



**MINUTES**  
**REGULAR CITY COUNCIL MEETING**  
**AUGUST 4, 2008 AT 6:00 P.M.**  
**CITY HALL, 116 FIRST STREET**  
**NEPTUNE BEACH, FLORIDA**

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Pursuant to proper notice a Regular Meeting of the City Council of the City of Neptune Beach was held August 4, 2008 at 6:00 p.m., in the City Hall Council Chambers, 116 First Street, Neptune Beach, Florida.

## Attendance

## IN ATTENDANCE:

Mayor Richard A. Brown  
 Vice Mayor Harriet Pruette  
 Councilor Fred Lee  
 Councilor Eric Pardee  
 Councilor John Weldon  
 City Attorney Christopher White  
 City Manager Jim Jarboe  
 City Clerk Lisa Volpe, CMC

## STAFF:

Community Development Director Amanda Askew  
 Director of Finance Steve Ramsey  
 Director of Public Safety David Sembach  
 Director of Public Service Leon Smith

## Order Call/Pledge

Mayor Brown called the meeting to order at 6:00 p.m. and asked the boys scouts in the assembly to lead the pledge of allegiance.

**AWARDS / PRESENTATIONS / RECOGNITION OF GUESTS**

**POLICE OFFICER AWARDS:** Chief Sembach presented awards to Officers David Focht and Ricky Wood for saving a man from jumping off of the Intracoastal Bridge on Atlantic Boulevard. He also presented an award to Officer Mike Key for saving a man's life after he crashed his vehicle on Atlantic Boulevard. The vehicle was on fire and the driver was trapped and unconscious. Officer Key administered CPR until the fire department arrived, distinguished the fire, and cut the victim free.

**APPROVAL OF MINUTES**

Moved by Pruette, seconded by Weldon.

## Minutes

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

**JULY 7, 2008, WORKSHOP CITY COUNCIL MEETING**  
**JULY 7, 2008, REGULAR CITY COUNCIL MEETING**  
**JULY 21, 2008, SPECIAL CITY COUNCIL MEETING**  
**JULY 21, 2008, WORKSHOP CITY COUNCIL MEETING**

Councilor Pardee asked to amend the following paragraph on page two of the June 21, 2008 workshop meeting as follows:

Councilor Pardee explained the Shell Gas Station on Atlantic Boulevard recently ~~submitted an~~ called to inquire about an application to remodel and improve the building.

Councilor Lee asked to amend the following paragraph on page three of the June 21, 2008 Workshop meeting as follows:

RESOLUTION NO. 2008-XX: A RESOLUTION ~~ON THE~~ OF THE CITY OF NEPTUNE BEACH, FLORIDA SETTING THE RULES AND STANDARDS FOR THE USE OF JARBOE PARK BY GROUPS AND ACTIVITES.

Roll Call Vote:

Ayes: 5 – Lee, Pardee, Pruette, Weldon, Brown

Noes: 0

MOTION CARRIED

### COMMUNICATIONS AND CORRESPONDENCE

City Manager Jarboe stated he received a letter from Paul West, President of the Florida Surfing Association, requesting to hold a surfing tournament in Neptune Beach Central Business District on September 20, 2008. If there were no objections from the Council he would approve the request.

City Clerk Lisa Volpe announced the qualifying period to run for City Council is August 25<sup>th</sup> through the 29<sup>th</sup>.

### CITY MANAGER REPORT

- There was a major lightning strike at the water plant. The repairs should be covered by insurance.
- There was a major water break on Second Street. Public Services were able to do the repairs.
- The Town Center parking problem has lessened.

### COMMENTS FROM THE PUBLIC / NONE

### CONSENT AGENDA

Res. No. 2008-13

RESOLUTION NO. 2008-13: A RESOLUTION OF THE CITY OF NEPTUNE BEACH, FLORIDA SETTING THE RULES AND STANDARDS FOR THE USE OF JARBOE PARK BY GROUPS AND ACTIVITIES.

Vice Mayor Pruette suggested adding the following language to the Resolution: The City Manager may allow a special non-fund raising community event to take place when there is not time to send to Council for approval.

Councilor Lee suggested amending the long term use definition of more than two days a year. City Manager Jarboe stated he would meet with Councilor Lee regarding the amendment and bring it back to the Council.

Moved by Pruette, seconded by Lee.

Motion: TO APPROVE RESOLUTION NO. 2008-13 AS AMENDED.

Roll Call Vote:

Ayes: 5 – Lee, Pardee, Pruette, Weldon, Brown

Noes: 0

MOTION CARRIED

**VARIANCES**

Appeal  
V08-08  
111 Palm Place  
VT Properties

APPEAL TO THE CITY COUNCIL FOR FINAL DECISION OF THE BOARD OF APPEALS WITH RESPECT TO VARIANCE V08-08, 111 PALM PLACE, VT PROPERTIES, LLC: City Attorney White reminded the Council they were to review the record of the hearing conducted by the Board of Appeals. No new evidence may be presented or considered unless it pertained to events or circumstances which have substantially changed since the Board of Appeals decision. The reason for the appeal was the allegation that the decision of the Board of Appeals was not supported by competent substantial evidence and testimony produced at the public hearing. The Supreme Court defines competent substantial evidence as such relevant evidence that a reasonable mind would accept as adequate to support a conclusion.

Councilor Weldon stated there were forty five pages of testimony and other details that were hard to digest without guidance or background. He asked if Attorney Paul Eakin, Community Development Director Amanda Askew, and Chair of the Board of Appeals Chris Chin, could address the Council and explain what was said at the public hearing.

City Attorney White explained the law required Council to review the record of the hearing and decide if there was competent substantial evidence to uphold the decision of the Board of Appeals. He suggested the Council review the verbatim and the record provided in the agenda packet. The Code clearly states the appeal is based on the record presented at the Board of Appeals not additional testimony or arguments.

Councilor Lee explained the variance request was to exceed the front setback by five feet for construction of a deck. Councilor Weldon stated he understood the request was to construct a deck on the north side of the house with the hardship being that they had lost their ocean view and should be entitled to a variance to recover that view.

City Attorney White suggested the Council ask a representative from each side to state their summary of the issue.

Paul Eakin, 599 Atlantic Boulevard, Suite 4, Atlantic Beach, Florida, Attorney for the appellants, Mr. and Mrs. John Kokawbany, 110 Palm Place, and Mr. and Mrs. Vickers, 1008 Oceanfront, read the following opening statement as submitted on the application for appeal: "The Board of Appeals granted variance V08-08 without substantial competent evidence that the applicant suffered a unique hardship and peculiar circumstances. The alleged hardship was self created. The applicants purchased the property in its present configuration with the knowledge of present non-conformity and the granting of this variance confers a special privilege on the applicants that is denied by the ULDC to other lands buildings and structures in the same zoning district." Also in the record the applicants allege the loss of the oceanfront view as their hardship. He added that on page two of the verbatim Mr. Fred Cattar talks about how the board wrestled with the same issue in the past on the exact same street and why they voted against it.

He added that on page thirty of the verbatim Mrs. Chin states she did not believe the variance was consistent with the ULDC and she felt the hardship had been created by the owners. It was important to remember that the owners are Doctor and Mrs. Von Thron and they expanded their property to obscure view of the ocean to their rental property.

Mrs. Ann Von Thron, 1012 Oceanfront, 111 Palm Place, stated she never had an ocean view at that location. Attorney Paul Eakin objected to her statement for the record. Councilor Weldon asked Mrs. Von Thron to summarize her variance request without any additional information. Mrs. Von Thron stated they asked to build a deck on the front of the property that would allow an oceanfront view, and improve the quality of the neighborhood.

Councilor Weldon felt he now had enough information to make a decision. He stated he did not see how the Council could consider granting a variance to an existing non-conforming unit on the basis of a desire to have an ocean view.

Vice Mayor Pruette agreed the need for an ocean view should not be considered a hardship.

Councilor Lee asked if the previous granting of a similar variance one year ago on the same street had any precedent.

City Attorney White stated the Code and Florida Law was clear that a variance can not be based on the granting or non-granting of a previous variance.

Councilor Pardee stated he appreciated the different board members and their opinions. He felt the evidence the board heard at the hearing gave the board the ability to make their own decision.

Councilor Weldon clarified for the record he was not basing his decision on what he heard tonight. He was basing his decision on the record presented in the agenda packet and the information that was clarified tonight.

Vice Mayor Pruette also clarified she was not basing her decision on what was said tonight. She stated she supports the Board of Appeals. But she also felt not having an ocean view was not a hardship.

Moved by Weldon, seconded by Pruette.

Motion: **TO REVERSE THE ACTION OF THE BOARD OF APPEALS AS RELATED TO VARIANCE REQUEST V08-08, 111 PALM PLACE.**

Councilor Lee stated he was confused by Councilor Weldon's decision to reverse the action of the Board of Appeals. He added there was discussion regarding supporting the Boards.

Councilor Weldon agreed at every opportunity the Council should support the decisions of the volunteer boards. He felt in this instance, after having read the material and receiving clarification, the Board of Appeals did not make the right decision.

Mayor Brown explained without the appeal process the Board's decision would be final. He felt the appeal process was an appropriate phase.

Councilor Weldon asked Council to consider amending the Code to have appeals go directly to the Circuit Court in the future.

Roll Call Vote:

Ayes: 3 – Pruette, Weldon, Brown

Noes: 2 – Lee, Pardee

**MOTION CARRIED**

### **ORDINANCES**

Ord. No. 2008-09

**ORDINANCE NO. 2008-09, POLICE OFFICERS RETIREMENT SYSTEM, SECOND READ AND PUBLIC HEARING: AN ORDINANCE OF THE CITY OF NEPTUNE BEACH AMENDING CHAPTER 2, ADMINISTRATION, ARTICLE V, EMPLOYEE BENEFITS, DIVISION 4, POLICE OFFICERS' RETIREMENT SYSTEM, OF THE CODE ORDINANCES OF THE CITY OF NEPTUNE BEACH; AMENDING SECTION 2-346, MEMBERSHIP; AMENDING SECTION 2-347, BOARD OF TRUSTEES; AMENDING SECTION 2-349.5, OPTIONAL FORMS OF BENEFITS; AMENDING SECTION 2-349.15, DOMESTIC RELATIONS ORDERS; RETIREE DIRECTED PAYMENTS; EXEMPTION FROM EXECUTION, NONASSIGNABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY OF PROVISION; REPEALING ALL ORDINANCES IN CONFLICT HERewith AND PROVIDING AN EFFECTIVE DATE.**

Moved by Pardee, seconded by Pruette.

Mayor Brown read Ordinance No. 2008-09 by title only and opened the public hearing. There being no comments from the public, the public hearing was closed.

Motion: **TO ADOPT ORDINANCE NO. 2008-09 ON SECOND READ AND PUBLIC HEARING.**

Roll Call Vote:

Ayes: 5 – Lee, Pardee, Pruette, Weldon, Brown

Noes: 0

**MOTION CARRIED**

Ord. No. 2008-10

**ORDINANCE NO. 2008-10, UNIFIED LAND DEVELOPMENT REGULATIONS, FIRST READ AND PUBLIC HEARING:** AN ORDINANCE OF THE CITY OF NEPTUNE BEACH, FLORIDA, AMENDING THE CODE OF ORDINANCES CHAPTER 27 UNIFIED LAND DEVELOPMENT REGULATIONS, ARTICLE I, IN GENERAL, SECTION 27-15 DEFINITIONS, ARTICLE IV, LAND USE, SECTION 27-225, USES EXPRESSLY PROHIBITED WITHIN ZONING DISTRICTS, TABLE 27-226-1 AND PROVIDING AN EFFECTIVE DATE.

Mayor Brown read Ordinance No. 2008-10 by title only and opened the public hearing.

Michael Aston, 1523 Summer Sands Drive, was not opposed to remodeling the existing gas station but was concerned about allowing more gas stations.

There being no further comments from the public, the public hearing was closed.

Moved by Pardee, seconded by Pruette.

Councilor Pardee felt the citizens of Neptune Beach deserved to have gas stations within the city limits instead of having to wait in line in other cities.

Councilor Weldon stated for the record that his support for this ordinance was based strictly on providing a means for the Shell Station on the corner of Atlantic Boulevard and Penman Road to remodel and in no way to encourage future development of gas stations in Neptune Beach.

Motion: **TO PASS ORDINANCE NO. 2008-10 ON FIRST READ AND PUBLIC HEARING.**

Roll Call Vote:

Ayes: 5 – Lee, Pardee, Pruette, Weldon, Brown

Noes: 0

**MOTION CARRIED**

### **OLD BUSINESS**

TMDL

**AUTHORIZE CITY MANAGER TO NEGOTIATE A CONTRACT WITH TOP TMDL FIRM:** City Manager Jarboe stated three proposals were received for the TMDL. He asked the Council to allow him to negotiate a contract with ATM engineering firm. If a contract could not be reached with ATM, he would negotiate with the second and third place proposals.

Councilor Weldon felt an engineering firm would be helpful in figuring out a cost effective way to reduce the nitrogen content as imposed by the federal government without federal funding.

Moved by Pruette, seconded by Lee.

Motion: **TO AUTHORIZE THE CITY MANAGER TO NEGOTIATE A CONTRACT WITH ATM AND THEN IF NECESSARY THE SECOND AND THE THIRD FIRMS.**

Roll Call Vote:

Ayes: 5 – Lee, Pardee, Pruette, Weldon, Brown

Noes: 0

MOTION CARRIED

**NEW BUSINESS**

Res. No. 2008-14

RESOLUTION NO. 2008-14: A RESOLUTION ALLOWING THE FLORIDA DEPARTMENT OF TRANSPORTATION UTILITY WORK BY HIGHWAY CONTRACTOR AGREEMENT TO BE SIGNED BY THE CITY OF NEPTUNE BEACH.

Moved by Weldon, seconded by Pruette.

Motion: **TO APPROVE RESOLUTION NO. 2008-14.**

Roll Call Vote:

Ayes: 5 – Lee, Pardee, Pruette, Weldon, Brown

Noes: 0

MOTION CARRIED

Employee Health Insurance

EMPLOYEE HEALTH INSURANCE: City Manager Jarboe explained he received quotes from other health insurance agencies because the present insurance policy with Humana was going to increase by 31% this year. He asked Council to allow him to negotiate a contract with AvMed. The Avmed plan would require a deductible for employees but the cost to the city would be very similar to the current Humana plan.

Moved by Pruette, seconded by Pardee.

Motion: **TO APPROVE THE AVMED HEALTH PROPOSAL.**

Ayes: 5 – Lee, Pardee, Pruette, Weldon, Brown

Noes: 0

MOTION CARRIED

Vice Mayor Pruette acknowledged two boy scouts in the assembly and asked them to come forward and introduce themselves. Boy Scouts Jake Petzell and Bill Young introduced themselves and explained they were working toward earning their merit badges.

Vice Mayor Pruette asked Council to consider asking Duval County by resolution to have hazardous waste picked up at the beaches more frequently than once per year.

Councilor Lee asked Council to consider appointing a Jarboe Park Foundation to help fund park improvements.

Councilor Pardee publicly thanked the City of Jacksonville for adding a turn lane at Seagate Avenue and Penman Road.

Adjournment

There being no further business, the meeting adjourned at 7:35 p.m.

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Richard A. Brown, Mayor

ATTEST:

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

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