

STATE OF MAINE

COUNTY OF YORK

CITY OF SACO

I. CALL TO ORDER – On Tuesday, November 12, 2019, at 6:30 p.m. a Council Meeting was held in the City Hall Auditorium.

II. RECOGNITION OF MEMBERS PRESENT – Mayor Marston Lovell recognized the members of the Council and determined that the Councilors present constituted a quorum. Councilors present: Marshall Archer, Roger Gay, William Doyle, Alan Minthorn, Lynn Copeland, Micah Smart and Nathan Johnston. City Administrator Kevin Sutherland and City Clerk Michele Hughes were also present this evening.

III. PLEDGE OF ALLEGIANCE

IV. PUBLIC COMMENT

- John Harkins, 4 Christopher Terrace – I would like to inquire about the progress of hiring a new City Administrator and if the council has had an opportunity to meet the applicants to date? Mayor Lovell stated, “no comment”. Mr. Harkins asked if the new candidates will meet the requirements of municipal executive experience? Mayor Lovell stated that when there is an announcement you will now know who it is and what their experience is.

V. ADMINISTRATIVE UPDATE

City Administrator Kevin Sutherland provided the following updates:

60 Bay View Road

I've reviewed the claims and questions made by members of the public regarding 60 Bay View Road (also known as “Gerry’s Cottages”) with City Staff. This project has grown somewhat contentious over time and is a matter for the planning board, but now that it has come to Council and shared as a part of the public record, I would like to address the Council (and general public) in explaining this project and the actions that have been necessary for staff.

There are many pieces of misinformation that are being represented in this letter which I have not dedicated the time to respond to, (as nearly all of them have been answered in follow ups between staff and residents over the course of almost a year and many of the answers can be found in the documents provided by the accusing party).

The site had been a lawful nonconforming use for decades. The site had nearly a dozen old small cottages that were both no longer a permitted use post zoning enactment, and which buildings were also built within traditional setbacks, i.e. they were not only nonconforming uses, but were nonconforming structures as well. The developer proposed to maintain a nonconforming use (seasonal cottages) on site but to both reduce the number of buildings and eliminate all the nonconforming structures. As an aside, zoning favors a reduction in nonconformity. So, this project would be seen favorably by the Courts since it eliminates all the existing nonconforming structures.

It did this by replacing buildings that were within setbacks, and siting an initially proposed 8, now 6, revamped cottages in places on site where all setbacks can be met. Courts will view that very favorably as a total elimination of nonconformance as to the structures.

The heart of the dispute and concern relates more to the nonconforming use versus the nonconforming structures. As you may know, zoning opposes any expansion of nonconformity. The neighbors view the project as expanding nonconformity as to use. The City team has worked quite carefully to make sure the

nonconforming use is not expanded. So, for example, the City saw in the initial plan that the dozen or so rental units were to be reduced to 8 cottages. So, less intensity of use. The pushback is that initially the developer increased the "living area" of these units beyond what had been previously on site (arguably an increase in nonconformity). That led to the reduction from 8 cottages to 6 so that the living area remained the same as or lesser than what was on site. So, I think the City team is comfortable now that the area of nonconforming use has not been expanded via the actual buildings themselves.

The other expansion of use is the fear, not yet a reality, that what were once seasonal cottages, will now become by virtue of modern construction standards, full year-round homes and use, not snowbird cottages as designed. What rightly concerns the neighbors is that the old cottages were by their construction and character "self policing". By that I mean, as they were uninsulated, unheated old style cottages, they really could not be occupied into the winter. These new buildings will have basements and second floors (decorative) and heating plants. So, the logical fear is that even if there are only six units, those units will become full year-round homes as the "self-policing" limitations inherent in the condition and construction of the old cottages has been removed, and new buildings capable of year-round use are being offered up.

To combat this possibility, the City team insisted upon very strong deed covenants prohibiting year-round use, and a requirement that all units be disconnected from water on or before 10/31 of each year, and no reconnections until 5/1. The City Planner has confirmed with Maine Water that this can be effectively accomplished and enforced. We also asked for plan conditions that require the disconnection of electrical power on the same date/time as the water but the developer has pushed back on that requirement, but each of these steps is designed to assure that no winter occupancy/use will occur. These steps are designed to assure that the "seasonality" of the former cottages is maintained.

The City attorney have been involved with this project since it first arrived in Code Enforcement as it was necessary to seek out legal guidance as to the interplay between nonconforming structures and nonconforming use. By Attorney Murphy's accounts, Mr. Lambert has fairly and appropriately applied the rules as he and I both understand them. Subsequently, Emily Cole Prescott has been involved in assisting the Planning Board to review the project. She, as well, has fairly applied the rules and standards in reviewing the application, and in assisting the Planning Board. I am entirely confident this project has been treated and reviewed in the same manner and fashion as other projects before the City.

Councilor Copeland asked about the debris there and he has been given a written warning for 30 days and that was months ago. What about follow up in that area? Mr. Sutherland stated that again, he was no going to respond to everyone of the accusations that were made. He believes that Code Enforcement Officer Mr. Lambert has done everything that he is responsible for doing. Councilor Copeland said his letter says he had 30 days and he didn't comply. Mr. Sutherland stated that from his conversation with the Code Enforcement Officer, he has complied with our requirements under our code. Councilor Copeland noted that there is still trash there. I think that that deserves a follow up. The other thing is what about the fact that he demolished all the buildings before he had site plan approval? Mr. Sutherland stated he is legally allowed to take down the buildings and that starts a timeline where he has to have some site plan review. A demolition permit is something he can go for, which he did. He got permission to take the buildings down and he has every right to do that. You don't have to do that to get site plan. The problem is now there is a timeline in which he has to get site plan approval to build anything else. Councilor Copeland noted that attorney Murphy's letter stated that once the buildings were removed things changed in terms of prior use. Is that the timing you are talking about? Mr. Sutherland stated yes that is the timeline. He has 1 year to comply with getting his approvals through the Planning Board in order to view the project as still non-conforming or grandfathered in. Councilor Copeland asked so how do we get basements involved in this? There is the discussion about the lighting on the outside and the closeness to the. Mr. Sutherland noted those are all concerns the Planning Board needs to address, not the city council. Councilor Copeland said well you are addressing it, so I'm addressing you on it. Mr. Sutherland stated that he can't answer those questions. Those are questions for the Planning Board. Councilor Copeland asked what about the fact the residents have brought the issues up to the Planning Board, doesn't that have any weight? Mr. Sutherland stated that the Planning Board has to make those decisions, not myself or the council. I was trying to address the complaints about the staff because that is my purview. Councilor Copeland stated that

Emily was doing a great job. Mr. Sutherland stated and so has Dick Lambert. They both have followed every ordinance they are responsible for. Councilor Copeland questioned that debris clean up one.

VI. COUNCIL DISCUSSION AND COMMENT

- Councilor Copeland – I would like to applaud the City Clerk and her team of many who pulled off a terrific election.

VII. EXECUTIVE SESSION

Mayor Lovell stated he didn't believe they were going in under (A) I believe it is (D). Particularly, examination of a contract. So, if I could have a motion referencing (D), subsection 6 (D) Contract Negotiation.

Councilor Minthorn moved, Councilor Gay seconded "Be it Ordered that the City Council enter into executive session, pursuant to [M.R.S.A. Title 1, Chapter 13, Subchapter 1, §405 (6)]: (D) Contract Negotiation. The motion passed with seven (7) yeas. Time: 6:43 p.m.

VIII. REPORT FROM EXECUTIVE SESSION

Mayor Lovell, Councilors: Archer, Gay, Doyle, Copeland, Minthorn, Smart, and Johnston and the City Administrator were all present.

Councilor Smart moved, Councilor Johnston seconded pursuant to [M.R.S.A. Title 1, Chapter 13, Subchapter 1, §405 (6)]: (D) to come out of Executive Session. The motion passed with seven (7) yeas. Time: 7:10 p.m.

Councilor Johnston moved, Councilor Smart seconded to approve the drafted contract offer and authorize the Mayor to offer it to the candidate for City Administrator. The motion passed with four (4) yeas and three (3) nays – Councilors Doyle, Copeland, and Minthorn.

IX. ADJOURNMENT

Councilor Minthorn moved, Councilor Smart seconded to adjourn the meeting. The motion passed with seven (7) yeas. Time: 7:11 p.m.

Attest: _____
Michele L. Hughes, City Clerk