



SPECIAL CITY COUNCIL MEETING
5:30pm, Tuesday, February 20, 2024
1207 Palm Boulevard, Isle of Palms, SC and
broadcasted live on YouTube: <https://www.youtube.com/user/cityofisleofpalms>

MINUTES

1. Call to order

Present: Council members Hahn, Ward, Anderson, Bogosian, Miars, Campsen, Carroll (via Zoom), Pierce (via Zoom), and Mayor Pounds

Staff Present: Administrator Fragoso, Director Kerr, City Attorney McQuillin

2. Purpose – Discussion and consideration of Emergency Ordinance permitting residents between 100 and 914 Ocean Boulevard to install a revetment or seawall outside of the State’s jurisdiction for erosion control

Administrator Fragoso explained, “We were tasked with drafting two different options. One that included the allowance of hard erosion control structures outside of the State’s jurisdiction, no limitation on where the seawall or the revetment would be able to be built as long as it is outside of the area that is claimed by the State as having jurisdictional authority over. The other option, we were asked to measure the distance of all of the pools that are in that area that is covered by the emergency ordinance, and we have done that. We will walk through those distances. I think that there was a desire of understanding what areas would be protected if the allowance for hard erosion control structures was tied to the maximum building line. As you all know, emergency protective measures include habitable structures and pools. So I think that Council wanted to see what that distance would be that would cover at least, if not all, of the pools that are already in that area.”

They mapped out a proposed 35’ from the maximum build line which includes protection for all but 24 pools. Additionally, they mapped out the two jurisdictional lines, the baseline and the setback line from OCRM.

She noted that Section 1, subsection I is the only difference from the last meeting. That subsection includes the two distinctions of allowing structures outside of the State’s jurisdiction or allow it within a distance from the maximum building line.

Director Kerr, using Google Earth aerial images of the homes between 100 and 914 Ocean Boulevard, explained the logic of the 35’ setback line. He said, “We are trying to balance being farther back. If you will remember, that was Stephen Traynum’s goal was to have these walls be as close to the house as possible feeling that if they are closer to the houses they are less likely to be exposed. When they are less likely to be exposed, they are less likely to cause problems for

the beach. So we are trying to balance being back, but at the same time, giving protection to the houses and also trying to make it so that we can also give protection to each of these pools.”

He said that an adjustment needs to be made for the pools, and “the way that we have written that option is to allow pools that exist today to have a protrusion in the wall of up to 8’, and 8’ was chosen after speaking with the designers of these seawalls as to how tight they could design a seawall that would give meaningful protection to those pools and be able to be installed, but still be, again, as far landward as feasible.”

He said both proposed ordinances require OCRM to come to the property and mark their jurisdictional line. The City believes the 35’ line creates a fairly uniform, contiguous line except for the 24 pools.

Council Member Bogosian said that building a seawall or revetment 8’ from a pool is not possible without harming the pool. In addition, it would be extremely difficult to get the necessary equipment onto the property to build the structure. Director Kerr said the City had spoken with an engineer who said it is possible to build a think structure there.

City Attorney McQuillin pointed out that if homeowners opt to build an erosion control structure and the critical line set by OCRM moves during construction, OCRM will require the homeowner to move the structure.

Director Kerr believes there are approximately 10 homeowners who have engaged civil engineers to discuss the building of an erosion control structure, most of them in the 2nd and 3rd blocks of Ocean Boulevard.

Director Kerr said of the second ordinance: “We think the beach’s critical area would be most limiting in this area [Breach Inlet] up to 5th, 6th, 7th, somewhere up in that area.”

Council Member Miars said, “If we just step out, we are going to have, in addition to pools that are out too far, we are going to have walls, too. I think that the very least we can do is try to make these walls as close to houses as possible. The maximum build line was put there, what 40-some-odd years ago, and it was put there for a reason.”

Council Member Campsen added, “I am with Douglas, I think, and Katie, where they are in that what we are looking at tonight, in my opinion, is an emergency ordinance attempting to provide emergency relief in an emergent situation to some homeowners who are being impacted by the cycle we are in. I always viewed this as step one in a perhaps a multi-step process that gets us to the discussion about full revocation of that 250’ line, which is where we all think we want to be at least in the discussion process. But that takes time. That is nothing we can do this evening. And from my perspective, I am comfortable with coming off of a set building line because we know that is going to be the more consistent of the two options. The two bad options, frankly, to kind of tide us over and to provide some relief to the people who are willing and able to take it and to get us to a point where we can start having a more robust discussion around the 250 and what that means for this entire island really.”

Council Member Hahn reminded Council members that they swore an oath to uphold the laws of the State, and the State said that no erosion control structures can be built on the beach. He said anything built needs to be built as far landward as possible. He believes the building of any seawall has disastrous unintended consequences. He agreed with Council Member Miars' sentiment that removing all restrictions will create chaos on the beach. He believes there is a compromise in allowing people to build as close as possible to their homes to protect the foundations.

Council Member Pierce said he cannot support either ordinance as the "mechanics and implementation" do not work.

Council Member Campsen agreed that neither are great options, but the City is attempting to provide relief from existing legislation.

Administrator Fragoso said, "The concern that we have with 20' is right now the State allows emergency protective measures which is what we have been doing for the past few months to be done using a measurement of 20' between either a habitable structure or a pool. So a lot of the work we have been doing for the past several months has been looking at that distance to protect, in some instances, areas where there are pools. So there would, I guess, an inconsistency potentially by having the emergency ordinance be applied in a way that would not include pools."

Administrator Fragoso said that the Army Corps of Engineers' project is now slated to begin the first week of April. She said Mr. Traynum has a meeting Wednesday "with OCRM to discuss if recent conditions have changed our understanding of the permit that is necessary for the work that the City wants to do. We talked about us enhancing the project from the Army Corps of Engineers by speeding up the movement of some of that sand onto the dune system and into the dry sand beach. Our understanding so far is that the City can operate under the Army Corps of Engineers' permit. We will be confirming that and what, if anything, would we need to do between now and when they get started. So we would be talking about a few more months of work that, as you know, has taken up all of the time that Douglas and I have, and has been for the past several months."

She also pointed out that the City is close to spending all the money City Council allotted for sand scraping, trucking in sand, and sand bags.

Regarding risk, City Attorney McQuillin said, "I think to Katie's point, I do not think there is a risk with carving out pools and going closer to the house. Just because OCRM considers that an emergency that does not mean necessarily that we have to. There is an argument potentially that could be made about people that have pools further out that we are putting them in a better position or not treating them equally with people that don't have pools. Sort of an equal protection type argument, and there are some risks there."

He said of homeowners that build seawalls, "If you have a hard erosion control device, even if it is outside of OCRM's jurisdiction, they will not issue a permit to allow emergency protection measures such as scraping or sandbags funded by the City or State or otherwise. And on top of

that, if you build it, if you are just starting to build it and the critical area comes up to where they flagged it in the middle of your construction, they are going to make you move it back further out. There are sort of two potential issues with building as close to the critical line as you can knowing that the tide may come up and get up to your wall and you have to remove it. And then two, once it is installed, they are not going to allow those emergency permits to apply to your house.”

Mayor Pounds said, “We are dealing with an emergency ordinance tonight to give some relief.”

City Attorney McQuillin explained that as an emergency ordinance, whatever Council adopts this evening will go into effect immediately without having to have a Second Reading, Public Hearing, or consideration of the Planning Commission. The two options presented tonight were based on Council’s feedback from the February 13 meeting, but there are other options.

MOTION: Mayor Pounds made a motion to adopt the ordinance that is 35’ from the maximum build line. Council Member Campsen seconded the motion.

MOTION: Council Member Hahn made a motion to amend the ordinance to move the line from 35’ to 20’. Council Member Ward seconded the motion.

City Attorney McQuillin pointed out the ordinance must pass by a super majority to go into effect.

Director Kerr said, “The original ordinance that we forwarded to you last week had a provision that clarified that the allowable protection for pools only applied to pools that existed at the time of adoption. That was not put into this draft, and that was an unintentional omission. We think that it should not allow an owner to go at some date in the future build a pool well out and then protrude a seawall around it. That is the first amendment we think it needs. The other is really a housekeeping revision that OCRM contact Mac this afternoon and asked that we add a provision that indicates that the seawall construction would have to be compliant with the NPDES land disturbance requirements of the Clean Water Act.” He asked that both of those amendments be added to the ordinance.

City Attorney McQuillin quoted the exact language provided by OCRM: “Prior to obtaining a permit from the City, the resident shall comply with all applicable State and Federal laws in procuring any additional permits require prior to construction including a National Pollution Discharge Elimination System (NPDES) permit and a Coastal Zone Consistency Review from the State, if applicable.” He did not believe it will be applicable in most instances, but OCRM asked that it be put in the ordinance.

Director Kerr said both of these issues are “standard housekeeping issues.”

VOTE: A vote was taken on the amendment as follows:

Ayes: Campsen, Anderson, Ward, Miars, Hahn, Carroll, Pounds
Nays: Pierce, Bogosian

The motion passed 7-2.

MOTION: Council Member Miars made a motion to amend by adding the additional language mentioned by Director Kerr and City Attorney McQuillin and making necessary grammatical changes. Council Member Hahn seconded the motion. A vote was taken on the amendment as follows:

Ayes: Campsen, Anderson, Ward, Miars, Hahn, Carroll,
Pounds Nays Pierce, Bogosian

The motion passed 7-2.

VOTE: A vote was taken on the ordinance as amended as follows:

Ayes: Campsen, Anderson, Ward, Miars, Hahn, Carroll,
Pounds Nays Pierce, Bogosian

The motion passed 7-2.

3. Adjournment

Council Member Ward made a motion to adjourn. Council Member Anderson seconded the motion. The meeting was adjourned at 6:55pm.

Respectfully submitted,

Nicole DeNeane
City Clerk