

**MINUTES OF A REGULAR MEETING
OF THE CITY COUNCIL OF THE CITY OF GULF SHORES, ALABAMA**

The City Council of the City of Gulf Shores, Alabama, met in regular public session at City Hall in the City of Gulf Shores, Alabama, at 5:00 o'clock P.M. on the 23rd day of February, 2009.

The meeting was called to order by the Mayor Pro Tempore, and the roll was called with the following results:

Present: Carolyn M. Doughty, Mayor Pro Tempore
Joe Garris
Philip Harris
Jason Dyken
Stephen E. Jones

Absent: Robert Craft, Mayor

The Mayor Pro Tempore thereupon stated that a quorum was present and that the meeting was open for the transaction of business.

The invocation was delivered by the Reverend Neil McDavid, First United Methodist Church. The Pledge of Allegiance to the flag was led by Mayor Pro Tempore Doughty.

Councilman Garris moved to approve the minutes of the regular meeting of February 9, 2009, as presented; seconded by Councilman Jones; and the vote of those officials present was unanimously in favor of the motion. The Mayor Pro Tempore declared the motion carried.

Councilman Dyken moved to approve the minutes of the special meeting of February 16, 2009, as presented; seconded by Councilman Garris; and the vote of those officials present was unanimously in favor of the motion. The Mayor Pro Tempore declared the motion carried.

Councilman Jones moved to approve the minutes of the work session of February 16, 2009, as presented; seconded by Councilman Harris; and the vote of those officials present was unanimously in favor of the motion. The Mayor Pro Tempore declared the motion carried.

Councilman Jones moved to approve the payroll and expense vouchers in the amount of \$526,994.04; seconded by Councilman Garris; and the vote of those officials present was unanimously in favor of the motion.

The City Clerk noted that the complete list of vouchers to be paid, as reflected on a computer printout, had been made a permanent record in the Clerk's office.

The Mayor Pro Tempore noted that pursuant to notice heretofore published in accordance with the provisions of Alabama Constitutional Amendment No. 750, today was the date and time for the holding of a public meeting related to the proposed construction of a new Publix shopping center at Colonial Pinnacle at Craft Farms and the consideration by the City Council of an Amended and Restated Lease and Development Agreement and an Amended and Restated Repurchase and Sale Agreement, both by and among the City, Colonial Realty Limited Partnership ("Colonial") and Langley-Colonial, LLC ("Langley"). The Mayor Pro Tempore announced that Mayor Craft was not available to attend tonight's meeting. The Mayor Pro Tempore also noted that since Mayor Craft had been involved in the sale of the real estate forming a part of the original Colonial Pinnacle project, Mayor Craft had previously refrained from discussions about the Publix and Colonial Pinnacle project. Negotiations of the proposed project relating to the Publix Store and the Colonial Pinnacle Project had been conducted by members of the Finance

Committee. The Mayor Pro Tempore then generally described the nature of the project and the fact that members of the Council had to consider whether the expenditure of public funds for the new Publix project and the existing Colonial Pinnacle project would serve a valid and sufficient public purpose, notwithstanding any incidental benefits accruing to Colonial, Langley, Publix or any other private party. The Mayor Pro Tempore further noted that Ken Marshall from Colonial Realty and Paul Woodall from Walston, Wells & Birchall, LLP were both present. The Mayor Pro Tempore noted that, along with the members of the Finance Committee, Mr. Marshall and Mr. Woodall had been involved in the negotiations and that both were available to answer questions from the public. The Mayor Pro Tempore thereupon called upon any member of the public who wished to address the issues reflected in the Notice of Public Meeting to please come forward.

The following public comments were received:

(a) Mr. A. J. Benintende questioned if a discounted cash flow study had been done on the current agreements and the proposed agreements. He also asked what would happen if Colonial and Publix defaulted.

(b) Ms. Virginia Benintende stated her concern for the citizens of the City citing that there are approximately nine to twelve new vacant buildings now. She is concerned that the City is supporting a new business while the two existing grocery stores are struggling with no City support. Further, her main concern is that the City will not be adding any revenue.

(c) Mr. Gary Ellis stated that he feels that the City is fortunate that a business such as this wishes to locate here and put money into the community.

After answering the above questions and upon further discussion, Councilmember Dyken moved for unanimous consent of the Council to suspend the rules of procedure to allow for the immediate consideration of the following Resolution:

RESOLUTION NO. 4622-09

**A RESOLUTION PURSUANT TO
ALABAMA CONSTITUTIONAL AMENDMENT NO. 750**

WHEREAS, the City Council has heretofore conducted on this date a public meeting pertaining to the development located (and to be located) on Lots 1 through 9 (the "Development") according to the Plat of Colonial Properties Commercial Park, as recorded in Map Slide 2252-C in the Probate Office of Baldwin County, Alabama (the "Original Plat"), as amended by an Amended Plat of Colonial Properties Commercial Park, as recorded in Map Slide 2351-C and 2351-D in the Probate Office of Baldwin County, Alabama (the "Amended Plat"); and

WHEREAS, the City of Gulf Shores (the "City") and Colonial Realty Limited Partnership ("Colonial") previously entered into that certain Lease and Development Agreement dated October 24, 2005 (the "Original Lease"), providing for the terms and conditions under which the City purchased a fee simple interest in certain land, located along Highway 59, in the City of Gulf Shores, Baldwin County, Alabama, more particularly described as Lots 2, 7 and 8 according to the Original Plat (the "Original Lease Parcels"), and then leased such Original Lease Parcels to Colonial for commercial development pursuant to the terms thereof; and

WHEREAS, to finance the City's purchase of the Original Lease Parcels, the City issued General Obligation Taxable Warrants, Series 2005-C, in the face amount of \$11,560,000 dated December 15, 2005 (the "Series 2005-C Warrants"); and

WHEREAS, Colonial subsequently caused to be conveyed two additional parcels of land within the Development to the City, namely Lots 3 and 4 according to the Original Plat; and

WHEREAS, the Original Lease was amended by that certain First Amendment to Lease and Development Agreement dated as of July 18, 2007, between the City and Colonial (the "First Amendment to Lease") to reflect the Amended Plat and the addition of said lots to the land the subject thereof, such that the Original Lease, as amended by First Amendment to Lease, currently covers Lots 2, 3, 4, 7 and 8 according to the Amended Plat; and

WHEREAS, the Original Lease as amended by First Amendment to Lease, was partially assigned to Langley-Colonial, LLC ("Langley"), pursuant to that certain Partial Assignment and Assumption of Lease and Development Agreement and Repurchase and Sale Agreement dated as of July 18, 2007 (the "Partial Assignment"), whereby the rights of occupancy with respect to Lots 2, 3, 4 and 7 according to the Amended Plat were assigned to Langley, with Colonial retaining the rights of occupancy with respect to Lot 8 according to the Amended Plat (the Original Lease, as heretofore amended by the First Amendment to Lease, and partially pursuant to the Partial Assignment, the "Existing Lease"); and

WHEREAS, Lot 9 according to the Amended Plat generally consisted of an outparcel entirely within the boundaries of Lot 8 according to the Amended Plat; and

WHEREAS, Lots 8 and 9 according to the Amended Plat (the "Publix Shopping Center Site") are currently undeveloped; and

WHEREAS, there currently exists a shopping center known as Colonial Pinnacle at Craft Farms generally located on Lots 1, 2, 3, 4, 5, 6 and 7 according to the Amended Plat (the "Pinnacle Shopping Center Site") (it being acknowledged that there may not be improvements on all of such lots as of this time); and

WHEREAS, Colonial and the City entered into that certain Repurchase and Sale Agreement dated as of October 24, 2005, as amended by that certain First Amendment to Repurchase and Sale Agreement dated as of July 18, 2007, as the same was partially assigned to Langley, pursuant to the Partial Assignment (such Repurchase and Sale Agreement, as heretofore amended and partially assigned, the "Existing Repurchase Agreement"), whereby Langley has the right to purchase the land the subject of the Existing Lease pursuant to the terms thereof; and

WHEREAS, Colonial has entered into a written lease agreement with Publix Alabama, LLC ("Publix"), providing for the construction by Colonial of a Publix grocery store of approximately 45,600 square feet (the "Publix Store"), to be located on Lot 8 according to the Amended Plat, and the lease of such store to Publix for a base term of not less than twenty (20) years; and

WHEREAS, in addition to the Publix Store, Colonial has proposed to construct and develop on the Publix Shopping Center Site approximately 22,000 square feet of additional first-class retail space; and

WHEREAS, the rent under the Existing Lease is generally calculated as the amount by which the debt service on the Series 2005-C Warrants during each twelve (12) month period beginning on March 1 (an "Applicable Period") exceeds the sales, use, lodging and ad valorem tax revenues to the City with respect to the Development during such Applicable Period (i.e., the amount by which the applicable tax revenues to the City from the Development during such Applicable Period are insufficient to cover the debt service under the Warrants during such Applicable Period) (such rent amount during an Applicable Period, referred to as a "Shortfall Payment"); and

WHEREAS, based on current projections by Langley, and due to the current economic downturn, Shortfall Payments are anticipated during the coming years; and

WHEREAS, the City proposes to provide certain credits against the Shortfall Payments which would otherwise be owing under the Existing Lease, to be funded with the issuance by the City of a \$1,500,000 General Obligation Taxable Warrant, Series 2009 (the "Series 2009 Warrant"); and

WHEREAS, in connection with the proposed development on the Publix Shopping Center Site, Publix and Colonial have requested the City to execute and deliver an Ingress and Egress Easement Agreement by and among Gulf Shores CY Hotel Associates, LLC (as the owner of the adjacent hotel site), the City and Colonial, relating to vehicular and pedestrian access between the Publix Shopping Center Site and the adjacent site consisting of a hotel (the "Easement").

WHEREAS, the City has negotiated the terms of an Amended and Restated Lease and Development Agreement (the "Amended and Restated Lease") and a Second Amendment to Repurchase and Sale Agreement (the "Second Amendment to Repurchase Agreement") by and among the City, Colonial and Langley.

WHEREAS, the City anticipates the authorization of a \$1,500,000 General Obligation Taxable Warrant, Series 2009, (the "Series 2009 Warrant"), the proceeds of which would be used in connection with the proposed Amended and Restated Lease and Second Amendment to Repurchase Agreement.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GULF SHORES, ALABAMA, as follows:

SECTION 1. Findings and Representations.

The City Council does hereby find, determine, represent and warrant that notice of this meeting and proposed action by the City of Gulf Shores was published in the *Mobile Press-Register*, Baldwin County edition, on Friday, February 13, 2009, and in *The Islander* on Saturday, February 14, 2009. The *Mobile Press-Register* and *The Islander* are the papers with the largest circulation in the City of Gulf Shores. Notice was also posted at City Hall at least five days prior to the date of this meeting and was placed on the City's website.

SECTION 2. Approval of Expenditure of Public Funds.

The City hereby determines in accordance with Alabama Constitutional Amendment No. 750 that the proposed expenditure of public funds for the purposes set forth herein, and (a) the issuance of a \$1,500,000 general obligation taxable warrant in connection therewith, and (b) entering into the Amended and Restated Lease, Second Amendment to Repurchase Agreement and the Easement will serve a valid and sufficient public purpose, notwithstanding any

incidental benefits accruing to Colonial, Langley, Publix or any other private party. The public benefits sought to be achieved are expected to include without limitation (i) the construction of a new Publix Store and additional retail space on the Publix Shopping Center Site, and (ii) the enhancement of Langley's ability to attract new tenants to the Pinnacle Shopping Center Site, all of which will increase sales tax revenue to and increase employment opportunities within the City and benefit the Development.

SECTION 3. Authorization of Validation Proceedings.

The City desires, before the issuance of the Series 2009 Warrant, to validate the legality of all proceedings had or taken in connection therewith, the validity of the means provided for the payment of the Series 2009 Warrant, including the Amended and Restated Lease and the Second Amendment to Repurchase Agreement, and the validity of all covenants and provisions contained in the ordinance authorizing the issuance of the Series 2009 Warrant, by filing a complaint against the taxpayers and citizens of the City of Gulf Shores, Alabama in the Circuit Court of Baldwin County, Alabama. A complaint to validate such Warrant, proceedings, and covenants shall be filed and validation proceedings shall be instituted in the name of the City and the members of the governing body thereof. Walston, Wells & Birchall, LLP, Birmingham, Alabama, is hereby designated and appointed as the attorneys of the City to file such complaint, institute such proceedings, and to take all steps necessary to complete such validation proceedings in accordance with the provisions of Article 17 of Chapter 6 of Title 6 of the CODE OF ALABAMA 1975. Any actions heretofore taken by such attorneys in connection with the filing of such complaint or such validation proceedings are hereby ratified and confirmed.

SECTION 4. This resolution shall become effective immediately upon its adoption.

The motion for unanimous consent was seconded by Councilmember Harris and upon the question, the vote thereon was as follows:

Ayes: Carolyn Doughty, Mayor Pro Tempore
Joe Garris
Philip Harris
Jason Dyken
Stephen Jones

Nays: None

The Mayor Pro Tempore declared the motion carried and the rules suspended.

After said resolution had been discussed and considered in full by the Council, Councilmember Dyken then moved for the adoption of Resolution No. 4622-09 and to waive the reading of said resolution at length. The motion was seconded by Councilmember Harris. The motion was regularly put and, upon roll call, the vote thereon was as follows:

Ayes: Carolyn Doughty, Mayor Pro Tempore
Joe Garris
Philip Harris
Jason Dyken
Stephen Jones

Nays: None

The Mayor Pro Tempore thereupon declared said motion carried and the resolution passed and adopted as introduced and read.

Mayor Pro Tempore Doughty stated that this was the time and place for the public hearing, as advertised, on the application of Cellular South for a Special Use Permit for placement of a telecommunications tower at 3757 Gulf Shores Parkway.

The City Clerk stated that this public hearing had been advertised, as reflected by the following affidavits of publication:

Acting Planning Director Andy Bauer informed the Council of the background on this request, and presented the following recommendations of his Department:

Mayor Pro Tempore Doughty asked if anyone present wished to express support or opposition to the request.

David Green, a local business owner, stated he was opposed to the site for the tower due to the proximity to his business.

Gary Ellis, a local business owner, stated that he felt there were alternate sites that could be pursued and he didn't feel the applicants had exhausted all possibilities.

The Mayor Pro Tempore asked if there was any written comment received. Acting Planning Director Andy Bauer advised that one letter of opposition had been received from Courtney Busch, a property owner in the area.

Councilman Jones introduced and moved for the adoption of Resolution No. 4623-09, Granting a Special Use Permit to Cellular South for Location of a Telecommunications Tower at 3757 Gulf Shores Parkway. Motion died for lack of a second.

The City Clerk presented the Application for Transfer of the Restaurant Retail Liquor License of CRM LLP, dba Big O's Grill.

Councilman Jones moved to approve the Application for Transfer of the Restaurant Retail Liquor License of CRM LLP, dba Big O's Grill, located at 1209 Gulf Shores Parkway; seconded by Councilman Garris. Upon the question, all those officials present voted in favor of the motion, with the exception of Councilman Dyken, who abstained. The Mayor Pro Tem declared the motion carried.

Councilman Garris introduced and moved for the adoption of the following Resolution:

RESOLUTION NO. 4623-09

**A RESOLUTION AUTHORIZING
CITY OF GULF SHORES' PARTICIPATION
IN NATIONAL LEAGUE OF CITIES
PRESCRIPTION DISCOUNT PROGRAM**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GULF SHORES, ALABAMA, WHILE IN REGULAR SESSION ON FEBRUARY 23, 2009, as follows:

Section 1. That the City of Gulf Shores is authorized to participate in the National League of Cities Prescription Discount Program, a free prescription discount program to help citizens with the high cost of prescription drugs.

Section 2. That this Resolution shall become effective upon its adoption.

The motion for the adoption of Resolution No. 4623-09 was seconded by Councilman Jones; was regularly put; was discussed and considered in full by the Council; and upon the question, the vote thereon was as follows: Councilman Garris, "aye," Councilman Harris, "aye," Councilman Dyken, "aye," Councilman Jones, "aye," and Mayor Pro Tem Doughty "aye." Mayor Craft was absent. Whereupon, the Mayor Pro Tem declared Resolution No. 4623-09 duly and legally adopted.

Councilman Dyken introduced and moved for the adoption of the following Resolution:

RESOLUTION NO. 4624-09

**A RESOLUTION AUTHORIZING AND DIRECTING THE
MAYOR PRO TEM AND CITY CLERK TO EXECUTE
AND ATTEST, RESPECTIVELY,
CONTRACT WITH CHARLES R. CHAMBLESS, JR.
FOR BI-ANNUAL INSPECTION OF BRIDGE STRUCTURES
IN AMOUNT NOT TO EXCEED \$7,500.00**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GULF SHORES, ALABAMA, WHILE IN REGULAR SESSION ON FEBRUARY 23, 2009, as follows:

Section 1. That the Mayor Pro Tem and City Clerk be and they are hereby authorized and directed to execute and attest, respectively, a contract between the City of Gulf Shores and Charles R. Chambless, Jr. for bi-annual inspection of bridge structures within the City in an amount not to exceed \$7,500.00; in substantially the form presented to Council this date.

Section 2. That this Resolution shall become effective upon its adoption.

The motion for the adoption of Resolution No. 4624-09 was seconded by Councilman Harris; was regularly put; was discussed and considered in full by the Council; and upon the question, the vote thereon was as follows: Councilman Garris, "aye," Councilman Harris, "aye," Councilman Dyken, "aye," Councilman Jones, "aye," and Mayor Pro Tem Doughty "aye." Mayor Craft was absent. Whereupon, the Mayor Pro Tem declared Resolution No. 4624-09 duly and legally adopted.

Councilman Harris introduced and moved for the adoption of the following Resolution:

RESOLUTION NO. 4625-09

**A RESOLUTION AUTHORIZING
MUTUAL AID AGREEMENT
BETWEEN GULF SHORES FIRE RESCUE AND
FORT MORGAN FIRE DEPARTMENT**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GULF SHORES, ALABAMA, WHILE IN REGULAR SESSION ON FEBRUARY 23, 2009, as follows:

Section 1. That the Mutual Aid Agreement between Gulf Shores Fire Rescue and Fort Morgan Fire Department be and it is hereby authorized; in substantially the form presented to Council this date.

Section 2. That this Resolution shall become effective upon its adoption.

The motion for the adoption of Resolution No. 4625-09 was seconded by Councilman Garris; was regularly put; was discussed and considered in full by the Council; and upon the question, the vote thereon was as follows: Councilman Garris, "aye," Councilman Harris, "aye," Councilman Dyken, "aye," Councilman Jones, "aye," and Mayor Pro Tem Doughty "aye." Mayor Craft was absent. Whereupon, the Mayor Pro Tem declared Resolution No. 4625-09 duly and legally adopted.

The Mayor Pro Tem requested and received unanimous consent of the Council to deviate from the published agenda to consider a Resolution authorizing an appropriation for the Alabama Gulf State Park Kids Fishing Jubilee.

Councilman Garris introduced and moved for the adoption of the following Resolution:

RESOLUTION NO. 4626-09

**A RESOLUTION AUTHORIZING APPROPRIATION TO
ALABAMA GULF STATE PARK
FOR KIDS FISHING JUBILEE
IN AMOUNT NOT TO EXCEED \$1,500.00**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GULF SHORES, ALABAMA, WHILE IN REGULAR SESSION ON FEBRUARY 23, 2009, as follows:

Section 1. That an appropriation in an amount not to exceed \$1,500.00 is hereby authorized to the Alabama Gulf State Park for the Kids Fishing Jubilee.

Section 2. That this Resolution shall become effective upon its adoption.

The motion for the adoption of Resolution No. 4626-09 was seconded by Councilman Dyken; was regularly put; was discussed and considered in full by the Council; and upon the question, the vote thereon was as follows: Councilman Garris, "aye," Councilman Harris, "aye," Councilman Dyken, "aye," Councilman Jones, "aye," and Mayor Pro Tem Doughty "aye." Mayor Craft was absent. Whereupon, the Mayor Pro Tem declared Resolution No. 4626-09 duly and legally adopted.

The Mayor Pro Tem requested and received unanimous consent of the Council to deviate from the published agenda to consider a Resolution authorizing an Arts Center Ground Lease Agreement.

Councilman Jones introduced and moved for the adoption of the following Resolution:

RESOLUTION NO. 4627-09

**A RESOLUTION AUTHORIZING AND DIRECTING THE
MAYOR PRO TEMPORE AND CITY CLERK TO EXECUTE
AND ATTEST, RESPECTIVELY,
ARTS CENTER GROUND LEASE AGREEMENT
WITH BEACH CITE STUDIOS, INC.
FOR LEASE OF PROPERTY LOCATED AT
CORNER OF WEST 19TH AVENUE AND WEST 2ND STREET**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GULF SHORES, ALABAMA, WHILE IN REGULAR SESSION ON FEBRUARY 23, 2009, as follows:

Section 1. That the Mayor Pro Tempore and City Clerk be and they are hereby authorized and directed to execute and attest, respectively, an Arts Center Ground Lease Agreement between the City of Gulf Shores and Beach Cite Studios, Inc. for lease of property located at the corner of West 19th Avenue and West 2nd Street; in substantially the form presented to Council this date.

Section 2. That this Resolution shall become effective upon its adoption.

The motion for the adoption of Resolution No. 4627-09 was seconded by Councilman Harris; was regularly put; was discussed and considered in full by the Council; and upon the question, the vote thereon was as follows: Councilman Garris, "aye," Councilman Harris, "aye," Councilman Dyken, "aye," Councilman Jones, "aye," and Mayor Pro Tem Doughty "aye." Mayor Craft was absent. Whereupon, the Mayor Pro Tem declared Resolution No. 4627-09 duly and legally adopted.

COMMITTEE REPORTS:

Mayor Pro Tem Doughty expressed appreciation to the Public Works staff and the Beautification Board members who participated in the tree planting event in Prattville last weekend.

DEPARTMENT SUPERVISORS' REPORTS:

Harold Samples, Parks and Recreation Director, announced that there would be a grand opening at the new softball complex on March 6 at 4:00 p.m.

Arthur Bourne reported that pay parking at the beach would begin on March 13.

Mayor Pro Tempore Doughty asked if there was anyone present who wished to address the Council but had been unable to get on the formal agenda.

Gerald Carter, a City resident, urged the Council to not allow Allied Waste to reduce garbage pickups and increase costs. While Mr. Carter agreed that recycling was important, he stated that many do not want a 90-gallon recycling container.

There being no further business to come before the meeting, it was moved and seconded that the meeting be adjourned. Motion carried.

Carolyn M. Doughty, Mayor Pro Tempore

(SEAL)

ATTEST:

Renee F. Moore, MMC, City Clerk