



MINUTES
REGULAR CITY COUNCIL MEETING
NOVEMBER 5, 2001 AT 7:00 P.M.
CITY HALL, 116 FIRST STREET
NEPTUNE BEACH, FLORIDA

Pursuant to proper notice a Regular Meeting of the City Council of the City of Neptune Beach was held November 5, 2001, at 7:00 p.m., in the Council Chambers, City Hall, 116 First Street, Neptune Beach, Florida.

Attendance

IN ATTENDANCE:

Mayor Richard A. Brown	City Clerk Lisa Volpe, CMC
Vice Mayor Robert D. Shimp	Director of Finance Steve Ramsey
Councilor Ronald D. Patronik	Building Official Dan Arlington
Councilor Harriet Pruette	Assistant to the Building Official Piper Turner
Councilor Jimmy Gilbert	Assistant to the City Manager Terry Klein
City Attorney Christopher A. White	Deputy City Clerk Karla Strait
City Manager Richard A. Linn	

Order Call/Pledge

Mayor Brown called the meeting to order and asked Councilor Patronik to lead the Pledge of Allegiance.

AWARDS / PRESENTATIONS / RECOGNITION OF GUESTS

Certificates of
Appreciation

CERTIFICATE OF APPRECIATION – KIM ARMSTRONG AND LYNN COALSON FOR RECOGNITION OF COMMUNITY SPIRIT: Mayor Brown presented a Certificate of Appreciation to Kim Armstrong and Lynn Coalson for their efforts to the City in connection with the “Beaches Come Together” Remembrance Service in Town Center on September 23, 2001. The event was in memory of those who died on September 11, 2001 and for the support of our troops. This service was greatly appreciated during our nation’s time of need.

IBBC / Volunteer of
the Year

PRESENTATION OF ISH BRANT BEAUTIFICATION COMMITTEE “VOLUNTEER OF THE YEAR” PLAQUE TO KARL ANDERSON: Mayor Brown and Kara Tucker presented Karl Anderson with a plaque for “Volunteer of Year” for his efforts in working with the Ish Brant Beautification Committee.

APPROVAL OF MINUTES

Motion: **TO APPROVE THE FOLLOWING MINUTES AS STATED:**

OCTOBER 1, 2001, REGULAR COUNCIL MEETING
OCTOBER 8, 2001, WORKSHOP COUNCIL MEETING
OCTOBER 15, 2001, WORKSHOP COUNCIL MEETING

Moved by Patronik, seconded by Shimp.

Roll Call Vote:

Ayes: 5 – Gilbert, Patronik, Pruette, Shimp, Brown

Noes: 0

MOTION CARRIED

COMMUNICATIONS AND CORRESPONDENCE

- Stormwater Utility STORMWATER UTILITY: Mayor Brown referred to correspondence received from the St. Johns River Water Management District describing cost sharing of a storm water utility. Mayor Brown asked City Manager Linn if we had the potential of sharing some cost as we developed a stormwater utility system. City Manager Linn responded that he was presently working on a grant for the formation of the stormwater utility and would continue doing so.
- Watersedge
"Lots of Record" WATERSEEDGE – LOTS OF RECORD: Vice Mayor Shimp voiced concern about the residents of Watersedge Drive not having a lot of record. Under the current city code if their homes were destroyed they would not be able to rebuild without a lot of record. Vice Mayor Shimp explained that the individually owned residences were originally built as apartments and were sold separately without a city-approved lot of record. Vice Mayor Shimp requested placing the issue on the agenda for a vote to acknowledge that these homes could be rebuilt if they were destroyed.
- Building Official Dan Arlington explained that the property had been replated at the time of sale but the replat had never been approved by the city.
- Legal Advise City Attorney White advised that it would be best for him to prepare a legal opinion on whether or not the property fell within the footprint bill and advised Council not to consider voting on the issue as an emergency.
- Vice Mayor Shimp felt it was an emergency because 21 families had bought the property with the understanding that it could be rebuilt. Vice Mayor Shimp asked the Council to vote to approve the replat allowing the property owners to have a lot of record.
- For the Record Councilor Pruette stated on the record that she sided with the property owners but she felt an opinion from the City Attorney was needed in order to do what was right for the homeowners as well as the city.
- Councilor Gilbert agreed the issue needed to be taken care of as soon as possible. He felt the property owners might be holding back from modifying or beautifying the area because of investment concerns.
- Legal Opinion Mayor Brown asked City Attorney White what his recommendations were. City Attorney White stated: 1) if something new was to be placed on the agenda there would have to be a motion, 2) it was not an appropriate item to be brought up under communications and correspondence and, 3) it was a question of interpretation of the code and the definition of a lot of record. City Attorney White stated he would be more than happy to prepare a legal opinion as soon as possible.
- Building Official Dan Arlington restated that the developer designed and built the property as apartments and later split them up and sold them individually without contacting the city. He found out about the problem a few years ago after 18 out of the 21 had already been sold.

City Manager Linn advised there were probably many lots or parcels that had been subdivided throughout the city that were not recognized as lots of record. Mr. Linn read aloud the following provisions of the current code:

1. The code's definition of a lot of record meant: a parcel of land, the deed or plat of subdivision, which had been approved by the City of Neptune Beach, of which has been recorded in the office of the Clerk of the Circuit Court of Duval County as of the effective date of this code.
2. The codes definition of the footprint bill was: reconstruction of a substantially damaged or destroyed non-conforming residential structure, notwithstanding other provisions of this ordinance on conforming residential structures which were lawfully erected on a lot of record within a residential district, may be reconstructed if it was substantially damaged or destroyed.
3. The contradictory portion of the code read: Notwithstanding provisions of paragraph (a) above it is intended that the enforcement of this part shall not unduly restrict the right to reconstruct substantially damaged or destroyed residential structures in a residential district where non conformities exist only in regards to density, yards, and lot areas.

Mr. Linn added there were sections within Chapter 27 defining how to replat property with city approval, however there were no requirements at the county or state level seeking the city's approval of subdivisions.

Mayor Brown suggested Council make a motion that they were in agreement to take steps to provide a legal structure that would take care of the problem as soon as possible.

Vice Mayor Shimp stated he felt this was an emergency situation because the owners were not able to refinance while the rates were low and suggested calling a meeting tomorrow night to vote on it.

Mayor Brown stated that if the Council took a vote and it was meaningless and not legal that it would not help the situation. Vice Mayor Shimp responded that it would show the intent of the Council.

Mayor Brown asked if the Council agreed to treat this as a resolution that they intended to provide the proper structure for the individual platting as soon as legally feasible.

Councilor Patronik also felt that the situation needed to be taken care of as soon as possible but was not comfortable voting on it until the City Attorney had reviewed it.

Legal Advice City Attorney White advised the council that passing a resolution about the Council's intentions was not an appropriate resolution. Mr. White explained a resolution is passed regarding what the Council wanted at that moment, not about the Council's intention of what it wants to do in the future because Council had the right to change its intention. Mr. White also cautioned council about making statements about prospective or future applications of the code.

Moved by Gilbert, seconded by Patronik.

Motion: **TO PREPARE A RESOLUTION THAT THE COUNCIL INTENDED TO TAKE PROPER LEGAL STEPS TO REMEDY THE OVERSIGHT THAT TOOK PLACE WHEN THE PROPERTY WAS CONVERTED FROM APARTMENTS TO INDIVIDUALLY OWNED UNITS.**

Roll Call Vote:

Ayes: 5 – Gilbert, Patronik, Pruette, Shimp, Brown
Noes: 0

MOTION CARRIED

Arbor Day
Proclamation

PRESENTATION OF ARBOR DAY PLAQUE TO THE ISH BRANT BEAUTIFICATION COMMITTEE: City Clerk Lisa Volpe asked Mayor Brown to present the Arbor Day Proclamation to the Ish Brant Beautification Committee again so they could get a photo. Mayor Brown presented that Proclamation to Member of the Ish Brant Beautification Committee Kara Tucker.

CITY MANAGER REPORTS

Watersedge Drive

WATERSEEDGE DRIVE – DRAINAGE PROBLEM: City Manager Linn circulated a photo of the drainage basin that was installed by J.T.A. and informed that it was working great. He had not yet been able to resolve the problem on the marsh side caused by J.E.A.

Jarboe Park
Improvements

JARBOE PARK IMPROVEMENT PROJECT: City Manager Linn circulated photos of the Jarboe Park Improvements and announced that the project was moving along and was 80 to 90% complete. Mr. Linn estimated the project to be completed within two weeks.

Fence Playground

FENCE AROUND THE SMALLER CHILDREN'S PLAYGROUND IN JARBOE PARK: Councilor Patronik questioned City Manager Linn about placing a fence around the smaller children's playground. City Manager Linn responded he would get a price on the fence.

Consensus: TO PLACE A FENCE AROUND THE SMALLER CHILDREN'S PLAY AREA IN JARBOE PARK.

COMMENTS FROM THE PUBLIC

Susan Green, 200 First Street, President of the Florida Planning & Zoning Association, invited the council to their 50th Anniversary and Conference at the Sea Turtle Hotel. Ms. Green also invited the council to the opening reception from 6:00 to 9:00 at 345 Beach Avenue. Ms. Green added that the development at 200 First Street was awarded the Outstanding Private Development Award for the entire State of Florida last year. Mr. Edward Jones would be hosting a reception from 4:00 to 7:00 p.m. on Thursday the week of the conference to recognize the building and thank the planners that were involved. Ms. Green voiced concern about Town Center stating that she would be happy to serve on a committee or task force group to help in keeping Town Center clean & beautiful and encourage development.

Leslie Karlin, 1506 Spindrift Circle West, felt that the fence around the lift station at Third Street and Florida was unattractive and asked if it could be changed to a different color. Ms. Karlin stated that opening Oakhurst Drive would directly affect the residents of Summersands and they were not in favor of opening the road. She suggested that in the future all residents be notified when issues relative to them are on the agenda.

Lynda Padrta, 1113 First Street, felt the property owners of Watersedge should consider suing the developer and the mortgage companies involved in the sales transaction because they should be held responsible for not getting the replat approved by the city. Ms. Padrta questioned how many other illegal properties existed. She opposed changing the color of the fence at Third Street

and Florida Boulevard.

Laura Patronik, 1520 Leeward Lane, asked if the handicap swings in Jarboe Park were going to be replaced. Mrs. Patronik also voiced concerned about the school crossing at Florida Boulevard and Windward Lane.

Ralph LaPerna, 2507 Watersedge Drive, stated he had faith that the city would take proper measures to correct and approve the replat of Watersedge. He felt residents should be notified if their property was not a lot of record. Mr. LaPerna also thanked the Council & City Manager for correcting the drainage problem at Watersedge.

Waters Edge
Lots of Record

A lengthy discussion ensued regarding correcting the lot of record issues at Watersedge.

City Attorney White stated regardless of Council action there was also an additional issue of whether or not the private individuals had causes of action against the title companies or the sellers for not informing them ahead of time what they were buying. He needed to know when each person bought their unit and where the footprint bill stood at that time.

Vice Mayor Shimp questioned why the city did not take any action two years ago when the Building Official found out about the problem. He suggested having staff look at each piece of property in the city so the residents could be notified if there was a problem with their property and suggested doing a one-time mass grandfathering. He recommended giving City Attorney White a time period to have his legal opinion.

City Attorney White stated he would be more than happy to accept the deadline presented by the council.

City Manager Linn stated that to ask the staff to research every individual parcel of land and when it was conveyed and subdivided, it would be an impossible task with the limited resources. City Manager Linn added one recommendation that had come forth in the past was granting a blanket as of a certain date that every parcel recorded in Duval County would be recognized in the City of Neptune Beach and any future properties subdivided without approval of the city would have no rights. Mr. Linn applauded Building Official Dan Arlington for making the property owners aware that they did not have a lot of record. City Manager Linn stated the city could also amend the code to strike the words in the footprint bill "on a lot record" and add "as of this date."

Mayor Brown stated that from the political side of the issue it would be hard to imagine the council telling someone that because of a technicality we would not allow them to rebuild their home. Mayor Brown stated it would not be realistic to think the council would do that.

City Attorney White advised that the impact on the Comprehensive Plan and the consequences of density issues needed to be considered.

Councilor Pruette asked if City Attorney White could look at the Footprint Bill to see if that would be a simpler solution. City Manager Linn felt that if words "lot of record" were taken out it would correct the problem and have less impact.

Councilor Gilbert asked if the wording was taken out did the property owners still need a lot of record as part of their mortgage papers. City Manager Linn answered that by striking the words "lot of record" they would be able to rebuild, however there would be a problem if they wanted to expand or remodel and needed a variance.

Bob Zimfer, 2525 Waters Edge Drive, asked if the property was under any potential of condemnation.

Mayor Brown had heard no suggestions of anything like that and he was committed to correcting the problem in a timely manner.

Vice Mayor Shimp stated that if there were a change in administration condemnation would be possible depending on the interpretation.

City Manager Linn stated there was a need to schedule a meeting on the Land Development Regulations.

City Attorney White was unclear if the Council wanted an opinion on if the lots qualified as lots record or if it was the Council's intention to change the language of the code to remove the phrase "lot of record" from the Footprint Bill.

City Manager Linn added that the phrase "lot of record" may be referred to in other provisions of the code and if was struck from one provision the definition still may be needed in other sections of the code.

Councilor Patronik felt it would be better served to make the Watersedge property lots of record.

Mayor Brown asked if there were any more comments from public and moved on the consent agenda.

CONSENT AGENDA

Personnel Policy

AMENDMENT TO THE PERSONNEL POLICY: The amendment to the personnel policy deleted the positions that joined the union and eliminated the authority to appoint a Deputy Finance Director at the same time the accountant position was occupied.

Moved by Shimp, seconded by Patronik.

Motion: **TO APPROVE THE CONSENT AGENDA AS STATED.**

Roll Call Vote:

Ayes: 5 – Gilbert, Patronik, Pruette, Shimp, Brown

Noes: 0

MOTION CARRIED

VARIANCES/NONE

ORDINANCES/NONE

OLD BUSINESS/NONE

NEW BUSINESS

Resolution
No. 2001-22

RESOLUTION NO. 2001-22 – APPOINTING BOARD MEMBERS TO THE CODE ENFORCEMENT BOARD AND THE BOARD OF APPEALS:

**RESOLUTION APPOINTING BOARD MEMBERS TO THE
CODE ENFORCEMENT BOARD AND THE BOARD OF
APPEALS**

RESOLVED, the City Council of the City of Neptune Beach, Florida, hereby confirms the following board appointments:

CODE ENFORCEMENT BOARD

Member	Type	Term	Begins	Ends
Bill Gunsch	Appoint Regular	3 yrs	11/05/2001	11/04/2004
Eric Pardee	Appoint Alternate	1yr	11/05/2001	11/04/2002

BOARD OF APPEALS

Member	Type	Term	Begins	Ends
Daniel Disch	Appoint Alternate	1yr	11/05/2001	11/04/2002

Moved by Shimp, seconded by Pruette.

Motion: **TO APPROVE RESOLUTION NO. 2001-22, APPOINTMENT OF BOARD MEMBERS.**

Ayes: 5 – Gilbert, Patronik, Pruette, Shimp, Brown

Noes: 0

MOTION CARRIED

Oakhurst Drive
Access

REQUEST OF TOM WEST FOR THE CITY TO PROVIDE ACCESS TO HIS PROPERTY FROM OAKHURST DRIVE: City Manager Linn announced that he had received a fax from Tom West requesting to be removed from the agenda.

Councilor Pruette questioned if this had been before the Planning & Development Review Board per the Council consensus at the September 17, 2001, Workshop Meeting. City Manager Linn stated that the applicant was adamant about taking it directly to Council and it was the decision of Council to hear it or not.

Consensus: **TO STRIKE THE OAKHURST DRIVE ACCESS FROM THE AGENDA.**

Development Order
120 ½ Lemon Street

DEVELOPMENT ORDER FOR 120 ½ LEMON STREET – HOT DOG STAND: City Manager Linn called on the applicants to present their plans.

Paul Eakin, Attorney representing Tom Whittingslow, on his petition to transform the property at 120 ½ Lemon Street from the present single-family apartment into a hot dog stand, explained the project went before the Planning & Development Board presented as a carry out restaurant and in passed 7-0 in favor. Then the Board discovered that carry out restaurants were not allowed in the Central Business District. The Planning & Development Review Board was then concerned about parking if the hot dog stand was going to be a fast food restaurant. The owner then developed a parking plan and went back before the Planning & Development Review Board. The Board had a split vote of 3-3. Mr. Eakin explained to Council the new plan provided sufficient parking including a handicap parking space and an additional space that was allocated to them by David Cole, owner of the Sea Horse Hotel, to use for as long as Mr. Cole would allow them to. Mr. Eakin added that the hot dog stand would provide a walk up type of stand for people on the beach that were not properly dressed to eat at the Ragtime or Sundog restaurants and it would help keep people at the beach.

Legal Advice City Attorney White stated Section 27-548 of the Code read: in the event the city was going to consider waiving any parking requirement the developer would have to provide a written agreement approved in form by the City Attorney assuring the continued availability of the off site parking. Mr. White stated he did not know if the parking space was assured and that was for the council to decide. Mr. White added Council could also waive the requirement.

Moved by Shimp, seconded by Pruette.

Motion: **TO APPROVE THE DEVELOPMENT ORDER FOR 120 ½ LEMON STREET.**

Roll Call Vote:

Ayes: 5 – Gilbert, Patronik, Pruette, Shimp, Brown

Noes: 0

MOTION CARRIED

Mayor Brown asked if there were any final comments.

Watersedge
Lot of Record

Vice Mayor Shimp asked again when the meeting would be held to discuss the plight of the people at Watersedge.

Mayor Brown answered when the City Attorney had the information needed a date would be set.

Vice Mayor Shimp asked City Attorney White when he would have the information.

City Attorney White answered that from what he understood Council wanted an opinion about whether they were lots of record and he would be happy to give one.

Vice Mayor Shimp stated Council should task the staff to determine if the lots needed to be grandfathered in and advertise for a meeting on Tuesday November 13, 2001 to pass an ordinance which did so.

Mayor Brown restated that he wanted to have some legal language on the issue.

City Attorney White informed that if they wanted an ordinance it would have to be prepared and advertised.

Vice Mayor Shimp questioned why a legal opinion was necessary. City Attorney White responded that whatever Council did with Watersedge would have the impact of setting a precedent.

Councilor Gilbert suggested an advertisement notifying the residents that their lots may not be legal if they were subdivided. He was opposed to grandfathering in everything explaining that some properties may be far under the proper building codes and may have major problems.

City Attorney White informed that the Footprint Bill grandfathered everything up to August 1, 1994. Everything that was there before August 1, 1994 that was non-conforming or improperly divided was protected so they may be considered lots of record under the bill.

Vice Mayor Shimp asked City Attorney if he could have an opinion by next Tuesday. Mr. White responded yes. Vice Mayor Shimp asked Mayor Brown if they could set an emergency meeting next Tuesday night.

City Attorney White advised that economic benefit or detriment to an individual citizen was not a sufficient basis to declare an emergency.

Mayor Brown stated that as soon as the Council was prepared to meet on the subject they would notify Vice Mayor Shimp.

Adjournment

There being no further business, the meeting adjourned at 9:06 p.m.

Richard A. Brown, Mayor

ATTEST:

Lisa Volpe, CMC, City Clerk

Approved: _____