

**Minutes of Regular City Council Meeting
Held Monday, October 16, 2006 at 7:00 P.M.
In the Council Chambers, 11 North 3rd Street,
Jacksonville Beach, Florida.**



Call to Order

The meeting was called to order by Mayor Fland Sharp.

Opening Ceremony

Invocation was by Council member Buck; Salute to the Flag.

Roll Call

Mayor: Fland Sharp

Council members: Lee Buck Penny Christian Rick Knight
Dick Matthews Martha Ann Sibley Linda Spence

Also present were City Manager George Forbes, City Attorney Stephen Stratford, City Clerk Heidi Reagan, and Recording Secretary Amber Lehman.

Approval of Minutes

Motion: It was moved by Ms. Spence, seconded by Ms. Sibley, and passed, to approve the minutes of the Workshop held September 25, 2006 and the Regular Meeting held October 2, 2006, meeting as presented.

Communications

None

Courtesy of Floor to Visitors

Sandy Golding, 1203 18th Avenue North, Jacksonville Beach, stated that there will be a candidate forum on October 19, 2006 at the Beaches Women's Club. Ms. Golding also stated that October 29th from 3pm-6pm, there will be a fund raiser to help with the maintenance and improvements at Paws Park.

City Manager "a"

Monthly Financial Reports for September 2006

Motion: It was moved by Ms. Spence, seconded by Ms. Sibley, and passed to approve the Monthly Financial Reports for September 2006.

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City Manager “b”

Request for Approval to Hire Two Apprentice Line Workers at Beaches Energy Services

Motion: It was moved by Ms. Spence, seconded by Ms. Sibley to authorize Beaches Energy Services to over-hire a total of 6 apprentice line workers to ensure that we can fill future Journeymen positions that will become vacant due to anticipated retirements.

Roll call vote: Ayes – Buck, Christian, Knight, Matthews, Sibley, Spence and Mayor Sharp.

Motion carried unanimously.

City Manager “c”

Request for Approval of Inter-Agency Agreement for Beach Outfalls Extension Grant

Motion: It was moved by Ms. Spence, seconded by Ms. Sibley to authorize the Mayor and City Manager to execute the inter-agency agreement with the Florida Division of Emergency Management for grant funding for the City's Beach Stormwater Outfalls Extension Project.

Roll call vote: Ayes – Christian, Knight, Matthews, Sibley, Spence, Buck and Mayor Sharp.

Motion carried unanimously.

City Manager “d”

Contract Extension with Southland Waste Systems for the Disposal of Solid Waste and Recycling

Motion: It was moved by Ms. Spence, seconded by Ms. Sibley to authorize the Mayor and City Manager to execute the 5-year contract extension with Southland Waste Systems as detailed in the memorandum by Ty Edwards dated October 11, 2006, entitled “Collection and Disposal of Solid Waste and Recycling.”

Discussion: Mr. Forbes stated that the Council has had two workshops on the issue of garbage collection. There were two options discussed – staying with the current system or going to an automated system for the next 5 years. The automated system provides 64 gallon trash cans which a truck with a mechanical arm will pick-up and empty. Mr. Forbes also stated that he did

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not foresee an increase in cost to the citizens in the next few years. If the Council adopts this motion it means we will move to the new system. The new system would not be phased in until around March 2007, as Southland will need to purchase the new automated trucks.

Roll call vote: Ayes – Knight, Matthews, Sibley, Spence, Buck, and Christian. Nays – Mayor Sharp.

Motion carried by a vote of 6 to 1.

**City Manager “e”
Recommendation on Awarding Bids:**

Bid No. 0506-29 – Wood Poles – 12-36 Months Requirements

Motion: It was moved by Ms. Spence, seconded by Ms. Sibley to award Bid No. 0506-29 for Wood Poles to the lowest bidders as recommended in the memorandum from Don Ouchley dated October 4, 2006, entitled “Wood Poles.”

Roll call vote: Ayes – Matthews, Sibley, Spence, Buck, Christian, Knight and Mayor Sharp.

Motion carried unanimously.

Bid No. 0506-30 – Electric Supplies – 12 Months Requirements

Motion: It was moved by Ms. Spence, seconded by Ms. Sibley to award Bid No. 0506-30 for Electric Supplies to the lowest bidders as recommended in the memorandum from Don Ouchley dated October 4, 2006, entitled “Electric Supplies.”

Roll call vote: Ayes – Sibley, Spence, Buck, Christian, Knight, Matthews and Mayor Sharp.

Motion carried unanimously.

Res No. 1750-2006 – Additional Pay for Non-Union Members

Mayor Sharp requested that the City Clerk read Resolution No. 1750-2006, by title only; whereupon Ms. Reagan read the following:

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“A RESOLUTION ADOPTING ADDITIONAL PAYS FOR NONUNION POSITIONS EFFECTIVE NOVEMBER 1, 2006 AND CORRECTING RESOLUTION #1749-2006”

Motion: It was moved by Ms. Spence, seconded by Ms. Sibley to approve Resolution Number 1750-2006, as read by title.

Roll call vote: Ayes – Spence, Buck, Christian, Knight, Matthews, Sibley and Mayor Sharp.

Motion carried unanimously.

ORDINANCES

ORDINANCE NO. 2006-7928 – SECOND READING – PUBLIC HEARING

Mayor Sharp requested that the City Clerk read Ordinance No. 2006-7928, on its second reading by title only, holding a public hearing; whereupon Ms. Reagan read the following:

“AN ORDINANCE TO AMEND PLANNED UNIT DEVELOPMENT ORDINANCE NO. 7411, AS AMENDED, SUPPLEMENTING THE COMPREHENSIVE ZONING REGULATIONS AND PLAN FOR THE CITY OF JACKSONVILLE BEACH, FLORIDA, AS PROVIDED UNDER CHAPTER 34 OF THE CODE OF ORDINANCES OF SAID CITY.”

Mayor Sharp read the following statement for the record:

“This ordinance for the rezoning of property is before this Council for a public hearing and consideration on its second reading. Under the laws of the State of Florida, an application for the rezoning of property is handled as a ‘quasi-judicial’ proceeding. A quasi-judicial proceeding means that a governing body is now functioning in a manner similar to a court with the Mayor and Council sitting as impartial decision makers hearing testimony and questioning presenters, who are to provide substantial and competent evidence to support their side of the issue. It is the duty of the Council to arrive at sound decisions regarding the use of property within the City. This includes receiving citizen input regarding the proposed use on the neighborhood, especially where the input is fact-based and not a simple expression of opinion.

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It is the applicant's burden to demonstrate that their application is consistent with the Land Development Code and the Comprehensive Plan. If the applicant is successful in showing consistency, then it is up to the local government to produce competent, substantial evidence of record that the application should be denied. The Council's decision on a rezoning application is based on the criteria set forth in Section 34-211 of the Land Development Code. Each member of the Council has been provided a copy of the criteria.

In addition, the Council has received a copy of the application and the staff and Planning Commission reports on this rezoning request."

Mayor Sharp opened a public hearing on Ordinance No. 2006-7928.

Discussion: Gary Hunter, of Hopping, Green & Sams, attorney for Home Depot Home Depot, stated that Home Depot had submitted a tremendous amount of information at the prior meeting. There are only two things that he wanted to bring to the Council's attention. First being that, Home Depot has met with the opposing parties to try to come to an agreement about their concerns, however, Home Depot and the opposing parties have agreed to disagree. Secondly he advised that they wish to modify condition 13 which reads as follows: *"There shall be no loading/unloading of any type of semi-trailers from any other entrance other than the primary loading area at the northwest corner of the Home Depot building, except that the loading and unloading of lumber shall be permitted between the hours of 6:00 PM and 11:00 PM through the customer pick-up canopy on the east side of the building. During such outdoor loading/unloading operations, the engine of any vehicle being loaded or unloaded shall be turned off, and any audible back-up alarms of vehicles loading and unloading materials shall be deactivated"*. The reason for the request is to allow for the unloading and loading to occur between the hours of 3:00am and 5:00am. These particular hours will be only be utilized by Home Depot, and will not disrupt the surrounding neighbors or communities. Mr. Hunter further stated that Home Depot is very comfortable with agreeing to all other conditions.

Mr. Knight stated that he had received the most up to date revisions on the conditions to the ordinance, and felt that the public should be aware of the changes. Mr. Knight read the following conditions for the record:

1. There shall be no outside speakers permitted.
2. There shall be no net reduction in landscaping with the PUD. Any tree removed from the parking area in front of the building shall be relocated or replaced within the K-Mart parcel with a tree of the same species and caliper.

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3. There shall be the same number of tree planter boxes containing plant material of the same quality as are now located along the driveway on the south side of the building. The tree planter boxes shall be permanently fixed in place.
4. There shall be no outside storage of goods or services offered or empty cartons/pallets either during or after operating hours at any time, to include but not limited to storage in portable storage units, except that empty pallets, baled cardboard, any recyclable items may be stored within the truck well area, adjacent to the compactor, at the northwest corner of the building.
5. There shall be no outside storage or display of propane bottles except in the area of the truck well or the north side of the garden center.
6. All shopping carts and lumber dollies shall be stored in the building or in parking lot cart corrals during business hours and within the building before and after business hours.
7. There shall be no use of semi-trailers during or after hours at any time to either store items in or sell merchandise from.
8. There shall be no outside display of goods or services offered between the daily close of business and the subsequent daily opening of business.
9. There shall be no outside repair of powered products at any time.
10. Assuming no significant public utility interruption, A 12 40-foot high decorative pre-cast concrete post and panel screen wall system shall be installed along the northern property boundary, extending from the access drive at the northeast corner of the K-Mart Parcel westerly to the western most edge of the K-Mart Parcel. Such wall system shall have a stone texture on both sides and be integrally colored, and shall be installed as close as possible to the curb line of the rear service driveway to maximize preservation of existing trees and shrubs. Such wall shall be installed and maintained prior to the demolition of the vacant K-Mart building, and shall include a climbing vine to be planted every four linear feet along the north side of the wall.
11. All outdoor lighting and supports shall match the lightning and supports now existing in the PUD, and shall be designed and installed in a manner that will prevent harsh glare or excessive light from spilling onto adjacent property or streets.
12. The demolition and construction contractors shall maintain an effective dust control program during the entire time that the existing building is being removed and the new building is constructed.
13. There shall be no loading/unloading of any type of semi-trailers from any other entrance other than the primary loading area at the northwest corner of the Home Depot building, except that the loading and unloading of lumber shall be permitted between the hours of 6:00 PM and 11:00 PM through the customer pick-up canopy on the east side of

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the building. During such outdoor loading/unloading operations, the engine of any vehicle being loaded or unloaded shall be turned off, and any audible back-up alarms of vehicles loading and unloading materials shall be de-activated.

14. The Jacksonville Drive entrance to the shopping center shall not be used by semi-trailer trucks delivering merchandise to the Home Depot.
15. The canopy over the lumber service area shall have a concrete barrel tile roof, consistent in appearance with the tile elements across the front of the building.
16. There shall be no vendors of any type operating outside of the building.
17. Home Depot shall not expand outside of the K-Mart Parcel within South Beach Regional Shopping Center.
18. The building elevations sheet dated September 11, 2006 attached hereto as Exhibit B, shall be incorporated by reference into this PUD amendment.

The following people spoke in favor of the amendment:

Sylvia Osewalt, 3 Freedom Way, Jacksonville Beach
Francis Floyd, 910 24th Street, Jacksonville Beach
Robert Malagon, 1696 NE Miami Gardens Drive, Miami
John Sharp, 3376 North Zephys Way, Jacksonville Beach
Tina Richotte, 3928 South Beach Regional Parkway, Jacksonville Beach

The following people spoke in opposition to the amendment:

Sheila Page, 3332 Anhinga Court, Jacksonville Beach
Gretchen Alter, 3915 Ponte Vedra Blvd, Jacksonville Beach
Matt Jackson, Attorney - 76 South Laura Street, Jacksonville
Mike Freed, Attorney - 76 South Laura Street, Jacksonville
Tom Alter, 3915 Ponte Vedra Blvd, Jacksonville Beach
Scott Chestnut, 224 2nd Avenue, Jacksonville Beach
Steve Proctor, 2312 Pine Island Ct, Jacksonville Beach
Dean Thompson, 2067 Green Heron Point, Jacksonville Beach
Lance Folsom, 1022 North 23rd Street, Jacksonville Beach
Frank Cervone, 474 Jacksonville Drive, Jacksonville Beach
Yana Kiely, 195 St. George Ct, Jacksonville Beach
Bill Love, 552 Jacksonville Drive, Jacksonville Beach
Pam Henry, 133 29th Avenue South, Jacksonville Beach

Mayor Sharp closed the public hearing.

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Motion: It was moved by Ms. Christian, seconded by Ms. Spence, to adopt Ordinance No. 2006-7928, on its second reading, as read by title only.

Discussion: There followed a brief discussion during which the council expressed their concerns about the hours of unloading and loading, and also the traffic concerns if the primary customer pickup was moved to the southeastern part of the building. It was decided that the best hours for unloading and loading would be between 9:00 PM and 12:00 PM.

Amended Motion: It was moved by Ms. Christian, seconded by Ms. Sibley, to amend Ordinance No 2006- 7928, Section 13, to substitute of the hours for unloading of lumber (from 6:00 pm to11:00 pm) to between the hours of 9:00 pm and 12:00 midnight through the customer pick-up canopy at the east-end of the building.

Roll call vote on amendment: Ayes –Buck, Christian, Knight, Matthews, Sibley, Spence and Mayor Sharp.

Motion carried unanimously.

2nd Amended Motion: It was moved by Mr. Buck, seconded by Mr. Knight, to amend Ordinance No. 2006-7928, at line 8, Section 6, paragraph E, after the phrase “goods or services”, to delete the phrase “offered between the daily close of business and the subsequent daily opening of business”.

Roll call vote on 2nd amendment: Ayes – Christian, Knight, Matthews, Buck and Mayor Sharp. Nays – Sibley and Spence.

Motion carried by a vote of 5 to 2.

Motion: It was moved by Ms. Christian, seconded by Ms. Spence, to adopt Ordinance No. 2006-7928, as amended, as read by title only.

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Discussion: Mr. Forbes stated that the conditions of the ordinance would be enforced by the building code, but the requirements for loading and unloading will be enforced by Home Depot. Mr. Forbes asked Home Depot if they are willing to abide by these conditions and if so, how they will enforce those conditions. The Home Depot representative stated that the store will abide by the conditions and will enforce them through signage, training, and providing an instruction manual to managers with a list of the requirements. Mr. Forbes asked about enforcement of conditions on truck operations. The Home Depot representative stated that the managers work through the night and will be responsible to instruct the drivers on these requirements. Mr. Forbes asked if they understood and can abide by the change made to Section 8 that states there shall be no outside display of goods or services. The Home Depot representative stated they understood and would abide by the conditions.

Mr. Forbes stated that he wanted to make clear for everyone that the change to Section 13 requires the beepers be turned off on the forklifts, but that the trucks also have beepers that operate when they are backing up. Those beepers are required by law and will not be turned off. He also pointed out that they can load and unload other vehicles as can the other stores at any time during the night, that this provision only covers the unloading of lumber at the east-end of the building.

Roll call vote to adopt the Ordinance as amended: Ayes – Knight, Matthews, Sibley, Spence, Buck, Christian and Mayor Sharp.

Motion carried unanimously.

ORDINANCE NO. 2006-7929 – SECOND READING

Mayor Sharp requested that the City Clerk read Ordinance No. 2006-7929, on its second reading by title only; whereupon Ms. Reagan read the following:

“AN ORDINANCE TO AMEND CHAPTER 18 NOISE, SECTION 18-3, PARAGRAPH (f) *BUILDING OPERATIONS REGULATING ALLOWABLE DAYS AND TIMES FOR CERTAIN BUILDING AND CONSTRUCTION ACTIVITIES, AND FOR OTHER PURPOSES.*”

Motion: It was moved by Ms. Spence, seconded by Ms. Sibley, to adopt Ordinance No. 2006-7929, as read by title on its second reading.

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Discussion: A discussion ensued concerning the proposed ordinance. Mr. Matthews expressed support for the ordinance and Ms. Spence expressed opposition. Mr. Forbes stated that we rarely arrest people for violation of this provision, normally a notice to appear would be issued if there was a complaint and construction did not stop.

Roll call vote: Ayes – Matthews, Buck, Christian and Knight. Nays – Sibley, Spence and Mayor Sharp.

Motion carried by a vote of 4 to 3.

Adjournment

There being no further business coming before the Council, Mayor Sharp adjourned the meeting at 9:36 pm.

Submitted by: Amber Lehman, Recording Secretary

Approval:

/s/Fland Sharp
Mayor

November 6, 2006
Date