

November 17, 2020

The regular meeting of Town Council was held on the above date at approximately 6:00 p.m., all requirements of the Freedom of Information Act having been satisfied.

Present were: Patrick M. O'Neil, Mayor
Chauncey Clark, Mayor Pro-Tem
Sarah Church, Councilmember
Greg Hammond, Councilmember
Tim Reese, Councilmember
Bachman Smith, IV, Councilmember
Kaye Smith, Councilmember

Mayor O'Neil called the meeting to order at 6:00 p.m. and stated the press and public had been notified in accordance with State Law. This meeting was conducted via virtual meeting as a result of COVID-19 Pandemic. There were approximately seventy-five (75) members of the public present and one (1) member of the media present. Mayor O'Neil led the Pledge of Allegiance, followed by the invocation by Mayor Pro-Tem Clark.

I. Bluestein et al. v. Town of Sullivan's Island et al. Mediated Settlement- Vegetation Removal Update

1. Attorney Derk Van Raalte- Review of Settlement and Settlement Plan.

Mr. Van Raalte gave a brief update and reviewed what the next steps are in this process. "Last month, Council approved a mediated settlement in the Bluestein suit and to recap, that lawsuit saw monetary damages, a nuisance abatement and a court ordered dictating that all vegetation on the Accreted Land be mowed to a height of 3'. Had the Town lost, the result would have been a complete 3' clear-cut and potentially monetary payment. Rather than run that worse-case risk, Council reached a compromise that preserved the Accreted Land in a managed state that would not be completely wild but would also not be clear-cut. The plan involved a 50% reduction in Myrtles, removal of invasive species and selective thinning of remaining trees based on size and species with parameters in that to vary by zone. The zone closest to the Harbor receiving the lightest touch.

There's been a lot of coverage lately about timing of the settlement approval meeting, with some claiming it was rushed. Obviously, personally satisfaction is not something that I can speak to, but I do think it would be useful to understand how the timeline for this settlement approval compares to other mediations. First,

Council spent significant time preparing for this mediation. By April, Council was looking towards a September mediation. By June, Council started a series of prep meetings, at times almost weekly to discuss legal parameters and strategy. I will go on a limb here and say that I cannot recall another mediation in which a party has put in more time preparing, at least in my 20-25 years of experience. Second, the settlement here did not occur quickly after mediation compared to other mediations that I have been a part of.

Mediation rules require that parties bring to the room people with full settlement authority. Successful mediations are typically concluded with the settlement being signed before the parties are even exiting the room. That is what plaintiffs expect. Of course, in this case, the settlement required formal Council approval. It is not unheard of in such instances for Council to enter into a special meeting that afternoon or evening to provide immediate approval. That is certainly what Bluestein and Albenesius's would have preferred here. On the other hand, Council wanted to be able to receive public input before the approval vote. Some surely would have preferred more time to review the proposed settlement document before the meeting, others wished to have final approval the day of the mediation.

The general issues and positions were well known on the island. The document was a few pages and could be read in minutes. The Plaintiff's would not have agreed to settle if the matter would not get prompt closure. So, as with everything else, the resulting approving schedule was a compromise. Not at the pole that either side wanted and maybe not in a place that either side liked but it was in the middle. What's next? The Town's responsibility is now to implement the agreed-upon thinning. Much of the Accreted Land is within the jurisdiction of the OCRM and likely the Army Corps of Engineers. The first matter is to determine whether the proposed acts require administrative approval based on a) the nature of the proposed act and b) the location of the proposed act. There may be some acts that are allowable generally outside the critical zone but which require a permit to do within it.

Conversely, there may be some acts that are so de minimis that no permit is required regardless of the location. Some of these concerns flow into the means of implementation so our engineers and others must develop a work plan setting forth a prudent and reasonable way to accomplish what is in the settlement order. Those plans will be important from a good environmental stewardship perspective. They are also important because the means and methods can have a bearing on what permissions are required. Ideally, both sets of issues are

considered simultaneously. The result should be a proposed work plan that is as environmentally sensitive as possible that is then packaged into formal submissions to OCRM, the Corps and potentially others.

Depending on what the proposals entail, both the Corps and OCRM have established pathways for review. Where permits are required, typically this includes public comment period and other public involvement. These processes are administered by the regulatory agency and are independent of the Town. So, for those in the public who wish to give more input than they have so far, it has been expected by all on Council from the outset that more public input opportunities could arise. What progress has been made so far? The Town engaged Thomas and Hutton to lead the permitting and design effort. Thomas and Hutton performed the tree survey, created the relevant data base and has a wealth of pre-existing site knowledge.

We have tasked Thomas and Hutton generally with finding the lowest impact practical methods to accomplish the thinning in ways that OCRM is comfortable sufficiently protecting the area. We've asked them to generally engage with other experts as would be prudent from an environmental and permitting perspective. For instance, Thomas and Hutton has been in contact already to discuss having a wetlands delineation performed as it may be of interest to the Army Corps of Engineers. We've asked them ultimately to look at drawing up work plans and necessary submittals for regulatory approval. Now, the Town has from the very earliest days been in contact with OCRM, the Land Trust and Army Corps of Engineers.

We want to understand the potential regulatory concerns, consider how such concerns may be entirely avoided, or, if that is not possible, how the regulators would most like to see such concerns addressed. We are also seeking guidance from the regulators about how to properly make any required submittals. Let me make one thing clear, the Town and staff is not seeking to avoid talking to state or federal regulators. Staff has been and will be constantly coordinating with them to be sure that all processes are properly followed. Discussions on both the engineer side and permitting side are ongoing. We expect to have pre-application feedback in early December which should give us a much better idea of the applicable permitting path, help finalize the proposed scope of work and lay out the estimated timeline.”

2. Shawn Boone, U.S. Army Corps of Engineers, Regulatory- USACE Procedure to Review Settlement Plan.

Mr. Boone stated that the Army Corps authority is limited to: Waters of the US, subject to tide, tributaries or other special aquatic areas, including some wetlands. If it is determined that the Corp has jurisdiction over the project, they will require 2 state certifications before they begin their review. The Army Corps views projects by starting with the presumption that a project can be done without impact to waters of the US; it is up to the applicant to demonstrate otherwise.

The permit application process begins by identifying waters and working with the applicant to demonstrate a purpose and a need for the project. Also, to help provide an alternatives analysis to avoid impacts to the waters of the US, minimize impacts to waters of the US and help mitigate if impacts are absolutely necessary. Mr. Boone stated that the Army Corps are only authorized to approve or deny the permit application. Rather than deny, they will try to work with the applicants to reduce impacts or justify the need for impacts so that they can move forward and meet everybody's goals.

3. Barbara Neale, Senior Program Analysis, South Carolina Department of Health and Environmental Control- DHEC Procedure to Review Settlement Plan.

Ms. Neale stated that DHEC's authority is limited to coastal waters, tidelands, beaches and beach dune systems. There are certain setback lines from beaches and beach dune systems over which they also have jurisdiction. As with the Army Corp, their goals are to work with the applicants to avoid impacts, minimize impacts and help mitigate impacts to critical areas.

The permit application process begins with reviewing the application, put in a public notice for comments on their website and after the comment period closes, they complete the review and issue a ruling. The DHEC staff can approve the permit, approve with conditions or deny. The applicant or anyone under the law who is an affected party can request the DHEC Board review the staff level decision. If there is no request, then the DHEC staff position is final. If a review is requested, the DHEC Board can choose to review or not. If no review is granted, the DHEC staff position is final. If a DHEC Board review is granted, the Board's decision becomes the final position. The DHEC's final position can be appealed through the Court of Appeals and the SC Supreme Court.

- II. Public Comments:** The following island residents made a public comment regarding the Accreted Land: Brian Gilhuly, 2118 Pettigrew Street, Steve Poletti, 1771 Atlantic Avenue, Pete Budko, 2061 Pettigrew Street, Michael Bourland, 1607 Atlantic Avenue,

Will Spielvogel, 2430 Raven Drive, Karen Byko, 2862 Middle Street, Sarah Diaz, 1325 Middle Street, Susan Middaugh, 2420 Raven Drive, Rob Byko, 2862 Middle Street, Cyndy Ewing, 2514 I'On Avenue, Michael Cox, 1807 Atlantic Avenue, Scott Bluestein, 2408 Goldbug Avenue, Julia Khoury, 1728 I'On Avenue, William Craver, 2702 I'On Avenue, Allison Bourland, 1607 Atlantic Avenue, Luke Lewis, 2630 Raven Drive, Michael Brickman, 2629 Bayonne Street, Kimberly Brown, 2118 Pettigrew Street, and Brad Dake, 2101 Pettigrew Street. (Attachment 1)

III. Council Action Items:

1. Approval of Council Minutes –

Motion was made by Councilmember Bachman Smith, IV, seconded by Kaye Smith, to approve the following minutes of Town Council:

- **October 2, 2020 Special Council Meeting**
- **October 20, 2020 Regular Council Meeting**
- **October 28, 2020 Emergency Council Meeting**

Motion passed unanimously. Councilmember Sarah Church abstained from voting to approve the October 28, 2020 Emergency Council Meeting minutes.

2. Third Reading and Ratification, Ordinance 2020-17, Zoning Ordinance Text

Amendments: Consideration of Planning Commission recommended text amendments to Zoning Ordinance Sections 21-31, *Foundation Height* and Article 21, *Definitions*:

Motion was made by Councilmember Sarah Church, seconded Councilmember Greg Hammond, to approve Third Reading and Ratification, Ordinance 2020-17, Zoning Ordinance Text Amendments: Consideration of Planning Commission recommended text amendments to Zoning Ordinance Sections 21-31, *Foundation Height* and Article 21, *Definitions*.

Motion was made by Councilmember Tim Reese, Seconded by Councilmember Kaye Smith, to amend the original motion to amend Ordinance 2020-17 under Section 21-31 B. (2) *Foundation Height* to read “The finished floor shall be no more than nine (9) feet four (4) inches above finished grade”.

Motion passed unanimously.

The motion as amended passed unanimously.

3. Third Reading and Ratification, Ordinance 2020-18, Chapter 5, Article IV Text Amendments for Flood Damage Prevention Ordinance:
Motion was made by Mayor Pro-Tem Clark, seconded by Councilmember Sarah Church, to approve Third Reading and Ratification, Ordinance 2020-18, Chapter 5, Article IV Text Amendments for Flood Damage Prevention Ordinance.
Motion passed by a vote of 6-0-1, with Councilmember Greg Hammond recusing himself from this item due to a conflict of interest. Councilmember Greg Hammond did not participate in any discussions on this item.

4. First Reading, by Title Only, Ordinance 2020-22, An Ordinance Amending Section 22 Purchasing Ordinance of the Sullivan’s Island Code of Ordinances in its Entirety:
Motion was made by Councilmember Tim Reese, seconded by Councilmember Bachman Smith, IV, to approve First Reading, by Title Only, Ordinance 2020-22, An Ordinance Amending Section 22 Purchasing Ordinance of the Sullivan’s Island Code of Ordinances in its Entirety.
Motion passed unanimously.

IV. Reports and Communication:

1. Mayor’s Report- None.

2. Administrator’s Report

I. General Correspondence

- Bill Dunleavy- Notification that the 2021 Polar Bear Swim has been cancelled due to the COVID-19 Pandemic.

II. Construction

Fire Station Structural Repairs- Contractual agreements for the project have been reviewed from Applied Building Sciences and Trident Construction. Review underway by Attorneys Bundy and MacDonald.

Two meetings with Trident Construction, Applied Building Sciences and the Town have been held to date to establish project parameters and basic timeline.

Station 18 Street Stormwater Project- Anticipate that Thomas and Hutton will submit deliverables to SCEMD and FEMA for Phase I in December 2020.

Temporary construction easement and permanent force main easement submitted to property owners at 1807 I’On Avenue. Further discussion will be required.

III. General

South Carolina Beach Advocates 2021 Annual Meeting- The annual meeting for the SC Beach Advocates will be held February 8-9, 2021 at the Wild Dunes Resort on Isle of Palms.

Bluestein et al. vs. Town of Sullivan's Island- The final court order was signed by Judge Jennifer McCoy on 10-15-2020. Staff has been working with Thomas and Hutton to prepare a plan for review by regulatory and for contractor bidding.

South Carolina Municipal Insurance Trust Risk Management- The Town of Sullivan's Island has been selected by SCMIT as winner of the annual Risk Management award for small municipalities in 2020 for its ability to reduce the frequency and severity of lost time by employees. Criteria for the award includes lowering the experience modifier and uncapped loss ratio. Criteria was met due to the effort and safety conscious Town employees while in the work place each and every day during 2020.

3. Attorney's Report- No items to report.

4. Boards and Commissions Reports – Joe Henderson reported that all of the Boards and Commissions have approved their respective 2021 meeting dates.

V. Committee Reports:

Finance Committee – Mayor O'Neil. Monthly report rendered.

Comptroller Jason Blanton presented the October financial report.

Public Facilities Committee – Councilmember Greg Hammond, Chair. Monthly report rendered.

Beach signage- Councilmember Greg Hammond recommended adding signage on each beach path stating no smoking, single use plastics, Styrofoam or E-bikes. Chief Griffin stated that he will increase enforcement on the beach.

Status updates:

- i. Seal and tack-weld openings at Battery Logan and large cement building behind the mound for safety purposes
- ii. Seal and tack-weld openings at Battery Thompson for safety purposes, remove remaining extraneous ply-wood structures, re-paint, remove power line from pole to structure
- iii. Sale process for Formal Town Hall Property
- iv. Evaluate safety of shallow-well structures in the Jasper & Station 26 area
- v. Master plan for beach paths with goal of ensuring usability of each beach path, including prioritizing of work (funding of work to remain TBD)

vi. Station 18 stormwater work

Land Use and Natural Resources Committee – Mayor Pro-Tem Chauncey Clark, Chair. Monthly report rendered.

Next Transition Zone Work- Station 22.5 to Station 28. This is still in progress.

Administration Committee – Councilmember Sarah Church, Chair. Monthly report rendered.

Dog Licenses- Councilmember Church recommended pro-rating the dog licenses for 2021 due to the pandemic and beach closures. Town staff is reviewing this item.

Codification of Town Ordinances- in progress, to be reviewed by Council upon completion.

Personnel Handbook- in progress, to be reviewed by Council upon completion of draft.

Water and Sewer Committee – Councilmember Bachman Smith IV, Chair. Monthly reports rendered.

Project Updates- Councilmember Bachman Smith, IV and Greg Gress gave project updates for the CWS project, Lift Station project and the WWTP project.

Committee Meeting – The next Water & Sewer Committee Meeting will be November 19, 2020 at 8:45 a.m.

Public Safety Committee – Councilmember Tim Reese, Chair. Monthly reports rendered.

Overview and discussion on potential island-wide paid parking implementation

Town Council consensus on two items:

- a. SCDOT Encroachment Permit authorization for Stantec
- b. Stantec develop scope of work to craft a potential paid parking program for presentation to Council and potential RFP process for vendors. This is only to obtain a quote from them.

Recreation Committee – Councilmember Kaye Smith, Chair.

Christmas- The annual Holiday Festivities in Stith Park will be held Friday, December 4, 2020. Entertainment will begin at 5:30 p.m. with holiday music from the award-winning Wando Chorus. The park will be illuminated at approximately 5:50 p.m. followed by a fireworks display. Unfortunately, due to the COVID-19 pandemic, it will not be possible to serve the

traditional holiday pizza. Moreover, Santa Claus has advised that he will not be able to attend in an effort to stay healthy for his duties on Christmas Eve.

VI. Executive Session

1. Legal Advice- Attorneys Van Raalte and Dodds re: Bluestein et al. v. Town of Sullivan's Island et al. Settlement Agreement
2. Legal Advice- Attorney Dodds re: Nonconformities 21-149 et. seq.
3. Legal Advice- Attorney Dodds re: Private Stormwater Discharge Line to Public Outfall
4. Legal Advice- Attorney Dodds re: Dock Request 2850 Jasper Boulevard
5. Personnel- Accrued Vacation 2020
6. Personnel- SC Municipal Insurance Trust

Motion was made by Councilmember Kaye Smith, seconded by Councilmember Greg Hammond, to go into Executive Session at 7:27 p.m. to discuss the above six (6) items. Motion passed unanimously.

Motion was made by Councilmember Sarah Church, seconded by Councilmember Greg Hammond, to come out of Executive Session at 8:57 p.m. Motion passed unanimously.

Mayor O'Neil stated that no votes or actions were taken in Executive Session.

VII. Adjournment

Motion was made by Mayor Pro-Tem Clark, seconded by Councilmember Greg Hammond, to adjourn the Meeting at 8:57 p.m. Motion passed unanimously.

Respectfully submitted,



Courtney Sottile