

CITY HALL, FIRST FLOOR CONFERENCE ROOM

Special Meeting

April 4, 2016

The eighth meeting of the City Council of Charleston was held this date convening at 10:30 a.m. at the City Hall.

A notice of this meeting and an agenda were sent to the news media on April 1, 2016 and appeared in The Post and Courier April 3, 2016 and are made available on the City's website.

PRESENT (13)

The Honorable John J. Tecklenburg, Mayor

Councilmember White (telephone)	District 1	Councilmember Waring	District 7
Councilmember Williams	District 2	Councilmember Seekings	District 8
Councilmember Lewis	District 3	Councilmember Shahid	District 9
Councilmember Mitchell	District 4	Councilmember Riegel (telephone)	District 10
Councilmember Wagner	District 5	Councilmember Moody	District 11
Councilmember Gregorie (telephone)	District 6	Councilmember Wilson	District 12

Mayor Tecklenburg called the meeting to order at 10:34 a.m.

The Clerk called the roll.

Mayor Tecklenburg said, "We're all here. That's terrific. Thank you all. I'd like to next ask Councilmember Williams to say an invocation for us."

Councilmember Williams said, "May we bow our heads in a moment of silence for many things, but let's lift up the Moody family."

Councilmember Williams opened the meeting with a moment of silence.

Mayor Tecklenburg said, "We have a flag here, and I will ask you all to stand and recite the Pledge of Allegiance."

Councilmember Williams then led City Council in the Pledge of Allegiance.

Mayor Tecklenburg said, "So, as I think you all know, we are here to discuss, as a result of a Court Order, designating or appointing representatives for our mediation session regarding

the Sergeant Jasper, to come up with our team that would attend and be party to the mediation. My thought was to include the Councilmembers who have been involved very diligently, and I thank them for their service over the last few months of meetings that have been dubbed the 'museum meetings' where, substantially, it's been a continuation of the mediation process. So, those Councilmembers have been intimately involved in that process. I did want to try and keep the number of participants manageable. The Court Order actually called for a single individual to represent each party, but our Counsel went back to the Judge, and got some clarification, and we are allowed to have more than one person. So, that led to my proposal to you this morning. Let me just say from the outset, that I'm flexible, and it's the will of Council, and as many folks as you would like to participate would be okay with me.

The important thing in my view is to try to have a successful mediation and move the ball forward on this log jam that we've had with the Sergeant Jasper redevelopment. That's the key thing. Next, let me call on Corporation Counsel, Frances Cantwell, to give us an update because I think she just went over to try to talk with the Judge about an issue that just came up this morning."

Frances Cantwell, Corporation Counsel, said, "Good morning, everybody. Just as a little bit more background, Judge Nicholson, who heard the case, I guess in February, is prepared to make a ruling. So, he called the lawyers in last week, and he said that had had received everybody's proposed orders, he's reviewed them, and he is prepared to make a ruling in the case. Obviously, that's either going to be: one side is going to be very unhappy, or both sides are going to be somewhat unhappy, depending on however he rules. So, he, who does not live in a vacuum, and obviously, he's been following this saga in the paper; he thought it was prudent and in our interests and the parties' interests and the community's interests, that we give it one more shot to try and go into mediation and see if we could not agree. He wants us to take up design first, what it is going to be, the height, scale, and mass of the project. That is the first order of business before we even get to whatever the process is after that.

His Order was very specific. He wanted somebody there with final authority because he believes that time is of the essence, not just for any particular interest's sake, but for himself. He wants to get this case off of his desk, and he's not shy about doing it. He'll make a ruling. So, he asked for one person with authority. We thought that was problematic, not just for the City, but from the other groups who are in the case, as well, the two neighborhoods and the two preservation groups. So, he gave us that flexibility. He said 'bring a delegation, if you want, but they have to have the authority to settle the case, and you can bring staff and whoever else you need to sort of understand the proposals.'

I have two good lawyers on Council, maybe more than that, but they practice without a license, who have raised the issue of propriety of Council ceding that authority to a delegation and should it not come back to you for approval. I have to tell you, I don't disagree with that. I don't disagree with it at all. I think you could do it, if you wanted to do it, but if you're not inclined to do it, I have e-mailed the Judge and his clerk, and I've told him this issue came up. I told him I didn't want to be in contempt, and I told him that I didn't want you all to be in contempt, but we may only have a team that would have to report back to Council for final approval. I told him that if that were the case, that I would encourage Council to say that it would call a Special Meeting if we reached a settlement in mediation, call a Special Meeting to take that issue up, if we could not get it on the agenda for a regularly scheduled meeting that wouldn't delay your taking it up too much. His idea is if we're going to get it settled, then he wants to get it done. He doesn't want it dragged back. Frankly, I don't think I'm speaking out of school, but I think he was more concerned with the neighborhoods and the groups showing up with authority to settle

because when they have to go back to their boards, it gets unwieldy. It's a little bit different with you all, but he didn't exclude you. That having been said, Alice Paylor is here. She represents The Beach Company. She has already informed the Judge by e-mail that she has no objection to Council coming back and signing off on it, but I just wanted to bring that to your attention. I know it's a loose tooth. They brought it up, so that's where we are.

As the Mayor said, depending on how you want to limit, or whatever authority you give the team, do you have three, do you have five? You don't want it to be unwieldy, but that's Council's call, and he gave the reasoning before that there's five of you that have been very active in this thing and know the history really well. So, that's all I've got."

Mayor Tecklenburg recognized Councilmember Moody.

Councilmember Moody said, "Let me just, with Council here, recap a few things that I'm concerned about, and I think the number might be three. I think that maybe the three people should be able to bind Council, bind the City, but with one important caveat, and I'll get to that in a minute. As an unlicensed, probably uninformed lawyer, I think our BAR (Board of Architectural Review) is maybe in trouble here. I don't have any way other than just reading all of the stuff that's been out there publically, that I think our BAR is maybe in trouble, that they may have overstepped. I think The Beach Company may be successful, that's Bill Moody's opinion. So, I want to protect that. I know that Mayor Tecklenburg has mentioned three people, and I don't have any real problem with those three. I do have a little bit of a problem with Councilmember Seekings' vote on the 11-1 vote. Councilmember Gregorie was not in attendance when we voted on the 55 foot height restriction back in December, and this was before Mayor Tecklenburg was sworn in. I don't know how committed Councilmember Seekings is to that or whether that was just maybe a political vote, or whatever, and he can speak to that if he wants to. I just was concerned about it. I do know that in this process, we got to a point when it seems like everybody wants to get rid of that tall, ugly building, and we all agreed, and agreed is probably a little bit of a loose term, but we all discussed it and said 'give us some parameters as to where we ought to be.' Basically, my understanding of that was that we ask The Beach Company to come back with another plan that basically had 375,000 square feet of space, that it wouldn't be over ten stories. Then, you get into is ten stories livable space, or occupied space. Maybe the elevator shaft goes up on the top, and that might be above ten stories, and maybe if they put the Moravian Star back up, that might be, which I hope they do."

There was laughter in the conference room.

Councilmember Moody continued, "I always enjoyed seeing that from across the river. Anyway, I would hope that that would still be allowed, and that might be something we could work out. They didn't want a grocery store, and I think everybody agreed there would be no grocery store, whether they had a little market, or something like they have there now. That might be something that we would need to work out. There was a percentage of the 375,000 square feet that could be office or retail, something other than residential. The big thing to me that The Beach Company gave up was St. Mary's Field. That would become a park, and as I remember, there was a park down the side, or a linear park along the Canal Street, that they would enhance and improve that, which would connect it all to Colonial Lake.

So, I supported those general terms. I guess what I'm saying is that I would like to maybe hear from the three of you that have been appointed. If somebody disagrees with that, I would give my name as maybe a substitute, because I think maybe the three of you, whoever the three are, should go to that meeting with full authority to make a compromise. It's time to

get this off of our schedule. It's time for The Beach Company to do whatever they're going to do, and it's time for the neighborhoods to hopefully be satisfied with what we come up with. My hope is that we can then convince The Beach Company that they should go through one more BAR process, a public vetting of the design. So, to me, that whole height, density, all of that stuff is in those areas that we just talked about, whether you use Greek or Roman columns, whatever we put on those things, whatever color we paint it, that's something that maybe the BAR could look at it, and the public could have come input on that, but have one more meeting with the BAR to kind of vet that. Then, let's move on. That way, I think, The Beach Company can get on with their project. Whether it's leaving it, if we can't get all of this mitigated, then they'll go on with their project. Those are my comments. That's my proposal. So, for whatever it's worth, that's Bill Moody."

Mayor Tecklenburg said, "Thank you."

Mayor Tecklenburg recognized Councilmember Shahid.

Councilmember Shahid said, "Thank you, Mr. Mayor, and thank you, Councilmember Moody, for those comments. I think that gave us a good, historical backdrop on where we stand with this. The matter before us this morning is this Resolution, and I have a problem with the Resolution. As it stands, I would vote against it. Let me explain why. I am delighted that the Judge has sort of taken the bull by the horns on this case in trying to get the parties, and sort of shepherding the parties, to come to a resolution through mediation. I'm a litigator. I understand the essence of mediation. Mediation is a wonderful tool, and if this case can be resolved in mediation, great, and it needs to be resolved in mediation. So, it takes off of the table Councilmember Moody's concern whether or not this ordinance is going to be struck down, and then we have a fight about that down the road. It takes it off the table at that particular point. It's good for the parties if this case can be resolved at mediation. It saves us all, not just capital, but it takes out the emotional capital and goodwill if we can get this thing resolved. It's important for the neighborhood associations, it's important for us and the City if this case can get resolved.

I have no problem with the team that the Mayor has proposed. Those folks seem to me to have historical, institutional knowledge and are the appropriate people to be there on this, but the way the Resolution is drafted states, 'that the representatives are authorized by majority vote to consent to a settlement agreement, and that any consent given by the City's representatives shall be deemed ratified and duly authorized with all respects by City Council and shall not require any further action of City Council.' I have a problem with that language because I think whatever happens at this mediation, that has to come back in front of full Council, and it has to be vetted in the normal course of how Council does it because we're a government entity, and we're not a private corporation. We're not an association. We are government, and we have to go through the normal process on these things, if we do it in executive session, like we've done with some other litigations we've had before. Whatever that process, if it calls for some kind of modification of the Zoning Ordinances, we have to go through the normal process of addressing that. It goes back to, as you mentioned earlier, about the design and certain aspects of the structure. That's going to have to go through a normal process. The way this Resolution is worded, I think someone used the word 'abdicate,' and that's what we're doing. We're abdicating our responsibility as representatives of the people of Charleston in the Resolution on this, and I don't think we can do it. I think that the representatives can go, they can mediate, they can come back to us and say 'this is our recommendation to that,' and then vote on it and handle it in the normal course of business. I don't want anyone to walk out of here thinking that I'm opposed to the mediation process. I

want the mediation process to work. I just want to make sure we're doing it in the right way, so that the end result is going to stick, that the mediation Resolution will stick in the proper course of business, and that we're not jumping off of the train thinking, 'oh, you guys handle this; see you later, thank you very much,' and there's nothing for us to worry about. I think we have an obligation that City Council has got to review this in the normal course of how City Council does its business, in a public forum, and not appear and not by de-facto abdicating our authority to those folks. If we all go to the mediation, then that brings up another whole problem that we have a quorum, and we're sitting with the public like we're doing right now. That's another Pandora's box that we're opening up. So, I expressed my concerns to Frances this morning. I briefly mentioned it to the Mayor when we assembled with a couple of Councilmembers earlier. I don't want my position to be reflective of anything else beyond I just want to make sure we do it the right way. That's my major concern."

Mayor Tecklenburg recognized Councilmember Wagner.

Councilmember Wagner said, "I might be a little late on this, and I might have missed something, but I could have sworn for the last three months, we've been trying to mediate this thing, and then spokesmen going down to meetings every couple of weeks, and the five names that were presented this morning were the five names, I believe, that were going. So, if we've been trying for three or four months, what's the holdup? What is the major sticking point is the big question I've got. Why isn't it done? I do agree with Peter (Shahid), by the way, 100 percent. If he puts that in a motion, I'll second it, but I'm just kind of curious why it seems like we're further away today than we were in December. I'm just trying to figure out what's going on and why, and how can this one meeting fix it? We can flip a coin. I'm just having trouble understanding why there is still a problem, and is it fixable or not?"

Mayor Tecklenburg recognized Councilmember Seekings.

Mayor Tecklenburg said, "We'll leave that question hanging for him."

Councilmember Seekings said, "Thank you, Mayor Tecklenburg. Actually, I would like to address what Councilmember Wagner brought up first, and that is, what's changed from December until today is what Frances told us just a moment ago in the report, and that is, a Judge is prepared to make a ruling. Whenever judges are prepared to make a ruling, and he gives you sort of advance warning that that ruling's coming, he's encouraging the parties that they're going to be subject to that ruling, and that it might be time to sit down and reach a compromise because no one's going to be happy. With all due respect to Councilmember Moody, I think it's going to be a split decision. We'll see. I do think that both parties will be unhappy, and that is probably what he has projected, although we don't know, and no one's seen it. I do think that the timing of this is very good, and I agree with Councilmember Shahid. I don't think this body should abdicate its responsibilities to review what goes on in this mediation if a resolution is had that implicates anything that City Council might have to get involved in.

As you all know, there are three plans that are sort of out there in the world right now. Plan 'A,' which is the plan that keeps the building in place, which arguably fits within the zoning that's already out there. It really doesn't implicate City Council at all as it goes through the process. Plan 'C' is the plan that is currently in front of the Judge and is being litigated, and the two questions under Plan 'C' in front of the Court are: one, whether or not the BAR as constituted is constitutional, and then secondly, as constituted, if constitutional, whether or not BAR acted arbitrarily and capriciously in denying what we call 'Plan Chicago,' Plan 'C,' which is principally a commercial development with 400,000 and some square feet that cuts across the

entire process. Where this Council is going to get involved and is going to need some involvement going forward is, if the compromise through the mediated process is something that looks like Plan 'B,' which those of us who have been along through all of this, have seen Plan 'B,' because Plan 'B,' whatever the square footage of it, whatever the height of it, and all of those things, is a principally residential development. In order to have a principally residential development on the lots that the Sergeant Jasper sits on, more than 80 units, there is going to have to be a change in the zoning, and that implicates all of the things, including the ordinance we didn't take up when we met last time at Charles Towne Landing, which was the Overlay Zone.

I think, Councilmember Wagner, our timing is as good as it can be now. It would have been great if we had gotten this resolved before. In response to Councilmember Moody, there is no one in this world who wants this resolved more than me. I can assure you. I see this building from my yard, and more importantly, it's in my neighborhood. I do think that all of us bring a lot of perspective to this. For me, I've been involved from the very get-go. I will tell you, through the mediated process, I'm open to listening to anything, so if you have any concerns about any votes I've given at Council, I want to hear. That's to say, if we're going to have a compromise that involves this Council, it's going to be something that looks like Plan 'B.' The rest of it sort of, I think, goes around. I think we should send in a team that has the authority to come back to Council and report a recommendation. I do not believe that if we pass this Resolution as drafted, we can live with it because it says that any consent given to the City's designated representatives shall be deemed ratified and duly authorized and shall require no further action from City Council. There are so many things that could happen in a mediated process, that I would feel uncomfortable, and I think all of us would have pause with two out of three binding a Council of 13. Remember the debate we had about the vote required to overturn the Planning Commission with a super majority. This is sort of the reverse. So, I would ask you to think about that as you make your comments, and I would like to be part of that team. I think we should send somebody in who's got some interest and some knowledge on this, but I do think that we have to have a backstop that allows us to come back to Council in this Resolution."

Mayor Tecklenburg said, "Let me come back, if I may."

Ms. Cantwell said, "I think what Councilmember Seekings just said is absolutely correct, as far as you could very well have a negotiated settlement that would require further action from Council, but the intent of the Resolution was to say, 'yes, this is what we will do,' but the process, it would still have to come back, and if not for the sake of the process, I think for the sake of The Beach Company's lender, who's going to want to know that whatever approvals they have are solid. I think that's kind of a given. Anyway, I just wanted to offer that up because it could be very well that you all could come up with a settlement, even if you had full authority, but it would still say that part of the settlement is to 'take this to City Council, go through one more BAR meeting, whatever, whatever, whatever. We don't know what the settlement's going to be. I have no clue, and couldn't venture to guess."

Mayor Tecklenburg recognized Councilmember Lewis.

Councilmember Lewis said, "That would have been my question to you. Once, if we decide to do a settlement and not a resolution, what timeframe would we have between getting stuff back to City Council and the Judge making his ruling because I know time is of the essence."

Ms. Cantwell said, "If there is a report from the mediator that says, 'this is the settlement that the parties have reached,' then he's going to settle the case. It's over, okay?"

Councilmember Lewis said, "Okay."

Ms. Cantwell said, "But, that settlement, whatever it is, and this will be part of what we negotiate, could require something else of The Beach Company as it pertains to either the BAR or the City Council. It might not, but my bones tell me that the settlement is probably going to come up with a project that will require some zoning. I think everybody wants it more residential than what its current zoning would allow, so I think to answer your question, Councilmember Lewis, if in fact we come to a settlement, and whether they have the authority to settle there or come back to Council, if the judge is satisfied, whoever signed that mediation agreement, or whoever reports back to him and says, 'City Council has approved it,' the case will be ended."

Mayor Tecklenburg recognized Councilmember Moody.

Councilmember Moody said, "Let me start with the three, whoever the three are, and it's fine with me if it's whoever, I accept what Councilmember Seekings has just said, that he's pretty much in favor of this thing, this height, mass, whatever. It seems to me like, the three of you all, if you all come back with a split decision, I think that's going to cause problems on Council if you all are not in agreement. I agree with what Peter's (Councilmember Shahid) saying. We do have a lot of issues that we have to deal with, and from what you said, the Judge has said, 'yeah, you all might have to do that.' Alice (Paylor) said that was okay, so I think we're moving in that direction, but I would sure like for you guys, whoever the three are, to come out of that with a statement to the Court that says 'we are going to recommend to City Council that this agreement be accepted.' If it comes with 2 -3, then it feels like to me we're kicking that can down the road a little bit because, quite frankly, if we don't get an agreement out, I don't think if the three of you all are not together, then that shows a weakness to the rest of the parties. They're going to come in there, and whoever they are, they're going to be unanimous in their decision, I would think, as to how they're going to vote. So, if we don't reach a mediated settlement here, the Judge is going to rule, whatever that is, and then, we're going to be stuck with it."

Councilmember Lewis said, "Maybe I didn't frame my question right, but he just answered my question. If we don't reach an agreement, and we don't have three out of three, and it has to come back to Council, maybe the Judge isn't going to give us that kind of time because he is ready to rule and get this settlement."

Councilmember Moody said, "You could come back with all kinds of stuff. What I want our delegation to do is go in there unified and argue for a position that we can support as a Council. That's kind of what got us in this thing. The BAR's decision was 3-2. I don't want a 3-2 decision on our part."

Mayor Tecklenburg said, "I follow you."

Mayor Tecklenburg recognized Councilmember Williams.

Councilmember Moody said, "Let me say just one other thing."

Mayor Tecklenburg said, "Yes, sir."

Councilmember Moody continued, "What I know that I don't want to do is, if we lose, I don't want to appeal this. I don't want to spend any more money fighting this issue."

Councilmember Lewis said, "I agree with you. I don't want to either."

Councilmember Moody continued, "Whatever it is, it's going to be, and I want us to force the best decision for the City that we can get. Right now, we've got the opportunity to do it without having to file an appeal and spend millions of dollars fighting this issue in the future. Thank you."

Mayor Tecklenburg said, "Councilmember Williams has not been heard yet."

Councilmember Williams said, "Thank you. Everything Councilmember Moody said, from the start. I have full confidence in whomever those three are, but from all the meetings I've been to, I'm very doubtful about the neighborhood associations. Every time we were a part of that, we had the ability to do it, and I'm just very doubtful unless they come in with a different resolve, I'm doubtful that it could happen. I have full confidence in the three that will go, but I'm just very doubtful, unless they come in with a different resolve because we all were there."

Councilmember Moody said, "I think that's why, excuse me for not being recognized, but I think that's why we need our team to be on the same page. If we do this, we're going to have to deal with it as Council, and here's where we're going. We're going right after this Plan 'B'."

Councilmember Williams said, "Even though I've been a part of all of the discussions, I stand ready to do something. I just want the three who go to have one voice. I do not want two different voices on this issue coming from us. Thank you."

Mayor Tecklenburg announced the order of speakers as Councilmember Seekings followed by Councilmember Shahid.

Councilmember Seekings said, "Thank you, Mr. Mayor and Councilmember Moody. I agree with you, actually, on that point, and you've been at all of the museum talks. I just can't imagine, of course anything is possible, but I can't imagine there would be unanimity of the groups, including homeowners' associations, and a disagreement among those that come from this delegation. I can't imagine a scenario where that would possibly happen. It's going to be our job to push those groups towards resolution, and I will tell you that will be my mission in life, whether I'm in that room or not, because those are my constituents. I can assure you that we're going to push them as hard as we can towards a resolution. That's what needs to happen, I think as a practical matter. I can't imagine a scenario where South of Broad, Harleston Village, the Preservation Society, and Historic Charleston are in unanimity, and there's a split among the three of the Councilmembers. I just can't imagine that."

Mayor Tecklenburg recognized Councilmember Waring.

Councilmember Seekings said, "We can have part of our team going in there saying all three of us have to agree. Right. We all have to agree. Sorry."

Ms. Cantwell said, "The mediation is, every party has to agree."

Councilmember Seekings said, "Mediation can't be separate."

Ms. Cantwell said, "So, the City can be united, and one of the groups could be united, but if somebody isn't, then the mediation doesn't go forward."

Councilmember Moody said, "But they need to understand, the City is going to deal with this, and the City is going to deal with it kind of along these lines. I think that message needs to be sent if we can't reach an agreement. We've already kind of agreed to the big box. We've got some little pieces in there that we may have to agree to, and those are fine. We can work those out."

Ms. Cantwell said, "The ordinance that you all may consider would have enabled that."

Councilmember Seekings said, "That ordinance, by the way, being out there is something, I think, we should have right in our arsenal when we go in there at this mediation because that ordinance really puts focus as you know on Plan 'B.'"

Councilmember Waring said, "Thank you, Mr. Mayor. The problem with this has not been Council. I agree with Councilmember Shahid. Councilmember Seekings, I beg to differ a little bit when it comes to the neighborhoods because when it came to Plan 'B,' that Overlay that was coming to Council was not the Plan 'B' that we agreed to. The Plan 'B' that you worked on and the five of us, including the Mayor, worked on, that was a tweaking to the compromise which threw things off track. If there's been one mistake with hindsight being 20/20, it would have been great for Plan 'B' to have been put in front of Council a month ago voted up or down. In my opinion, I think it would have passed. That was my question, and I think you answered it, Counsel, where if there's one neighborhood group that disagrees, hypothetically, with the original Plan 'B,' not the Overlay Plan 'B,' then the mediation is done. I'm asking. I don't know."

Ms. Cantwell said, "That's correct."

Councilmember Waring continued, "Immediately after that, can we bring an ordinance to Council and approve what I call 'the original Plan 'B,' not the Overlay Plan 'B,' but the Plan 'B' that we agreed to at George Street. One of the things that you said, Councilman, and I don't want to put words in your mouth, so certainly I'd like you to answer this. You consistently said 'the normal course of action,' and 'the normal process.' The normal process is too slow. We won't have the time. We're here now to try to expedite something. We have a special meeting, so I think you would agree with an expedited process, but you can speak to that yourself. My question would be our contingent could be unanimous, and I think it will be. It could come to Council on a called meeting, and it could be voted upon. That one group, two groups, neighborhood groups, if they vote against it, the mediation is done. What do we do to advance the ball? See, we have sat back and played catcher on this one, and I think other people have been throwing the pitches. Again, I'm repeating myself, but if that original Plan 'B' had been put in a form before Council, I don't have a crystal ball, but I have a very good feeling that would have been approved, and The Beach Company would have had something else to consider. That's been our failing in this. We're now in April. Obviously, we've been talking about this at the museum meetings before you took over, and afterwards, I thought the George Street meeting was just a fabulous meeting, and after that, I don't know how that compromise to a compromise got in there, but the problem here has been the neighborhood groups. The neighborhood groups have the influence to change what we all accepted as being a compromise. That's got us in this position that we're in today. So, I think if they don't agree, that we need to have a plan to act beyond that because the Judge is certainly going to rule. At the end of the day, something's going to have to be approved and make it through zoning, and what is that going to be? In my opinion, it's Plan 'B.'"

Mayor Tecklenburg recognized Councilmember Shahid.

Councilmember Shahid said, "Thank you, again, Mr. Mayor. Let me modify my comments to make sure I'm on the right page with everybody else, and I said 'normal course.' I think the right term is the 'proper course' or 'legal course' of action, so that if we have to have an emergency hearing, or a special meeting, that's fine, but it has to operate within the confines of how City government is supposed to operate, the legal authority, and all of that. Ms. Cantwell answered part of my question and addressed this. I think we just need to make sure that we all understand that what's envisioned out of all of this is that the parties to this litigation, the parties to this lawsuit, if they reach an agreement at mediation, their signatures are going to be on a piece of paper saying, 'this is our agreement.' So, whatever comes back to City Council, everyone has signed off on it pending our review, or pending our approval, or pending whatever we need to do in the proper course of action. One thing I need to respond to that Councilmember Moody said, we can't go into that mediation. We cannot handcuff our delegation group with the idea of an appeal off the table. If for some reason mediation fails, and if for some reason the Judge rules against us, we have got to be prepared to defend our ordinances. That means an appeal and a costly and expensive appeal. We've got to keep those options available to us and open to us at all times because we are the stewards of this ordinance. We are the guardians of our laws. If it's a bad law, and we think it's a stupid law that needs to be struck from the books, that's fine. I understand that, but this ordinance has been passed. It's been on the books for God knows how many years and has operated fine. If it needs to be tweaked or changed, that's a different story, but I don't want us to walk into that mediation room with this message, thinking that if the Judge rules against us, we're not going to appeal. I want the delegation to walk into that meeting with the full authority they're entitled to have and need to have, including the understanding, and I want us to be clear, the understanding that if we don't reach a resolution, and the Judge rules against us, by God, we're going to appeal. That's going to be an option available to us. So, make sure we're not handcuffed by this. That's important to go into this meeting."

Councilmember Waring said, "Mr. Mayor."

Mayor Tecklenburg recognized Councilmember Waring.

Councilmember Waring said, "To follow-up with that, it's not the ordinance. It's the BAR stepping outside of the ordinance, you see. Again, 17 years on the Planning Commission, height and density is the purview of the Planning Commission, and the BAR did speak to that. That's the issue. I think we need to get that one out in the open. I'm in that position of not wanting to appeal this one. So, this mandatory appeal, we're going to get to bring that, and we'll have a hearty discussion at Council, but had they stayed within the scope of their auspices, we may not even be in this room today. The height and density, it's just not there."

Mayor Tecklenburg said, "We've covered a lot of ground. Does someone on the phone want to be recognized?"

Councilmember Riegel said, "Yes, Mr. Mayor, Council, thank you."

Mayor Tecklenburg said, "Please speak up if you can."

Councilmember Riegel said, "Councilmember Dean Riegel. Unfortunately I am unable to be there. We're working on a big proposal, but I've listened intently and think there have been some wonderful comments by Councilmember Moody and Councilmember Waring. A

question I have, and I don't want anybody to take this personally, but the make-up of the team, and Mike (Councilmember Seekings) don't take this personally, includes you. I have some genuine concern that you have had the opportunity to influence neighborhoods and impact their thoughts to mitigate and negotiate with them, and you would have to work as close as anybody else, in my opinion, over these people, and nothing has happened to date. The second thing is, based on your voting history, as I believe Councilmember Moody pointed out, I have a concern if you're going to be able to be impartial. I think that you can be. I admire your legal expertise to a great extent, but those are two concerns I have about your involvement on this mediation team. I heard Councilmember Moody speak very, very passionately, very, very objectively about his concerns, as well as Councilmember Peter Shahid. Should the group entertain it, I'd like to see (Councilmember) Bill Moody with his financial background as a CPA be on that team, possibly in place of Michael (Councilmember Seekings). It's nothing against Michael, but it's just for reasons, and I have some angst. Thank you, Mr. Mayor."

Mayor Tecklenburg asked, "Is there anyone else?"

No else asked to be heard.

Mayor Tecklenburg said, "Let me make a couple of observations first. I do appreciate the fact that there was recalcitrance on the part of a couple of the neighborhood associations in terms of agreement on Plan 'B,' but mostly their concerns have been about the process and making sure that The Beach Company follows our normal processes of public input and public scrutiny. On the other hand, I've got to tell you that I really tried, I think a pretty good effort, over the last couple of months to convince The Beach Company to just go ahead and bring Plan 'B,' or our conception of Plan 'B,' to the BAR, and they could have done that. I tried to give them every assurance that we would be supportive of that and that we would expedite the matter. So, the responsibility, Councilmember Wagner, of why we hadn't resolved this thing yet doesn't lie solely on the shoulders of any neighborhood association. It's a joint responsibility, and it also includes, in my view, The Beach Company's failure to bring forward Plan 'B' to the BAR. That's a decision they made because they are as afraid of the process as some of our neighborhood groups are supportive that the process will be respected. So, that's been a bugaboo and a road block, and that is what brought me to bring to Council at our last meeting the proposal for us to go ahead and have the Overlay rezoning of the property. What happened, and admittedly it was a little bit at the 11th hour before that meeting, but it became clear as we met with The Beach Company, and also with the neighborhood associations, that there really wasn't a meeting of the minds yet, even on what Plan 'B' really was and how high it was and how big. I think The Beach Company, after their financial review of Plan 'B,' wanted to make some modifications.

So, the Judge, I think very wisely, has asked us. First, the parties must agree on a design of the redevelopment of the Sergeant Jasper prior to discussion of remaining issues. I think he recognized that we just need to be on the same sheet of music in terms of what Plan 'B' is, and make sure that we've got some agreement on that. Having said all of that and listening to the great comments here today, may I suggest, and I am not an attorney, so I might ask somebody else to word this idea better than I can, but that we proceed with the designation of myself, Councilmember Waring, and Councilmember Seekings to represent City Council at the mediation. If we want to even limit it to what the Judge asked for, but maybe not. I think it's fine for us to say rather than by a majority vote, that we require that we three members be unanimous in our recommendation to Council, but, in fact, I hope the Judge wouldn't consider us to be in contempt of court because I don't want to offend the Judge, that it be our authority to represent the City and to agree unanimously on a recommendation that would have to come back to Council for its approval. Undoubtedly, it will involve a rezoning of the property in order

to get the residential use that we're seeking, and I think it's certainly appropriate that Council have that review. So, if somebody could state that better than me in the form of a motion, maybe if you all would consider that path forward, so that we can proceed to Wednesday's mediation. What's important, I think, is with the prospect that everybody isn't going to be happy with the Judge's ruling, what's important really is for us to try and make this mediation work, and Councilmember Seekings is absolutely correct that it's going to be up to the three of us to help get a consensus among the other seven parties. I'm not worried about this process and this City trying to move forward to avoid a long lawsuit and get a development plan going forward that gets The Beach Company out of the ditch and gets a final product that our community can be happy with. That would be my suggestion to you."

Mayor Tecklenburg recognized Councilmember Waring.

Councilmember Waring said, "Mr. Mayor, it's a wonderful opportunity that I cannot resist. Now, we get an agreement, we come back and rezone it at Council, doesn't it go to the Planning Commission? Now, if the Planning Commission were to be overly influenced by the neighborhood groups, somehow, those who were not present at the mediation, and the Planning Commission were to deny it, does that require Council to have 75 percent approval?"

Ms. Cantwell said, "As the law stands now, yes."

Councilmember Waring said, "As the law stands now. I just wanted to make sure."

Councilmember Seekings said, "That's why I think it's important that the Mayor's motion says that we have to be unanimous about it because I think if you get three that are unanimous, it would be hard to not do that."

Councilmember Williams said, "I move for approval that after the rewriting of the stated motion of the Mayor, that we proceed. I make a motion that after it's rewritten, that we proceed."

Councilmember Waring said, "The three are unanimous, and then it comes back to Council for approval."

Councilmember Williams said, "And the wording. Just as you said."

Councilmember Waring said, "I don't know who had it, though."

Councilmember Moody said, "Maybe Ms. Cantwell can read the motion, so we know what we're voting on."

Ms. Cantwell said, "The motion is to designate the Mayor, the Mayor Pro Tem, and Councilmember Seekings to represent Council at the mediation. Their decision on a recommendation after mediation has to be unanimous, and they would bring that recommendation back to Council for approval."

Councilmember Williams said, "I move for approval."

Councilmember Shahid said, "I second the motion."

Councilmember Waring said, "Should we include in that motion an expedited meeting?"

Ms. Cantwell said, "I would add that, so that I can tell the Judge that you all are willing to meet on 24 hours notice."

Mayor Tecklenburg said, "Right."

Councilmember Williams said, "I'll add that to the motion."

Mayor Tecklenburg recognized Councilmember Lewis.

Councilmember Lewis said, "As far as advertising, you have to advertise any meetings that we have."

The Clerk said, "You need 24 hours for advertisement of a special meeting."

Mayor Tecklenburg said, "We'll add to the motion that we're willing to have another Special Meeting with 24 hours to approve the recommendation."

Councilmember Shahid said, "I second the amended motion."

Mayor Tecklenburg recognized Councilmember Wagner.

Councilmember Wagner said, "I'm good."

Mayor Tecklenburg asked, "Is there any other discussion?"

Councilmember Moody asked, "Can we get our 75 percent removed in this thing?"

There was laughter in the meeting.

On a motion of Councilmember Williams, seconded by Councilmember Shahid, City Council voted to adopt the Resolution, as amended, appointing the City's representatives for the Court-ordered mediation in Beach Jasper, LLC and Beach Equity Investments, LLC v. City of Charleston, et al.

The vote was not unanimous. Councilmember Gregorie and Councilmember Riegel voted nay.

Mayor Tecklenburg said, "Two nays, the motion carries. Is there any other business to come before Council today?"

Mayor Tecklenburg recognized Councilmember Lewis.

Councilmember Lewis said, "When will this ordinance be placed before City Council where the zoning ordinance is concerned?"

Ms. Cantwell said, "The mediation is going to be held on Wednesday, and if we come to an agreement, we might be getting back together as early as Thursday or Friday. If there is no agreement, then we would have to think about whether we would want to pass some sort of Overlay to accommodate what maybe the team of City Council thought was appropriate."

Councilmember Lewis said, "That wasn't my question. My question was about the ordinance with the 75 percent. I think we have dragged this out."

Ms. Cantwell said, "I'm sorry. That goes to the Planning Commission this month and goes to the Planning Commission the third week of April, and would come back to Council probably the first meeting in May."

Councilmember Lewis said, "Thank you. I hope we have it on the agenda that week in May. We just drag things out sometimes a little too long, especially when it's the wish of Council for something to be done. We just need to deal with it and get it past us. Thank you."

Mayor Tecklenburg asked, "Is there any further business?"

Councilmember Shahid said, "I just want to comment."

Mayor Tecklenburg said, "Yes, sir."

Mayor Tecklenburg recognized Councilmember Shahid.

Councilmember Shahid said, "I just want to commend the Moody family for the grace they've showed with the funeral of their beloved son, and the influence of the Moody family sort of hit me, sitting in that pew with the number of Catholics in a single pew at a Methodist Church at one time. You all wield a lot of influence, and God bless you all for what you all have endured, and I just want you to know that our prayers have been with you all for the entire time."

Councilmember Moody said, "Thank you so much, and I'll just say on behalf of the Moody family, the City of Charleston has just been tremendous. All of you guys that came and represented the City, the cards that came, that calls that came from you, the cards that came from staff, Chief Mullen, Recreation Department, HR, I mean it was overwhelming. We felt the love of this group, and we're thankful for everything you did. It was just tremendous. So, thank you, Peter."

Councilmember Mitchell said, "Mr. Mayor, I just want to make a quick comment. I hope that even going through this mediation, litigation, and everything, that everybody take it seriously, even the neighborhood associations and the various people concerned, that this is very serious and that no one gets it all. We have to come to some compromise on these things. These community organizations are there, but community organizations do not run the City. So, they have to remember that we all live here together, and we need to work together and come up with compromises to make things go smoothly. If we keep fighting amongst each other all the time, fighting that you have a development coming in, and sometimes developments are there, and they are approved for what they are going to build in that particular area, we have to be very careful because we don't own these particular places. That's one area that I think we find ourselves running into problems sometimes with neighborhood associations and other people. I'm not knocking them, but let them know, 'hey, that has been there all these years, and something is going to be done with it. We're going to try to make it the best that we possibly can that will appease everyone, but nobody's going to get it all, so you're going to have to come to a compromise on both sides'."

Mayor Tecklenburg said, "Absolutely. There being no further business, this meeting is adjourned."

There being no further business, the meeting adjourned at 11:28 a.m.

Vanessa Turner Maybank
Clerk of Council