



CITY OF BELLE ISLE, FL
CITY COUNCIL REGULAR SESSION
Held in City Hall Chambers, 1600 Nela Avenue

Tuesday, September 21, 2021, * 6:30 pm
MINUTES

Present was:

Nicholas Fouraker, Mayor
District 1 Commissioner – Ed Gold
District 2 Commissioner – Anthony Carugno
District 3 Commissioner – Karl Shuck
District 4 Commissioner – Randy Holihan
District 5 Commissioner – Beth Lowell
District 6 Commissioner – Jim Partin
District 7 Commissioner – Sue Nielsen

Absent was:

1. Call to Order and Confirmation of Quorum

Mayor Fouraker called the meeting to order at 6:30 pm, and the City Clerk confirmed quorum. Also present were Attorney Langley, City Manager Francis, Chief Houston, and City Clerk Yolanda Quiceno.

2. Invocation and Pledge to Flag

Comm Nielsen gave the invocation and led the Pledge to the Flag.

3. Discussion/Appointment of District 5 Commissioner and Oath of Office

City Manager Francis said the City received two qualified applications for District 5 Commissioner – Beth Lowell and Rick Miller. Mayor Fouraker opened for Council discussion.

Comm Carugno moved to appoint Beth Lowell as the District 5 Commissioner.

Comm Nielsen seconded the motion.

Comm Gold said he feels since Mr. Miller actually won the office and was effectively chosen by the entire City by lack of an opponent, he is entitled to apply for it and not be dismissed. He was unjustly tried and convicted and objected that he was removed and rejected for consideration.

Mayor Fouraker said he appreciates his opinion; however, to clarify, the latter comment is false because the City Manager named him one of the qualified candidates for consideration.

After discussion, the motion passed upon roll call unanimously 6:0.

Mayor Fouraker swore in Beth Lowell as the District 5 Commissioner.

4. Consent Items

- a. Approval of the City Council meeting minutes - August 17, 2021
- b. Approval of the City Council meeting minutes - August 23, 2021
- c. Approval of the City Council meeting minutes - September 7, 2021
- d. Monthly Reports: Code Enforcement, Fire Unit Responses, NAV Board, PD, and Red Light Camera

Comm Carugno moved to approve the Consent Agenda as presented.

Comm Nielsen seconded the motion, which passed unanimously 7:0.

5. Citizen Comments

Mayor Fouraker opened for citizen comment.
There being no comments, Mayor Fouraker closed public comment.

6. Unfinished Business

- a. **Ordinance 21-10 (Second Reading and Adoption)** AN ORDINANCE OF THE CITY OF BELLE ISLE, FLORIDA; AMENDING SECTION 50-103(a) OF THE CITY'S CODE OF ORDINANCES AS SUCH PERTAINS TO HOME BASED OCCUPATIONS; PROVIDING FOR HOME BASED BUSINESS REGULATIONS CONSISTENT WITH GENERAL LAW; AND PROVIDING FOR ENFORCEMENT, SEVERABILITY, CONFLICTS, CODIFICATION, AND AN EFFECTIVE DATE.

City Clerk read Ordinance 21-10 for the record.

Comm Partin moved to adopt Ordinance 21-10 as presented.

Comm Holihan seconded the motion, which passed unanimously 7:0.

- b. **Discussion on Equity Study Commission**

City Manager Francis said he could not find any more information on an Equity Study Commission. However, he said the City's business community can form a Commission from each District to look at new rates and classifications for home-based businesses and commercial properties. Staff recommended the discussion be tabled for 3-4 months. After discussion, the Council consensus was to place the question and create a Committee on hold for a later date.

Comm Nielsen moved to table discussion for four months.

Comm Gold seconded the motion, which passed unanimously 7:0.

7. New Business

- a. **Discussion/Appointment Kevin Pierre to Budget Advisory Committee (District 4)**

Comm Holihan moved to appoint Kevin Pierre to the Budget Advisory Committee for District 4.

Comm Partin seconded the motion, which passed unanimously 7:0.

- b. **Discuss Revised Lease Agreement for Cornerstone Charter Academy**

City Manager Francis said the City and CCA Representative met on August 31 to discuss changes to the lease agreement. One of the items they could not agree on was the annual rent. It was proposed, at the meeting, that the City continue negotiations for a reasonable and fair rent. The City asked CCA for total costs for their facilities, grounds, and annual payments; provided for the record.

The City, under its current Lease, has an obligation for maintenance of the HVAC and building envelope – averaging approximately \$350,000 for the past few years – break down consist of,

- The school strictly pays the Debt Service Fund totaling \$8m through its revenues.
- \$250,000 is put away in a Reserve Fund for equipment, maintenance, and repair.
- Excess rent is given back to the City to cover expenses at the school.

Mr. Francis summarized the upcoming maintenance projects, over the next couple of years, at the High School totaling \$850,000 and equipment and repair projects on the other buildings totaling approximately - \$977,000.

With the proposed Triple Net Lease, CCA will take on the maintenance, equipment, and repair debt and refinance the Bond. The City will not have to pay any maintenance costs moving forward. In addition, CCA will be taking over the Bank of America property and the Debt Service for the next 20-years. Based on the new Lease, CCA offered a rent of \$400,000 a year for the ground lease with a 2% max and CPI annual increase.

The subcommittee reviewed the Lease and removed the language that stated CCA could not make any By-Law changes through a lease. The proposed Lease also requires some scrivener edits. Staff recommends conditional approval to move forward for CCA approval. The Lease will be approved by Ordinance and have two readings before adoption by Council.

Comm Nielsen asked for clarification on Article III – Leasehold Mortgages. Attorney Langley said it is a mortgage on the Charter School's interest on the Lease. A Leasehold is the tenant's interest on the Lease, contracted the right of possession. The mortgage will be a security interest that will encumber the tenant's interests.

Comm Holihan said he did not see a subordination clause and said one should be clearly stated. Mr. Francis said he would make the note and forward it to the City Attorney for review. He further asked for clarification on Condemnation. Attorney Langley said since the City is the owner, the likelihood of Condemnation is unlikely. There is document law that often prohibits one entity from taking the property of another. Since the City has condemning power, it mitigates the possibility. Comm Holihan said he is not opposed to the proposed rent considering all the

school's other expenses will be covered under the new Lease (HVAC replacement, debt service, maintenance, and repairs).

For clarification, Mr. Francis said the City of Belle Isle Charter Schools Inc. was changed to Cornerstone Charter Schools, Inc. and corrected on the final Lease. The City owns the property, and CCA is the tenant. The effective date will be applied once the 2012 Bond is paid off, approval of the Ordinance, and the Triple Net Lease is finalized.

Mayor Fouraker shared his concern with the proposed \$400,000 a year rental amount and the unknown of future build-outs not tied to the Lease. He spoke of the going rent/value rates currently in the market and believes the rent is on the low end and not close to the value for 12+ acres, including the shared use of Wallace field. Comm Holihan said the property has such a specialized use the standard comps do not apply. Discussion ensued on tenant and landlord lease options and comps.

Comm Partin said Council should consider how much money the CCA will be paying on the build-out of the property and Wallace Field. CCA will also be taking over the City's maintenance and repair costs currently paid out of the Excess Rent. The City has an opportunity to be relieved from the debt and obtain sustainable revenue.

Mayor Fouraker said the school has an \$8m surplus; the charter school business is very lucrative, and the school is asking for a 37-year term lease. He would like to see more of a community partnership. He shared some of the views from the subcommittee and provided a copy for the record. Discussion ensued.

Comm Partin said he asked CCA about the \$8m surpluses and was told that the funds are being used as part of the bank's evaluation to allow them to apply for the loan. He said after some research, the Budget Committee recommended a rent base of \$400,000.

Comm Carugno asked for staff recommendation. Mr. Francis said staff recommends,

- Council conditional approval to move forward for CCA approval;
- Have the City Attorney correct the scriveners' errors, two draft readings of an ordinance with the Lease as an exhibit.

Comm Shuck said he has always had a problem with the City making money on the school's back.

Comm Shuck moved to accept the revised lease agreement with Cornerstone Charter Schools, Inc.

Comm Partin seconded the motion.

Attorney Langley clarified that the Lease would not be formally approved until the City adopts it by Ordinance.

Comm Gold said he is interested in learning more about the school's surplus. Mayor Fouraker shared his opinion and said he does not believe enough money is being used to upgrade the building and classrooms. Discussion ensued.

After discussion, the motion failed 5:2 upon roll call with Comm Nielsen, Comm Holihan, Comm Gold, Comm Lowell, and Comm Carugno, nay. Comm Partin withdrew his second.

The motion failed for lack of a second.

The Council discussed and clarified the necessary changes to the Lease as follows,

- Subordination clause in the Lease
- Tighten the landlord and tenant permit/site plan approval process to ensure traffic studies are completed
- Scrivener's errors: tenant name, business terms, and annual CPI

Comm Nielsen asked what professionals have evaluated the Lease and determined that it is in no way harmful or risky to the City. Mayor Fouraker said the Lease had been assessed by the City's Financial Advisors, Real-estate Sub-Committee, Real Estate Expert-Bob Harrell, Study of Land Lease, Comm Partin, Comm Holihan, and the City Attorneys. Comm Nielsen shared her concerns and said the Lease should be vetted every two years or tightened up where necessary.

Comm Gold said the City and its residents are stakeholders, and the school rightfully belongs to the residents.

After discussion, Comm Holihan moved to have the Lease forwarded for CCA consideration to include the following changes,

- **Subordination clause**
- **Tighten the landlord and tenant permit approval process**
- **Correct scrivener's errors: name, business terms and move to an annual CPI**
- **Propose a yearly Lease amount of \$450,000**

Comm Partin seconded the motion with an amendment to include reasonable permit control/approval – Section 7.1. As the government in charge of permitting, Comm Langley said the City could only exercise the authority in the confines and restrictions of the law.

The motion passed 6:1 upon roll call with Comm Carugno, nay.

c. Discuss/Determine Qualifications of Nicholas Fouraker to run for Re-election

Mayor Fouraker opened the discussion and said this is a continuance of the July 20, 2021 meeting.

In consultation with the Mayor, Attorney Langley recommended that the Mayor seek clarification and determination from Council regarding his qualifications to run for re-election. He suggested that the Mayor give the facts surrounding his claim that 5826 Cove Drive is his residence to qualify for re-election.

The Council is ultimately the body that determines the qualification of its members. The Mayor was very proactive and came to Council before purchasing his home and residing out of the City limits. Council voted 7:0 and determined that the Mayor continues to meet the qualifications for office due to the circumstances. Circumstances have not changed, and Case Law on residency is not always black and white. The mere absence from home is not evidenced that someone has lost a residence. The courts look to the intention of the individual who wants to run for office—unless there is clear evidence of the contrary. The courts may be more favorable towards him through several factors: where he receives mail, utility bills, and driver's license address, renovation of a property, and homestead exemption.

Mayor Fouraker said he came to Council proactively in the act of transparency to disclose that he had a dilemma with purchasing a property with extensive renovations on his forever home. With Council's approval, he and his family endeavored. He currently resides in Conway Harbor off of Daetwyler; his attendance record has been impeccable with Council, Boards, and other duties. The home was financed as his primary residence and provided a letter from the bank for the record. They have camped at the house, opened utilities, received mail, a driver's license issued, and are members of the Lake Conway HOA. He and his family have suffered unexpected delays with the building materials.

John Carr residing at 4210 Cay Drive Court, stated that it is evident that there are numerous delays with every phase of the project. They have waited for 6-months for windows, pavers, and materials. Because of all the delays, he is 6-months past the deadline, beyond anyone's control. Despite the price increases, mayor Fouraker has pushed through to ensure that things get done right and without further delay.

Comm Partin said he asked Mr. Carr about the delays. Besides the wait and price increase of 30-40% in materials, Mr. Carr said there is a shortage of professional labor. The Pandemic has created a lot of issues for a lot of folks in the industry.

Mayor Fouraker stated,

- He bought his house at 5826 Cove Drive on 10/31/2019 (1 year before the qualifying date)
- Mortgage received based on purchasing a primary resident
- Drivers License has primary address 5826 Cove Drive
- Receives USPS mail at the same address

Based on the information provided, Attorney Langley recommends that Council determines that Mayor Fouraker qualifies for re-election. A candidate for office is giving Council indication and declares that 5826 Cove Drive is his residency. The home is under construction and renovation, and upon completion, it is his residence. The fact that the Council had already spoken on this issue in Oct 2019 makes it more challenging to support the contrary position.

Mayor Fouraker excused himself from the meeting.

Comm Gold asked if the Mayor notified the Supervisor of Elections of his new address because he could not find a penalty for voting at the wrong location. Attorney Langley said he would have to ask the Mayor on his return. Comm Gold said. He spoke of the events in Nov. 2017 regarding the Charter Amendments and a letter he wrote to Mr. Francis

for clarification on Code Section 3.07 on residency. He said several residents are questioning that Section of the Code, and he feels it necessary to speak for them.

Comm Partin read section 3.03 of the Code and asked for Council clarification. Attorney Langley said it states that Council decides the qualifications and can be challenged in court, typically a candidate.

Comm Nielsen asked if the Council received the emails from John Evertsen and Holly Bobrowski. Comm Nielsen said she would like to read them aloud before moving to a vote. Comm Nielsen read the email submitted by John Evertsen dated September 20, 2021, for the record.

Comm Carugno moved to extend the meeting an additional 30 minutes.

Comm Holihan seconded the motion, which passed unanimously 7:0.

Comm Shuck excused himself for a comfort break.

Vice Mayor Partin called for citizen comments.

- Holly Bobrowski shared her concerns over the integrity of the City Charter. The Charter clearly states the residency requirements to qualify to be a candidate for office and what needs to remain there. She spoke on Sections 3.02, 3.07, 3.03 and submitted a copy of her email to Council dated September 21, 2021.

There being no further comment, he closed citizen comment.

Attorney Langley spoke on the statement made by John Evertsen in his letter regarding Council directing the City Clerk. Attorney Langley stated that Section 3.03 explicitly gives the Council the role to determine the qualifications of its members and extends to candidates. The forfeiture of office provision speaks explicitly to individual members of the Council directing staff members, not the entire body. He does not see the decision, as a body, on this matter interfering with the role of the City Clerk.

Attorney Langley also said the example of a person claiming they could not hold office because he did not reside in the District. The dispute is not to whether someone resides in a district. In this case, the Mayor says that he resides in the City, this is my address, and I plan to live there. Unless there are any questions, his recommendation has not changed

Comm Holihan said one of the things the Council is striving to do is raise themselves to a higher level moving forward. Council granted the exemption; Mayor Fouraker has done his best to get his home built under the existing conditions and continues to keep it as his primary residence. The Council must uphold the intent for him to complete the process.

Comm Shuck shared some concerns with the address posted on permit applications as 7328 Grotto Avenue. The exemption was granted in 2019 after qualifying in the prior election. He said, if Council wants to stick to the letter of the law, the Code calls for a bonafide residence and a homestead exemption. Attorney Langley clarified that a homestead exemption is not the only deciding factor. Discussion ensued.

Comm Carugno shared his concerns with the comments made by John Evertsen about Council. He said Council is doing the best they can and understands the stress s the Mayor and his family must be going through. He said the Mayor should be allowed to qualify, and if someone is opposed, they should vote him out. Based on the Attorney's recommendation, he called for the vote.

After hearing the evidence presented by the City Attorney, Comm Carugno moved that the Council is determining that Mayor Fouraker meets the residency requirement for re-election for the position of Mayor based on the declaration that 5826 Cove Drive is his residence.

Comm Holihan seconded the motion, which passed unanimously 5:2 upon roll with Comm Shuck and Comm Gold, nay.

8. Attorney's Report – No report.

9. City Manager's Report

a. Issues Log – No report.

Mr. Francis reported the following

- He will be on vacation from September 24 – October 1.
- He and the Lobbyists met with Rep. Anna Eskamani and Sen. Linda Stewart regarding State funding for Wallace Field Drainage Project, Building a new Emergency/PD Operations Center, and Start the conversion of Septic to Sewer Program.

b. Chief's Report – No report.

c. Public Works Director's Report – No report.

10. Mayor's Report

Mayor Fouraker reported on the following,

- CCA Board meeting scheduled for September 22
- COVID 19 Vaccine Event – October 4.

11. Council Reports

- Pine Castle Pioneer Days Silent Auction – October 21 at 6:30 at St. Mary of the Angels
- Gumbo Cook-off – October

12. Adjournment

There being no further business, Mayor Fouraker called for a motion to adjourn. The meeting adjourned at 9:30 pm.