

CITY COUNCIL MEETING

6:45 p.m., Tuesday, November 18, 2008

The regular meeting of the City Council was held at 6:45 p.m. on Tuesday, November 18, 2008 in Council Chambers of City Hall, 1207 Palm Boulevard, Isle of Palms, South Carolina. Present for the meeting were Council members Bettelli, Buckhannon, Cronin, Duffy, Loftus, Piening and Taylor, Mayor Pro Tem Rice, City Administrator Tucker, City Attorney Sottile, Assistant to the Administrator Dziuban and City Clerk Copeland. There was a quorum present to conduct business.

1. Mayor Pro Tem Rice called the meeting to order at 6:50 p.m. and acknowledged that the press and the public had been duly notified of the meeting in accordance with the Freedom of Information Act.

Prior to entering into the business of the City, Mayor Pro Tem Rice introduced herself as acting mayor replacing Mike Sottile who was elected to the South Carolina House of Representatives. She stated that she was pleased to serve the City in this time of transition; the municipal election for the mayor to complete Mayor Sottile's term will be held January 27, 2009.

Mayor Pro Tem Rice then offered the invocation that was followed by the Pledge of Allegiance to the Flag. Clerk Copeland called the roll and indicated that all members of Council were present.

2. Appointment and Administration of Oath to New Employees

MOTION: Councilman Cronin moved to appoint Jeremy Harris to the staff of the Public Works Department and Fran Overdorf to the Police Department as a Telecommunicator; Councilman Bettelli seconded and the motion PASSED UNANIMOUSLY.

Mayor Pro Tem re-administered the Employee Oath to Mr. Harris and Ms. Overdorf.

3. Approval of the Minutes of the Previous Meeting:

MOTION: Councilman Taylor moved to approve the minutes of the regular meeting of October 28, 2008 as submitted; Councilman Buckhannon seconded and the motion PASSED UNANIMOUSLY.

4. Citizens' Comments

Jim Raih, 3904 Cameron Boulevard, expressed that he had enjoyed working with the Mayor Pro Tem in her role as Chairwoman of the Real Property Advisory Committee, as well as Councilman Bettelli who served before her, for the three (3) years he was appointed to the Committee and four (4) years on the Planning Commission. He stated

that the City staff had been wonderful to work with and that he had enjoyed his time with the Committees. He reported that he was now a year-round in-water slip renter at the marina; therefore, he anticipated being at the marina more than ever. He voiced his opinion that the City owed the taxpayers everything they could do for them as owners of the marina. He commented on the fact that the Real Property Advisory Committee had functioned as an *ad hoc* committee, but he believed that it was now time for a change in the administration of it. It was his opinion that there was no substitute for having another council member at a committee level meeting.

Diane Oltorik, 15 Ocean Park Court, brought issues before Council regarding the actions taken at two (2) meetings that had been held in October 2008. She congratulated the Mayor Pro Tem on her new position. She recounted that the ATAX Committee had changed its meeting schedule from monthly to quarterly in the spring; she expressed concern about the frequency of attendance at meetings by some committee member. Ms. Oltorik asked the Council the following two (2) questions:

- (1) Is there a policy regarding absenteeism on Committees? and
- (2) Do Committee members serve *ad infinitum* or is there a term?

Ms. Oltorik stated that, regardless of the answers, "perhaps, it was time for the Chair to be unencumbered from the duties and responsibilities to the ATAX Committee and that it might be prudent for Council" to help arrive at that conclusion. She opined that, at a minimum, the Chairperson of a Committee that met only quarterly should be present.

The second meeting that Ms. Oltorik wanted to discuss was the October 2008 meeting of the Board of Zoning Appeals where a height variance was granted for 1022 Carolina Boulevard. She did not believe that there were any exceptions in the ordinance regarding the maximum height limit of forty feet (40'). Although she knew that City Council did not have oversight of the Board, she proposed that Council could be instructive to the Board of Zoning Appeals and suggest to them that there were to be no exceptions to the maximum height of buildings.

Ms. Oltorik concluded by asking that Council think about and address her concerns, and she looked forward to discourse on them at future meetings.

Mayor Pro Tem Rice informed Ms. Oltorik that the variance at 1022 Carolina Boulevard was to be discussed later in the meeting and encouraged her to stay. The Mayor Pro Tem stated also that persons were appointed to serve on Committees for specific terms, but they were eligible to be reappointed if Council saw fit.

5. Reports from Standing Committees

A. Ways and Means Committee

Chairman Taylor reported that three (3) motions came from the Ways and Means Committee meeting held prior to the Council meeting tonight. They are as follows:

MOTION: Councilman Taylor moved to approve Change Order #5 for the Public Safety Building that includes;

- Reinstall 2 water taps for \$1,459.70,
- Changes in 30 inch drain and water main for \$9,008.45,
- Additional 12 inches pavement removal across Palm Boulevard for \$728.00, and
- Add exterior shower and supply piping for \$2,063.64;

Councilman Bettelli seconded and the motion PASSED UNANIMOUSLY.

MOTION: Councilman Taylor moved to replace the 1991 fire engine to realize the savings of placing the order for a new engine by midnight on December 31, 2008 with an anticipated cost, before bidding, of \$360,000, the order will include the ability for the City to withdraw the order in the first quarter of 2009, no deposit or down payment will accompany the order and delivery will be made in FY 2010; Councilman Cronin seconded and the motion PASSED UNANIMOUSLY.

Councilman Taylor explained that the City has a schedule for the replacement of all City equipment, and this item fell into the replacement cycle for this year.

MOTION: Councilman Taylor moved to award the contracts exceeding \$10,000 to purchase the following three (3) budgeted vehicles for the Police Department:

- 1) 2 Dodge Durangos from Butler Chrysler-Plymouth in Beaufort, \$21,659.00/each, includes addition of 4 wheel drive and sales taxes; state contract pricing and
- 2) 1 Chevrolet Impala from Love Chevrolet in Columbia, \$19,173.00, includes sales taxes; state contract pricing;

Councilman Cronin seconded .

Councilman Duffy pointed out that the vehicles were on a six (6) year replacement cycle to maximize the use of City equipment.

Call for the Question: The motion PASSED UNANIMOUSLY.

B. Public Safety Committee

Councilman Buckhannon reported that the meeting had centered on the change order for the Public Safety Building, the replacement of the 1991 pumper for the Fire Department and the purchase of the Police vehicles. In the update on construction for the Public Safety Building, the second floor would be added in the next couple of weeks. Personnel from both the Fire and Police Departments assisted Public Works in pumping water from the streets following the torrential rains in October. Again this month the Police urged residents to keep their homes and vehicles secured. Administrator Tucker reported that discussions were initiated on the prospect of an ordinance requiring bi-directional amplifiers in large commercial buildings constructed of steel and concrete.

C. Public Works Committee

Councilman Bettelli related requests made by Bev Ballow, a member of the Migratory Shore and Sea Bird Nesting Group, for vehicles that drive on the beach to drive on wet sand to avoid the nests that are very well camouflaged and to add information on these birds to the new informational kiosk to be placed on Front Beach. Regarding recent flooding, the Chair reported that the Public Works Department had pumps running for eighteen (18) days in October following the deluge; during that time, the oldest pump burned out and a second pump was flooded. The Committee will consider include the purchase of additional pumps in the budget for FY 2009-2010. The City Attorney has returned the debris removal RFP having completed his review. Councilman Bettelli informed the Council that the City has received a satisfactory grade from its first NPDES review. Director Pitts was tasked with prioritizing a list of key drainage problem areas on the island. Councilman Bettelli informed the Council that Administrator Tucker had been appointed to the County's Green Committee that has been charged with finding the best ways to deal with the County's growing volume of solid waste.

Councilman Loftus added that there had been a lengthy discussion on flooding problems on the north end of the island in an effort to find a workable and permanent drainage solution.

D. Recreation Committee

Councilman Buckhannon reported that soccer has just ended and that *The Island Eye* team won; enrollment is underway for basketball. There are events for persons of every age planned for the holiday season at the Rec Center; please go to the website to check under Recreation for the full schedule. Congratulations were offered to the Staff for another fabulous Halloween Carnival; it gets bigger and better each year.

The annual tree lighting will take place Thursday, December 4 at 6 p.m. when there will be snow on Front Beach.

E. Personnel Committee

Councilman Piening reported that the November Personnel Committee meeting was spent in Executive Session as the members discussed appointments to Board and Commissions for 2009. The recommendations will be announced at the Special Council meeting at 6:00 p.m. on Tuesday, December 6. The announcement of Safety Sweepstakes winners was as follows:

Ryan O'Shea – Fire Department Robert Jimenez – Police Department
Cathy Kennedy – Building Department Joseph Washington – Public Works

The Employee of the Month was Pfc. Gerardo Chavez of the Police Department for his work in solving a case involving golf cart thefts.

6. Reports from City Officers, Boards and Commissions

A. Board of Zoning Appeals – minutes attached

Administrator Tucker noted that the height variance that was brought to Council's attention in Citizens' Comments was granted at the October 2008 Board of Zoning Appeals meeting; she reported that she had been asked to look into it to determine if the City had missed anything, with the idea that, if that were the case, it would be corrected for the future to ensure the occurrence was not repeated. The situation was that the developer of 1022 Carolina Boulevard submitted plans, which were reviewed under the normal building code review that included an elevator to the Building Department. Administrator Tucker informed Council that there are two (2) types of elevator designs, one is pulled by a hoist and another that is operated by a piston. The plans that were approved included an elevator that did not require any overhead-type cables to draw it up. As the building was going forward, the South Carolina Department of Labor, Licensing and Regulation – that approves elevators – indicated to the developer that they would not license the type elevator indicated in the plans in this application. So the builder had to alter the plans to add the type of elevator that requires an extension on the roof to pull the elevator up. At that point the developer came back to the Building Department to explain the problem, i.e. to have the elevator required by the Labor, Licensing and Regulation Board, the height of the structure would exceed the forty feet (40') height maximum. The developers were told, at this time, they must apply to the Board of Zoning Appeals, which is the only body capable of granting a variance to exceed the height restriction in the City Code.

Now that the Planning Department is aware of this kind of problem, when plans are submitted for approval and the elevator does not have the roof extension, the Planning Department will know to send the party submitting the plans to the Labor, Licensing and Regulation board before they are allowed to submit the plans for approval.

When the variance request went before the Board of Zoning Appeals, it was approved under the section that allows utility-type extensions in excess of the height limit [§5-4-2(19)].

§5-4-2(19) – *Height of a structure* means the vertical distance from either the highest elevation of the road centerline immediately adjacent to the lot on which the structure is located, or the lowest area within the building footprint, or the lowest area within the building footprint, proposed or existing, of an unaltered/unfilled lot, whichever is higher, to the highest point on the structure. Except for height limitations of communication towers and antennae contained in this chapter, the zoning district height limitations contained in this chapter shall not apply to church spires, chimneys, antennas, communication towers or aerials.

Administrator Tucker explained that the Board of Zoning Appeals has approved, in the past, at least five (5) elevator shaft extensions above the forty foot (40') height limitation in other locations in the Commercial District. Both Administrator Tucker and Building Director Kerr believe that, had they known about the problem with the Labor, Licensing and Regulation Board (LLR) and the type of elevator in the beginning, it was likely the same process would have been followed and likely that the same results might have occurred, because it had occurred in the past in circumstances where the elevator shaft was going to require an extension above the height limitation. The Administrator stated that, while the process for this variance request may have been different, a precedent had been set for this type of elevator shaft. Administrator Tucker distributed a handout to Council that contained a memo from Director Kerr explaining how events unfolded, an aerial photograph indicating where other similar variances had been granted, a drawing of the finished building at 1022 Carolina Boulevard with the elevator extension and a photograph of 1022 Carolina Boulevard under construction.

Councilman Piening voiced much concern in his understanding of Administrator Tucker's remarks; he inferred that the same situation could reoccur because a precedent had been set and that the Building Department may not monitor plans to prevent it from happening again.

Mayor Pro Tem Rice disagreed with Councilman Piening; she voiced her understanding that, having become more knowledgeable about elevator issues, that the Building Department would question what type of elevator was to be installed before the plans were approved and send the builder to LLR for licensing.

Councilman Duffy commented that he thought the members of the Board of Zoning Appeals had interpreted the section of the code very broadly in order to grant the variance.

The Mayor Pro Tem remarked that the members of Board of Zoning Appeals and other City boards and commissions were appointed by Council, and those appointments are made by Council believing that the appointees have the best interest of the City at heart.

Administrator Tucker noted that plans were approved only if they conformed to the City's building and zoning codes. She restated the concept that, going forward if someone brought in plans with an elevator that did not have the above the roof structure, the staff in the Building Department would send the builders to Labor and Licensing before considering the plans.

Councilman Loftus expressed his opinion that the maximum height limit in the City's code was forty feet (40') and that it should not be exceeded. He stated that the elevator structure was a part of the permanent structure, not an antenna or satellite dish. He added that he did not want to see any more structures that exceeded the forty-foot (40') maximum.

Director Kerr reiterated the Administrator's statements that, from this point forward, he knows to ask the builder up front and to send the applicant to Labor and Licensing to ensure that they have the correct elevator for the structure. If Labor and Licensing required the hoist type elevator, the builder would go before Board of Zoning Appeals to request a variance and Board of Zoning Appeals has the authority to approve or disapprove; to date, Board of Zoning Appeals has granted the variance six (6) time out of six (6) – to Director Kerr's knowledge.

Councilman Cronin clarified that the variances had been granted because Board of Zoning Appeals had interpreted the roof hoist as a "utility-type" extension. Director Kerr explained that the members of Board of Zoning Appeals were not interpreting the code to say that this was allowed; they used the code as guidance that it was alright to have some type of additional, ancillary part of the structure extend above the forty feet (40') level. He continued that the Board of Zoning Appeals was "not interpreting the code to say that elevator shafts are okay;" "that would be an appeal and they would be overturning (Director Kerr's) interpretation that the elevator shaft is not compliant with the building code. They are acknowledging that the elevator shaft is not allowed by the building code and, therefore, needs a variance, but they granted the variance. "

Councilman Cronin asked if Council could amend §5-4-2(19) to specifically say that elevator shafts and the like cannot protrude over the forty foot (40') maximum height.

Director Kerr responded that he did not think the Council could take away the Board of Zoning Appeals' authority to grant a variance, but Council could remove the exceptions that were currently in the code. However, people would continue to have the right to request a variance. Councilman Cronin noted that the property owner must prove a hardship in order to be granted a variance, and Director Kerr agreed. Councilman Cronin then remarked that, in his opinion, it would be nearly impossible to argue a hardship in the design phase. Director Kerr reported that the applicants in all of the cases he had been involved with had been able to illustrate that they could only construct a building with two (2) usable floors above an elevated floor that was required by flood; they made the argument that two (2) floors versus three (3) floors unreasonably restricted the use of the property. In response to Councilman Cronin's question about actions the City could take if it disagreed with Board of Zoning Appeals' decision, Director Kerr stated that the Council could ask for the Board of Zoning Appeals to re-consider the variance request, which may have a thirty (30) day window from the date of the decision and may need additional information to have surfaced after the decision was made, or the City could, in essence, sue itself by suing Board of Zoning Appeals.

Mayor Pro Tem Rice commented that the Council should respect the decisions of the board it appointed.

Councilman Piening agreed with the Mayor Pro Tem, but added that he and others on Council and in the Community wanted "some reasonable assurance that this (granting of a variance to the height limits) was not going to happen again."

Councilman Bettelli commented that, when an applicant went before the Isle of Palms Board of Zoning Appeals to request a variance, he/she was going before one of the toughest Boards of Zoning Appeals in the County for granting variances.

Councilman Duffy noted that one member of the Board of Zoning Appeals had voted against granting this variance and that he would like to know the vote of the other members to determine what kind of pattern there was on the Board of Zoning Appeals. He added that, in his opinion, the granting of six (6) height variances out of six (6) requests did not sound like a very strong Board of Zoning Appeals to him.

Councilman Bettelli stated that he wanted a legal opinion on just how close the City Council should get to the members of Board of Zoning Appeals; he stated his understanding that Council was "to stay at arm's length." Councilman Bettelli said he did not want the Council to get into legal difficulty for trying to influence the members of Board of Zoning Appeals. Attorney Sottile responded that the City Council's "major redress . . . available is in the appointment process; if you (Council) do not like the way people are voting or their particular positions, you (Council) replace them. You

(Council) could amend the zoning ordinance to tighten it up.” The City Attorney agreed with Director Kerr that the Council was limited in how far it could go. Councilman Taylor asked Director Kerr to define the area that was covered by the forty- foot (40') height restriction. Director Kerr replied that everything outside of Wild Dunes was subject to the height restriction, both residential and commercial. Councilman Taylor asked what type of height restrictions were in place inside Wild Dunes; Director Kerr explained that there was an architectural review board with the authority to approve building heights over most of the property within the development, but the developer still had the right to determine what height was wanted for his particular property development.

B. Planning Commission

Mayor Pro Tem Rice reported that the Commission was working on the items requested by Council, i.e. short-term rentals, floor to lot ratios and maximum square footage allowed in houses, as well as the Comprehensive Plan.

B. Real Property Advisory Committee

Councilman Cronin expressed his thanks to Mr. Raih for his service to the Real Property Committee and other aspects of the City. Phillip Smith had spoken during Citizens' Comments about the drainage easement that runs between his property and the marina; Mr. Smith stated that the flow of water leaving the island has created a buildup of sand and silt that was affecting the use of his dock and extended into the Intracoastal Waterway. Mr. Smith was appealing to be included in the City's dredging project that is planned for next year. Despite the fact that the steel has been slow to be delivered, work has been progressing on the bulkhead replacement project; more steel delivery was anticipated. On the subject of contract, Councilman Cronin reported that the RFP for the Front Beach parking lots would be advertised very soon in order to have a contractor in place when the lots open in mid-March 2009.

MOTION: Councilman Cronin moved to extend the existing management contract with Marina Joint Ventures through September 30, 2009 with the new contract to begin October 1, 2009; Mayor Pro Tem Rice seconded.

Councilman Cronin confirmed for Councilman Taylor that the extension would be under the existing contract terms.

Councilman Bettelli expressed concern for the timing in that the new contractor would be entering into the agreement at the least busy time of the year and, therefore, be stepping into a loss for the initial months of the contract. Councilman Cronin countered that the corollary was also true – Mr. Berrigan was being asked to extend through the bulkhead replacement when profits would be down substantially.

Councilman Duffy asked for a specific target date to have the RFP available to bidders. Administrator Tucker answered that the RFP would be out at the end of March or early April, and she explained that the reason this RFP had been so time consuming was due to alternatives available in terms of structure that the new financing has permitted. Changes under consideration were a contract with a longer term and a lease contract rather than a management agreement; both items were considered to be more advantageous to the City and possibly to the bidders.

Call for the Question: The motion to extend the management agreement for Marina Joint Ventures PASSED UNANIMOUSLY.

Councilman Cronin concluded his comments by reporting that cadets from The Citadel have been collecting data to compose a parking study for the marina; it should be available in the spring 2009.

7. **Reports from Special or Joint Committees - None**
8. **Petitions Received, Referred or Disposed Of - None**
9. **Bills Already in Possession of Council - None**
10. **Introduction of New Bills, Resolutions and Proclamations - None**

First Reading of Ordinance 2008-09 – An Ordinance Amending Certain Provisions of and Re-codifying the Entire Code of the City of Isle of Palms, South Carolina.

MOTION: Councilman Bettelli moved to adopt Ordinance 2008-09; Councilman Cronin seconded and the motion PASSED UNANIMOUSLY.

11. Miscellaneous Business

Mayor Pro Tem Rice invited those present to the City's annual Tree Lighting to be held at 6:00 p.m. on Thursday, December 4.

12. Adjourn

MOTION: Having completed the business of the City Council, Councilman Taylor moved to adjourn at 7:55 p.m.; Councilman Duffy seconded and the motion PASSED UNANIMOUSLY.