

## CITY HALL

### Special Meeting

June 21, 2016

A Special Meeting of City Council regarding the Sergeant Jasper Litigation was held June 21, 2016 convening at 8:16 p.m. at City Hall.

A notice of this meeting was posted 24 hours in advance at City Hall and an agenda was electronically mailed to the news media June 20, 2016 and made available on the City's website.

### PRESENT (13)

The Honorable John J. Tecklenburg, Mayor

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

On a motion of Councilmember Gregorie, seconded by Councilmember Waring, City Council voted to go into Executive Session at 8:16 p.m.

On a motion of Councilmember Riegel, seconded by Councilmember Mitchell, City Council voted to come out of Executive Session at 9:16 p.m. and to reconvene the Special Meeting. The vote was not unanimous. Councilmember Seekings voted nay.

Mayor Tecklenburg said, "Let the record show that there was no action taken while we were in Executive Session. Now, can we entertain a motion?"

Mayor Tecklenburg recognized Councilmember Riegel.

Councilmember Riegel said, "Thank you, Mr. Mayor. I would like to make a motion supporting the proposed settlement for the Sergeant Jasper litigation between the great City of Charleston and The Beach Company, and authorizing you to settle that on our behalf. Thank you, sir."

Councilmember Waring said, "I second the motion."

Mayor Tecklenburg said, "We have a second. We have a motion and a second. Is there any discussion?"

Mayor Tecklenburg recognized Councilmember Seekings.

Councilmember Seekings said, "I was just going to say one thing. We just saw this settlement agreement for the first time, other than Councilmember Moody, who told me he read it tonight. I can't see any way a responsible body can take the end of a piece of litigation without reading a document and vote for it. So, that's where I start. I haven't read it yet, and I will, but I just don't know that we can vote on it responsibly without understanding everything that's in it and what we're committing the City to and what we're not. My understanding is, having not even read it yet, that there are still some things to be worked out. So, I just think we talked a lot tonight about not rushing anything. We've talked about just appointing a Commission, and we're going to take two months to think about that. This is a settlement of a major piece of litigation over the biggest development issue we've had in our lifetimes, and we've got a seven-page document that no one's read, and we're going to vote on it, except for Councilmember Moody who did read it."

Mayor Tecklenburg announced the order of speakers as Councilmember Riegel followed by Councilmember Waring.

Councilmember Riegel said, "I didn't want to interject, and I hear Councilman Seekings. I hear him loud and clear. He's a great advocate for his district. I wish he was my City Councilmember, Council representative, but this issue has had a great deal of public input, a great deal of public scrutiny. It's been before BAR (Board of Architectural Review) several times. We've engaged a Special Commission of three Councilmen here who have looked at this and worked hard with the neighborhood associations. I think it's time, Mr. Mayor and esteemed body, that we move forward with this project, and let's settle this litigation. We have so many more projects for this great City to look at, so let's settle this tonight. Thank you, Mr. Mayor."

Mayor Tecklenburg recognized Councilmember Waring.

Councilmember Waring said, "Mr. Mayor, that's an assumption that 11 other Councilmembers didn't read it. That's just wrong. It diminishes the ability of our Corporation Counsel to provide advice to us. That's why you asked her to be our Corporation Counsel and, obviously, there has been nothing rushed. It is a huge understatement to say that anything with the Sergeant Jasper has been rushed. So, sometimes you just be quiet, but on that particular issue, that we are ill-informed, something had to be said."

Mayor Tecklenburg said, "Could I call on our Corporation Counsel, Frances Cantwell, to address Council?"

Frances Cantwell said, "Thank you, Mr. Mayor. For the benefit of the public, who was not in Executive Session when we discussed what the settlement was, I think it's only fair to put the proposal out so that you will know what it is. We have a document that will be, and is, available to the public. Copies are being made right now. But, as you know, this whole lawsuit started with the proposal by The Beach Company to build a new project at the Sergeant Jasper site. There were two proposals made to the BAR, and the last proposal was made in June of last year. It was denied, and a lawsuit ensued. An appeal was taken from the BAR's decision, and I won't go through all of the machinations of parties coming in and coming out and mediations held here and mediations held there. At the end of the day, we had a hearing and the Judge issued an Order in April which essentially, in my estimation, did great damage to the authority of the BAR, and the process that has been in place that, I think, has served this City

well for 81 years. So, we asked him to reconsider that Order, and Judge Nicholson indicated that he would reconsider portions of his Order. He made it clear, however, in that hearing that he felt that the issue of height was beyond the purview of the BAR and that he was going to require the issuance of a Certificate of Appropriateness for Conceptual Approval of the plan that was rejected in June of last year. I submitted an Order to the Judge according to what I thought his directives were. The Beach Company's lawyer did the same. There has not been a ruling on that Order yet and so, in the meantime, settlement discussions ensued, and the settlement, that we are proposing tonight and we discussed with Council in Executive Session, contains the following points:

First off, we agree that conceptual approval will be given to the plan that was rejected by the BAR in June of last year. We have nicknamed that the 'Short Stack' because it's shorter than what was originally proposed. It's about the same height as the Sergeant Jasper is now, and it has outbuildings around it also with a parking structure. Under this settlement, they will get conceptual approval of that plan. They will have to go through every other public process that the City has with respect to that plan. That includes going back to the BAR for preliminary approval and back to the BAR for final approval. Points that were very important to the City and to the co-Defendants in this case were that we preserve the process. That process is being preserved with this project.

Additionally, as this project goes through the preliminary and final reviews, there will be informal discussions that will be held in public between The Beach Company, its representatives, the City staff, and the BAR members who want to participate, so that everybody has an idea of where everybody else is coming from as the preliminary submission comes forward and as the final submission comes forward. This is not new. This is in the ordinance now and, frankly, it's a process that is not used often. It's been done from time to time, and we're agreeing to do it now again for this project and, in the interest of being transparent, we think it's a good idea.

The Beach Company will have to bring this project through the TRC, the Technical Review Committee. That, too, is a public process. The meetings are noticed, the public is invited to attend and to watch what's going on, and they are privy to all of the comments that are made and to the written comments that are given to the applicants. What we have agreed to do is, we've set out a schedule for how submissions would be reviewed, and I'll just use an example. In other words, if Beach (Company) comes in for TRC approval, we will have them on the agenda the following Thursday and will give them comments, and we will continue that process until we get to the end because TRC is not done in one meeting. Probably preliminary approval is not done in one meeting, but there will be a process and a track that will keep the project going. The plans for the Sergeant Jasper renovation have been properly filed and have been on file with the City since April. We don't know whether those plans will be acted on, but we have agreed to review those plans and to give Beach the comments. This will be to renovate the building, if they decided to do that. We're going to get that done and will hopefully get that done very quickly. These are kind of little things. Obviously, during construction what we're going to do is close Barre Street, and St. Mary's Field will be used as a laydown.

So, what we have so far is, Beach gets conceptual approval. They've got to go through every other process, every other public process. We haven't done a thing to short-circuit that. The City, in return, will be getting a park on a portion of St. Mary's Field. When that park is developed, The Beach Company, who is not a party to this lawsuit, but who has agreed to this agreement, it, or its successor, will set aside no less than  $\frac{3}{4}$  of an acre of contiguous high ground that will hug the marsh and be waterfront that will be built by The Beach Company as a

public park. It will either be dedicated or deeded to the City, or the City will be given a perpetual easement for the benefit of the public to have access to that park on a daily basis during daylight hours. Beach will sign a release releasing the City of any potential liability for any claims that are arising out of this litigation. Finally, and which I think is very important, this agreement is contingent on Judge Nicholson, who is the presiding Judge. It is contingent on his vacating the Order that he's issued in this case and dismissing the appeal. So, at the end of the day, there will be no Order that comes from this appeal. It will have been vacated. Beach gets conceptual approval, they go through the process, the City gets a release, and we get a park. Now, those are the elements of the settlement."

Mayor Tecklenburg said, "Thank you very much for that summary of the agreement."

Mayor Tecklenburg recognized Councilmember Waring.

Councilmember Waring said, "Mr. Mayor, could we hear from Mr. Lindsey regarding the public process that we've been through and the public process that we will go through?"

Mayor Tecklenburg said, "Yes, sir."

Jacob Lindsey said, "Ms. Cantwell was correct in terms of the public process going forward in that, if this were to move forward as of this evening, there would be future public hearings at the Board of Architectural Review for its next review, which is preliminary, and then again for its review which is final. Going forward, there would be reviews of the Technical Review Committee, which is also a public meeting process. Ms. Cantwell covered that previously. There were full public hearings at the first Board of Architectural Review, where the project was deferred, and the second Board of Architectural Review, where the project was denied. The applicant appealed, and the appeals process, as we have constructed it in our ordinance, is direct to Circuit Court, and we had Court-ordered mediation. So, there were full public hearings previously, two of them. What we are currently doing is what the ordinance prescribes to resolve a conflict in that public process."

Councilmember Waring said, "Thank you, Mr. Lindsey."

Mayor Tecklenburg said, "Are there any other comments, questions, or discussion? If not, I'll call the question."

On a motion of Councilmember Riegel, seconded by Councilmember Waring, City Council voted to approve the Settlement Agreement in connection with the Sergeant Jasper litigation. The vote was not unanimous. Councilmember Seekings voted nay.

Mayor Tecklenburg said, "Alright, the matter carries."

The Clerk said, "Opposed, one, Councilmember Seekings."

There being no further business, the Special Meeting of City Council adjourned at 9:29 p.m.

Vanessa Turner Maybank  
Clerk of Council