

## **COUNCIL MINUTES JULY 22, 2009**

Mayor Brimer convened a special meeting of the City Council at 6:00 p.m. on Wednesday, July 22, 2009, in the Council Chamber. The following were present: Mayor Mark Brimer, Vice-Mayor Martha Kirby, Councilman Dominick Montanaro, Councilman Michael Chase, Councilman Jeffrey Fleis, City Manager Michael Crotty, City Attorney James Beadle, and City Clerk Barbara Montanaro.

### **PRESENTATION BY HUNT PINNACLE (6:00 P.M. TIME CERTAIN)**

Community Development Director Laura Canady introduced representatives from The Hunt Group: Daniel Chevera, Robert Kelly, Patty BremPELL, and Shane Arnold, Project Manager.

Community Development Director Canady reported as follows:

South Patrick Drive Wall: The proposed wall will be a concrete block wall using the existing pilasters, all of which will be treated with stucco and painted to match the Montecito wall. Any existing pilasters which are not structurally sound will be replaced. The Hunt Group will pay for landscaping along the wall to match the FDOT approved landscaping.

Overhead lines: The Hunt Group is working on permitting and obtaining easements to move the power lines from overhead to underground along South Patrick Drive. They are currently working with FPL to straighten the remaining power poles.

Realignment of Shearwater Parkway: At the May 20, 2009, meeting, Council agreed that realignment of Shearwater Parkway is not needed at this time. The Hunt Group has offered to replace the existing traffic signal with mast arms and signage at the intersection of Shearwater and A1A.

Sidewalks, etc.: Hunt Pinnacle has removed the duplicate sidewalks and demolished three turnouts along Shearwater Parkway. These areas have been reseeded and will be maintained. The Hunt Group is studying the feasibility of a sidewalk on the west side of A1A.

Building Official Update on the project: Demolition of structures – Phase II is almost complete, Phase III will begin July 20, and Phase IV will begin in October. All phases are scheduled for completion by December 31. The Shrike Drive/South Patrick Drive connector has been approved by FDOT. The site plan and building plans for the leasing center have been approved and permits will be issued in about two weeks. The permit for 53 Fish & Wildlife compliant streetlights has been issued; installation should be complete in February, 2010.

Council discussed the following:

- Council expressed concern that some of the pilasters appear to be broken and may not be suitable for use with the new wall. Shane Arnold stated that the wall will be

concrete masonry block on a fixed footing with rebar 32 inches on center.

- Council asked The Hunt Group to consider installing a sidewalk along the west side of A1A. The Hunt Group stated that they had considered the sidewalk but decided it was more important to use that money for streetlights. If there is sufficient land for a sidewalk along A1A, it may be possible to work in partnership to put the sidewalk in, using District 8 Impact Fees. Staff will continue to work with The Hunt Group to add sidewalks, if possible.
- Council stated that they want to retain the right to readdress the realignment of Shearwater Parkway if traffic counts warrant it in the future.
- Council asked about the dirt and debris piled near the Atlantic Mini Storage. The Hunt Group is currently designing the grade plan for that area and will distribute all the soil on the west side of the A1A wall, creating an 18 inch berm.

Mayor Brimer asked for public comments. The following individuals addressed Council:

- John Fergus, 135 Maple Drive, asked if they are providing a cut through to provide residents access to the school and Atlantic Plaza. (They have been working with the City to leave those accesses open, but school has a new fence which limits the usefulness of the access cuts. The Bank of America building has a new owner and staff is working with that owner to get access to Atlantic Plaza.)
- Bill Higginson, 1175 Highway A1A, asked if the requested sidewalk along A1A would meet the standards of the City's Bicycle/Pedestrian walkway. (Yes, it would be at least that wide.)

Mayor Brimer and members of Council thanked The Hunt Group for their professionalism in working through the issues.

**DISCUSS/TAKE ACTION ON ISSUES FROM THE SPACE COAST LEAGUE OF CITIES**

**A. RESOLUTION NO. 884, A RESOLUTION OF THE CITY OF SATELLITE BEACH, BREVARD COUNTY, FLORIDA, RELATING TO FLORIDA'S INITIATIVE TO PREVENT ELDER INJURIES AND FALLS; MAKING FINDINGS; DECLARING SEPTEMBER 22, 2009, AS FALL PREVENTION AWARENESS DAY; URGING INDIVIDUALS TO PARTICIPATE IN FLORIDA'S INITIATIVE TO PREVENT ELDER INJURIES AND FALLS; PROVIDING FOR DISTRIBUTION OF THIS RESOLUTION; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR ADOPTION**

Mayor Brimer stated that a similar resolution will be considered by the Brevard County Board of County Commissioners on August 4. The intent is to raise awareness of the dangers of falls and elder injuries.

**ACTION:** Councilman Montanaro MOVED, SECOND Vice-Mayor Kirby, to read

Resolution No. 884 by title only. VOTE: ALL AYES. MOTION CARRIED.

Mayor Brimer read Resolution No. 884 by title and asked for public comments. There were no comments.

**ACTION:** Councilman Montanaro MOVED, SECOND Councilman Chase, to adopt Resolution No. 884. VOTE: ALL AYES. MOTION CARRIED.

Vice-Mayor Kirby commended Mayor Brimer for his leadership in the Communities for a Lifetime program, not only in Satellite Beach but also throughout the State of Florida.

Mayor Brimer expressed appreciation to Lorraine Gott and John Fergus for volunteering to write the grant/award applications. He also expressed appreciation to staff for their support in making the Communities for a Lifetime initiative successful in Satellite Beach.

**B. TAXPAYER'S BILL OF RIGHTS (TABOR) AND IMPACT ON LOCAL GOVERNMENT (ELIGERE STRATEGIES)**

City Manager Michael Crotty stated that Eligere Strategies met with the Board of Directors for Space Coast League of Cities (SCLC) at their July meeting to discuss the major issues that will impact municipalities by eroding home rule: TABOR and Hometown Democracy. Eligere and SCLC Attorney Paul Gougelman will continue the discussion with SCLC at their August meeting in order for a strategy to deal with the issues.

Council discussed the following:

- There is talk of combining the bills sponsored by Senators Haridopolos and Bennett into a "Super TABOR." This would limit the millage for the county and cities combined to 13.5 mills, with only about 2 mills going to the cities. This would bankrupt five or six of the smaller municipalities in Brevard County.
- Florida Legislators believe that less government is better government and are passing legislation that will force smaller municipalities to merge or become part of the county. Brevard could become a county with no individual cities. Saving tax dollars may cost you your hometown.
- Based on the realities of the impact of similar legislation in Colorado and California, it is imperative to know both sides of the issue before voting. Saving tax dollars may bankrupt your government and eliminate local services.

City Attorney James Beadle stated that there is an attack on home rule; if it is successful, cities will be run by counties. Also, there is a new statute that prohibits local government from spending money to defend themselves against this legislative attack. He questioned whether this is a violation of freedom of speech.

Mayor Brimer asked for public comments. The following individuals addressed Council:

- John Fergus, 135 Maple Drive, stated that the legislators will continue with the theme

of tax reduction because it gets votes for professional politicians. He predicted that passage of these bills will bankrupt cities quicker than anyone can imagine. When that happens, we will lose local life safety services – Fire, EMS, and Police – and be forced to wait for Brevard County to respond. TABOR will kill cities.

- Lorraine Gott, 325 Trinidad Drive, stated that Satellite Beach is the only one who knows what is best for Satellite Beach and she recommended that every Councilmember do what is necessary to honor that.

Mayor Brimer stated that the effort to combat this legislation is coming together. However, due to term limits, etc., there will be a significant turn over in local elected officials. It is important to keep constant watch. He noted that Carol McCormick, Mayor of Palm Shores, will continue to take the lead on these issues through the SCLC.

**C. COUNTY CHARTER AMENDMENT PETITION AND RESOLUTION NO. 885, A RESOLUTION OF THE CITY OF SATELLITE BEACH, BREVARD COUNTY, FLORIDA, SUPPORTING AND ENDORSING THE PRINCIPLES OF HOME RULE AND ADOPTING THE POLICIES SET FORTH BELOW TO SUPPORT THE PREMISE THAT THE CITY SHOULD HAVE THE AUTHORITY TO GOVERN WITHIN ITS JURISDICTION; FURTHER PROVIDING THAT SUCH AUTHORITY SHOULD NOT BE ERODED; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES**

City Manager Crotty stated that Beth Rawlins spoke to the SCLC on July 13 regarding the proposed County Charter Amendment Petition. Each SCLC member city has been asked to review issues pertaining to the County Charter Amendment Petition to determine its position on the issue. Resolution No. 885 supports the principles of home rule and the desire of local government to be able to continue to govern themselves. The full text of the proposed amendment reads as follows:

Section 1.8 Charter amendments affecting municipalities.  
No provision of this Charter adopted after December 1, 2010, which transfers or limits any function, service, power, or authority of a municipality within Brevard County, shall be effective in a municipality unless the amendment is also approved by a majority of the voters in the municipality voting in the referendum.

**ACTION:** Councilman Montanaro MOVED, SECOND Vice-Mayor Kirby, to read Resolution No. 885 by title only. VOTE: ALL AYES. MOTION CARRIED.

Mayor Brimer read Resolution No. 885 by title and asked for public comments. The following individual addressed Council:

- John Fergus, 135 Maple Drive, stated that erosion to home rule is larger than a County Charter Amendment and recommended that Council endorse a larger amendment – an amendment to the State Constitution to protect home rule statewide for all local governments. Any amendment to the County Charter will be moot if TABOR passes – there will not be any local cities. Mr. Fergus recommended that cities, counties,

Leagues of Cities and Counties, and Florida League of Cities ban together to gather signatures to put the following language on the ballot: “Article VI, Section 7. Amendments affecting local governments. No provision of a county charter or the state constitution adopted after January 1, 2010 which transfers or limits any function, service, power, or authority of a municipality or county within Florida shall be effective in a municipality or county unless the amendment is also approved by a majority of voters in the municipality or county voting in the referendum.”

Council asked if this can be taken back to SCLC for consideration. Vice-Mayor Kirby asked Mr. Fergus to submit the information to the City Clerk so that it can be included in the SCLC packet for discussion.

**ACTION:** Councilman Montanaro MOVED, SECOND Councilman Chase, to adopt Resolution No. 885. VOTE: ALL AYES. MOTION CARRIED.

#### **D. LEGISLATION ALLOWING CITIES TO OPT OUT OF INAPPLICABLE CONCURRENCY ISSUES**

Council reviewed a letter dated July 14, 2009, from Mayor Carol McCormick to Representative Ritch Workman requesting legislation allowing cities to opt out of inapplicable concurrency issues. Council discussed the expense involved in adopting the following policies:

- Water concurrency policy - water is supplied and controlled by Melbourne.
- Evaluation Appraisal Review (EAR) – the City is almost built out.
- School concurrency – the School District governs when and where schools are built.

Eligere Strategies is working with legislators to draft appropriate legislation to relieve smaller cities from the financial burden caused by these state mandates.

Mayor Brimer recessed the meeting from 7:00 p.m. to 7:10 p.m.

#### **DISCUSS/TAKE ACTION ON RECOMMENDATION FROM THE CHARTER REVIEW AD HOC COMMITTEE (7:00 P.M. TIME CERTAIN)**

Lorraine Gott, Chairwoman of the Charter Review Committee, presented the Executive Summary of the Committee's tasks, approach, principles, and recommended changes. She stated that changes were made with a good faith effort to provide power to the people. Section 2.08 does diminish some voter power because it gives Council the authority to fill vacancies without going back to the voters.

Council reviewed the proposed amendments to the Charter one section at a time. Mayor Brimer asked for public comments on each section. If anyone addressed Council on a section, that comment is included under the section. If no comments are included, no one addressed Council on that particular section.

#### **ARTICLE I. IN GENERAL**

Sec. 1.01. City government. No changes.

Sec. 1.02. City boundaries. No changes.

Sec. 1.03. Intergovernmental activities. No changes.

Sec. 1.04. Annexation of land.

**ACTION:** Vice-Mayor Kirby MOVED, SECOND Councilman Montanaro, to amend Sec. 1.04 to read, "All annexations shall adhere to procedures prescribed by law." VOTE: ALL AYES. MOTION CARRIED.

Sec. 1.05. Bird and wildlife sanctuary. No changes

## **ARTICLE II. CITY COUNCIL**

Sec. 2.01. Definitions. No changes.

Sec. 2.02. Powers and duties generally. No changes.

Sec. 2.03. Prohibitions. No changes.

Sec. 2.04. Membership and qualifications. No changes.

Sec. 2.05. Terms. Council discussed the issue of term limits that prohibit a council member from serving the full time (two consecutive four-year terms, or ten years) on council and then running for mayor. A person who has served on council has training and knowledge that puts him in a position to better serve as mayor. This is one person, not an entire council, that can serve more than two consecutive terms.

The power of incumbency and name recognition discourages new people from running for office.

### **Public Comment:**

- John Fergus, 135 Maple Drive, stated that the public does not like professional politicians; eight years is long enough for anyone to serve. Cutting term limits would be a poison pill for the amendments; people will see it as self-serving and vote it down.
- David R. Schechter, 635 Seville Court, stated that term limits restrict the voters' choice. Two four-year terms are better than the three-year terms. He stated that one year is sufficient time to sit out before running again. If a person completes his term in November, two full years will not have elapsed before qualifying time for the next election; it will only be one year and nine months.

Sec. 2.05(1). No changes.

Sec. 2.05(2). **ACTION:** Councilman Montanaro MOVED, SECOND Vice-Mayor Kirby, to amend the last sentence of Sec. 2.05(2) to read, "A period of two years must elapse before a former councilmember shall be eligible for reelection; a period of one year must elapse before a former councilmember shall be eligible for appointment." VOTE: ALL

AYES. MOTION CARRIED.

Sec. 2.05(3). No changes.

Sec. 2.06. Compensation. No changes.

Sec. 2.07. Elections. No changes.

Sec. 2.08. Vacancies.

Sec. 2.08(1). No changes

Sec. 2.08(2). Council felt that someone who was appointed to fill a vacancy the remainder of a term took power away from the voter. They recommended that the person filling a vacancy serve until the next regular election.

**Public Comment:**

- John Fergus, 135 Maple Drive, spoke in support of changing the time served to fill a vacancy to the next general election.
- David R. Schechter, 635 Seville Court, asked what happens if there is a 2 to 2 tie vote in filling the vacancy.

City Attorney Beadle stated that it is mandated that you will make the appointment within thirty days. If you fail to meet that deadline, the governor will remove you from office.

**ACTION:** Council concurred to amend sections 2.08(2) and 2.08(3)(a) and (b) to provide for a replacement “to serve until the next regular election.”

Sec. 2.09. Grounds for Removal. No changes.

**Public Comment:**

- John Fergus, 135 Maple Drive, asked who would determine when someone is permanently unable to perform [Sec. 2.09(4)].

City Attorney Beadle stated that the Council is the judge of the rules; they would make the finding.

Sec. 2.10. Duties of mayor and vice-mayor. No changes.

Sec. 2.11. City council meetings. No changes

**Public Comment:**

- David R. Schechter, 635 Seville Court, suggested that Council establish a procedure to require attendance of absent members under Sec 2.11(5).

Chairwoman Gott recommended that Council and staff review all references to policies in the Charter to ensure that they are adequately addressed in the Council Policies and Procedures.

Sec. 2.11(1) – (11). No changes.

**ARTICLE III. CITY MANAGER.**

Sec. 3.01. Appointment, qualifications, removal, compensation. No changes.

Sec. 3.02. Powers and duties. No changes.

Sec. 3.03. Evaluation. No changes.

Sec. 3.04. Acting city manager. No changes.

**ARTICLE IV. CITY DEPARTMENTS AND BOARDS.**

Sec. 4.01 Departments. No change.

Sec. 4.02. Boards. Council questioned how a councilmember could be an effective liaison to a board if they could not participate in the meetings.

Chairwoman Gott pointed out that councilmembers had attended meetings of the Board of Adjustment and Planning and Zoning and Code Enforcement and attempted to guide the decisions of the boards. Those boards are supposed to give independent opinions. It is not appropriate for a councilmember to advise an advisory board on how to advise council.

Council felt that they should be able to address a board as a private citizen, just like any other citizen.

**Public Comment:**

- Bill Higginson, Chairman of Comprehensive Planning Advisory Board, stated they would not appreciate unsolicited comments from the council liaison at one of his meetings.

**ACTION:** Councilman Montanaro MOVED, SECOND Councilman Chase, to amend the last sentence of Sec. 4.02(1) to read, “Councilmembers may serve as liaisons to these boards, but shall not attempt to guide the deliberations of the boards.” VOTE: ALL AYES. MOTION CARRIED.

**ARTICLE V. ORDINANCES.**

Sec. 5.01. Generally. No changes.

Sec. 5.02. Emergency ordinances. No changes.

Sec. 5.03. Codification. No changes.

Sec. 5.04. Ordinance initiatives. No changes.

Sec. 5.05. Ordinances requiring voter approval. Council questioned the addition of “lot coverage greater than allowed in November 2006” because that was not part of the referendum that went before the voters.

Chairwoman Gott stated that the committee felt that lot coverage had been recommended by CPAB and it was the fourth leg on the stool.

City Manager Crotty pointed out the irony of opposing hometown democracy legislation while this charter amendment is exactly what hometown democracy is – having the citizens vote on amendment to the Comprehensive Plan regarding development.

City Attorney Beadle pointed out the potential liability a city assumes when it puts Land Development Regulations in the Charter.

**Public Comment:**

- John Fergus, 135 Maple Drive, stated that CPAB had sent the EAR based amendments to the Department of Community Affairs and they do address intensity. He spoke in favor of including it in the charter so future councils cannot increase lot coverage.

Council discussed that breezeway and other parameters already in place will prohibit and increase in lot coverage.

**ACTION:** Councilman Montanaro MOVED, SECOND Vice-Mayor Kirby, to remove “or lot coverage” from Sections 5.05(2) and (3). VOTE: ALL AYES. MOTION CARRIED.

**ARTICLE VI. FISCAL MATTERS.**

Sec. 6.01. Fiscal year. No changes.

Sec. 6.02. Taxes and other revenues. No changes.

Sec. 6.03. Codification. Council discussed the fact that the Department of Revenue prescribed the time and type of notice required for budget hearings. The Charter provisions are an additional expense that is not necessary to comply with Florida Statutes.

**ACTION:** Councilman Montanaro MOVED, SECOND Vice-Mayor Kirby, to amend Section 6.03(3) by deleting the second sentence and inserting, “Notice of the hearing shall be provided as required by law.” in its place. VOTE: ALL AYES. MOTION CARRIED.

Sec. 6.04. Borrowing. No changes.

Sec. 6.05. Competitive bidding. No changes.

Sec. 6.06. Independent audits. No changes.

**ARTICLE VII. MISCELLANEOUS.**

Sec. 7.01. Code of ethics. No changes.

Sec. 7.02. Transitional provisions. No changes.

Sec. 7.03. Conflicting city laws. No changes.

Sec. 7.04. Severability. No changes.

Sec. 7.05. Effective date. No changes.

Council discussed whether the amendments should be put on the ballot as a series of questions or one question to adopt a new charter.

**Public comments:**

- John Fergus, 135 Maple Drive, stated that considering multiple questions would make it challenging if some parts are adopted and others are not.

City Attorney Beadle stated that it would be difficult to do by article because provisions were moved from one section to another and the committee did wordsmithing on all the articles.

- Bill Higginson, 1175 Highway A1A, said that Ms. Gott and the committee spent a lot of time to put the Charter into clear language that anyone can understand. He recommended that the changes be spelled out and that the Charter be placed on the ballot as one question.

Ms. Gott and the City Attorney will work together to resolve this question. Ms. Gott will have the changes from this meeting incorporated into the document for Council to review on Monday.

Mayor Brimer and the Council commended members of the Charter Review Committee for an outstanding, detailed review of the Charter and the excellent work product – a clear, concise revised Charter.

**ESTABLISH MEETING DATE TO REVIEW 09/10 BUDGET CALENDAR AND SET TENTATIVE MILLAGE**

Council set a special meeting to be held Monday, July 27, 2009, at 6:00 p.m., to discuss budget issues.

**ADOPTION OF MINUTES: JULY 15, 2009, REGULAR MEETING**

Councilman Chase asked that the dollar amount in the motion regarding score posts for the tennis courts be changed to \$520.34.

**ACTION:** Councilman Montanaro MOVED, SECOND Councilman Chase, to approve the July 15, 2009, minutes with the correction. VOTE: ALL AYES. MOTION CARRIED.

Mayor Brimer adjourned the meeting at 9:25 p.m.

Barbara Montanaro, CMC  
City Clerk