings to the subject bill with the changes outlined by the applicant in Items 1 and 4 in the applicant's Version 4 of the PUD document as presented to Council.

Ms. Andrews again asked for the motion to include the deletion of Item C on page 5 of the City's version of the document. Councilmember Bleecker accepted this addition to her motion.

Councilmember Gallant asked if this meant nothing had changed since Council's previous meeting. Councilmember Bleecker responded that she thought this had made it better and everyone seemed to be happier.

Ms. Andrews noted additionally the main access road would come to Bohicket Road through the City's fire station property.

Councilmember Tinkler said he thought he understood the City's position pretty thoroughly regarding the 150-foot buffer surrounding the Angel Oak. He said he would like to hear a more detailed response to his argument concerning the planted buffer along the road. He commented that Ms. Smythe had stated this would be a better visual buffer than what occurs there naturally. He said he would like to hear more discussion on this matter.

Mr. Morgan responded that staff disagreed with this. He said Eric Schultz, the City's Land Resource Planner, deals with buffers on a daily basis and he called on Mr. Schultz to further respond to this area of concern.

Mr. Schultz commented that he would describe this issue as one with two systems. He identified one system as the Angel Oak System and the other system as the Human System. He noted that just recently the Angel Oak had been designated South Carolina's Heritage Tree. Continuing, Mr. Schultz stated that the science is unknown and we have not had the hydrologist on site and we do not know what is going on underground. He commented that we do not really know the significance of cross pollination with the existing other oak trees and how much it affects this tree. He spoke of the ecology that goes into of the Angel Oak tree and he referred to this as the Angel Oak system.

He next described the system he identified as the Human System. He commented that the Angel Oak had touched lives all over the state with its recent National Heritage designation. He said when a human being comes to the Angel Oak he/she experiences the largest living thing east of the Mississippi River. He remarked that we cannot allow somebody to see the backend of a townhouse or any other structure.

He talked about today's experience in traveling down a dirt road and experiencing the tree as it is as well as with very little under vegetation. He described walking around the tree, the wetlands approximately 300 feet from the tree and the different types of vegetation onsite. He expressed

his belief that the 150-foot buffer would protect the human experience of the Angel Oak Tree. He referred to Mr. Livingston's photographs which had been presented to Council at the previous meeting.

Mr. Schultz used the example of Glenn McConnell Parkway with its 50-foot buffers and said it is still possible to see through the buffers to the adjacent properties. He said he was a little discouraged or disheartened to think there would be trails coming from development to the Angel Oak from the north, east and west. He expressed his belief that Angel Oak should remain just as it is today.

Councilmember Morinelli asked about the width of Angel Oak. Mr. Compton replied that he was not sure the tree had been measured recently. He said the tree puts on between 12 and 24 inches of new growth every year. He noted that some of this is not pure horizontal growth, but he said the tree can be as much as 150 feet or more across.

Councilmember Morinelli then stated her understanding that the rule of thumb is that you cannot build anywhere within two times the width of the canopy. Mr. Compton said that it would be at least that, but he said it is hard to trace down every single root with the Angel Oak. He expressed confidence that there are roots running from the tree along Angel Oak Road into the tomato fields.

Mr. Compton stated there is another rule of thumb that every root on an oak tree is tied to a branch of the tree. He further noted the correlation between cutting a root and later noticing a branch dying on the tree. He said this can be seen around development frequently.

Mayor Riley asked if there was any ambiguity about what a conservation zone is. Mr. Morgan expressed his belief that this had been pretty well spelled out in the document before Council. When the Mayor asked for the meaning of the term conservation zone, Mr. Morgan replied that it is an area of limited development often used as parks. He said it would allow some limited development which had not been discussed for this site. He went on to say in other parts of the City one residential unit could be allowed for every 1.5 acre.

The Mayor asked for further clarification of what could happen in the subject 150-foot conservation zone. Mr. Morgan replied that staff's feeling would be that there should not be development in the conservation zone on this site. Mayor Riley stated his belief that this would also be City Council's understanding. He said if there was any ambiguity about this it should be clarified at that meeting.

Continuing, Mayor Riley stated City Council's intention would be for this to be an undisturbed zone. Mr. Morgan responded that the PUD document included that there would be no residential use assigned. He commented other than park-type uses that would be the only type of uses that could be done in a conservation zone. He said if Council so desired a stipulation could be added that there would be no development in the conservation zone.

Mayor Riley spoke of the need to make sure that there would be no confusion. He restated his belief that this should be a completely undisturbed area. The Mayor commented that he had asked Director of Design, Development and Preservation Yvonne Fortenberry to estimate the distance between the building where this meeting was taking place and the Charleston County Library directly across the street. He said Ms. Fortenberry had estimated the distance to be about 80 feet.

He talked about getting the language right and said this was not an effort to change anything. He commented for everyone's benefit there should be a clear understanding of what we are doing.

He said if the lawyers or the planners wanted to prepare some additional language so this would not be ambiguous, they could meet briefly to discuss it.

Ms. Andrews recommended adding the following language to the pending motion: “The delineation of the conservation zone defined as an undisturbed area – no development permitted around City Parks...”

Ms. Smythe rose before Ms. Andrews completed the language and said the applicant would have problems with this. She said there was no problem with the concept of no buildings, but she said the City’s Zoning Ordinance does not say that a conservation zone is an undisturbed area. She commented that the applicant would be happy to live with the City’s existing ordinance, but she did not agree with adding a requirement at this stage without the applicant’s full understanding of this.

Mayor Riley commented that it was good this matter had come up at this time because he believed every member of City Council expected this area to be undisturbed. He remarked this would not be adding something late but he felt this was important. He said everyone would feel badly if something occurred that was not what the City had in mind.

Councilmember Bleecker asked for further clarification about development. Mayor Riley commented that this discussion might include a retention pond. He said although this would be conservation it would disturb the area. He added that this could be paths, but he said he thought that everyone contemplated a thicket that would continue to be a thicket. He again commented that this would mean that the conservation zone would remain undisturbed.

Continuing, the Mayor said he thought this was one of the things to be worked out. He commented that he had asked about where the road would be coming in in order to think through whether or not the City would want the access to the Angel Oak to occur from a parking zone or whether it would continue to be off of Angel Oak Road. He said it could also be of benefit to the developer if this was decided.

The Mayor remarked that it had occurred to him that there was a need to make sure everybody understood what conservation zone means. He expressed his opinion that it means thicket and he thought it was important to make sure that it does.

Councilmember Bleecker stated her understanding that conservation zone meant this property would not be touched.

Ms. Smythe stated the City had passed a PUD in 2001 which created a conservation zone around the park. She said this had been tied to the City’s ordinances and it had a definition. She commented that the City was now at a very eleventh hour trying to change the definition and trying to make it something other than what was previously defined as a conservation zone. Ms. Smythe went on to say that the ramifications were not just around the perimeter of the park. She said the City was also talking about the ramifications for a very large area of land and at this very eleventh hour trying to do site plan review. She noted this was all being done at time when a developer had to make a decision as to whether to go forward on a contract in bankruptcy court. When Ms. Smythe commented in the background the City had come forward and said “by golly, we’d like to buy it,” Mayor Riley said she had stated something that was a mischaracterization. He noted the City did not say “by golly, we’d like to buy it” and he further noted that it was important for this to be in the record.

He went on to say that the City had said “if to protect the Angel Oak, our requirements make it to where the developer elects not to buy it, we will purchase it to protect Sea Island.”

Ms. Smythe apologized for her lack of precision. She said the perception from the developer, whether rightly or wrongly, the City would like them to back away and not go forward in order for the City to purchase the property. She commented if they were being unfair that is their perception based on things that had been said and things that had happened to them.

The developer rose to say that they would accept this change.

For the record Mayor Riley explained that the City had a PUD adopted in 2001. He directed attention to the exhibit map and noted the area where there had been substantially less development planned. He said the former plans had not gone forward and subsequently a contract had been entered into effective this past February. He noted the City had not seen the plan until late August.

He stated in late August the City in good faith had pursued to analyze a revised plan. In the analysis of it the Mayor said there had been quite substantially more development in this area than there had been before. The Mayor noted the commercial development which was near Angel Oak was more substantial and it moved south in its placement.

Mr. Morgan agreed. He commented that the site plan is not really part of the PUD, but the developer had envisioned more substantial development closer to the tree.

The Mayor spoke of the work the planning staff had done in good faith with the developer and about the feeling of increased responsibility for what was at stake for Sea Island. He also talked about protecting something that would be important our community for the next 500 years. He went on to say that this meeting was about protecting the quality of this region, protecting a very precious asset and making sure at the last minute that the City would not at the last minute allow something it would regret. He stated that the City had been acting in exact good faith and in full and complete furtherance of its stewardship responsibility to our community. He noted the City had certainly tried to be understanding of the challenges that lie before Sea Island.

Councilmember Tinkler expressed his understanding of the conservation zone and asked Ms. Andrews to reread the language she had offered earlier.

In light of Ms. Smythe's concerns, Ms. Andrews said she wanted to clarify that this Council wanted to make sure that the 150-foot conservation zone around the tree would remain undisturbed and that any other conservation zones permitted in the PUD amendment would be governed by the Zoning Ordinance, its definitions and regulations relating thereto.

Ms. Andrews went on to say that the City was not changing the zoning definition of conservation zones in the PUD except for the 150-foot conservation zone along the eastern, northern and western sides of the tree.

Councilmember Tinkler asked if the ordinance would include a provision that this particular area would be undisturbed and Ms. Andrews responded affirmatively.

In response to a question from Ms. Smythe, Ms. Andrews said she thought it should say "shall be undisturbed with no development permitted." She clarified that this would mean no retention ponds, no trails, etc.

Councilmember Gallant commented to the developer that there was a lot of resentment coming from the people of Johns Island that they had been left out of the design process and what was being proposed. He expressed his belief that a number of people were very angry when they left the previous Council meeting. He said it was important to be sure that this does not look like the people of the community had been deceived.

He stated his belief that the community is under the impression that this would be undisturbed property.

Without objection and at the suggestion of Mayor Riley, the meeting recessed at 9:40 a.m. for staff to meet and write out exactly what the City wanted. He spoke of the need to be sure this was perfect.

The meeting reconvened at 9:50 a.m. Mayor Riley called on Ms. Andrews to present some language to City Council which he understood the developer had agreed to accept.

Ms. Andrews provided the following information:

Statement #1 on Page #1 of the applicant's version of the PUD amendment dated October 24, 2005 read as follows:

1. The delineation of the conservation zone around the City Park was adjusted so that there is 150' along the northern boundary as shown on the attached master plan map. The obligation to plant a 50 foot dense buffer along the eastern and northern boundaries of the City Park has been eliminated. The acreage charts were amended to reflect the increase in the conservation zone.

Ms. Andrews recommended the addition of the following language at the end of the applicant's Statement #1:

150-foot conservation zone around the eastern, northern and western sides of the Angel Oak property shall be and remain undisturbed with no development permitted therein with the exception of walking trails which may be permitted with the approval of the Department of Parks. All other conservation zones permitted in this PUD amendment shall be governed by the definition and regulations contained in the City of Charleston Zoning Ordinance.

Ms. Andrews further recommended the inclusion of Statement #4 from the applicant's cover memorandum which she noted addressed the primary access road. The subject statement read as follows:

4. A sentence was added to the Roads Section that reads as follows: The primary access road from Bohicket Road shall be as shown in the original PUD documents across lands currently owned by the City of Charleston as a part of its fire station property.

At the request of the Clerk of Council, Ms. Andrews clarified that the elimination of Section C on Page 5 which read "owners will plant a dense 50 foot planted buffer along the north and east boundaries of the City Park, 25' will be within the City property and 25' will be within the PUD property would remain as part of the motion.

Councilmember Bleecker accepted the inclusion of this language to her motion and to give second reading to the subject bill.

The Clerk of Council asked about the change pertaining to the deletion of Section C in the City's version on Page 5. Ms. Andrews stated that would remain as part of the motion.

Mayor Riley asked Ms. Smythe and Truett Nettles, Esq. if they wanted to make any further comments on the pending. They both indicated they did not wish to speak further on this matter. There were no further comments or questions of Council.

On motion of Councilmember Bleecker, the bill received second reading including the language outlined above. It passed second reading on motion of Councilmember Evans and third reading on motion of Councilmember Gallant. On the further motion of Councilmember Bleecker, the rules were suspended and the bill was immediately ratified as:

Ratification Number

2005-608

AN ORDINANCE TO AMEND THE ZONING ORDINANCE OF THE CITY OF CHARLESTON BY AMENDING THE PLANNED UNIT DEVELOPMENT FOR 3627 MAYBANK HIGHWAY, BOHICKET ROAD AND ANGEL OAK ROAD (*JOHNS ISLAND - SEA ISLAND PUD*) (52.41

ACRES) (TMS #279-00-00-142, 248 AND 309) AS SET FORTH IN EXHIBIT A, ATTACHED

HERETO AND INCORPORATED BY REFERENCE HEREIN. (**As amended**)

BE IT ORDAINED BY THE MAYOR AND CITY COUNCILMEMBERS, IN CITY COUNCIL

ASSEMBLED:

Section 1. That the Zoning Ordinance of the City of Charleston be, and the same hereby is amended, by amending the Planned Unit Development for the property described in Section 2 hereof, as set forth in Exhibit A, attached hereto and incorporated by reference herein. Section

2. The property is described as follows:

3627 Maybank Highway, Bohicket Road and Angel Oak Road
(Sea Island Planned Unit Development) (52.41 acres)

(TMS# 279-00-00-142, 248 and 309)

Section 3. This ordinance shall become effective upon ratification.

The next matter before Council was a bill up for second reading to provide for the issuance and sale of a General Obligation Bond Anticipation Note in the principal amount of not exceeding \$3,500,000.

There were no questions or comments of Council.

On motion of Councilmember Bleecker, the bill received second reading. It passed second reading on motion of Councilmember Gallant and third reading on motion of Councilmember Waring. On the further motion of Councilmember Gallant, the rules were suspended and the bill was immediately ratified as:

Ratification Number

2005-609

AN ORDINANCE TO PROVIDE FOR THE ISSUANCE AND SALE OF A GENERAL OBLIGATION BOND ANTICIPATION NOTE OF THE CITY OF CHARLESTON, SOUTH CAROLINA IN THE PRINCIPAL AMOUNT OF NOT EXCEEDING \$3,500,000, THE PROCEEDS OF WHICH SHALL BE USED TO PURCHASE APPROXIMATELY 43 ACRES WITHIN A LARGER TRACT OF LAND BOUNDED BY MAYBANK HIGHWAY, BOHICKET ROAD AND ANGEL OAK ROAD IN CHARLESTON COUNTY, SOUTH CAROLINA,

IN THE
VICINITY OF THE ANGEL OAK FROM SEA ISLAND COMPREHENSIVE HEALTH
CARE
CORPORATION AND SEA ISLAND DEVELOPMENT FUND, INC.; AND TO PAY COSTS
OF
ISSUANCE; TO PROVIDE FOR THE PAYMENT THEREOF; AND OTHER
MATTERS
RELATING THERETO. **(As amended)**
BE IT ORDAINED BY THE MAYOR AND CITY COUNCILMEMBERS, IN CITY
COUNCIL
ASSEMBLED:

As an incident to the enactment of this Ordinance and the issuance of the note provided for herein, the City Council of the City of Charleston, South Carolina (hereinafter called the City Council), the governing body of the City of Charleston, South Carolina (hereinafter called the City), finds that the facts set forth herein exist and the statements made with respect thereto are true and correct.

WHEREAS, by virtue of the Municipal Bond Act (Article 5, Chapter 21, Title 5 Code of Laws of South Carolina 1976, as amended). As amended and continued by Section 11-27-40 of the Code of Laws of South Carolina 1976, as amended (the Municipal Bond Act, as so amended and continued, being hereinafter called the Enabling Act), the City Council is authorized to issue general obligation bonds of the City for any purpose which is a public purpose and a corporate purpose of the City in any amount not exceeding the constitutional debt limit applicable to the City; and

WHEREAS, by Section 11-17-10 to 11-17-120, inclusive, of the Code of Laws of South Carolina 1976, as amended, the City Council is authorized to issue notes in anticipation of the issuance of general obligation bonds; and

WHEREAS, pursuant to the authorizations of Article x of the South Carolina Constitution and the Enabling Act, the City Council has determined to purchase, if and when offered to it by the Seller (as defined below), approximately 43 acres within a larger tract of land bound by Maybank Highway, Bohicket Road and Angel Oak Road in Charleston County, South Carolina, more particularly described in Exhibits B-1 and B-2, attached hereto and incorporated by reference herein, in the vicinity of the Angel Oak (the "Property") from Sea Island Comprehensive Health Care Corporation and Sea Island Development Fund, Inc. (together, the "Seller") in order to preserve and protect this nationally significant landmark (the "Undertaking"); and

WHEREAS, it is specifically recognized that the City may use all or part of the Property for expansion of the passive park at the Angel Oak or may determine to sell all or a portion of the Property for environmentally appropriate development.

NOW, THEREFORE, on the basis of the foregoing authorizations and for the purpose of raising the sum of not exceeding \$3,500,000 to be expended for the purposed set forth above, the

City Council enacts this Ordinance to effect the issuance and sale of the City's not exceeding \$3,500,000 General Obligation Bond Anticipation Note.

ARTICLE I
DEFINITIONS

Section 1 Defined Terms.

The terms defined in this Article (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Ordinance shall have the respective meanings specified in this Article.

“Code” shall mean the Internal Revenue Code of 1986, as amended.

“Note” shall mean the General Obligation Bond Anticipation Note of the City authorized to be issued hereunder in the principal amount of not exceeding \$3,500,000.

“Ordinance” shall mean this Ordinance as from time to time amended or supplemented. “Original Purchaser” shall mean use directly or indirectly in a trade or business carried on by a natural person or in any activity carried on by a person other than a natural person, excluding, however, use by a state or local governmental unit and use as a member of the general public.

Section 2 General Rules of Interpretation.

Except as otherwise expressly provided or unless the context otherwise requires, words importing persons include firms, associations, and corporations and the masculine includes the feminine and neuter.

ARTICLE II
ISSUANCE OF NOTE

Section 1 Authorization of Note.

Pursuant to the provisions of the Enabling Act and for the purposes set forth above, there shall be issued not exceeding \$3,500,000 General Obligation Bond Anticipation Note of the City of Charleston. The Note shall be originally dated the date of its delivery and shall be in fully-registered form, and shall be payable, both principle and interest, no more than one year from the date of delivery of the Note as determined by the Mayor.

Section 14 of Article X of the South Carolina Constitution provides that a city may incur general obligation indebtedness without referendum if such indebtedness, together with then outstanding indebtedness subject to the limitation, does not exceed 8% of the assessed value of all taxable property in the City. The final assessed value of all taxable property for the fiscal year ended December 31, 2004, in the City is not less than \$529,235,399. Eight percent of this sum equals \$42,338,831. Outstanding indebtedness subject to the 8% limit is \$26,734,325.10. Consequently the City may incur the Note with referendum.

Section 2 Note Prepayment

The Mayor is hereby authorized to negotiate with the Original Purchaser the terms of the prepayment provisions for the Note.

Section 3 Interest Rate on Note.

The Note shall bear such rate of interest, payable at maturity or earlier prepayment, as shall, at the sale of the Note, reflect the lowest net interest cost to the City, at a price of not less than par and accrued interest to the date of delivery, but any premium offered must be paid in cash as a part of the purchase price.

For the purposes of this Section, interest cost shall mean the aggregate of interest on the Note from the dated date of the Note, less any sum named by way of premium.

Section 4 Medium of Payment.

Both the principal of and interest on the Note shall be payable in any coin or currency of the United States of America which is, at the time of payment, legal tender for the payment of public and private debts.

Section 5 Place of Payments.

Principal of and interest on the Note, when due, shall be payable at the principal office of the Original Purchaser.

Section 6 Execution of Note.

The Note shall be executed in the name of the City by the Mayor by his manual signature, and attested by the Clerk, by her manual signature, and the seal of the City shall be impressed or reproduced on the Note. The Note shall be executed in respect of any manual signature by the person or persons holding office when the Note is ready for delivery. The execution of the Note in this fashion shall be valid and effectual notwithstanding changes in the personnel of any of the above offices subsequent to their execution. No authentication of the Note is required.

Section 7 Form of Note.

- (a) The Note shall be issued in fully registered form, and all principal and interest due thereunder shall be payable only to the registered owner thereof. The form of the Note shall be substantially as set forth in Exhibit A attached hereto and made a part of this Ordinance.
- (b) A copy of the approving legal opinion to be rendered may be attached to the back of the Note.

ARTICLE III

SECURITY FOR NOTE

Section 1 Pledge of Full Faith, Credit and Taxing Power.

For the payment of the principal of and interest on the Note when due, the full faith, credit, and taxing power of the City are irrevocably pledged, and there shall be levied and collected in the same manner as other City taxes are levied and collected, a tax, without limit, on all taxable property in the City, sufficient to pay the principal and interest of the Note when due, and to create such sinking fund as may be necessary therefore. It is specifically provided, however in lieu of the foregoing pledge, principal and interest on the Note may be paid from the proceeds of the sale of any portion of the property purchased with the proceeds of the Note or the proceeds of the general obligation bond in anticipation of which the Note is issued.

ARTICLE IV

SALE OF NOTE; DISPOSTION OF PROCEEDS OF SALE Section 1.

Sale of

Note.

The Note shall be sold at not less than par and accrued interest to the date of delivery. Bids shall be received until such time and date at such place as may be selected by the Mayor. The form of Notice of Sale, and the conditions of sale, shall be substantially those set forth in Exhibit C attached hereto and made a part and parcel hereof. Delivery shall occur on November 1, 2005, or on such later date as shall be determined in consultation with the Seller, so that the Property may be acquired on a date determined to be in the best interests of both parties.

Section 2 Disposition of Proceeds of Sale of Note.

The proceeds derived from the sale of the Note issued pursuant to this Ordinance shall be deposited with the Chief Financial Officer of the City and shall be expended and made use of by

the City Council as follows: Any premium shall be applied to the payment of the first installment of principal of the Note; and the remaining proceeds shall be used to defray the cost of issuing the Note and the cost of the Undertaking.

ARTICLE V

TAX EXEMPTION OF NOTE

Section 1 **Exemption from State Taxes.**

Both the principal of and interest on the Note shall be exempt from all state, county, municipal, school district and all other taxes or assessments of the State of South Carolina, direct or indirect, general or special whether imposed for the purpose of general revenue or otherwise, except inheritance, estate, transfer or certain franchise taxes.

Section 2 **Federal Guarantee Prohibition**

The City shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Note to be “Federally guaranteed” within the meaning of Section 149(b) of the Code and the Regulations promulgated thereunder.

Section 3 **Private Business Use Limitation.**

The City shall assure that (i) no portion of the proceeds of the Note in excess of 10% of the proceeds of the Note is used for Private Business Use if, in addition, the payment of more than 10% of the principal or 10% of the interest due on the Note during the term thereof is, under the terms of the Note or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is to be derived from payments, whether or not to the City, in respect of property or borrowed money used or to be used for a Private Business use; and (ii) in the event that both (a) in excess of 5% of the proceeds of the Note are used for a Private Business Use, and (b) an amount in excess of 5% of the principal or 5% of the interest due on the Note during the term thereof is, under the terms of the Note or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for such Private Business Use or in payments in respect of property used or to be used for such Private Business Use or is to be derived from payments, whether or not to the City, in respect of property or borrowed money used or to be used for such Private Business Use, then such excess over such 5% of the proceeds of the Note used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the facilities financed with the proceeds of the Note.

Section 4 **Private Loan Limitation.**

The City shall assure that no portion of the proceeds of the Note in excess of 5% of the net proceeds of the Note is used, directly or indirectly, to make or finance a loan to persons other than state or local government units.

Section 5 **No Arbitrage.**

The City shall not take, or permit or suffer to be taken, any action with respect to the proceeds of the Note which, if such action had been taken, or had been deliberately and intentionally taken, on the Closing Date would have caused the Note to be an “arbitrage note” within the meaning of Section 148(a) of the Code and regulations promulgated thereunder.

ARTICLE VI

MISCELLANEOUS

Section 1 Execution of Closing Documents and Certificates.

The Mayor and the Clerk are fully authorized and empowered to take such further action and to execute and deliver such closing documents and certifications as may be necessary and proper in order to complete the issuance of the Note herein authorized and the action of such officers or any one or more of them in executing and delivering any of such documents, in such form as he or they shall approve, is hereby fully authorized.

Section 2 Mayor Pro Tempore May Act in Mayor's Absence; Acting Clerk may Act in Clerk's Absence.

In the absence of the Mayor, the Mayor Pro Tempore is fully authorized to exercise all powers vested in the Mayor under this Ordinance. In the absence of the Clerk, the Acting Clerk of the City Council is fully authorized to exercise all powers and take all actions vested in the Clerk under this Ordinance.

Section 3 Benefits of Ordinance Limited to the City and Holder of the Note. With the exception of rights or benefits herein expressly conferred, nothing expressed or mentioned in or to be implied from this Ordinance or the Note is intended or should be construed to confer upon or give to any person other than the City and the holder of the Note, any legal or equitable right, remedy or claim under or by reason of or in respect to this Ordinance or an covenant, condition, stipulation, promise, agreement or provision herein contained. This Ordinance and all of the covenants, conditions, stipulations, promises, agreement or provision herein contained. This Ordinance and all of the covenants, conditions, stipulations, promises, agreements and provisions hereof are intended to be and shall be for and inure to the sole and exclusive benefit of the City and the holder from time to time of the Note as herein and therein provided.

Section 4 Ordinance Binding Upon Successors or Assigns of the City.

All the terms, provisions, conditions, covenants, warranties and agreements contained in this Ordinance shall be binding upon the successors and assigns of the City and shall inure to the benefit of the holder of the Note.

Section 5 No Personal Liability.

No recourse shall be had for the enforcement of any obligation, covenant, promise or agreement of the City contained in this Ordinance or the Note, against any member of the City Council, any officer or employee, as such, in his or her individual capacity, past, present or future, of the City, either directly or through the City, whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, it being expressly agreed and understood that this Ordinance and the Note are solely corporate obligation, and that no personal liability whatsoever shall attach to, or be incurred by, any member, officer or employee as such, past, present or future, of the City, either directly or by reason of any of the obligations, covenants, promises or agreements entered into between the City and the noteholder or to be implied therefrom as being supplemental hereto or thereto, and that all personal liability of that character against every such member, officer and employee is, by the adoption of this Ordinance and the execution of the Note, and as a condition of, and as a part of the consideration for, the adoption of this Ordinance and the execution of the Note, expressly waived and released. The immunity of member, officers and employees of the City

under the provisions contained in this Section shall survive the termination of this Ordinance.

Section 6 Effect of Saturdays, Sundays and Legal Holidays.

Whenever this Ordinance requires any action to be taken on a Saturday, Sunday, legal holiday or bank holiday in the State of South Carolina, such action shall be taken on the first business day occurring thereafter. Whenever in this Ordinance the time within which any action is required to be taken or within which any right will lapse or expire shall terminate on a Saturday, Sunday, legal holiday or bank holiday, in the State of South Carolina, such time shall continue to run until midnight on the next succeeding business day.

Section 7 Partial Invalidity.

(a) If any one or more of the covenants or agreements or portions thereof provided in this Ordinance on the part of the City to be performed should be determined by a court of competent jurisdiction to be contrary to law, then such covenant or covenants, or such agreement or agreements, or such portions thereof, shall be deemed severable from the remaining covenants and agreement or portions thereof provided in this Ordinance and the invalidity thereof shall in no way affect the validity of the other provisions of this Ordinance or of the Note, but the holders of the Note shall retain all the rights and benefits accorded to them hereunder and under any applicable provisions of law.

(b) If any provisions of this Ordinance shall be held or deemed to be or shall, in fact, be inoperative or unenforceable or invalid as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any constitution or statute or rules of public policy or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable or invalid in any other provision or provisions herein contained inoperative or unenforceable or invalid to any extent whatever.

Section 8 Law and Place of Enforcement of the Ordinance.

This Ordinance shall be construed and interpreted in accordance with the laws of the State of South Carolina, and all suits and actions arising out of this Ordinance shall be instituted in a court of competent jurisdiction in such State.

Section 9 Effect of Article and Section Headings and Table of Contents.

The heading or titles of the several Articles and Sections hereof, and any table of contents appended hereto or to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction, interpretation or effect of this Ordinance.

DONE IN MEETING DULY ASSEMBLED, THIS 25th day of October, 2005.

CITY OF CHARLESTON, SOUTH CAROLINA

BY: /s/ Joseph P. Riley, Jr

Mayor

(SEAL)

Attest:

/s/ Vanessa Turner-Maybank

City Clerk

First Reading: October 18, 2005

Second Reading: October 25, 2005

The remaining matter on Council's agenda was a Contract for the Sale and Purchase of Real

Estate between Sea Island Comprehensive Health Care Corporation, Seller, and the City of Charleston, Purchaser, consisting of 43 acres on Johns Island in the City and County of Charleston, State of South Carolina for the sum of \$3,500,000. A copy of the proposed document is on file in the office of the Clerk of Council in the meeting folder of this date. Mayor Riley noted this contract would only occur in the event River Birch did not consummate their agreement.

There were no questions or comments of Council.

On motion of Councilmember Gallant, seconded by Councilmember Waring, Council voted to approve the proposed Contract for the Sale and Purchase of Real Estate between Sea Island Comprehensive Health Care Corporation, Seller, and the City of Charleston, Purchaser, consisting of 43 acres on Johns Island in the City and County of Charleston, State of South Carolina for the sum of \$3,500,000 as presented

There being no further business the meeting adjourned at 9:55a.m.

Vanessa Turner-Maybank
Clerk of Council

October 25, 2005

COUNCIL PROCEEDINGS

Special meeting.

The forty-seventh meeting of the City Council of Charleston was held this date convening at 8:40 a.m. at 75 Calhoun Street.

A notice of this meeting and an agenda were mailed to the news media October 21, 2005 and is made available on the City's website.

PRESENT

The Honorable Joseph P. Riley, Jr., Mayor; Councilmembers Morinelli, Gallant, Gilliard, Waring, Evans, Tinkler, and Bleecker --- 8.

Councilmembers Fishburne, Shirley and George were out of town. Councilmember Lewis was working.

The meeting was opened with prayer by Councilmember Evans.

Councilmember Evans led City Council in the Pledge of Allegiance.

Mayor Riley welcomed everyone to this special City Council meeting and expressed his particular appreciation to City Council for adjusting their schedules in order to attend this meeting.

The Mayor then briefly stated that the purpose of this meeting was to give second and third readings to two bills and approve a contract for the purchase of real property. He commented that the first matter pertained to the Planned Unit Development (PUD) for the property located at 627 Maybank Highway, Bohicket Road and Angel Oak Road.

Mayor Riley noted City Council at the last meeting had approved an amended version of the PUD bill which was before Council at that time. He said specific additions had been made to what had come from the Planning Commission which had included a 75-foot buffer on Angel Oak Road, 150-foot conservation zone and a requirement that the Commercial Corridor Design Review Board (CCDRB) approve the buildings in the interior roads as well as those on the highway.

Continuing, the Mayor commented that the proposed developer/purchaser had submitted a revised PUD which included the three requirements City Council had put in the bill at the last meeting. He noted Interim Director of Planning and Neighborhoods Christopher Morgan would be outlining this information in his presentation. He said Mr. Morgan would also be discussing an additional slight change the City's staff had recommended just to be sure that the minimum requirements of the City's PUD ordinance still apply.

The Mayor stated separate from that there would be a bill to provide for the issuance and sale of a general obligation bond anticipation note and a contract of sale for the purchase of real estate between Sea Island Health Care Corporation and the City of Charleston.

He explained this proposed bill up for first reading would approve the mechanism for the City to borrow the money and purchase the land from Sea Island in the event that the contract of sale between River Birch and Sea Island is not consummated as they planned. He noted if that contract is consummated then the City's bond anticipation note and contract of sale would not be needed because the land would have been purchased by River Birch pursuant to the requirements of the PUD.

Council then considered the bill up for second reading pertaining to amending the Planned Unit Development for 3627 Maybank Highway, Bohicket Road and Angel Oak Road (*Johns Island - Sea Island PUD*) (52.41 acres) (TMS #279-00-00-142, 248 and 309).

Interim Director of Planning and Neighborhoods Christopher Morgan directed Council's attention to two versions of the PUD documents. He commented there were two versions because staff had received the copy from the applicant late the day before this meeting and had done a cursory review of it. He said staff felt there were a couple of things that needed to be addressed and he directed attention to the document with the cover sheet which staff recommended.

He indicated the document prepared by Forsberg Engineering and Surveying and said River Birch Management, LLC had prepared the other document. A copy of each of these documents is on file in the office of the Clerk of Council in the meeting folder of this date and copies of each are available in the Department of Planning and Neighborhoods.

Continuing, he explained that the applicant had agreed to the 150 foot conservation zone on all sides of the Angel Oak and he pointed out the page in the document where Council could find this information. He said they had also agreed to the 75 foot buffer zone along Angel Oak Road which could be found in the southeastern corner of the PUD document.

Mr. Morgan noted there was also language within the document itself that River Birch would agree to the CCDRB review over the entire development. He stated because of the timing in the receipt of these amendments Mr. Morgan said staff had felt it was appropriate to include a provision to be sure there would be complete compliance with all PUD guidelines in the City's Zoning Ordinance.

He then directed Council's attention to page 3 in the document and read "to the extent the provisions herein are inconsistent with the minimum Planned Unit Development standards as set forth in the City of Charleston Zoning Ordinance the minimum standards in the City's Zoning Ordinance shall control." Mr. Morgan expressed his understanding that the applicant had agreed to that language.

He went on to say that the only difference in what staff was presenting and what the applicant had distributed was some technical illustrations at the rear of the document. He noted these would be addressed through the City's technical review process.

Susan Smythe, Esq. spoke on behalf of the applicant and stated that they had agreed with the language and the elimination of the drawing of the alley right-of-way. She said the language regarding the 150 feet and the 75 feet not because the applicant had agreed to it but because that was what Council had passed at the previous meeting.

She said the applicant would like time to request a change with respect to the 150 feet and the 75 feet buffers. She commented that the applicant believed he was offering something better to meet the City's stated objectives. She said she did not know the appropriate time to discuss this, but she said she would like to do so.

Mr. Morgan responded the staff recommendation had been and Council had voted to approve the provision for the 150 foot deep conservation zone on all sides of the Angel Oak. He stated his understanding that the applicant was talking about 50 foot deep vegetative buffers. Ms. Smythe directed Council's attention to the document labeled *Development Guidelines Planned Development District Sea Island Comprehensive Health Care Corporation* prepared by River Birch which was dated October 24, 2005. Mr. Morgan had referenced this document earlier in this meeting.

She said this document showed the changes between what Council had seen at the previous meeting and what was before them at this meeting. She referred to the bottom of Page 6 of the referenced document and explained the differences. She commented that the City had voiced concern about visibility of the development from the live oak. She talked about the Planning Commission meeting when the applicant had asked for the 150 foot request on the northern boundary to be substituted with a requirement for the applicant to plant a 50 foot dense buffer along the boundary of the park. She restated that the applicant felt that would better address the City's concerns for there to be visual protection of the park from the development. She asked Council to consider this and go back to the boundary that had been in the 2001 PUD which she said this Council had adopted.

She commented that the request was for the conservation zone to be only 75 feet from the park boundary as it had been in 2001. She noted at the last meeting no science had been presented that the 150 feet was needed for the protection of the live oak. She said the document included a provision that "all issues related to the live oak would be decided by a team of experts." She said the developers had agreed to this and she read the last paragraph on page 5 of the applicant's document.

She commented that she was trying to make two points. She said her first point was that the 150 feet was not required to protect Angel Oak. She stated there was a good mechanism in the applicant's document which would make sure that no development anywhere would have any adverse impact on the health of the oak.

Ms. Smythe then spoke of the City's objective to have a visual buffer and said that was the reason given for asking for the 150 feet. She referred to two photographs that had been presented at the October 18, 2005 Council meeting. She referred to the 75-foot buffer and said the applicant wanted to suggest replacing the 75-foot buffer with a 50-foot planted buffer which she said would be much better to meet the City's objective than the 150-foot buffer would be. She directed attention to the large exhibit again and showed the location of the applicant's

proposed 50-foot buffer. She said the existing buffer was not a particularly visual buffer and noted the architect had suggested replacing the undisturbed 75-foot buffer with a planted 50-foot buffer which she commented would provide better visual protection.

Mr. Morgan said he had not expected the applicant to come back on the requirements. When Mayor Riley asked if he was just finding out about this, Mr. Morgan replied affirmatively and said staff had been under the impression that an agreement had been reached regarding the requirements Council had approved at the previous meeting.

He noted that the City's staff includes a number of experts that deal with buffers on a daily basis. He expressed the staff's confidence that the City's requirements would be much more appropriate. He reiterated that the applicant was asking for development to be allowed within 50 feet of the Angel Oak tree property. He also talked about the photographs Council had seen at their previous meeting and said supplemental plantings would not do justice to the Angel Oak that the 150-foot buffer would. He asked Council to support the PUD requirements as they had at first reading.

Councilmember Bleecker referred to the language presented in the River Birch document regarding a hydrologist and a tree specialist. She wanted to know if this requirement was the same in both of the PUD documents.

Mr. Morgan spoke of the need to go beyond the health of the tree and the need for Angel Oak to be in the midst of an area that is basically undisturbed forest. He talked about the concerns that going within 50 feet of the tree even with supplemental plantings would take away from the original character of the tree's location and the way the tree would be viewed.

Assistant Director of Parks Matt Compton rose to comment that the applicant's proposal for the 50-foot buffer would include 25 feet on the City's side of the tree. He talked about the experience of the tree both under and around it. He expressed concern about restricting the space which he said could actually take away from the park. He commented that the natural view from the undeveloped land surrounding the tree was a much better buffer than could ever be constructed by man.

Councilmember Bleecker moved to give second and third readings to the subject bill in accordance with the staff recommendations contained in the City's PUD document Ms. Smythe commented that the acreage was incorrect in the City's version and restated the requirements. When she asked Mr. Morgan if he agreed, he responded that he would be more comfortable with the City's version with the corrected acreage amount. He noted staff had not received the corrected acreage until late in the day yesterday.

Mr. Morgan again stated his opinion that staff would be more comfortable with the City's version with corrections made to the acreage. He commented that staff would work with the applicant to make the changes in the text.

Ms. Smythe stated the City version still had the 50-foot buffer in it and she said Mr. Morgan had stated it should not be in it. She noted the applicant's version made it clear that the access would come through the fire station. She commented that this had been discussed with staff and with legal. She remarked that staff wanted this to be clarified so there would be no question about this.

The Mayor spoke of the importance of the details involved in this matter. He explained that

Council had two things before them. He then held up Version 4 of the Sea Island PUD Amendment prepared by River Birch Management, LLC and he also held up the document prepared by Forsberg Engineering and Surveying.

Continuing, he directed Council's attention to the bill before them for second reading which would amend the PUD for 3627 Maybank Highway, Bohicket Road and Angel Oak Road (*Johns Island - Sea Island PUD*) (52.41 acres) (TMS #279-00-00-142, 248 and 309) as set forth in Exhibit A attached to the document.

Mr. Morgan expressed his understanding that the applicant was referring to information located on Page 5 of the City's version.

Mayor Riley asked for clarification of Exhibit A as referenced in the subject bill. Mr. Morgan identified the Site Plan or map which was the last page of the document. When the Mayor then asked Mr. Morgan to identify the document, Mr. Morgan replied that it was the last page of the City's document and he believed it was also the last page of the applicant's document. The Mayor restated his understanding of Exhibit A and asked if the 52.41 acres was the correct acreage. Mr. Morgan replied that the overall acreage was correct. Mayor Riley again referred to the portion of the title of the pending bill which read "52.41 acres (TMS #279-00-00-142, 248 and 309) as set forth in Exhibit A, attached hereto and incorporated by reference herein." Mr. Morgan responded that this was the City's version of the ordinance. When the Mayor asked Mr. Morgan if the document prepared by Forsberg Engineering was part of the referenced Exhibit A, Mr. Morgan replied affirmatively. The Mayor then asked Mr. Morgan if the map was also part of Exhibit A and Mr. Morgan again responded in the affirmative.

Mayor Riley asked if the information outlined by Ms. Smythe was contained in the document labeled as Version 4 from River Birch and Mr. Morgan replied affirmatively. The Mayor asked about the proposed changes.

Ms. Smythe rose to state that one of the changes pertained to the obligation to plant the 50 foot dense vegetative buffer and she said this had been eliminated. She expressed her understanding that the City had agreed this should be eliminated.

When Councilmember Bleecker asked if Council could accept these changes, Mr. Morgan replied affirmatively. He spoke of the late e-mail information that had been received the previous day and said staff would be fine with eliminating this item. He explained there was a reference if the applicant is providing a 150-foot deep conservation zone the additional 50-foot buffer would not be necessary because the 150 feet would serve the same purpose. Mayor Riley concurred.

Ms. Smythe then referred to another change. She noted the additional sentence in the applicant's Version 4 of the document and read "primary access from Bohicket Road shall be as shown in the original PUD document across land currently owned by the City of Charleston as its fire station property." She stated that the applicant wanted to be sure there was no misunderstanding and that everybody was in agreement about this. Mr. Morgan commented that City staff was comfortable with that location.

The Mayor asked if this specified how far into the development that property goes or if only that this would be the primary access to Bohicket Road. Ms. Smythe directed attention to the map, which she believed to be the last page of both versions, and said the access could be seen on the map. She noted that it was only shown along the adjacent outparcels.

When the Mayor asked if this was all that this referred to and not to the interior alignment, Ms. Smythe agreed. Mr. Morgan restated staff's position that this would be an appropriate location for the road. He noted that obviously the easement issues would have to be worked out with the City because this would be on City property.

Mr. Morgan reiterated that staff would be comfortable with these two changes.

Councilmember Bleecker asked if there was still a difference between the 75-foot versus the 50-foot. Mr. Morgan replied that he thought the applicant had been expressing concern about the geometry of the site and he said City staff was more concerned about the Angel Oak. He went to the exhibit and showed the location where the applicant had recommended putting a 50-foot buffer. He explained that staff felt it was more important to have a 150-foot conservation zone which would preserve the character of the forest around the Angel Oak. He reviewed the applicant's recommendation for a 50-foot buffer rather than the 75-foot buffer staff had recommended. He also indicated the location of the subject buffer on the exhibit map.

Councilmember Bleecker stated her understanding of both the City's recommendation and the applicant's request.

In response to a question from Councilmember Bleecker, Ms. Smythe replied that the applicant had felt obligated to draft a document which included what Council had approved at its previous meeting. She said it was not what the applicant wanted, but it was what Council had passed.

Councilmember Bleecker asked Mayor Riley if she should reword her motion to give second reading to the subject bill including the adoption of the City's version of Exhibit A with the amendments for Items 1 and 4 of the River Birch Management Plan.

Councilmember Tinkler seconded the motion.

When Councilmember Bleecker asked the Clerk of Council if she understood the pending motion, the Clerk repeated that the motion was to give second reading to the pending bill including Items 1 and 4 from the River Birch application.

Ms. Andrews added that it would also include the deletion of Item C on the City's version of the document.

Councilmember Bleecker repeated her motion to give second and third readings to the subject bill with the changes outlined by the applicant in Items 1 and 4 in the applicant's Version 4 of the PUD document as presented to Council.

Ms. Andrews again asked for the motion to include the deletion of Item C on page 5 of the City's version of the document. Councilmember Bleecker accepted this addition to her motion.

Councilmember Gallant asked if this meant nothing had changed since Council's previous meeting. Councilmember Bleecker responded that she thought this had made it better and everyone seemed to be happier.

Ms. Andrews noted additionally the main access road would come to Bohicket Road through the City's fire station property.

Councilmember Tinkler said he thought he understood the City's position pretty thoroughly regarding the 150-foot buffer surrounding the Angel Oak. He said he would like to hear a more detailed response to his argument concerning the planted buffer along the road. He commented that Ms. Smythe had stated this would be a better visual buffer than what occurs there naturally. He said he would like to hear more discussion on this matter.

Mr. Morgan responded that staff disagreed with this. He said Eric Schultz, the City's Land Resource Planner, deals with buffers on a daily basis and he called on Mr. Schultz to further respond to this area of concern.

Mr. Schultz commented that he would describe this issue as one with two systems. He identified one system as the Angel Oak System and the other system as the Human System. He noted that just recently the Angel Oak had been designated South Carolina's Heritage Tree. Continuing, Mr. Schultz stated that the science is unknown and we have not had the hydrologist on site and we do not know what is going on underground. He commented that we do not really know the significance of cross pollination with the existing other oak trees and how much it affects this tree. He spoke of the ecology that goes into of the Angel Oak tree and he referred to this as the Angel Oak system.

He next described the system he identified as the Human System. He commented that the Angel Oak had touched lives all over the state with its recent National Heritage designation. He said when a human being comes to the Angel Oak he/she experiences the largest living thing east of the Mississippi River. He remarked that we cannot allow somebody to see the backend of a townhouse or any other structure.

He talked about today's experience in traveling down a dirt road and experiencing the tree as it is as well as with very little under vegetation. He described walking around the tree, the wetlands approximately 300 feet from the tree and the different types of vegetation onsite. He expressed his belief that the 150-foot buffer would protect the human experience of the Angel Oak Tree. He referred to Mr. Livingston's photographs which had been presented to Council at the previous meeting.

Mr. Schultz used the example of Glenn McConnell Parkway with its 50-foot buffers and said it is still possible to see through the buffers to the adjacent properties. He said he was a little discouraged or disheartened to think there would be trails coming from development to the Angel Oak from the north, east and west. He expressed his belief that Angel Oak should remain just as it is today.

Councilmember Morinelli asked about the width of Angel Oak. Mr. Compton replied that he was not sure the tree had been measured recently. He said the tree puts on between 12 and 24 inches of new growth every year. He noted that some of this is not pure horizontal growth, but he said the tree can be as much as 150 feet or more across.

Councilmember Morinelli then stated her understanding that the rule of thumb is that you cannot build anywhere within two times the width of the canopy. Mr. Compton said that it would be at least that, but he said it is hard to trace down every single root with the Angel Oak. He expressed confidence that there are roots running from the tree along Angel Oak Road into the tomato fields.

Mr. Compton stated there is another rule of thumb that every root on an oak tree is tied to a branch of the tree. He further noted the correlation between cutting a root and later noticing a branch dying on the tree. He said this can be seen around development frequently.

Mayor Riley asked if there was any ambiguity about what a conservation zone is. Mr. Morgan expressed his belief that this had been pretty well spelled out in the document before Council.

When the Mayor asked for the meaning of the term conservation zone, Mr. Morgan replied that it is an area of limited development often used as parks. He said it would allow some limited

development which had not been discussed for this site. He went on to say in other parts of the City one residential unit could be allowed for every 1.5 acre.

The Mayor asked for further clarification of what could happen in the subject 150-foot conservation zone. Mr. Morgan replied that staff's feeling would be that there should not be development in the conservation zone on this site. Mayor Riley stated his belief that this would also be City Council's understanding. He said if there was any ambiguity about this it should be clarified at that meeting.

Continuing, Mayor Riley stated City Council's intention would be for this to be an undisturbed zone. Mr. Morgan responded that the PUD document included that there would be no residential use assigned. He commented other than park-type uses that would be the only type of uses that could be done in a conservation zone. He said if Council so desired a stipulation could be added that there would be no development in the conservation zone.

Mayor Riley spoke of the need to make sure that there would be no confusion. He restated his belief that this should be a completely undisturbed area. The Mayor commented that he had asked Director of Design, Development and Preservation Yvonne Fortenberry to estimate the distance between the building where this meeting was taking place and the Charleston County Library directly across the street. He said Ms. Fortenberry had estimated the distance to be about 80 feet.

He talked about getting the language right and said this was not an effort to change anything. He commented for everyone's benefit there should be a clear understanding of what we are doing. He said if the lawyers or the planners wanted to prepare some additional language so this would not be ambiguous, they could meet briefly to discuss it.

Ms. Andrews recommended adding the following language to the pending motion: "The delineation of the conservation zone defined as an undisturbed area – no development permitted around City Parks..."

Ms. Smythe rose before Ms. Andrews completed the language and said the applicant would have problems with this. She said there was no problem with the concept of no buildings, but she said the City's Zoning Ordinance does not say that a conservation zone is an undisturbed area. She commented that the applicant would be happy to live with the City's existing ordinance, but she did not agree with adding a requirement at this stage without the applicant's full understanding of this.

Mayor Riley commented that it was good this matter had come up at this time because he believed every member of City Council expected this area to be undisturbed. He remarked this would not be adding something late but he felt this was important. He said everyone would feel badly if something occurred that was not what the City had in mind.

Councilmember Bleecker asked for further clarification about development. Mayor Riley commented that this discussion might include a retention pond. He said although this would be conservation it would disturb the area. He added that this could be paths, but he said he thought that everyone contemplated a thicket that would continue to be a thicket. He again commented that this would mean that the conservation zone would remain undisturbed.

Continuing, the Mayor said he thought this was one of the things to be worked out. He commented that he had asked about where the road would be coming in in order to think through whether or not the City would want the access to the Angel Oak to occur from a parking zone or

whether it would continue to be off of Angel Oak Road. He said it could also be of benefit to the developer if this was decided.

The Mayor remarked that it had occurred to him that there was a need to make sure everybody understood what conservation zone means. He expressed his opinion that it means thicket and he thought it was important to make sure that it does.

Councilmember Bleecker stated her understanding that conservation zone meant this property would not be touched.

Ms. Smythe stated the City had passed a PUD in 2001 which created a conservation zone around the park. She said this had been tied to the City's ordinances and it had a definition. She commented that the City was now at a very eleventh hour trying to change the definition and trying to make it something other than what was previously defined as a conservation zone. Ms. Smythe went on to say that the ramifications were not just around the perimeter of the park. She said the City was also talking about the ramifications for a very large area of land and at this very eleventh hour trying to do site plan review. She noted this was all being done at time when a developer had to make a decision as to whether to go forward on a contract in bankruptcy court. When Ms. Smythe commented in the background the City had come forward and said "by golly, we'd like to buy it," Mayor Riley said she had stated something that was a mischaracterization. He noted the City did not say "by golly, we'd like to buy it" and he further noted that it was important for this to be in the record.

He went on to say that the City had said "if to protect the Angel Oak, our requirements make it to where the developer elects not to buy it, we will purchase it to protect Sea Island."

Ms. Smythe apologized for her lack of precision. She said the perception from the developer, whether rightly or wrongly, the City would like them to back away and not go forward in order for the City to purchase the property. She commented if they were being unfair that is their perception based on things that had been said and things that had happened to them.

The developer rose to say that they would accept this change.

For the record Mayor Riley explained that the City had a PUD adopted in 2001. He directed attention to the exhibit map and noted the area where there had been substantially less development planned. He said the former plans had not gone forward and subsequently a contract had been entered into effective this past February. He noted the City had not seen the plan until late August.

He stated in late August the City in good faith had pursued to analyze a revised plan. In the analysis of it the Mayor said there had been quite substantially more development in this area than there had been before. The Mayor noted the commercial development which was near Angel Oak was more substantial and it moved south in its placement.

Mr. Morgan agreed. He commented that the site plan is not really part of the PUD, but the developer had envisioned more substantial development closer to the tree.

The Mayor spoke of the work the planning staff had done in good faith with the developer and about the feeling of increased responsibility for what was at stake for Sea Island. He also talked about protecting something that would be important our community for the next 500 years.

He went on to say that this meeting was about protecting the quality of this region, protecting a very precious asset and making sure at the last minute that the City would not at the last minute allow something it would regret. He stated that the City had been acting in exact good faith and

in full and complete furtherance of its stewardship responsibility to our community. He noted the City had certainly tried to be understanding of the challenges that lie before Sea Island. Councilmember Tinkler expressed his understanding of the conservation zone and asked Ms. Andrews to reread the language she had offered earlier.

In light of Ms. Smythe's concerns, Ms. Andrews said she wanted to clarify that this Council wanted to make sure that the 150-foot conservation zone around the tree would remain undisturbed and that any other conservation zones permitted in the PUD amendment would be governed by the Zoning Ordinance, its definitions and regulations relating thereto.

Ms. Andrews went on to say that the City was not changing the zoning definition of conservation zones in the PUD except for the 150-foot conservation zone along the eastern, northern and western sides of the tree.

Councilmember Tinkler asked if the ordinance would include a provision that this particular area would be undisturbed and Ms. Andrews responded affirmatively.

In response to a question from Ms. Smythe, Ms. Andrews said she thought it should say "shall be undisturbed with no development permitted." She clarified that this would mean no retention ponds, no trails, etc.

Councilmember Gallant commented to the developer that there was a lot of resentment coming from the people of Johns Island that they had been left out of the design process and what was being proposed. He expressed his belief that a number of people were very angry when they left the previous Council meeting. He said it was important to be sure that this does not look like the people of the community had been deceived.

He stated his belief that the community is under the impression that this would be undisturbed property.

Without objection and at the suggestion of Mayor Riley, the meeting recessed at 9:40 a.m. for staff to meet and write out exactly what the City wanted. He spoke of the need to be sure this was perfect.

The meeting reconvened at 9:50 a.m. Mayor Riley called on Ms. Andrews to present some language to City Council which he understood the developer had agreed to accept. Ms.

Andrews provided the following information:

Statement #1 on Page #1 of the applicant's version of the PUD amendment dated October 24, 2005 read as follows:

1. The delineation of the conservation zone around the City Park was adjusted so that there is 150' along the northern boundary as shown on the attached master plan map. The obligation to plant a 50 foot dense buffer along the eastern and northern boundaries of the City Park has been eliminated. The acreage charts were amended to reflect the increase in the conservation zone.

Ms. Andrews recommended the addition of the following language at the end of the applicant's Statement #1:

150-foot conservation zone around the eastern, northern and western sides of the Angel Oak property shall be and remain undisturbed with no development permitted therein with the exception of walking trails which may be permitted with the approval of the Department of Parks. All other conservation zones permitted in this PUD amendment shall be governed by the definition and regulations contained in the City of Charleston Zoning Ordinance.

Ms. Andrews further recommended the inclusion of Statement #4 from the applicant's cover memorandum which she noted addressed the primary access road. The subject statement read as follows:

4. A sentence was added to the Roads Section that reads as follows: The primary access road from Bohicket Road shall be as shown in the original PUD documents across lands currently owned by the City of Charleston as a part of its fire station property.

At the request of the Clerk of Council, Ms. Andrews clarified that the elimination of Section C on Page 5 which read "owners will plant a dense 50 foot planted buffer along the north and east boundaries of the City Park, 25' will be within the City property and 25' will be within the PUD property would remain as part of the motion.

Councilmember Bleecker accepted the inclusion of this language to her motion and to give second reading to the subject bill.

The Clerk of Council asked about the change pertaining to the deletion of Section C in the City's version on Page 5. Ms. Andrews stated that would remain as part of the motion.

Mayor Riley asked Ms. Smythe and Truett Nettles, Esq. if they wanted to make any further comments on the pending. They both indicated they did not wish to speak further on this matter. There were no further comments or questions of Council.

On motion of Councilmember Bleecker, the bill received second reading including the language outlined above. It passed second reading on motion of Councilmember Evans and third reading on motion of Councilmember Gallant. On the further motion of Councilmember Bleecker, the rules were suspended and the bill was immediately ratified as:

RATIFICATION NUMBER

2005-608

AN ORDINANCE TO AMEND THE ZONING ORDINANCE OF THE CITY OF CHARLESTON BY AMENDING THE PLANNED UNIT DEVELOPMENT FOR 3627 MAYBANK HIGHWAY, BOHICKET ROAD AND ANGEL OAK ROAD (*JOHNS ISLAND - SEA ISLAND PUD*) (52.41 ACRES) (TMS #279-00-00-142, 248 AND 309) AS SET FORTH IN EXHIBIT A, ATTACHED HERETO AND INCORPORATED BY REFERENCE HEREIN. (**As amended**) _____

The next matter before Council was a bill up for second reading to provide for the issuance and sale of a General Obligation Bond Anticipation Note in the principal amount of not exceeding \$3,500,000.

There were no questions or comments of Council.

On motion of Councilmember Bleecker, the bill received second reading. It passed second reading on motion of Councilmember Gallant and third reading on motion of Councilmember Waring. On the further motion of Councilmember Gallant, the rules were suspended and the bill was immediately ratified as:

RATIFICATION NUMBER

2005-609

AN ORDINANCE TO PROVIDE FOR THE ISSUANCE AND SALE OF A GENERAL OBLIGATION BOND ANTICIPATION NOTE OF THE CITY OF CHARLESTON, SOUTH CAROLINA IN THE PRINCIPAL AMOUNT OF NOT EXCEEDING \$3,500,000, THE PROCEEDS OF WHICH SHALL BE USED TO PURCHASE APPROXIMATELY 43 ACRES

WITHIN A LARGER TRACT OF LAND BOUNDED BY MAYBANK HIGHWAY, BOHICKET ROAD AND ANGEL OAK ROAD IN CHARLESTON COUNTY, SOUTH CAROLINA, IN THE VICINITY OF THE ANGEL OAK FROM SEA ISLAND COMPREHENSIVE HEALTH CARE CORPORATION AND SEA ISLAND DEVELOPMENT FUND, INC.; AND TO PAY COSTS OF ISSUANCE; TO PROVIDE FOR THE PAYMENT THEREOF; AND OTHER MATTERS RELATING THERETO. (As amended)

BE IT ORDAINED BY THE CITY OF CHARLESTON, SOUTH CAROLINA, IN MEETING DULY ASSEMBLED:

As an incident to the enactment of this Ordinance and the issuance of the note provided for herein, the City Council of the City of Charleston, South Carolina (hereinafter called the City Council), the governing body of the City of Charleston, South Carolina (hereinafter called the City), finds that the facts set forth herein exist and the statements made with respect thereto are true and correct.

WHEREAS, by virtue of the Municipal Bond Act (Article 5, Chapter 21, Title 5 Code of Laws of South Carolina 1976, as amended), as amended and continued by Section 11-27-40 of the Code of Laws of South Carolina 1976, as amended (the Municipal Bond Act, as so amended and continued, being hereinafter called the Enabling Act), the City Council is authorized to issue general obligation bonds of the City for any purpose which is a public purpose and a corporate purpose of the City in any amount not exceeding the constitutional debt limit applicable to the City; and

WHEREAS, by Section 11-17-10 to 11-17-120, inclusive, of the Code of Laws of South Carolina 1976, as amended, the City Council is authorized to issue notes in anticipation of the issuance of general obligation bonds; and

WHEREAS, pursuant to the authorizations of Article X of the South Carolina Constitution and the Enabling Act, the City Council has determined to purchase, if and when offered to it by the Seller (as defined below), approximately 43 acres within a larger tract of land bounded by Maybank Highway, Bohicket Road and Angel Oak Road in Charleston County, South Carolina, more particularly described in Exhibits B-1 and B-2, attached hereto and incorporated by reference herein, in the vicinity of the Angel Oak (the "Property") from Sea Island Comprehensive Health Care Corporation and Sea Island Development Fund, Inc. (together, the "Seller") in order to preserve and protect this nationally significant landmark (the "Undertaking"); and

WHEREAS, it is specifically recognized that the City may use all or part of the Property for expansion of the passive park at the Angel Oak or may determine to sell all or a portion of the Property for environmentally appropriate development.

NOW, THEREFORE, on the basis of the foregoing authorizations and for the purpose of raising the sum of not exceeding \$3,500,000 to be expended for the purposes set forth above, the City Council enacts this Ordinance to effect the issuance and sale of the City's not exceeding \$3,500,000 General Obligation Bond Anticipation Note.

ARTICLE I DEFINITIONS

Section 1 Defined Terms.

The terms defined in this Article (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Ordinance shall have the respective meanings specified in this Article.

"Code" shall mean the Internal Revenue Code of 1986, as amended.

"Note" shall mean the General Obligation Bond Anticipation Note of the City authorized to be issued hereunder in the principal amount of not exceeding \$3,500,000.

"Ordinance" shall mean this Ordinance as from time to time amended or supplemented.

"Original Purchaser" shall mean the first purchaser of the Note from the City.

"Private Business Use" shall mean use directly or indirectly in a trade or business carried on by a natural person or in any activity carried on by a person other than a natural person, excluding, however, use by a state or local governmental unit and use as a member of the general public.

Section 2 **General Rules of Interpretation.**

Except as otherwise expressly provided or unless the context otherwise requires, words importing persons include firms, associations, and corporations and the masculine includes the feminine and neuter.

ARTICLE II

ISSUANCE OF NOTE

Section 1 **Authorization of Note.**

Pursuant to the provisions of the Enabling Act and for the purposes set forth above, there shall be issued not exceeding \$3,500,000 General Obligation Bond Anticipation Note of the City of Charleston. The Note shall be originally dated the date of its delivery and shall be in fully-registered form, and shall be payable, both principal and interest, no more than one year from the date of delivery of the Note as determined by the Mayor.

Section 14 of Article X of the South Carolina Constitution provides that a city may incur general obligation indebtedness without referendum if such indebtedness, together with then outstanding indebtedness subject to the limitation, does not exceed 8% of the assessed value of all taxable property in the City. The final assessed value of all taxable property for the fiscal year ended December 31, 2004, in the City is not less than \$529,235,399. Eight percent of this sum equals \$42,338,831. Outstanding indebtedness subject to the 8% limit is \$26,734,325.10.

Consequently the City may incur the Note without referendum. **Section**

2 **Note Prepayment.**

The Mayor is hereby authorized to negotiate with the Original Purchaser the terms of the prepayment provisions for the Note.

Section 3 **Interest Rate on Note.**

The Note shall bear such rate of interest, payable at maturity or earlier prepayment, as shall, at the sale of the Note, reflect the lowest net interest cost to the City, at a price of not less than par and accrued interest to the date of delivery, but any premium offered must be paid in cash as a part of the purchase price.

For the purposes of this Section, interest cost shall mean the aggregate of interest on the Note from the dated date of the Note, less any sum named by way of premium. **Section 4**
Medium of Payment.

Both the principal of and interest on the Note shall be payable in any coin or currency of the United States of America which is, at the time of payment, legal tender for the payment of public and private debts.

Section 5 Place of Payments.

Principal of and interest on the Note, when due, shall be payable at the principal office of the Original Purchaser.

Section 6 Execution of Note.

The Note shall be executed in the name of the City by the Mayor by his manual signature, and attested by the Clerk, by her manual signature, and the seal of the City shall be impressed or reproduced on the Note. The Note shall be executed in respect of any manual signature by the person or persons holding office when the Note is ready for delivery. The execution of the Note in this fashion shall be valid and effectual notwithstanding changes in the personnel of any of the above offices subsequent to their execution. No authentication of the Note is required.

Section 7 Form of Note.

(a) The Note shall be issued in fully registered form, and all principal and interest due thereunder shall be payable only to the registered owner thereof. The form of the Note shall be substantially as set forth in Exhibit A (*A complete copy of Exhibit A is attached to the original ordinance*) attached hereto and made a part of this Ordinance.

(b) A copy of the approving legal opinion to be rendered may be attached to the back of the Note.

ARTICLE III **SECURITY FOR NOTE**

Section 1 Pledge of Full Faith, Credit, and Taxing Power.

For the payment of the principal of and interest on the Note when due, the full faith, credit, and taxing power of the City are irrevocably pledged, and there shall be levied and collected in the same manner as other City taxes are levied and collected, a tax, without limit, on all taxable property in the City, sufficient to pay the principal and interest of the Note when due, and to create such sinking fund as may be necessary therefor. It is specifically provided, however, in lieu of the foregoing pledge, principal and interest on the Note may be paid from the proceeds of the sale of any portion of the property purchased with the proceeds of the Note or the proceeds of the general obligation bond in anticipation of which the Note is issued.

ARTICLE IV **SALE OF NOTE; DISPOSITION OF PROCEEDS OF SALE**

Section 1 Sale of Note.

The Note shall be sold at not less than par and accrued interest to the date of delivery. Bids shall be received until such time and date at such place as may be selected by the Mayor. The form of Notice of Sale, and the conditions of sale, shall be substantially those set forth in Exhibit C attached hereto and made a part and parcel hereof. Delivery shall occur on November 1, 2005, or on such later date as shall be determined in consultation with the Seller, so that the Property may be acquired on a date determined to be in the best interests of both parties. **Section 2** Disposition of Proceeds of Sale of Note.

The proceeds derived from the sale of the Note issued pursuant to this Ordinance shall be deposited with the Chief Financial Officer of the City and shall be expended and made use of by the City Council as follows: Any premium shall be applied to the payment of the first installment of principal of the Note; and the remaining proceeds shall be used to defray the cost of issuing the Note and the cost of the Undertaking.

ARTICLE V **TAX EXEMPTION OF NOTE**

Section 1 Exemption from State Taxes.

Both the principal of and interest on the Note shall be exempt from all state, county, municipal, school district and all other taxes or assessments of the State of South Carolina, direct or indirect, general or special whether imposed for the purpose of general revenue or otherwise, except inheritance, estate, transfer or certain franchise taxes. **Section 2** Federal Guarantee Prohibition.

The City shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Note to be "Federally guaranteed" within the meaning of Section 149(b) of the Code and the Regulations promulgated thereunder. **Section 3** Private Business Use Limitation.

The City shall assure that (i) no portion of the proceeds of the Note in excess of 10% of the proceeds of the Note is used for Private Business Use if, in addition, the payment of more than 10% of the principal or 10% of the interest due on the Note during the term thereof is, under the terms of the Note or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is to be derived from payments, whether or not to the City, in respect of property or borrowed money used or to be used for a Private Business use; and (ii) in the event that both (a) in excess of 5% of the proceeds of the Note are used for a Private Business Use, and (b) an amount in excess of 5% of the principal or 5% of the interest due on the Note during the term thereof is, under the terms of the Note or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for such Private Business Use or in payments in respect of property used or to be used for such Private Business Use or is to be derived from payments, whether or not to the City, in respect of property or borrowed money used or to be used for such Private Business Use, then such excess over such 5% of the proceeds of the Note used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the facilities financed with the proceeds of the Note.

Section 4 Private Loan Limitation.

The City shall assure that no portion of the proceeds of the Note in excess of 5% of the net proceeds of the Note is used, directly or indirectly, to make or finance a loan to persons other than state or local government units.

Section 5 No Arbitrage.

The City shall not take, or permit or suffer to be taken, any action with respect to the proceeds of the Note which, if such action had been taken, or had been deliberately and

intentionally taken, on the Closing Date would have caused the Note to be an "arbitrage note" within the meaning of Section 148(a) of the Code and regulations promulgated thereunder.

ARTICLE VI **MISCELLANEOUS**

Section 1 **Execution of Closing Documents and Certificates.**

The Mayor and the Clerk are fully authorized and empowered to take such further action and to execute and deliver such closing documents and certificates as may be necessary and proper in order to complete the issuance of the Note herein authorized and the action of such officers or any one or more of them in executing and delivering any of such documents, in such form as he or they shall approve, is hereby fully authorized.

Section 2 **Mayor Pro Tempore May Act in Mayor's Absence; Acting Clerk may Act in Clerk's Absence.**

In the absence of the Mayor, the Mayor Pro Tempore is fully authorized to exercise all powers vested in the Mayor under this Ordinance. In the absence of the Clerk, the Acting Clerk of the City Council is fully authorized to exercise all powers and take all actions vested in the Clerk under this Ordinance.

Section 3 **Benefits of Ordinance Limited to the City and Holder of the Note.**

With the exception of rights or benefits herein expressly conferred, nothing expressed or mentioned in or to be implied from this Ordinance or the Note is intended or should be construed to confer upon or give to any person other than the City and the holder of the Note, any legal or equitable right, remedy or claim under or by reason of or in respect to this Ordinance or any covenant, condition, stipulation, promise, agreement or provision herein contained. This Ordinance and all of the covenants, conditions, stipulations, promises, agreements and provisions hereof are intended to be and shall be for and inure to the sole and exclusive benefit of the City and the holder from time to time of the Note as herein and therein provided. **Section 4**
Ordinance Binding Upon Successors or Assigns of the City.

All the terms, provisions, conditions, covenants, warranties and agreements contained in this Ordinance shall be binding upon the successors and assigns of the City and shall inure to the benefit of the holder of the Note.

Section 5 **No Personal Liability.**

No recourse shall be had for the enforcement of any obligation, covenant, promise or agreement of the City contained in this Ordinance or the Note, against any member of the City Council, any officer or employee, as such, in his or her individual capacity, past, present or future, of the City, either directly or through the City, whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, it being expressly agreed and understood that this Ordinance and the Note are solely corporate obligations, and that no personal liability whatsoever shall attach to, or be incurred by, any member, officer or employee as such, past, present or future, of the City, either directly or by reason of any of the obligations, covenants, promises or agreements entered into between the City and the noteholder or to be implied therefrom as being supplemental hereto or thereto, and that all personal liability of that character against every such member, officer and employee is, by the adoption of this Ordinance and the execution of the Note, and as a condition of, and as a

part of the consideration for, the adoption of this Ordinance and the execution of the Note, expressly waived and released. The immunity of member, officers and employees of the City under the provisions contained in this Section shall survive the termination of this Ordinance.

Section 6 Effect of Saturdays, Sundays and Legal Holidays.

Whenever this Ordinance requires any action to be taken on a Saturday, Sunday, legal holiday or bank holiday in the State of South Carolina, such action shall be taken on the first business day occurring thereafter. Whenever in this Ordinance the time within which any action is required to be taken or within which any right will lapse or expire shall terminate on a Saturday, Sunday, legal holiday or bank holiday, in the State of South Carolina, such time shall continue to run until midnight on the next succeeding business day. **Section 7** Partial Invalidation.

(a) If any one or more of the covenants or agreements or portions thereof provided in this Ordinance on the part of the City to be performed should be determined by a court of competent jurisdiction to be contrary to law, then such covenant or covenants, or such agreement or agreements, or such portions thereof, shall be deemed severable from the remaining covenants and agreement or portions thereof provided in this Ordinance and the invalidity thereof shall in no way affect the validity of the other provisions of this Ordinance or of the Note, but the holders of the Note shall retain all the rights and benefits accorded to them hereunder and under any applicable provisions of law.

(b) If any provisions of this Ordinance shall be held or deemed to be or shall, in fact, be inoperative or unenforceable or invalid as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable or invalid in any other case or circumstance, or of rendering any other provision or provisions herein contained inoperative or unenforceable or invalid to any extent whatever.

Section 8 Law and Place of Enforcement of the Ordinance.

This Ordinance shall be construed and interpreted in accordance with the laws of the State of South Carolina, and all suits and actions arising out of this Ordinance shall be instituted in a court of competent jurisdiction in such State.

Section 9 Effect of Article and Section Headings and Table of Contents.

The heading or titles of the several Articles and Sections hereof, and any table of contents appended hereto or to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction, interpretation or effect of this Ordinance. _____

The remaining matter on Council's agenda was a Contract for the Sale and Purchase of Real Estate between Sea Island Comprehensive Health Care Corporation, Seller, and the City of Charleston, Purchaser, consisting of 43 acres on Johns Island in the City and County of Charleston, State of South Carolina for the sum of \$3,500,000. A copy of the proposed document is on file in the office of the Clerk of Council in the meeting folder of this date. Mayor Riley noted this contract would only occur in the event River Birch did not consummate their agreement.

There were no questions or comments of Council.

On motion of Councilmember Gallant, seconded by Councilmember Waring, Council voted to approve the proposed Contract for the Sale and Purchase of Real Estate between Sea Island Comprehensive Health Care Corporation, Seller, and the City of Charleston, Purchaser, consisting of 43 acres on Johns Island in the City and County of Charleston, State of South Carolina for the sum of \$3,500,000 as presented

There being no further business the meeting adjourned at 9:55a.m.

Vanessa Turner-Maybank Clerk
of Council