

SPECIAL CALL MEETING OCTOBER 29, 2019

Be it remembered that the Mayor and Board of Aldermen of the City of Ocean Springs met in a Special Call meeting at City Hall in the City of Ocean Springs at 6:00 p.m. on October 29, 2019. The Mayor presiding, Aldermen Gill, Authement, Bellman, Cox, Papania, Blackman and Impey were present. Also present were City Clerk Patty Gaston and City Attorney Kevin Melchi.

Let the minutes reflect that proper notice of the meeting was provided to all Aldermen via email and that the notice was posted at City Hall and online within one hour of the meeting being called.

The Mayor called the meeting to order.

The Special Call Meeting is for the purpose of any and all matters pertaining to the appeal of 209 Front Beach Tree Protection Committee ruling.

Motion was made by Alderman Authement, seconded by Alderman Gill and unanimously carried to accept the agenda.

The City Attorney explained that this is not a public hearing nor a normal public forum; this is an appeal. Two appeals have been filed, Mrs. Wrigley filed on behalf of herself and neighboring property owners and Mr. Markle filed on behalf of Mr. Trehern. Each appellants will have their say, then Mrs. Littlepage and her attorney, Mr. Schwartz, will be able to respond. He said this is not a court of law, there will be no cross examination, and requested that all be civil to one another.

Mr. Michael Randolph said he does not know why this is not a de-novo proceeding to the Board of Aldermen. He requested that the order be reversed so that the applicant can prove she has the right to cut down the trees. His request was denied by the Mayor. He then requested dismissal of discussion now due to the Tree Protection Committee (TPC) ruling on February 26th was unlawful since due process was not given and there was not a quorum of Tree Protection Committee members as two City Employees voted.

The City Attorney said this meeting is going forward under the April 2019 application and the Tree Protection Committee heard this new application in May and again in June 2019.

Mr. Randolph made a motion to dismiss now but was informed he could not make a motion, only the Board can make a motion. He then asked if Mr. Bosco was given notice. The Mayor informed him that the special call was released on Friday, October 25, 2019 to give ample notice. Mrs. Wrigley said the notice was not on the City calendar on the City website but was on the agenda tab, which is the normal location of meetings being posted.

Mrs. Wrigley said that she is building a home behind 209 Front Beach. She asked that the Board to preserve the character and what makes Ocean Springs special, but more importantly to follow the law. She said the Tree Protection Committee decision was in error for several reasons. She said they failed to prove economic hardship, but most importantly the trees do not restrict all reasonable use of the property which is required to remove protected trees. She asked that the Board follow the law off the UDC, which is easy to read and uphold, if the decision is arbitrary or capricious it is subject to reversal in circuit court.

Mr. Markle, Attorney for Mr. Trehern, said the ordinance says that the Tree Protection Committee should not issue a permit unless the tree is located in an area where a structure will be placed according to a tree site plan and it unreasonably restricts all reasonable use of the property, he emphasized all reasonable use of the property. He asked the Board to keep some key points in mind during deliberation; is there a way to balance the problem, is there a redesign that would keep all happy, what is the value of a tree not just with dollars and cents. He said that a property owner has rights but can't hurt the community doing it, as no physical, clear and convincing evidence has been given to cut the trees.

Mr. Markle called Mr. Andrew Dooley' principle of Dooley Design Associates, to address the Board. He presented a conceptual drawing of the home submitted by Mrs. Littlepage with a redesign of the home placed on top which accommodates the trees, the document was not given an exhibit number. Mr. Markle asked about moving the driveway to save the trees. Mr. Dooley said that the boat storage and driveway with minor modifications and without more cost could be adjusted to save the trees.

Mr. Randolph asked to address the Board again after Mrs. Littlepage. The Mayor denied his request. He said his witness will declare that the two trees closest to Front Beach pull out of the ground 500 gallons of water a day out of the ground.

Mr. Randolph asked Mr. William Rhodes to address the Board as a professional engineer. The Mayor called to take a 10 minute break at 7:09 p.m. The Mayor called the meeting back to order at 7:19 p.m.

Mr. Randolph asked Mr. Rhodes to repeat his credentials. Mr. Randolph submitted Mr. Rhodes's resume to the Deputy City Clerk and requested it be marked as Exhibit 1. Mr. Randolph then submitted the Site and Drainage Plan and requested it be marked as Exhibit 2. Mr. Rhodes said that the lot is 0.52 acres and with 1" of rainfall the lot would get over 14,000 gallons of water from the 1" of rainfall. He added that with impervious structures built onto the lot the water would have to drain through the drainage plans, which are three 8"-12" diameter pipes penetrating the retaining wall onto Front Beach Drive. Mr. Randolph gave Mr. Rhodes a copy of City Ordinance 23-167, asked it to be marked as Exhibit 3 and quoted it. Mr. Rhodes agreed and said that the object of engineering is to keep water off roadways, not dump water directly on road ways. Mr.

Randolph asked Mrs. Wrigley to display photographs of Front Beach Drive on the screens in the boardroom. The photographs show water and a sheen, he said caused by algae, on the road. Mr. Randolph continued to quote Ordinance 23-167. He asked if the City of Ocean Springs is required to file a Storm Water Plan with the Mississippi Department of Environmental Quality. Mr. Rhodes replied yes, and said it states that storm water runoff is a major contributor to the degradation and pollution of receding waters of the MS Sound. Mr. Randolph asked for Mr. Rhodes's professional opinion, he replied that it will change the drainage onto the road to a detriment to safety and public health.

Mr. Randolph asked Dr. Glenn Hughes to address the Board and submitted his resume as Exhibit 4. Dr. Hughes said there was an economic impact report post Hurricane Katrina for the trees lost, which gave an economic value of \$30,000 per tree in 2006. He also said per a study by the University of Florida during growing season, mid-February to mid-November, the larger two trees will use 250 gallons per day and the smaller one will use approximately 200 gallons per day. Mr. Randolph quoted Ordinance 16-1987. Mr. Randolph said that anyone who bought property in Ocean Springs after 1987 bought it subject to this law. Dr. Hughes said that the trees could be replaced but would be approximately \$40,000. Mr. Randolph said that during the Tree Protection Committee meetings there was never a dollar amount of economic hardship. He said that Mrs. Littlepage's contract to buy the property expired September 1, 2019 and that the co-applicant and owner of the property is not present tonight. Mr. Randolph quoted Mrs. Littlepage as saying she "wants to exercise my rights as an American Citizen to do to my property what I want to do" and submitted the newspaper article as Exhibit 7. He then said that on January 9, 2019, Mrs. Littlepage did a television interview and contradicted herself wanting a single level home. Dr. Hughes said that with minor modifications both the trees and the home could be accommodated. He said the most valuable trees on the property are the ones at the front of the lot. He said that the one on the left does indeed have damage that most likely predates Katrina, has survived and could continue to thrive for decades. He said the one on the right is in very good health. He added that these trees are incompatible with the house as drawn but does not preclude all uses of the property. He was asked how close to a house can a tree be put for the root structure not to be harmed; he replied that there are two separate formulas, one based on the area and one based on the diameter of the tree. He said he does not have the information in front of him but he thinks it would be 25 to 30 feet from the center of the tree.

The Mayor called a break at 8:15 p.m. The meeting resumed at 8:19 p.m.

Mr. Randolph asked Dr. Hughes if he agreed the tree was damaged by fire as stated in a report. He responded that the tree was damaged but did not agree that the damage was by fire; he said he believes it was damaged by a lightning strike.

Mr. Randolph asked Arborist David Minkler to address the Board and submitted his resume as Exhibit 9. Mr. Randolph asked Mr. Minkler if he had an opinion as a professional arborist regarding the trees. He replied that the trees are perfectly healthy; the lightning

struck tree was damaged 50-60 years ago and survived Katrina as a testament to its resiliency and potential strength of the wound wood. He said that the trees wound wood is actually stronger than the original wood of the tree. Mr. Randolph presented two more documents with pictures of the damaged tree as Exhibits 10 and 11. Mr. Minkler also disagreed that the damage to the one tree was caused by fire. Alderman Authement asked if the trees were trimmed back, would the root system not grow beyond the trim line of the canopy. Mr. Minkler replied that no, the root and the canopy are independent of each other. He said it is important to protect the roots and the formula he uses is you can go out five times the diameter of the tree and cut the roots beyond that distance. Alderman Gill asked about the picture provided in Exhibit 10 that states "the tree is hollow from the crown to the trunk". Mr. Minkler responded that statement is inaccurate. He said there is a wound from the branch that lightning struck down to the bottom of the trunk and the hollow extends with petrified oak but to say the upper crown is hollow is inaccurate. Alderman Gill said the picture clearly shows the tree is hollow from the bottom all the way up the limb. Alderman Gill asked how tall the damaged tree stands. He replied fifty to sixty feet. Alderman Gill then asked if he would build a half million dollar house within twenty-five feet of this tree. He responded yes he would. Mr. Minkler then said the formula to determine whether a tree is hollow is seventy percent of the material should be missing and the tree in question is less than seventy percent hollow.

Attorney for Mr. Trehern, Mr. Markle, spoke about the hollow portion of the tree from Exhibit 10. He asked Mr. Minkler the life expectancy of the tree. Mr. Minkler said there is no definite answer but the hollow will not kill the tree and the wound wood strengthened the tensile strength of the tree.

The Mayor advised that this is Mr. Randolph's time and said for him to proceed.

Mr. Randolph asked Mr. Dennis Cowart, Architect, to address the Board. Mr. Randolph said he wanted to submit Mr. Cowart's resume as an exhibit but he didn't bring it with him so he asked him to verbally review his credentials. Mr. Randolph showed the drawings of the proposed house to Mr. Cowart which he asked to be marked as Exhibit 12. He said there are three porches on the drawings plus an outdoor kitchen and approximately 7,300 square feet under roof. He said as a professional architect there has been no reasonable effort made to accommodate one or both trees, further in his opinion, no effort at all has been made to accommodate the protected trees. Alderman Authement said he thought the Tree Protection Committee made a caveat with their decision that the trees cannot be permitted until the actual building permit is filed. Mr. Randolph said that the trees cannot be cut, there is no provision in the minutes or in the City that grants the Tree Protection Committee the right to issue a conditional permit. The City Attorney said yes, there was a caveat that required a building permit first.

Mr. Randolph submitted minutes from Tree Protection Committee meeting of October 23, 2018 as Exhibit 13. He pointed out item 2 for 515 East Beach Drive, the their request to

remove protected trees but the TPC denied application stating that "a building permit is required before the applicant can move forward".

Mr. Randolph submitted minutes from the Tree Protection Committee meeting of November 13, 2018 as Exhibit 14. He quoted the first item under Old Business, "T. Franklin updated the TPC informing them that the applicant for 515 East Beach Drive appealed to the Mayor and Board of Alderman; the tree removal permit for the application will be granted once a building permit is attained". He said it proves the inconsistency and this application should have been denied since no building permit was approved.

Mr. Randolph submitted a letter received from the Planning Commission regarding a public notice for a meeting held August 13, 2019 at 6:00 p.m. for the construction of a gravel driveway as Exhibit 15. He said neighbors received notice for the construction of a driveway but not the consideration of removing 300 year old trees.

Mr. Randolph submitted the notice of the TPC meeting on February 26, 2019 as Exhibit 16. He said since it only states "items of discussion will be reviewed of current and past applications", residents would not know if they had an interest in the meeting. He said the address is not listed and that is one main objection from the neighbors.

Mr. Randolph submitted a screen shot of the City calendar from the City website as Exhibit 17. He said it does not have the meeting tonight listed on the calendar.

Mr. Cowart said there are ways to build closer than the suggested 25 feet from the tree; he gave the example of the addition to the Walter Anderson Museum of Art on Washington Avenue. He said the additions foundation was built on short piers within 12 feet of a 72 inch diameter Live Oak tree. He said that it has been requested to modify a design of a home to accommodate trees and thinks that it is reasonable to request the same be asked for these trees.

Mr. Randolph asked Realtor & Appraiser Chad Boudreaux to address the Board and said he is his nephew. He submitted a Real Estate Contract for 209 Beach Hill Road in the amount \$375,000.00 on November 5, 2012 as Exhibit 18; which was his offer in 2012. Mr. Randolph submitted a Real Estate Contract for 209 Front Beach Drive from February 8, 2019 by buyers Dr. John Raff and Mrs. Debra Littlepage and sellers Dr. Julius Bosco and Mr. John Bosco as Exhibit 19. He said the purchase price was whited out so it could not be determined if it was a fair offer or the value of the property. He also stated that the contract expired on September 1, 2019 and was contingent on the approval of the City of Ocean Springs for meeting all planning and permitting requirements to include any possible tree removal.

The Mayor said Mrs. Littlepage and her Attorney Mr. Schwartz could now address the Board.

Mrs. Littlepage said that anyone that builds on the lot will have to address the mitigation of water on the lot as the lot holds water now. She said that the trees could be successfully moved. She said they have offered to replace the trees removed with mature trees planted where the City designates. She quoted the UDC Sections 2.28.4 and 4.12.9. The first criteria is if trees are located where a structure or an improvement will be placed according to a tree site plan, not a full set of building plans, she said they are within the code. Also if a tree is diseased, injured, or in danger of falling and causing destruction or damage to structure or utilities. She said that she has had two certified arborists review and examine the trees and the reports have been submitted to the TPC and the Board previously. She said her insurance agent gave a document saying they would avoid insuring a home with a rotting tree next to the structure, they would not insure. She said she has had a tree fall on their home in Ocean Springs in Culeoka Subdivision; they are not interested in having a damaged tree next to their home. She added that regarding the economic hardship, if the trees remain they will lose up to half the buildable depth of the lot because the trees are situated 85 feet from the south property line and the north lot setback is 25 feet and they would have to build 25 to 40 feet back from the trees because of the health of the south westerly tree. That would leave between 94 and 109 buildable feet from a 244 feet deep lot, which means they have economically lost more than half the size of the lot because of the trees. She argued that this is exactly the situation the ordinance was created for. She said in 2014, on the westerly adjoining property they were granted the removal of three Live Oak trees at 205 Front Beach Drive for two trees in the footprint of the home and one in the footprint of the driveway. She listed other instances that applicants were granted removal of trees; April 11th she said a tree was granted permission to be removed on General Pershing for fear of falling during a storm; April 10th on Government Street the removal of a Cedar tree and two Magnolia trees was granted for parking and sidewalk; May 6th on Lover's Lane two Oak trees were granted permission for removal for new construction. She reiterated the plan to replace the removed trees with mature trees. She said they are not asking for anything not granted to other citizens.

Mr. Leonard Noland, certified arborist since 1992, stated that the damage looks like it was from fire because the damage is on the underside of the wood. His professional opinion is that a new home should not be built next to the damaged tree.

Mr. Freddie Fountain, Heinrich & Associates, he said they were hired to review the drainage condition of the site currently and post development. He said currently the topography of the land is relatively flat on the north side of the trees but falls on the south side of the trees, the eastern side about a 13% slope and the south side to the retaining wall is an 8.5 feet fall of elevation change. He said it is already draining on Front Beach Drive and there is currently erosion of soil south of the trees because of the slope of the lot. He said post development the plan is to capture the water in drainage basins and a pipe next to the retaining wall that will be detained and release water onto the road because there is no other land for it to drain onto. He said the City Engineers will

have plenty of opportunities to review before final design and have any concerns addressed.

Mr. Schwartz, Attorney for Mrs. Littlepage, said that previous information provided is part of the record which includes expert reports of damage to the tree. He said that the Bosco's provided economic hardship criteria at the previous meeting contrary to Mr. Randolph's statement but he actually helped make the case that the economic loss would be over \$375,000 if the application is denied. He said there would be too significant of an adjustment to accommodate the trees. He said the TPC found good cause to grant the application and could be granted for either of the reasons stated earlier by Mrs. Littlepage. He said their application meets the requirements of the code and he asked the Board for approval of the application.

The Mayor asked the Board if there were any questions.

Motion was made by Alderman Gill, seconded by Alderman Cox and unanimously carried to go into closed session to determine the necessity of going into executive session.


The City Clerk returned to the meeting and announced a motion was made by Alderman Gill, seconded by Alderman Authement and unanimously carried to remain in executive session to discuss potential litigation as to a potential appeal of tonight's process.

Motion was made by Alderman Impey, seconded by Alderman Cox and unanimously carried to come out of executive session.

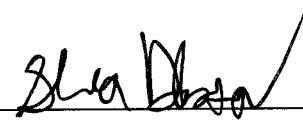
Motion was made by Alderman Gill and seconded by Alderman Bellman to uphold the Tree Protection Committee recommendation because the trees in the footprint of the house unreasonably restrict all reasonable uses of the property. The motion carried with Aldermen Gill, Authement, Bellman, Cox and Papania voting aye and Aldermen Blackman and Impey voting nay.

Motion was made by Alderman Gill, seconded by Alderman Bellman and unanimously carried to adjourn the Special Call meeting.

The meeting ended at 10:39 p.m.


City Clerk

Nov. 25, 2019
Date


Mayor

Nov. 25, 2019
Date

Exhibits submitted by Mr. Randolph:

- Exhibit 1: Resume – William Tully Rhodes, P.E.
- Exhibit 2: Site and Drainage Plan for 209 Front Beach Drive
- Exhibit 3: City Ordinance 23-167, not provided to Deputy City Clerk. Could not be found in City Ordinances
- Exhibit 4: Harry Glenn Hughes Resume
- Exhibit 5: SNA Research Conference Vol 51-2006 – Status of MSGC Love Oak Trees after Hurricane Katrina
- Exhibit 6: Proposed Floor Plan
- Exhibit 7: Ocean Springs Gazette & Record – Thursday, March 14, 2019
- Exhibit 8: Flash Drive containing pictures being displayed throughout the meeting
- Exhibit 9: Resume – David Minkler
- Exhibit 10: Photo of Tree stating "The tree is hollow from the crown to the trunk"
- Exhibit 11: Tree Removal Site Assessment, Inspected by Eric Nolan May 16, 2019
- Exhibit 12: Potential House Plans
- Exhibit 13: TPC Site Report for October 23, 2018
- Exhibit 14: Minutes for TPC Meeting November 13, 2018
- Exhibit 15: Public Notice from Planning Commission for August 13, 2019
- Exhibit 16: Notice of Tree Protection Committee Meeting February 26, 2019
- Exhibit 17: City Calendar for October 2019 from City Website
- Exhibit 18: Real Estate Contract Buyer: Michael Randolph Seller: Julius Bosco Sr., Ellen Bosco for 209 Beach Hill Road; Certified letter receipt dated 11/5/12; and S&P 500 periodic investment calculations
- Exhibit 19: Real Estate Contract Buyer: John Bourke Raff and Debra Littlepage Seller: Julius Bosco Sr. and John Frank Bosco for 209 Front Beach Drive

**CITY OF OCEAN SPRINGS
COUNTY OF JACKSON
STATE OF MISSISSIPPI**

Call for a Special Meeting of the Mayor and Board of Aldermen of the City of Ocean Springs, Mississippi.

From: Mayor Dobson

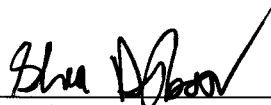
To: Aldermen Cox, Gill, Authement, Bellman, Papania, Blackman, and Impey

You are hereby notified that a Special Call Meeting is called to meet at City Hall at **6:00 p.m., Tuesday, October 29, 2019.**

THE OBJECT OF THE MEETING IS AS FOLLOWS:

Any and all matters pertaining to:

- a) Appeal of 209 Front Beach Tree Committee ruling



Shea Dobson, Mayor

ATTEST:



Patty Gaston, City Clerk