



**MINUTES**  
**REGULAR CITY COUNCIL MEETING**  
**AUGUST 4, 2003, 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 August 4, 2003, 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 Jimmy Gilbert	Director of Public Safety William Brandt
Councilor Harriet Pruette	Director of Public Services Leon Smith
Councilor Larry Shealy	Director of Finance Steve Ramsey
Councilor John Weldon	Assistant to the City Manager Terry Klein
City Attorney Christopher A. White	Assistant to the Building Official Piper Turner
City Manager Richard A. Linn	Deputy City Clerk Karla Strait, CMC

Order Call/Pledge

Mayor Brown called the meeting to order at 7:00 p.m. and Councilor Shealy led the pledge of allegiance.

**AWARDS / PRESENTATIONS / RECOGNITION OF GUESTS**

Donald White

Mayor Brown presented a plaque to Donald White in appreciation for his service on the Board of Appeals.

Relay for Life

Denise Brown and Robin Allen-Paris, American Cancer Society's Relay of Life, thanked the city for all the support in using Jarboe Park and City employees participated. It was the most successful event the beach ever had. They hoped the event could continue next year on April 17 and 18. They brought t-shirts for the council.

**APPROVAL OF MINUTES**

Motion:

**TO APPROVE THE FOLLOWING MINUTES:**  
**JULY 7, 2003, REGULAR CITY COUNCIL MEETING**  
**JULY 14, 2003, BUDGET WORKSHOP MEETING**  
**JULY 21, 2003, WORKSHOP CITY COUNCIL MEETING**

Moved by Gilbert, seconded by Weldon.

Roll Call Vote:

Ayes: 5 – Gilbert, Pruette, Shealy, Weldon, Brown  
 Noes: 0

MOTION CARRIED**COMMUNICATIONS AND CORRESPONDENCE**

Councilor Pruette questioned City Manager Linn if FDOT responded to his letter asking them to clean up the ditch on 5<sup>th</sup> Street. City Manager Linn stated the area was already cleaned up.

Councilor Pruette asked if "Beach Accesses" could be discussed at the end of the meeting.

Vice Mayor Gilbert asked if the Bike Path could be extended all the way to Penman Road. City Manager Linn replied he would like to see the Bike Path extended down Penman Road to Seagate Avenue. He added that he would inquire about available funds through the MPO.

**CITY MANAGER REPORTS**

Water Project WATER IMPROVEMENT PROJECT: The water project was found substantially completed and all the connections were made. The contractor was working on repaving the streets, driveways, and sidewalks, and installing sod they had removed. The sidewalk on Florida Blvd would be replaced within 30 days.

Sewer Project SEWER IMPROVEMENT PROJECT: The sewer project was moving along. The contractor was waiting for the permit from FDOT for Third Street. A temporary lift station was being installed.

Town Center Drainage TOWN CENTER DRAINAGE PROJECT: The groundbreaking for the project took place a week ago. The City of Jacksonville Public Works Department was to begin the project to solve the Town Center drainage problem at the end of Atlantic Boulevard within 30 days. There would be palm trees available to be placed on city right-of ways.

Councilor Pruette asked why there had been a water break earlier in the day. City Manager Linn stated it was not a break but a scheduled maintenance to dead end the old line.

City Clerk Volpe asked council to please speak into the microphone since the air conditioning could be loud at times. City Manager Linn stated the a/c manufacturer was looking into dampening the noise.

Mayor Brown recognized Scott Shine in the audience from the Surf Riders Association. He commented that the ordinances would have separate public hearings later in the meeting. City Attorney Chris White stated that the variance appeal should be based on the Board of Appeals minutes and no further testimony should be given by the public.

**PUBLIC COMMENTS**

Public Comments Craig Lighty, 1810 Strand Street, wanted the beach accesses to be preserved as green space and not to be developed on at all.

Mary Ann Padrta, 1030 Second Street, questioned the council for giving the city manager the right to contract for the Public Services Operations Center for 2.2 million.

Todd Brown, 1512 Strand Street, questioned the appeal process and why an incomplete appeal application would be allowed on the agenda. He also

questioned why his appeal for an administrative decision was not granted.

Councilor Pruette asked why Mr. Brown was not allowed to appeal. City Attorney White explained it was mandated in the code that an appeal went straight to council and therefore was not an administrative decision and could not be appealed.

### **CONSENT AGENDA**

Public Services  
Facility

Award contract to Bob Mathews Inc. in the amount of \$2,210,000 for construction of the Public Services Operation and Maintenance Facility with the authorization for the City Manager to sign change orders to provide for value engineering not to exceed total project cost of \$2,200,000.

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

Moved by Gilbert, seconded by Shealy.

Roll Call Vote:

Ayes: 5 – Gilbert, Pruette, Shealy, Weldon, Brown  
Noes: 0

### **MOTION CARRIED**

Kings Road Bridge

To approve the replacement of Kings Road Bridge as summarized in the letter from Pitman-Hartenstein dated April 12, 2003.

Motion: **TO APPROVE ITEM B KINGS ROAD BRIDGE.**

Moved by Gilbert, seconded by Shealy.

Roll Call Vote:

Ayes: 5 – Gilbert, Pruette, Shealy, Weldon, Brown  
Noes: 0

### **MOTION CARRIED**

Councilor Weldon asked if it meant that the bridge engineering would not be bid again. City Manager Linn stated it only confirmed that the bridge would be replaced and a proposal for engineering would come back before the council.

### **VARIANCES**

V03-21 Kawasaki  
104 Davis St.

**VARIANCE #VO3-21 APPEAL – KAWASAKI RESIDENCE – 104 DAVIS STREET:** Michael Dunlap, architect, spoke as to what the variance was asking for and felt the board did not have competent substantial evidence to deny the variance based on only what the neighbors felt. Carl Sanders, attorney for Mr. Kawasaki, spoke as to the definition of competent substantial evidence and that the board did not have such evidence based on the minutes of the board's finding of facts in order to deny the variance.

Councilor Weldon asked the City Attorney what the council was there to do. City Attorney White stated the council was there to review if an error in procedure was made or in this case if there was competent substantial evidence to deny this variance. He discussed how competent substantial evidence was defined. Councilor Weldon asked Mr. Sanders which specific finding of fact did he find was not substantial competent evidence. Mr. Sanders stated the one that stood out is number 3. "The

proposed variance would not adversely affect adjacent and nearby properties or the public in general. No there were objections for the neighbors." Mr. Sanders felt there were no facts to deny the variance. Discussion ensued over the finding of facts.

Mayor Brown asked if the actual addition was within the setbacks. Mr. Sanders stated it was.

Councilor Weldon asked the City Attorney what the Council's role was. City Attorney stated this was not a retry of the variance. The council is limited to deciding if an error in procedure was made or, in this case, if there was competent substantial evidence to deny this variance.

Vice Mayor Gilbert asked for clarification as to which variances existed. Mr. Dunlap explained that since it was a non conforming lot most of that list was existing. The new variance was to build an entry deck on the south side and a second floor deck on the north side. Also reducing the current three living units to one, but maintaining the duplex status.

Acting Chairman of the Board of Appeals, Jim Miller spoke on behalf of the board. He stated they listened to Mr. Dunlap and comments of the public. He had reminded the board that they could only take into account the seven finding of facts and not ocean views or other comments made by neighbors. Off street parking was considered as well as the over building of the lot. It was a unanimous decision by the board based on the finding of fact. Discussion ensued over the guidelines for the Board of Appeals.

Council discussed the improvement of the neighborhood and the parameter of the appeal process. Also the council discussed whether the board's findings of facts were antiquated. The nature of increasing density whether it should be the number of dwelling units or the amount of square footage was discussed.

Motion: **TO AFFIRM THE BOARD OF APPEALS DECISION FOR THE APPEAL.**

Moved by Shealy, seconded by Pruette.

Roll Call Vote:

Ayes: 3 – Gilbert, Pruette, Shealy,  
Noes: 2 - Weldon, Brown

**MOTION CARRIED**

Recess/Reconvene

Mayor Brown called a recess at 8:25 p.m. and reconvened the meeting at 8:40 p.m.

Mayor Brown announced there would be a budget meeting at 6 pm on Monday August 11, 2003. He introduced Art Graham, Jacksonville City Councilman. Councilman Graham stated there would a town meeting on August 7, 2003 from 6:30 p.m.- 8:30 p.m. at the San Pablo Baptist Church. The meeting would be to discuss the rezoning of the corner of Beach Blvd and Hodges Blvd. There is scheduled to have a Super Wal-Mart and ten out parcels and a Super Target with seven out parcels along with 900 apartments to be built on this corner. He added that with six laning Beach Blvd and four laning Hodges Blvd the traffic condition would only upgrade to a D level with development as is.

### **ORDINANCES**

Ord. No. 2003-07

**ORDINANCE NO. 2003-07 – THREE STRIKES – FINAL READ AND PUBLIC HEARING– SPONSOR VICE MAYOR GILBERT: AN ORDINANCE OF THE CITY OF**

NEPTUNE BEACH, FLORIDA AMENDING SECTION 13-5(c); ADDING A NEW SECTION 13-5(d) – PROPERTY OWNER RESPONSIBILITY FOR SWORN COMPLAINTS; ADDING A NEW SECTION 13-5(e) – NUISANCE; DECLARING VIOLATIONS; PROVIDING AN EFFECTIVE DATE.

Mayor Brown explained the ordinance and stated he had some amendments to suggest. 1. To change the effective date to 90 days after the ordinance passes. 2. To have a 12 month sunset after the effective date. At that time the results will be studied and the ordinance reinstated, amended or repealed. 3. Which may not be needed, would be the property owner being called before the Code Enforcement Board, a first appearance will be fact finding only and will not result in a fine.

Councilor Pruette asked if the noise ordinance changes were being worked on. City Manager Linn stated it was being worked on and would be forwarded to her in the next day or so.

Mayor Brown opened the public hearing:

Marsha Coker, 206 Margaret Street, supported the ordinance to curtail the late night disruptions.

Lynda Padrta, 1113 First Street, felt rental properties are a business and should be held responsible for uncontrolled tenants. She stated all parking violations should be ticketed by the police.

Robert Newbern, 205 Pine Street, opposed the ordinance for going after the landlord instead of the tenant and suggested the city evict the tenants.

Mary Sorrell, 1415 Indian Woods Drive, considered the proposed ordinance unconstitutional in her legal opinion.

Christine Chin, 227A Margaret Street, supported the proposed ordinance and disagreed with the Realtors' Association's objections.

Dee Wagner, 1201 Kinds Road, supported giving residents relief from noisy neighbors and helping with parking concerns.

Joanne Waddill, 115 Oleander Street, supported the ordinance and thanked Vice Mayor Gilbert for the ordinance.

Mary Ann Padrta, 1030 Second Street, objected to the letter by the Northeast Realtors' Association.

Rae Brady, 1536 Sea Oats Drive, Jacksonville Beach, asked for cooperation between neighbors, landlords and the city to find a solution without penalizing landlords for what tenants are doing.

Fred Catter, 110 Walnut Street, a landlord and a member of the Northeast Realtor's Association was opposed to the ordinance and felt the tenants should be responsible. He felt the city should help with evicting tenants and enforce laws already enforce.

Jeanell Wilson, 3090 S. 3<sup>rd</sup> Street, thanked the council for addressing concerns and for looking at the noise ordinance to deal with tenants. She was opposed to ordinance 2003-07.

James Sorrell, 464 Seagate Avenue, spoke against ordinance 2003-07. He felt it was redundant with the noise and nuisance ordinances already in place.

Teresa Thomas, 224 Margaret Street, supported the ordinance and thanked the police department for all of their hard work.

Mayor Brown closed the public hearing.

Vice Mayor Gilbert stated this ordinance will help with loud neighbors and it will also help the landlords to be informed. He agreed with the amendments brought by Mayor Brown.

Councilor Shealy felt the individuals needed to be held accountable and the current laws should be enforced before another one is made. Councilor Pruette supported the ordinance and the amendments. Mayor Brown stated it had come to his attention that the third amendment may not be needed.

Councilor Weldon was opposed to the word sunset but would agree to an automatic review in twelve months. City Attorney White stated it would be difficult to write an automatic review into the ordinance. He also commented that the Code Enforcement Board has its own set of rules of what they could do therefore the third amendment is not necessary.

Mayor Brown stated he could understand the second and third amendment not being necessary but still felt the first amendment was a good idea.

Friendly Amendment: **TO INSERT THE FLOOR AMENDMENT OF CHANGING THE EFFECTIVE DATE TO 90 DAYS AFTER THE PASSAGE.**

Moved by Gilbert, seconded by Weldon.

Motion: **TO APPROVE ORDINANCE 2003-07 WITH THE FRIENDLY AMENDMENT.**

Roll Call Vote:

Ayes: 4 – Gilbert, Pruette, Weldon, Brown

Noes: 1 – Shealy

**MOTION CARRIED**

Councilor Pruette asked the nuisance ordinance be placed on the next workshop.

Ord. No. 2003-08

**ORDINANCE NO. 2003-08 – PROHIBITED USES – FIRST READ AND PUBLIC HEARING – SPONSORS MAYOR BROWN, VICE MAYOR GILBERT, AND COUNCILOR PRUETTE: AN ORDINANCE OF THE CITY OF NEPTUNE BEACH, FLORIDA AMENDING SECTION 27-225(2) AND ADDING SECTION 27-223(4) USES EXPRESSLY PROHIBITED WITHIN ZONING DISTRICTS AND PROVIDING AN EFFECTIVE DATE.**

City Clerk Volpe stated the updated ordinance included the changes made in Ordinance 2002-12. Mayor Brown stated this was to help make the commercial districts more vibrant and help bring in desirable uses.

Mayor Brown opened the public hearing:

Jeanne Miner, 409 Penman Road, stated she was the property manager of Penman Plaza and felt this was an excellent ordinance. A drive-in would not cause problems since security and clean up measures were already in place.

Mayor Brown closed the public hearing.

Councilor Weldon opposed the ordinance and felt it called into question to allowing gas stations and mini warehouses. He felt it added suburban sprawl and blight. Councilor Pruette felt the area already had blight and a drive-in restaurant is family oriented and would help the area.

Motion: **TO APPROVE ORDINANCE 2003-08.**

Moved by Gilbert, seconded by Pruette.

Roll Call Vote:

Ayes: 4 - Gilbert, Pruette, Shealy, Brown

Noes: 1 - Weldon

**MOTION CARRIED**

**OLD BUSINESS / NONE**

**NEW BUSINESS**

Beaches' Historical Society

**APPROVE CONTRIBUTING \$5,000 PER YEAR TO THE BEACHES' HISTORICAL SOCIETY FOR THE DEVELOPMENT OF A MUSEUM IN JACKSONVILLE BEACH:**

The council clarified it was a per year amount and it was based on if they could raise the full amount.

Motion: **TO APPROVE \$5000 PER YEAR FOR FIVE YEAR PROVIDED EVERYTHING IS AGREED TO PER THIS AGREEMENT.**

Moved by Gilbert, seconded by Weldon.

Roll Call Vote:

Ayes: 5 - Gilbert, Pruette, Shealy, Weldon, Brown

Noes: 0

**MOTION CARRIED**

Beach accesses and replats.

Councilor Pruette asked to discuss the beach accesses and the replat at Bay Street and Oceanfront. She asked to find a way to stop paving over the beach accesses.

Councilor Weldon agreed that something needed to be done. He questioned if a referendum could be written to protect the accesses and if a moratorium could be drawn up to help until a solution could be made.

Vice Mayor Gilbert recommended a change to waterfront instead of just oceanfront.

City Attorney Chris White wanted to clarify what he was being asked to do. He stated that you cannot deny people access to their property. He also asked how many other properties could possibly be affected and need access through beachfront accesses. He would look into if the council could impose a moratorium on any development on the beach access. The Charter that was put in place with the last referendum allowed people to use the right of way it just did not allow the council to vacate or abandon.

Mayor Brown asked Assistant to the Building Official Piper Turner if any other property could be replatted. Ms. Turner stated she could not think of any. Councilor Pruette stated that did not take into consideration redevelopment.

Councilor Pruette made a motion to rescind the replat given by the City Manager. City Attorney White stated the council did not have the authority to do that under the code. The code clearly stated the city manager granted replats. Also the replat was not even originally on the agenda. Councilor Pruette reminded the council she had asked the city manager to bring it before the council but the manager made the decision without doing as she asked.

City Manager Linn explained that the code did not give him the ability to ask the council for their decision. He welcomed the council changing the code to have the council grant minor replats. He did not have a choice in granting the replat due to the city attorney's opinion.

Councilor Weldon stated a solution needed to be found with the help of moratorium and/or a referendum.

Dr. Haycock, 912 Oceanfront, had a question as to who is allowed to request a replat since he is owner of record and had not asked for it. City Attorney White stated the code stated the developer could request for it. He stated Mr. Haycock and Mr. Russell were both present at the Planning and Development Review Board meeting. Mr. Haycock had no further knowledge after the board meeting and did not realize the replat had been granted.

Consensus: **FOR THE CITY ATTORNEY TO LOOK INTO A MORATORIUM AND A REFERENDUM. FOR PIPER TURNER TO SEE IF ANY OTHER PROPERTIES WOULD BE AFFECTED.**

City Attorney White stated you could not stop access to property. A moratorium until this was discussed was considered unless the issue was forced.

Adjournment

There being no further business, the meeting adjourned at 10:30 p.m.

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Richard A. Brown, Mayor

ATTEST:

\_\_\_\_\_  
Lisa Volpe, CMC, City Clerk

Approved: \_\_\_\_\_