



August 30, 2011
 Work Session
 Mayor and Council
 Town of Ocean City

Attendance: Mayor Rick Meehan, Council President Jim Hall, Council Secretary Lloyd Martin, Council Members: Mary Knight, Margaret Pillas, Doug Cymek, Brent Ashley and Joe Hall, City Solicitor Guy Ayres, City Manager Dennis Dare, Airport Manager Jaime Giandomenico, Interim City Clerk Wayne Pryor, General Services Director Joe Sobczak, Parks & Recreation Tom Shuster, Maintenance Manager John VanFossen, Chief Deputy Director of Public Works Jim Parsons, City Engineer Terry McGean, Zoning Administrator Blaine Smith, Budget Analyst Jennie Knapp, Fire Chief Chris Larmore, Executive Office Associate Diana Chavis, Members of the Press and Interested Parties.

Council President Jim Hall opened this work session at 10:30 a.m., in the Council Chambers of City Hall, 301 N. Baltimore Avenue, Ocean City, Maryland 21842; then, **Council Member Ashley moved to convene into closed session to: (1) discuss the appointment, employment or officials over whom it has jurisdiction; or, any other personnel matters that affects one or more specific individuals; (2) to consult with counsel to obtain legal advise; (3) before a contract is awarded, discuss a matter directly related to a negotiation strategy or the contents of a bid or proposal, if public discussion or disclosure would adversely impact the ability of the public body to participate in the competitive bidding or proposal process; seconded by Council Member Knight. The vote was 4-0 with Council Members Martin, Cymek and Pillas absent.**

1. Council President Hall re-opened the meeting at 1:00 p.m. and reported that legal, contractual and personnel matters were discussed in the closed meeting. Persons present were: Mayor Rick Meehan, Council President Jim Hall, Mary Knight, Margaret Pillas, Doug Cymek and Joe Hall, City Solicitor Guy Ayres, Public Works Director Hal Adkins, Fire Chief Chris Larmore, Executive Office Associate Diana Chavis, Public Works Maintenance Director Dick Malone, Human Resource Director Wayne Evans, and Grants Coordinator/Special Projects Wayne Pryor. He advised that the vote to end the closed session was unanimous.

2. Bid Openings

A. Front Load Refuse Truck

(Staff Estimate: \$210,000.00)

Vendor	Truck Body Only	Cab/Chassis Only	Combined Unit
Elliott Wilson Trucks		\$128,974.00	
Peterbilt of Baltimore	\$79,826.00	\$134,213.00	\$214,039.00
Harvey Truck Center		\$135,433.64	
Maryland Industrial Trucks	\$72,658.00		
Tom's Truck Sales	\$82,973.00		
Ingold, Inc.	\$82,811.00		
Waste Equipment Sales & Service	\$83,909.00		
McNeilus	\$78,442.00		
McNeilus	\$74,838.00		

Council Member Doug Cymek moved to acknowledge Maryland Industrial Trucks for the Truck Body, and Elliott Wilson Trucks for the Cab/Chassis only, with remand to staff for review; seconded by Council Member Knight. The vote was unanimous.

B. Wastewater Electrical Upgrades – postponed until September 6, 2011

C. **Wastewater DAF Construction Project – Phase I**
(Staff Estimate = \$950,000.00, Bid Bond is required)

Vendor	Part A	Part B	Lump Sum
Harkins Contracting	\$834,000.00	\$6,000.00	\$840,000.00
Johnston Construction Co	\$672,674.00	\$6,500.00	\$679,174.00
George & Lynch	\$810,641.00	\$9,383.00	\$820,024.00
Bearing Construction, Inc.	\$693,750.00	\$6,250.00	\$700,000.00

Council Member Knight moved to acknowledge Johnston Construction, Co. with remand to Staff for review; seconded by Council Member Cymek. The vote was unanimous.

D. **Self-contained Trash Compactor for the Convention Center**
(Budget Allocation = \$32,000.00)

Vendor	Bid
Big Stuff, Inc.	\$23,249.00
Waste Equipment Sales & Service	\$29,380.00
Mid Atlantic Waste Systems	\$23,409.00

Council Member Knight moved to acknowledge the apparent low bid from Big Stuff, Inc. with remand to Staff for review; seconded by Council Member Pillas. The vote was unanimous.

3. Public Works Director Hal Adkins introduced new Airport Manager Jaime Giandomenico.

Inserted Item: **Council Member Knight moved to appoint Wayne Pryor as Interim City Clerk; seconded by Council Member Pillas. The vote was unanimous.** Mayor Meehan swore in Grants Coordinator/Special Events Wayne Pryor as Interim City Clerk.

4. **Council Member Ashley moved to approve Traffic Regulation 2011-02, entitled Motorcycle Parking on 1st Street Adjacent to de Lazy Lizard during Bike Week; seconded by Council Member Pillas. The vote was unanimous.**

5. Melanie Pursel, Chair of the Chamber of Commerce made a recommendation to allocate \$25,000.00 from the market advertising fund for the 2011 Harbor Day on the Docks event. **Council Member Pillas moved to accept the Chamber’s recommendation to allocate \$25,000.00 out of market advertising for the Harbor Day at the Docks event; seconded by Council Member Cymek. The vote was unanimous.**

John Gehrig, accompanied by Tom Perlozzo, of the Tourism Advisory Board reported on TAB’s current initiatives including: identifying tourism trends, evaluating of the Tourism structure and gathering market intelligence. Secondly, he asked that the Mayor, a minimum of two Council Members, and tourism-related department heads become standing members of TAB.

Council President Hall asked that TAB report their initiatives to the Council on a regular basis.

6. Parks & Recreation Director Tom Shuster made a recommendation to award **American Tennis** for the resurfacing and repainting of three of the Town’s tennis courts, for the amount of \$10,450.00 (Budget Allocation = \$15,000.00). **Council Member Ashley moved to approve; seconded by Council Member Knight. With Council Secretary Martin out of the room.**

7. Maintenance Manager John VanFossen made a recommendation to sole source purchase an Elgin Street Broom from Maryland Industrial Trucks, for the amount of \$154,038.00 (Budget Allocation = \$160,000.00). **Council Member Doug Cymek moved to approve; seconded by Council Member Pillas. The vote was unanimous.**
8. Maintenance Manager John VanFossen made a recommendation to sole source purchase a 2011 Load and Pack Broyhill Barrel Dumper from Broyhill for the amount of \$145,097.00 (Budget Allocation = \$144,000.00). **Council Member Doug Cymek moved to approve; seconded by Council Member Pillas. The vote was unanimous.**
9. Chief Deputy Director of Public Works Jim Parsons requested approval for the following:
 - (1.) A policy authorizing Staff to settle Maryland Department of Environment (MDE) citations, called Sanitary Sewer Overflows, for up to \$10,000.00. He said all MDE overflow citations are posted on the Wastewater Department's website for a period of one year.
 - (2.) To hire Whitman, Requardt and Associates, in the amount of \$174,073.00, to complete the Water Master Plan Update
 - (3.) To hire Whitman, Requardt and Associates, in the amount \$94,160.00 to complete the Wastewater Facility Assessment Project**Council Member Pillas moved to approve all three recommendations; seconded by Council Member Knight. The vote was unanimous.**
10. City Engineer Terry McGean recommended the following code modifications pertaining to building permit expirations:
 - I. Reduction of time the project can sit open with no work occurring from 180 to 120 days;
 - i. *work must commence within 120 days after the permit is issued or it shall become invalid; or*
 - ii. *if the work authorized by the permit is suspended or abandoned for a period of 120 days after the time the work commenced the permit shall become invalid.*
 - II. Establish a definition for what constitutes work abandonment as failure to progress with required inspections: *"Work shall be considered suspended or abandoned if no required building, fire, plumbing or mechanical inspections have been performed for a period of 120 days or if the final building inspections have been performed for a period of 120 days or if the final building inspection is not completed within three years after permit issuance."*
 - III. Establish a finite three year time limit to complete the project and,
 - IV. Require that all construction equipment be removed from the site and the site secured until work resumes prior to receiving any time extension.
 - i. *"no extension will be granted unless the site is in a safe and secure condition as determined by the building official and all construction equipment shall be removed from the site until work resumes".***Council Member Ashley moved accept City Engineer McGean's recommendation with an amendment to require the contractor to seek the Council's approval if two extension were already granted by staff; seconded by Council Member Pillas. The vote was 5-1 with Council Member Cymek opposed.**

11. City Engineer Terry McGean made a recommendation to change the minimum value for non-structural projects requiring building permits from \$1,500.00 to \$5,000.00. **Council Member Joe Hall moved to approve raising the minimum to \$2,500.00; seconded by Council Member Ashley. The vote was unanimous.**
12. Zoning Administrator Blaine Smith presented the Planning Commission's recommendation regarding the allowance of Public Utilities as a Conditional Use in the R-2A District (see Attachment A). **Council Member Knight moved to accept the Finding of Fact as presented; seconded by Council Secretary Martin. The vote was unanimous.**
13. Budget Analyst Jennie Knapp presented draft budget amendment #2 for FY2011. **Council Member Knight moved to proceed with the First Reading of this Ordinance in the next Regular Session; seconded by Council Member Pillas. The vote was unanimous.**
14. Fire Chief Larmore presented a proposal to amend Chapter 34-21A, entitled Fire Prevention and Protection (changes the current selection process for the Fire Marshal). **Council Member Knight moved to proceed with the First Reading of the Ordinance; seconded by Council Member Knight. The vote was unanimous.**
15. **Council Member Knight moved to approve the First Reading of Ordinance 2011-26 amending Chapter 58, entitled Offenses and Miscellaneous Provisions (prohibits synthetic drug paraphernalia) as amended to include language requiring merchant leases to specify this prohibition; seconded by Council Member Pillas. The vote was 6-1 with Council Member Joe Hall opposed.**
Council Secretary Martin moved to ratify Ordinance 2011-26 as an Emergency Ordinance; seconded by Council Member Knight. The vote was 6-1 with Council Member Joe Hall opposed. The Mayor concurred with the vote.
16. **Council Member Knight moved to approve the First Reading of Ordinance 2011-25 amending Chapter 58, entitled Offenses and Miscellaneous Provisions (prohibiting the sale, possession, manufacture and distribution of any substance that contains cannibimimetic or hallucinogenic agents); seconded by Council Member Cymek. The vote was 6-1 with Council Member Joe Hall opposed.**
Council Secretary Martin moved to ratify Ordinance 2011-25 as an Emergency Ordinance; seconded by Council Member Knight. The vote was 6-1 with Council Member Joe Hall opposed. The Mayor concurred with the vote.

Council Secretary Martin moved to adjourn; seconded by Council Member Pillas. The vote was unanimous.

PLANNING AND ZONING COMMISSION
August 16, 2011

PRESENT

Pam Buckley
Tom Singman
Lauren Taylor
Chris Shanahan

IN ATTENDANCE

Blaine Smith
Kay Stroud
Bob Nelson
Will Esham

This meeting of the Planning and Zoning Commission was held on Tuesday, August 16, 2011, in the City Hall Council Chambers located on Baltimore Avenue and 3rd Street, Ocean City, Maryland. Pam Buckley, Commission Chairperson, called the meeting to order.

BUCKLEY: I call to order this public hearing, and this public hearing this evening is to consider amending Section 110-304 of the Code of the Town of Ocean City Maryland by including the following as a permitted Conditional Use in the R-2A, Low Density, Multi-family Residential District, public utilities and public services not otherwise regulated by the Maryland Public Service Commission, including buildings, treatment plants, pumping or regulator stations, substations and principle transmission lines but not including distribution and collection systems. The applicant is the Planning and Zoning Commission, it is File #11-14100005. Does anyone have any issue with any of the members taking part in this public hearing? Anyone in attendance? Let the record state that there were no objections to the sitting commissioners taking part in this public hearing. Mr. Smith, Mr. Will Esham.

ESHAM: Under the penalties of perjury do you hereby swear to tell the whole truth and nothing but the truth?

SMITH: I do, and I might say to the best of my memory.

(Laughter)

SMITH: I've gotten to the age now where I have to watch myself. And I say that because what I'd like to do in light of this request that was made by the Planning Commission to hold a public hearing, to give a little bit of history on the last Comprehensive Zoning Code that was adopted January 19, 1993. It was at that time that the Planning Commission had made recommendation to the Mayor and Council that public utility as now being referred to, would be first found as a Conditional Use in the R-2 Multi-Family Residential District. In that 1993 update, or comprehensive update of the zoning ordinance, we created two new zoning classifications, one of which was the R-2A Low Dense Residential District, and the other was R-3A, Medium Residential District. Both of them, well the R-3A actually was in the lower downtown between Baltimore Avenue and Philadelphia Avenue probably from 15th Street to 33rd Street, in that sector. The R-2A only appeared in the Caine Woods neighborhood and across the street on the ocean block was R-3A from about 122nd Street to the Delaware line, east of Coastal Highway. The R-2A and the R-3A were created to minimize the impact in those neighborhoods and to safeguard lower density for the beachgoer because there was a

lot of residential on Caine Woods and the ocean block and with the size of the beach and everything, it was felt that the density needed to be lowered to make it more compatible, both with the residential, the single-family residential district, and that neighborhood, and so we did create the R-3A and the R-2A. Now the R-3A, as you know, our zoning code is pyramidal in design, one district reverts back to the other district. Well if you look at public utility structures as defined and put into the record tonight, from R-2 forward to all your commercial districts, they are treated as Conditional Use. When you get to the R-2 District, it does not revert back to the R-2A District, it stops right at the R-2 District. So, if you look at R-1 and R-2A currently there is no provision for public utility structures, either in the R-1 District, or the R-2A District, so that's current code as of January of 1993. Prior to that date, they were allowed both in the R-1 and any district above R-1, realizing again that there was no R-2A District at that time. That was a newly created district in that 1993 zoning update and the comprehensive zoning maps at that time. That 1993 Comprehensive Zoning Code was to implement the 1989 Comprehensive Plan that had been adopted in 1989, so it was a follow-up to the land use plan. The zoning code, which goes back to July 20, 1970, has a provision that says if a use is not permitted, it's prohibited, so there's no provision in either the R-1 District or the R-2A District for public utility structure. The fact of the matter is we do have public utilities, both in the R-1 and the R-2A District in that Caine Woods area where the R-2 is. And it was brought to our attention that the existing utility substation has a need to expand. Even though the current utility substation is nonconforming it can continue and it can survive under our nonconforming section of the code, but it cannot expand to other property, where in this other block is this R-2A District, so that's what prompted us to look at and evaluate the code in how we treated public utility structures, both in the R-1 and R-2A District. I think we determined when we had our work session with the Planning Commission that it was not a need to go back and revisit the R-1 District. But we do believe, because of the placement of the City water plant and the existing public electric utility, that there is a need to allow it as a Conditional Use as it would be in any other residential or commercial district, as a Conditional Use, and that's the recommendation that we advertised is that the R-2A District would allow public utility structures which are not under the Public Service Commission to be Conditional Use so they can expand their use, that particular substation, in that particular case. It's a little bit isolated to that are because I don't know of any other R-2A except in that particular block where this may ever apply, but technically we can't process it otherwise, and that's why the request was made that we evaluate the code and make a recommendation to the Mayor and Council to authorize a Conditional Use for public utilities in the R-2A District. And that's the essence of the request.

BUCKLEY: Okay, alright. Any questions by the commission?

TAYLOR: I guess just a general, including buildings, treatment plants, treatment of what?

SMITH: We have, in fact, in that Caine Woods area, but it's in the LC-1 District, we have a switching station for C & P Telephone (Verizon?) on 142nd Street, east of Sinepuxent...

BUCKLEY: Uh huh.

SMITH: ...that's a public utility that would come under this same type provision. Years ago when the Mayor and Council approved that because they wanted it to be compatible

with the neighborhood, that building was to be built with brick, roofline to be compatible, so you may not know that, so that's one type of public utility. We have...

BUCKLEY: I think you were concerned about the word "treatment."

TAYLOR: Treatment, treatment of what?

BUCKLEY: What kind of treatment plant?

TAYLOR: Water, sewer?

SMITH: It would be water and sewer, however, if it's owned and operated by the Mayor and City Council, we have a special district for public governmental uses, which are not treated as private public utilities are. So your normal treatment plant, water and sewer, would normally come under our public utilities under the, um, it's a PG District, Public Governmental District, those are not subject –

TAYLOR: Then why is this in there?

BUCKLEY: Why do we need treatment in here then?

SMITH: It's just the language that's in the current code. You would not normally get it, but if you did get it, I know in Worcester County they get it because they have private systems.

TAYLOR/BUCKLEY: Right.

SMITH: We don't normally, and I don't anticipate that we would get private systems, but if there ever was one, then it would have to be by Conditional Use, so it would have to be reviewed by the Commission and the Mayor and Council prior to its operation. I don't anticipate that there would be, but you know, with the evolution of the infrastructure and the, you know we're doing a lot of "go green" stuff and environmental things and things like that, I don't know if we would ever get, you know we've got small wind turbines, and solar, passive solar...

BUCKLEY: Right.

SMITH: ...I don't know that there's actually a treatment system that I can think of, you know, we do a lot of stuff with stormwater management, treated subsurface, which that's not above surface, and we've had recycling, and we've had things, so you could get something that might be classified a treatment plant of sort, if you're doing certain types of recycling, some of your shopping centers can recycle "gray water" and if it became something that was, you know, a major thing, it could fall in that category.

TAYLOR: So my concern, there are residents, you know, we've said this particular parcel is unique, but there are a lot of residential things in that area, and there could be some treatment plant that wouldn't be considered...

SMITH: Well, as Conditional Use, then that's where it would be found whether it's compatible or incompatible. That would be part of the reason why it's Conditional Use, so you can do that evaluation, even in this case, it's not a given that that expansion is

okay until you've held that public hearing and weighed the comment that they will make it compatible and they will safeguard the existing residents as they expand.

TAYLOR: And my other question, "principle transmission lines, but not including distribution and collection systems" of what? Is that supposed to refer back to transmission lines? Or is that...

SMITH: Normally that would be cross-country transmission lines, and as an example, when years ago when they were talking about doing off-shore exploration, they were talking about bringing pipelines and stuff in at West Ocean City, the County Commissioners had to deal with that, and I think, you know, you had high-speed line for electronics and stuff?

BUCKLEY: Um hm.

SMITH: And the Mayor and Council have had to deal with that should they come ashore, so there may come a time with this new age of electronics and stuff, that a trunkline may come in town, through town, or whatever, so it's, so as I say, as the industry expands, but it makes it Conditional Use, it's not normal distribution to a consumer like your telephone, you've got telephone pedals, you've got electric transformers, the normal essential services that for the immediate property are not what we're talking about. We're talking about a trunkline that serves more than just Ocean City if it were to come through Ocean City.

TAYLOR: So distribution and collection is any utility?

SMITH: It could...

TAYLOR: Electric, or telephone, or?

SMITH: It could be.

BUCKLEY: Of utilities? Or are distribution and collection systems for private connections?

SMITH: I think another example would be if Eastern Shore Gas was going to do their bulk storage in town, which they did the opposite, they went out of town, but their distribution's in town because it goes to the consumer in town. That part is the essential service, but if they were going to put their storage like they did on 67th Street that would be Conditional Use, because they'd have to show how they were going to safeguard the community. Now realizing that what was up there for many years had been there for many years before we got in the regulatory side of it, but if a new gas company were to come in town and want to do bulk storage, they would be subject to a public hearing.

TAYLOR: But this says not including distribution...

BUCKLEY: Yeah, this is not including...

TAYLOR: So, they, it says they're not permitted, they wouldn't be permitted Conditional Use.

BUCKLEY: "Public utilities and public services not otherwise regulated by the Maryland Public Service Commission including buildings, treatment plants, pumping or regulator stations; substations and principle transmission lines, but not including distribution and collection systems."

SMITH: That's right, the systems, like your gas meter alongside your house is an essential service, that's not under this public Conditional Use.

BUCKLEY: That's collection system.

SMITH: Hm?

BUCKLEY: That would be a collection system?

SMITH: A collection or distribution system. The plants...

BUCKLEY: So you're saying that if the, what we're not going to cover, we will not be including the distribution of the gasoline lines.

SMITH: Right, right.

BUCKLEY: We will not be covering the collection system, whether that be the data for Delmarva Power, or the data from an electric meter, I mean, a gas meter...

SMITH: Right.

BUCKLEY: ...a water meter, or anything like that.

SMITH: Right.

BUCKLEY: That's what you're talking about here.

SMITH: Yeah, and, you know, propane tanks that are for household usage are permissive, based on life safety code. You know, fuel oil for oil furnaces that are at the location, those are permissive as essential service just for that house, but if you're doing a distribution plant, and it was a wholesale, you know, major gas company or something, not just the lines that run to the houses, just like the power lines run to the businesses and stuff.

BUCKLEY: Well, how about if we say "but not including distribution and collection systems that are for essential services."

SMITH: That's correct; that would be good because essential services is defined in the Code as such.

TAYLOR: I think this is a little vague, and you're not sure if it refers back to the beginning of the sentence...

BUCKLEY: Right.

SMITH: Um hm.

TAYLOR: ...or if it's a whole separate sentence.

BUCKLEY: It's just that "are for essential services" and that's just...

TAYLOR: Yeah.

SMITH: Yeah, and I think the reason why it's the way it is currently, the term "Public Service Commission," they're the ones that regulate when it goes to the customers; the distribution of it, and they have criteria like rate setting and all kinds of things that they do. They have oversight on the distribution, and that's why it says "things that are not" under their oversight...

BUCKLEY: Well, this "for essential services," that makes it a little bit clearer that it's not coming back and saying, like Lauren was trying to figure out.

SMITH: Yeah, yeah.

TAYLOR: Considering that we know a little more than the average citizen about this stuff and it's not clear to us, so I think the average person reading it probably would kind of be lost.

SMITH: Yeah.

BUCKLEY: Okay. Alright, anything else? Do I have any comments or questions from the audience? Just say hello.

(Chuckle)

BUCKLEY: Let us know there are some bodies here. (Laughter) We do have 5 people in attendance, just for... Oops, we've got Bob over there too don't we?

SMITH: Yeah.

BUCKLEY: He's considered staff though.

SMITH: Again, up til 1993 they were regulated as Conditional Use.

BUCKLEY: Right.

SMITH: And we just omitted it from that R-2A District, which was a new district, and it didn't get included and now we're saying it should be included.

BUCKLEY: Okay, almost a mistake, are we?

SMITH: Well, in a sense you could say it's a mistake or an oversight.

BUCKLEY: I have no problem making mistakes as long as we correct them.

SMITH: Yeah.

TAYLOR: Did you buy that from your children? (Laughter from everyone)

BUCKLEY: Of course I did! My son gives me that lecture, or that comment, all the time, "You may not know it Mom, but do you how much I learned that freshman year at college?" I'm like yeah, right. Alright, anything else? Mr. Esham, have we covered what we need to cover for this public hearing? Does the Commission have any questions before we can close the hearing for deliberations? Staff have anything else?

SMITH: No.

BUCKLEY: I want to make sure I've covered everyone. Alright I'll entertain a motion to close the hearing.

TAYLOR: So moved.

BUCKLEY: Second, by Chris. All in favor (gavel). So done. Alright, would we like to make a motion on this?

TAYLOR: I move we recommend that we amend Section, that we refer to the Mayor and City Council amending Section 110-304 of the Code as per the staff recommendation with the addition of "essential services" to the last section. It was, essentially, in error, and this parcel doesn't have any residential actually on it...

BUCKLEY: We're not doing it on a parcel.

TAYLOR: Oh okay.

BUCKLEY: We're just doing the...

TAYLOR: Oh, they're going to come back. Okay, okay.

BUCKLEY: Right, we're just putting it into the R-2A District.

TAYLOR: Okay, I'm done then.

BUCKLEY: Okay, and a second?

SHANAHAN: Second.

BUCKLEY: Mr. Chris is seconding. All in favor of the favorable recommendation with the addition of "that are for essential services" at the end of the statement? So done, so done, aye.

TAYLOR: Aye.

SINGMAN: Okay.

BUCKLEY: (Gavel) So moved.

Respectfully submitted,
Kay Stroud, Zoning Analyst
August 19, 2011