

20081009 City Council Minutes

Mayor Buelterman called the Consent Agenda Meeting to order at 6:30pm. Present were Mayor Pro Tem Doyle and Council Members Charlie Brewer, Barry Brown, Eddie Crone, Dick Smith and Paul Wolff. Also attending was City Attorney Bubba Hughes, City Manager Diane Schleicher and Planning Director Brannyn Allen.

Mayor Buelterman listed the following items on the Consent Agenda:

- **City Council Minutes for 8/28/08**
- **Tammy Smith-Fee Waiver request for the Guard House**
- **Parking Decal Request to allow 35 passes for Festival of the Arts for participating Artist. Oct. 17-19.**
- **Byers Street Beach Access DNR Permit**
- **Out of State Travel for Woody Hemphill and Renie Smith to Nashville, Tenn. to attend the National Conference for RV Parks Association November 12-15.**
- **Table Special Event App. For Critz Tybee Island ½ Marathon & 5K to allow Chief Price to review.**

Mr. Wolff moved to go into Executive Session to discuss Litigation, Mr. Smith seconded. The vote was unanimous.

Mr. Wolff moved to end Executive Session, Mr. Crone seconded. The vote was unanimous.

Mayor Buelterman adjourned the Consent Agenda.

Mayor Buelterman called the Regular Meeting of the City Council to order at 7:00pm. Those present at the Consent Agenda were also in attendance for the regular meeting.

Invocation and Pledge:

Reverend David Laughner of Chapel by the Sea Baptist Church gave the Invocation and everyone recited the Pledge of Allegiance to the Flag.

Announcements:

Mayor Buelterman thanked the Fire Department for the event that helped raise awareness for different safety issues with our children on the island.

Ms. Schleicher said Waste Pro is the new waste contractor we have starting next week. She said the new bins will have blue tops and there should be instructions attached to them. She said there will also be information on the website concerning pick up schedules. She said an additional benefit is we can start recycling cardboard at the curb.

Ms. Schleicher said she asked Department Heads to look at our current budget and prioritize and hold out at least 10% in case our revenue projections fall short. She said it may be personnel, capital or projects but she will share those projections with council at the workshop on October 18th.

Visitors:

Ms. Mary Ingalls thanked City Council for their support of the Arts on Tybee. She invited them to the Arts Festival on October 18th. She also invited everyone to participate in Art in the Park in November. She requested approval of parking passes for the participating Arts Festival vendors.

Ms. Tammy Smith gave a Sea Turtle Project Report saying the season runs from May 1st through around the end of October but luckily ours were finished in September and didn't interfere with Beach Renourishment. She said Tybee had a total of Seventeen Sea Turtle Emergent's and out of those six actual nests in which they left eggs in the cavity. She said out of the six nests they had about four hundred and ninety hatchlings. She said Little Tybee had a total of three nests and one hundred and ninety five hatchlings made it to the water. She said overall state wide they had a record one thousand six hundred and forty sea turtle nests along the entire coast.

Mr. David Lock introduced himself as a candidate for District Attorney

Mr. Mallory Pearce spoke in opposition to the repeal of the shore protection ordinance. He said the problem with the state law is the use of trees in delineating lines. He urged council to leave the ordinance as is and perhaps set up a committee to review it.

Ms. Kathryn Williams read a statement on behalf of the Center for Sustainable Coast. She said they are the only staffed non profit group overseeing coastal Georgia. The statement urged Tybee to maintain their authority over shore protection.

Mr. John Major said a few meetings ago council had on the agenda the review of the modified shore protection ordinance proposed by the Planning Commission and it was advertised as a public hearing. He said at that time Mr. Crone moved to repeal the Shore Protection Ordinance. He said the Planning Commission did not review or make a recommendation on the repeal and when the Planning Commission Chairman tried to bring that subject up at the Planning Commission meeting, he was told unequivocally by the Planning Director that they would not be allowed to discuss that subject. He said a subject so critical to the island must not be taken without the full benefit of public review and input.

Mr. Frank McNeil said his family owns a large parcel of property on Tybee between 7th and 8th Street. He said the flaw in the Tybee Jurisdiction Line is it is not fairly applied. He said they have two ocean front lots and two lots back from the ocean. He said they were denied the chance to develop and build on that property. He said they have owned that land and paid taxes for seventy five years. He said on either side of his property there are houses right at the dune line.

Disclosures/Recusals:

Mr. Hughes asked council to disclose ownership of property if possibly within 500 feet of the Shore Protection Area. He said because this is an issue of island wide application we have gone through the recusal appeal process and unless someone objects he would like the prior recusal appeal decision to apply here.

Mr. Brown disclosed ownership of property on 18th Street as possibly being 500 feet or less from the Shore Protection Area.

Mr. Smith disclosed ownership of property on the North End of the Island possibly 500 feet or less from the Shore Protection Area.

Mr. Brewer disclosed His Wife's ownership of property on Tybrisa that is 500 feet or less from the Shore Protection Area.

Mr. Wolff said he is not comfortable with the way this whole thing got started. He said when he made the motion for those with conflicts to appeal their recusals; he was talking about the proposal that came from the Planning Commission. He said he had no intention to open up the floor to repealing everything we had on the books. He said based on our Ethics Ordinance he thinks the entire process in which the issue has been dealt with is illegal and were this done over again he would not move to allow the rest of council to participate in the conversation by appealing their recusals. He thinks we are jeopardizing our islands most valuable resource and he didn't mean to get anywhere near that.

Mr. Brewer disclosed that Attorney Michael Graham represented him four years ago. He said that relationship would not affect his judgment on the Public Hearing for Lot 14 Gulick St.

Mr. Brown disclosed ownership of property possibly 500 feet or less from 1405 Fifth Avenue.

Mr. Hughes said he thinks they have done the best they can do under the circumstances to address a legislative matter. He said Mr. Wolff's point notwithstanding we are here and we have to function.

Public Hearings:

Mayor Buelterman opened the public hearing for a Zoning Variance (Section 5-090) from Section 3-090, Schedule of Development Regulations for James McLeroy/Side Setback Variances for deck addition at 1405 Fifth Ave. PIN# 4-0011-06-011 in Zone R-2. Ms. Allen said the petitioner is in the process of converting a duplex into a single family home and it is currently a non conforming use. She said Planning Commission recommended approval.

Mr. Brown asked if variances had been previously granted on this property. Mr. McLeroy said the previous owner did apply for a variance and had plans drawn up but the front deck extensions on the house were not built.

Mr. Wolff commended Mr. McLeroy for turning the duplex into a single family home which is reducing density on the island. Mayor Buelterman closed the public hearing. **Mr. Crone moved to approve. Mr. Wolff seconded. The vote was unanimous.**

Mayor Buelterman opened the public hearing on a Site Plan Amendment to Existing Planned Unit Development for the Live Oak Group, LLC at Lot 14 Gulick St. PIN# 4-0002-20-003 Zone PUD. Ms. Allen said Planning Commission recommended tabling this petition pending resolution of litigation. Mr. Hughes recommended council hear this case as they would any other case as if there is no lawsuit pending.

Mr. Tim Walmsley with Hunter McLain representing the Live Oak Group requested a PUD amendment to allow for development of the eastern portion of Lot 14. He said the development standards would be equivalent to Tybee's R-1 which are the most restrictive standards that Tybee has. He said a fifty year title search has been performed on this property by an attorney and the result was no restrictions whatsoever exist on this property.

Mr. Michael Graham spoke in opposition to this petition.

Mr. Nobel Boykin representing Dan Aikins, an owner in the Gulick Road subdivision, spoke in opposition to the petition. He said the nice part about a PUD is you know what you are going to get because it is completely planned. He said basically this is a policy decision and when you have a planned urban development on this island and all the lots are sold and all units are constructed the surrounding property owners count on what was approved; can someone come in and apply to amend that plan? He stated safety concerns over parking as part of his objection also.

Ms. Jill Shire, owner of one of the Townhomes on Gulick St. said she purchased her townhome because it was a part of the PUD and the eastern portion of lot 14 was not to be built upon.

Judy Miller of 23 Gulick said they have a covenant for their property that says no other buildings will be built.

Mr. Walmsley said this lot was being taxed by Tybee as an R-1 Lot when his clients bought it. Mayor Buelterman said taxes are assessed by Chatham County. Mr. Brown asked when the current owners bought the property. Mr. Walmsley said they bought it in March of 2005. Mr. Brown said he recalls there being a lot of discussion on this property years ago. He said he thought it went to council and was turned down. Mr. Walmsley said if that occurred it is not reflected in the minutes. He said they have not only gone through the minutes but all records they could find in order to determine if there were any restrictions of any kind on this property and there are none.

Mr. Brewer asked what the property owners stood to lose if this isn't approved. Mr. Walmsley said this isn't covered in title insurance because as far as the company is concerned the title is clean. He said there is a financial factor involved because this property was purchased by his clients after due

diligence and they stand to lose a significant amount of money on the value if Tybee determines it is not developable.

Mr. Henry Levy said Ms. Sanders kept dividing the lot until she got down to this last lot and it had less than 12,000 square feet as required so she could not develop it.

Mr. Graham requested council postpone making a decision in order to allow him and Mr. Boykin to determine if title insurance will cover something like this.

Mayor Buelterman closed the public hearing. **Mr. Wolff moved to continue for 90 days. Mr. Brown seconded.**

Mr. Wolff said it seems the representative for the Live Oak group is playing both ends against the middle because he says the property is R-1 and not subject to the PUD requirements but R-1 requires 12,000 square feet minimum lot size and the PUD doesn't require setbacks although they are on this plat. He said our fundamental issue is this PUD, which we don't even have anymore; which was approved by a former council based upon a predetermined set of conditions and those conditions would continue in perpetuity. He said he feels they would be doing a grave disservice to the people in the PUD as well as the purchasers of the property if they allowed anyone to make changes to the property upon which they based their purchases in good faith.

Mr. Hughes said if this motion should pass it should be that all interested parties will be notified that this will be on the agenda in 90 days.

The vote was unanimous.

Business Legally Presented:

Consent Agenda:

Mr. Wolff moved to approve the Consent Agenda Items, Mr. Brown seconded. The vote was unanimous.

Proposed Change to Residential and Commercial Garbage Cart and Recycling Charges. **Mr. Crone moved to approve. Mr. Wolff seconded. The vote was unanimous.**

2nd Reading Repeal of the Shore Protection Ordinance. Mr. Crone moved to approve, Mr. Brewer seconded. Mr. Wolff gave examples of what giving up jurisdiction to the state would allow to be done. He said the DNR jurisdiction line does not define a no build zone it simply designates the landward area of jurisdiction under the shore protection act. He said even though the law says that 1/3rd of the parcel has to stay in its natural vegetative and topographical state; that third has been interpreted as

just a third of the area seaward of the DNR line and can amount to just a small fraction of the parcel as a whole. He said once the property owner has delineated the third of the parcel that's going to remain natural and gotten a permit from DNR; they can completely cover the remaining two thirds of that property with impervious surfaces and then he can sell off the remaining third that was supposed to be natural and the whole process can be repeated. Mr. Gane said that would have to be proven with future permits but that is a potential problem. He said he is not aware of this having happened in the past. Mr. Brown asked if the property would have to be subdivided in order for this to occur. Mr. Wolff said yes.

Mr. Wolff asked if historically the state has allowed buildings on beach front property to be torn down and replaced with much larger structures as long as the footprint does not encroach seaward of the original line. Mr. Gane said that has happened one time. Mr. Wolff said this could ultimately negatively affect our FEMA rating.

Mr. Brown said he knows people say we should not move or rearrange sand dunes but an expert has said that if a sand dune is taking over a parking lot you could move it out of the way in order to give access to the general public to the beach; which seems fine as long as you have a beach management plan to go along with it. He said if it's good enough for the state to move a dune off of a parking lot, then what is the problem with an individual home owner moving sand around in order to access and build on his piece of property he has been paying taxes on. He said it's taking people's property just for a sand dune. Mr. Wolff said the proposed ordinance in August would not have denied anyone use of their property but instead would have allowed anyone with a beach front lot to build in a reasonable manner. Mr. Smith proposed that if they repeal what they have then they should at least consider ten feet from the landward most toe of the dune as a building set back line.

Mayor Buelterman asked Mr. Gane if they go to the state line is it possible to build in the dunes. Mr. Gane said the SPA line encourages people to be landward of the most landward point of the dunes but it is possible especially for certain types of structures. Mr. Brown asked what type of structures. Mr. Gane said dune walkovers, renourishment projects and it is possible for commercial, public or residential structures. He said it is possible because the committee has to make the decision and not staff. He said typically it is not approved but it is possible. Mr. Brown asked if Mr. Gane knew of anyone in the last twenty five years that the DNR has allowed to move dunes in order to build a house or community building. Mr. Gane said not a residence in his five years with the DNR but they have allowed dunes to be moved from a parking lot and roadways and those are typically done because of public interest. Mr. Brown asked if they ordinarily require people to stay ten feet from the toe of the dune. Mr. Gane said we generally request that they stay out of that dune area.

The vote was Crone, Brewer, Brown and Doyle in favor and Wolff and Smith opposed.

2nd Reading; Amendment to Sec 22-196. Solid Waste Ordinance regarding recycling fees. **Mr. Smith moved to approve. Mr. Wolff seconded. The vote was unanimous.**

2nd Reading; Amendment to Sec 10.7 Special Events-Animals temporarily permitted when connected with special events or activities. **Mr. Brewer moved to approve. Ms. Doyle seconded.** Ms. Doyle asked if an additional vote would be needed in order for the petting zoo to be a part of the Pirates Fest. Mr. Hughes said in this instance no additional vote is needed because these animals were talked about in the application. He said the clause is in there so that people have to include the request in the application for the special event to let council know what animals are talked about. He said that eliminates council approving animals they did not know about. **The vote was unanimous.**

2nd Reading; Amendment to Section 8 Flood Damage Control, and Section 5-100, Standards for Variance from the Flood Damage Control Regulations. **Mr. Wolff moved to approve. Mr. Smith seconded. The vote was unanimous.**

1st Reading FACT Ordinance on identity theft requirements & change of address procedures. **Mr. Brewer moved to approve. Ms. Doyle seconded. The vote was unanimous.**

1st Reading; Amendment to retirement plan/pension committee. Mr. Hughes said this updates who is on the committee by clarifying the titles because some of the positions have changed. He said it also authorizes the Mayor and Clerk to sign the appropriate provision and the amended adoption agreement. **Mr. Wolff moved to approve. Ms. Doyle seconded. The vote was unanimous.**

1st Reading; Amendment to Sec. 70-38, Billing of Water Services Ordinance. Mr. Hughes said it is to get us on monthly billing because of the struggle we've had with going wireless and with meter readers etc. He said this will establish the monthly billing and due dates for bills as well as late charges and the tiered rate structure and deposit schedule. **Mr. Wolff moved to approve. Ms. Doyle seconded. The vote was unanimous.**

Mr. Wolff moved to adjourn. Mr. Smith seconded. The vote was unanimous.

Mayor Jason Buelterman

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Vivian Woods, Clerk of Council

