

**MEMORANDUM**

**To:** Mayor O'Brien  
Vice Mayor George  
Commissioner Samuels  
Commissioner Snodgrass  
Commissioner England

**FROM:** Max Royle, City Manager 

**DATE:** January 27, 2016

**SUBJECT:** Building Height: Review of Proposed Ordinance Concerning Matters Related to Starting Point for Measuring Building Height

At your January 4<sup>th</sup> meeting, you discussed at length the topic of determining the beginning point for measuring the height of buildings. In response to your discussion, the City Attorney has prepared an ordinance for your review.

Attached as pages 1-6 are the minutes of that part of your January 4<sup>th</sup> meeting, when you discussed the topic of building height. Attached as pages 7-10 is the ordinance Mr. Burnett has prepared.

ACTION REQUESTED

It's that you have Mr. Burnett explain the ordinance. You can then discuss whether its language meets your intent, or whether changes need to be made to it. We suggest that the ordinance then be forwarded to the land planning consultant, so that the ordinance can be a part of the consultant's overall review of the Comprehensive Plan and the Land Development Regulations.

We did forward the ordinance to the Florida Department of Environmental Protection for review, but as of the date of this memo haven't received a reply.

**ON A RELATED MATTER:** The Building Official has provided a memo (page 11) that concerns the City's ISO (Insurance Service Organization) flood insurance rating. The lower the rating, the lower will be the flood insurance premiums for the City's property owners. The City's current ISO rating is an 8. Mr. Larson lists three actions the City could take to lower the rating. One is raising the finished floor elevation from 10 to 11 feet. This elevation would raise the height limit by one foot.

You can discuss this memo at your February 1<sup>st</sup> meeting, or ask that it be put on the agenda for your March 1<sup>st</sup> meeting.

MINUTES OF CITY COMMISSION MEETING, JANUARY 4, 2016

XI. OLD BUSINESS

2. Determination of Beginning Point for Measuring Building Height: Continuation of Discussion

Mayor O'Brien introduced Item 2 and asked for a report from City Manager Royle.

City Manager Royle advised that this was a continuation from the December meeting. He explained that Building Official Larson prepared a memo which advised the Commission of his suggestions.

Mayor O'Brien explained that the two items the Commission wants to review was filling lots and where to start to measure the 35 feet from. He commented that at the last meeting Building Official Larson advised that a resident could fill one foot to the crown of the road.

Building Official Larson advised that was correct for some lots; however it would depend on the surrounding neighbors how much fill could be used.

Mayor O'Brien asked Building Official Larson about his memo regarding not filling more than three feet above the adjacent lots.

Building Official Larson stated that someone suggested that that was how the County does it, but he said the Commission could have a separate ordinance between 16<sup>th</sup> Street and F Street to regulate like the County; however, other properties such as Sea Colony, Anastasia Dunes and Island Hammock cannot have a set fill requirement due to the dunes in the area.

Mayor O'Brien asked Building Official Larson what his recommendation was for where the height measurement should begin.

Building Official Larson explained that he was in contact with the International Organization of Standards (ISO) Evaluator who advised him that in order to get the ISO rating to seven, the City would have to have an ordinance that states the City would start it's measurement from the base flood elevation.

Commissioner England asked whether the policy for the City should be measured from the established grade or from the finished habitable floor. She advised that the minutes from the workshop showed a recommendation from Mike Stauffer to use the established grade. She remarked that if the City uses the finished habitable floor space, the City would not be controlling the height. She suggested to use the established grade and to define established grade as established by the Public Works and Building Departments as the minimum grade that would allow the City to control the height.

Commissioner Snodgrass asked what the difference was between the minimum established grade and the adjacent grade.

City Attorney Burnett advised that established grade was very similar to adjacent grade. He advised that measuring from the established grade and adjacent grade also eliminates the issue of allowing the 35 feet above the minimum requirement that FEMA sets.

Commissioner Snodgrass asked what the negative side would be if the Commission took this approach.

City Attorney Burnett advised it would depend on how the Commission defines established adjacent grade. He remarked that the Commission wouldn't want to have someone re-establish the grade at a higher level.

Commissioner Snodgrass asked how it could be controlled or limited.

City Attorney Burnett advised that in the previous package the Commission received, he had drafted language on how to limit or control the adjacent grade.

Commissioner Snodgrass asked Building Official Larson and Public Works Director Howell if this approach was adopted, what would be the negatives.

Building Official Larson advised that the Commission would have to have two ordinances, one for 15<sup>th</sup> Street to F Street and the other for the rest of the City. He explained that every lot was different and it needed to be determined lot by lot.

Commissioner England remarked that if we used Mr. Stauffer's recommendation to use established grade, then the minimum grade required by St. Augustine Beach's Land Use Regulations and the Building Codes would give the Building Official and the Public Works Director the flexibility to establish a minimum grade that would be necessary for each lot individually and to allow certain amount of fill and drainage.

Building Official Larson advised the Commission when they receive the email from City Manager Royle regarding the ISO evaluation to contact him on the rating. He advised that he has been trying to receive a better rating in order to decrease the flood insurance premium and suggested the Commission use the base flood elevation.

Commissioner Snodgrass asked what the implications would be if the Commission decides on the base flood elevation.

Vice Mayor George advised that in order for the Building Department to comply with the ISO standards as Commissioner England has suggested is to establish the minimum establish grade on a case by case basis.

Building Official Larson advised that he would know more about the ISO rating after his discussion with the ISO Evaluator tomorrow.

Commissioner England explained that a property could be in a certain flood plain but could receive a map amendment which would bring them out of a flood zone. She advised that FEMA regulations could change all the time.

Commissioner Samuels advised if the City is going to regulate fill, then it could impact the property owners to not be able to raise their house out of a flood zone which could lead into personal property rights. She advised that an ordinance should be drafted to use adjacent grade, measure from established grade, and limit the

property owner to have no more than three feet from the adjacent home for floor elevation.

Commissioner Snodgrass advised he would still like to know the implications of that language in the ordinance. He requested staff to think it through and give them time to think of the scenarios that might happen with this language.

Mayor O'Brien opened the Public Comment section. The following addressed the Commission:

Tom Reynolds, 880 A1A Beach Blvd, advised that he was amazed. He commented that the questions being asked are late in the process. He remarked that the two cities quoted by the Commission were incorporated after the City of St. Augustine Beach. He commented that Building Official Larson's degree was in teaching and wondered why the City Attorney was asking him questions.

Craig Thomson, 6 D Street, commented that the Commission has been discussing the height issue for five months and he could appreciate where the community is in the process. He clarified his remarks that state and federal laws regarding habitable space do not dictate building height for the community. He advised that Embassy Suites received a gift of 9 ½ feet but his concern was to not set a precedent. He suggested going back to grade and not allowing any other buildings to be measured at 18.5 feet.

Commissioner England advised Mr. Thomson that she was corrected at the last meeting. She explained that the fill was brought into the front of Embassy Suites in order to comply with the Americans with Disability Act requirements and the height was determined from the finished grade.

Building Official Larson advised that the fill was brought into the front, along the perimeter and the rear of the property.

Mr. Thomson advised that he was an architect and did know the ADA regulations; however elevators could be used which the building has instead of the ramp which is at a 1 in10 slope and going up nine feet would make it a 90 foot ramp. He commented that it could be argued that any building could go up in order to be ADA compliant, which should not affect the height from grade.

Ed Slavin, P.O. 3084, agreed with Mr. Thompson. He requested not to hire another attorney who works with developers. He advised that the Commission has an opportunity to hire an independent attorney. He remarked that the problem with Embassy Suites was that money talked and bad decisions were made. He advised that no one from the Department of Environmental Protection (DEP) or Federal Emergency Management Agency (FEMA) was at the workshop. He commented that the residents voted for 35 foot height which means 35 foot, not higher. He suggested to get advice not only from the new City Attorney but also law professors. He advised that the Commission needs to invite actual people who work for DEP and FEMA. He

suggested to have Embassy Suites sell their property for air rights and rebuild the pier like Orange County, California has. He remarked if anyone knows of any corruption to report it to the FBI Corruption Taskforce in Daytona Beach.

Dr. Pat Gill, 218 B Street, remarked that she was happy to hear that the Commission would not start the measurement at the first floor because the property owners could build an 18 foot garage and then their first floor. She suggested to go back to what was suggested and to measure where the City and County measures. She advised that she was looking forward to seeing at the workshop the Occupational Safety and Health Administration (OSHA), DEP and other state professionals, who were not at the workshop. She remarked that she was disappointed to see only agency representatives instead of state officials. She suggested official state representatives should come to workshops in the future and not representatives working for developers. She advised that the residents didn't say you can have 35 feet after the measurements were decided. She advised that the Commission should say no to any more rooms to Embassy Suites. She commented that the City has been badly influenced by the approval of Embassy Suites. She advised that the residents voted for 35 feet and the staff did not follow the will of the people.

Mayor O'Brien closed the Public Comment section and asked the Commission for further discussion.

Commissioner Snodgrass asked if there were any other resources that the Commission should consult with, such as state officials, experts, etc.

Commissioner Samuels advised that if the Commission asked for state officials, they would give the same information who the representatives gave at the last workshop. She advised that the people that came to the workshop were not developers. She remarked that the representatives were experts in their fields.

Commissioner Snodgrass agreed with Commissioner Samuels, but remarked that if there was any other resources to look at that he would like to do so before the Commission moves forward.

Mayor O'Brien asked whether City Attorney Burnett had enough information to draft an ordinance to bring back to the Commission.

City Attorney Burnett advised yes.

Vice Mayor George advised it is dangerous to generalize and classify all the representatives that came to the four hour workshop. She advised that she would be happy to speak to some law professors regarding this issue. She commented that City Manager Royle has flushed out a lot of good contacts that the Commission has been pulling from to get through the process.

Mayor O'Brien advised that when the drafted ordinance comes back to the Commission at the February City Commission meeting, Building Official Larson will have more information from the ISO Evaluator, which will help in the process.

Mayor O'Brien advised moved on to Item 3.

**ORDINANCE NO. 16-\_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF ST. AUGUSTINE BEACH RELATING TO APPENDIX A, ARTICLE II OF THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF THE CITY OF ST. AUGUSTINE BEACH; AMENDING SECTION 2.00.00, DEFINITIONS AS USED IN THIS APPENDIX., OF THE LAND DEVELOPMENT REGULATIONS TO ADOPT DEFINITIONS OF ADJACENT GRADE, BUILDING HEIGHT, AND FINISHED FLOOR ELEVATION; AMENDING ARTICLE VI OF THE CODE OF THE CITY OF ST. AUGUSTINE BEACH, TO ADD SECTION 6.01.04, ADOPTING THE BUILDING HEIGHT LIMITATIONS APPROVED BY THE VOTERS WHICH AMENDED THE CITY CHARTER; ADDING SECTION 6.01.05, MEASUREMENT OF BUILDING HEIGHT AND PERMITS; AMENDING ORDINANCE NOS. 07-13, 08-09, 13-08, AND 13-14; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**BE IT ENACTED BY THE CITY COMMISSION OF THE CITY OF ST. AUGUSTINE BEACH, FLORIDA:**

**Section 1.** Section 2.00.00, Definitions as used in this Appendix, of the Land Development Regulations of the City be, and the same are hereby amended to revise the definition of Building Height and add definitions for Adjacent Grade and Finished Floor Elevation to read as follow:

**ARTICLE II. - DEFINITIONS**

**Sec. 2.00.00. - Definitions as used in this Appendix.**

Adjacent Grade – The elevation of the top of the finished ground surface next to the proposed walls or foundation of the structure, including, for example, the perimeter of a Building.

Building Height – The height of a building without regard to Finished Floor elevation.

Finished Floor Elevation – Finished floor elevation or finished floor grade shall be the height of the habitable living area and different than the measurement of Adjacent Grade.



**Section 2.** ARTICLE VI. - DEVELOPMENT DESIGN AND IMPROVEMENT STANDARDS be, and the same are hereby amended to add a new Section 6.01.04, Building Height Limitation, **to formally incorporate the City's Charter height limitations** into the City Code, and accordingly is amended to read as follow:

**Sec. 6.01.04. – Building Height Limitation.**

- A. Buildings and structures within the City of St. Augustine Beach, Florida, shall be limited to a maximum height of thirty-five (35) feet.
- B. The thirty-five (35) feet building height limitation shall not apply to architectural features or any roof structures for housing elevators, stairways, tanks, mechanical equipment, ventilating fans, solar energy collectors, or similar equipment, nor to church spires, steeples, belfries, cupolas, domes, monuments, water towers, skylights, flag poles, vents, or similar structures, which may be erected above the height limit, nor to fire or parapet walls, provided, however that such features and items shall not extend more than ten (10) feet above the structure.
- C. Items or structural elements proposed to exceed the City's height limitations due to requirements by other state laws or the Federal Telecommunications Act shall not be included in determining building height but shall require approval of the City Commission.
- D. If an existing building over thirty-five (35) feet is destroyed or substantially damaged by terrorist attack, accidental fire, or natural and disastrous force, such building may be built back up (reconstructed) but must be:
  - a. Within its pre-disaster footprint; and
  - b. Within the three-dimensional envelope of the area of the pre- disaster building; and
  - c. Up to its pre-disaster gross square footage; and
  - d. Up to the same number of dwelling units or commercial square footage( or combination thereof) and pre- disaster floor area ration, but elevated above the base flood elevations required by federal flood regulations, state regulations or City Code; and
  - e. Conforming in all other respects to City Code, the Florida Building Code, other federal and state regulations, and state coastal construction control lines in effect at the time the substantially damaged building is built back reconstructed).

**Section 3. ARTICLE VI. - DEVELOPMENT DESIGN AND IMPROVEMENT STANDARDS** be, and the same are hereby amended to add a new Section 6.01.05, Measurement of Building Height and Grade, to read as follow:

**Sec. 6.01.05. – Measurement of Building Height and Permits.**

- A. Height of a Building – Building height shall be measured as one (1) foot above:  
(1) the vertical distance from the Adjacent Grade surrounding the perimeter of the Building; or (2) the vertical distance from the crown of the road at the location of the structure, other than an elevated roadway, whichever is higher, to the highest point of the structure. The building height does not include basements, cellars or garages, including those portions of the structure that are below Adjacent Grade.
  
- B. Building Height of Other Structures/Signs – Height of other structures/signs shall be measured as: (1) the vertical distance from the upper surface of the nearest street curb; or (2) the vertical distance from the crown of the road at the location of the Structure/Sign, other than an elevated roadway, whichever is higher, to the highest point of the Structure/Sign, provided that the height of a Structure/Sign shall not exceed the maximum Height of a Building on the same site.
  
- C. Finished Floor Elevations and Lot Grading Plans.
  - a. Finished floor elevations shall be constructed at a minimum one (1) foot above the FEMA one hundred (100) year minimum elevations in any Special Flood Hazard Area.
  - b. In addition, on any sites developed as a Major Development, the minimum floor elevations shall be as specified in those plans and the maximum floor elevation shall not exceed six (6) inches more than specified.
  
- D. State and Federal Permits. Copies of applicable Permits, including Permit conditions, from all agencies having jurisdiction shall be provided to the City concerning Building Height. These Permits include, but are not limited to: work in or near Wetland areas, Stormwater Management Systems, Special Flood Hazard Areas, coastal Construction and Roadway Construction. The burden of obtaining these Permits, if required, will be the sole responsibility of the Applicant including any work to upgrade existing Public or Private Roadway and drainage facilities which will be impacted by the Project. Agencies that may have jurisdiction over the proposed work include, but are not limited to, the following:
  - a. St. Johns River Water Management District
  - b. Florida Department of Environmental Protection
  - c. Florida Department of Transportation
  - d. United States Army Corps of Engineers
  - e. United States Environmental Protection Agency
  - f. Federal Emergency Management Agency

**Section 4. Other Code Sections Unchanged.** Any section or sections of the Code of the City of St. Augustine Beach not specifically modified herein shall survive in full force and effect and remain unchanged unless a conflict arises in which case this Ordinance shall control. In the event of a conflict between this Ordinance and an approved PUD, Major Development or final development plan, or existing construction plan approval, the prior approval shall control.

**Section 5. Severability.** If any phrase, clause, sentence, subsection, section, or provision of this Ordinance is held to be invalid, or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not be construed as to render invalid, or unconstitutional the remaining phrases, clauses, subsections, or provisions of this Ordinance.

**Section 6. Codification.** Other than Sections 1, 2 and 3 hereof, this Ordinance shall not be codified, but a copy of this Ordinance shall be maintained in the offices of the City Manager.

**Section 7.** This ordinance shall take effect ten days following passage.

**PASSED** by the City Commission of the City of St. Augustine Beach, Florida, upon Second Reading this \_\_\_\_ day of \_\_\_\_\_, 2015.

**CITY COMMISSION OF THE CITY OF  
ST. AUGUSTINE BEACH**

**ATTEST:** \_\_\_\_\_  
City Manager

By: \_\_\_\_\_  
Mayor Rich O'Brien

First reading: \_\_\_\_\_  
Second reading: \_\_\_\_\_

Memorandum

TO: Mr. Max Royle, City Manager  
FROM: Gary Larson, Building Official  
DATE: January 26, 2015  
RE: ISO Rating for Resident Flood Insurance Costs

Our current ISO rating that affects flood Insurance Cost is an eight (8). This rating has been maintained since 2000. For the past years, it was the best rating the City could obtain. I recently spoke to the ISO Investigator that reviews our flood program for any possible means to lower it to a seven (7). Considerations for the Commission to review and advise are:

1. Raising the finished floor elevation to 11 feet. We are currently at 10'. Two foot of freeboard will provide additional points. The negative will be a height addition of one foot .
2. Rezone the property we have at the Maratea site and Hammock Dunes on the West side of the Boulevard to open space. The Ordinance if considered would require verbiage that no structure can ever be place within this area. The legality is the property is currently parks and recreation. If the Commission considers this an asset to the residents, I can question this farther regarding re-zoning text. I would also try to add the property at Sea Colony as part of additional open space. The sum acreage exceeds what ISO requires.
3. Another means for the City to receive points is my taking the test to become a Certified Floodplain Manager. I have done this position for past years, did not want to spend funding when we were in the lean years to attend the conference for additional training and the test.. My budget now allows for it.

Following your review of this memo, please provide direction as to whether we place this first before P & Z or allow the Commission to advise.