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Informational Meeting  
Cherry Grove Dredging Project  
Saturday October 17, 2009  
City Hall

Mayor Hatley welcomed those in attendance. She stated that the City has worked on this project since 2004. The City has been through lawsuits and has been battling for the dredging of the Cherry Grove Channels. She stated that this meeting today is to share the information that the City has received recently concerning the legality of the channel dredging. She stated that officials are here to talk about how the channels are to be dredged, what channels are going to be dredged, what permits that have been obtained and why other permits have not been obtained.

Mayor Hatley introduced Senator Dick Elliott. Senator Elliott stated that the channels are beyond the time for needing dredging. This project has been underway for many years and due to legal obstacles the project was put on hold. There are State dollars available and he feels that the Municipal Charters of South Carolina need to be changed to allow the City to be the lead agency in dredging these channels. He stated that they plan to introduce that legislation very shortly. As a businessman in Cherry Grove for a long time he understands what it means to have the channels in our city. It is a wonderful attraction for everyone. It stimulates the economy and it is something that we must get on with. He stated that he was pleased to see the enthusiasm to move forward with the project.

Mayor Hatley thanked Senator Elliott and Representative Edge for helping secure the funding for this project.

The Mayor introduced Mr. Wayne Beam who the city hired as consultant to help with the permitting process.

Mr. Beam stated that he began working on the project in 2004 along with Braxton Kyzer, who is an Engineer, to obtain two permits, one from South Carolina Department of Health and Environmental Control (DHEC) and the other from the US Army Corps of Engineers. He is pleased to say that they have received the State permit from DHEC. Unfortunately the permit allows only the channels shown on the map prepared by the GIS department. Another bathymetric survey is required. This will determine how much material will be removed from these channels when they are dredged. This was done five

years ago and must be updated for the Corps of Engineers. Mr. Kyzer has done this new survey. This was done based on how much DHEC is allowing us to dredge. DHEC has specified the some of the areas will not be allowed.

Mr. Kyzer stated that he has been working on this project since 1992. They have resurveyed the channel and found that the channels had filled in from 4 inches to 15 inches in the last five years. If nothing is done soon it will be too late. It is going to be an expensive project. Some channels are two miles from the disposal area. Some are 4.2 miles. It must be done by small dredge so it will take two or three boosters to pump the silt to the designated Tidewater Basin. This is a spoil basin owned by the County. It will probably take about seven months to do the entire project. This is about 120,000 cubic yards of material. The main channel and the minor channel will be dredged to 30 feet wide and 3 feet deep. The inner channels are 20 feet wide and 3 feet deep. This will be at low tide.

Mr. Tommy Fennell, Chief of the Regulatory office for the Corps of Engineers from Conway, where the permit will be processed stated that in 2004 when this project was started, the State permit and the Federal permit were normally processed as one application and both were issued at the same time. This is a unique situation due to the legal issues over property ownership. When the property issue came up the Corps decided that they could not issue a permit if the property ownership is in question. They withdrew until the city and the lawsuit could come to a decision. In the five years the City has secured a state permit and made it through that lawsuit. Due to the length of time from the original permit the corps is required to get new information. The good part is because the state permit has been issued, the Corps will not have to wait on this to be issued. As soon as they can render their decision they will be able to issue a permit to the City to dredge these designated channels if they find that there will be no significant degradation and follow all the rules and regulation of the Clean Water Act, Section 10 of the Rivers and Harbors Act. The only issue will still be the property ownership. If the ownership cannot be adjudicated the Corps will process the application up to the point of decision, but will not issue the final paperwork until the property ownership is clearly identified. They have looked at the process that was done in 2004 and are allowing some tests that were done then to be used. He stated that the property owners of the channels will be notified by mail of a public notice and a copy of the plans for the project. This also will have a link to a website where they can keep track of the progress. They will also be able to send any comments to the Corp of Engineers. Mr. Fennell stated that it was his goal to keep everyone informed.

A member of the audience asked Mr. Beam why the lake area at the end of Duffy Street is not included in the dredging. She feels that by not doing this it will fill back up the channels that are to be dredged.

Mr. Beam stated that they had applied to dredge the entire area but were denied certain areas by DHEC.

Another member of the audience asked what the standard was that DHEC used to eliminate some areas and how can that be changed.

Mr. Beam stated that Mr. Jimmy Chandler, the Environmental Attorney for a group called Environmental Law Project and visited every one of the channels. He took pictures of these channels and went back to DHEC and said they did not want the channels depicted on the map in red to be dredged. DHEC went along with this.

A member of the audience asked Mr. Beam what his professional opinion would be concerning the future of the channels that are not dredged.

Mr. Beam stated that the reason they gave why they did not want the certain channels dredged was due to the fact that there were oysters present and that there was **Spartina Alterniflora Marsh Grass**. The environmentalists have become so protective of this in some areas that you cannot get within 15 feet of the grass with a dredge. This means if you have a 30 foot wide canal, you are out of luck.

**A salt marsh is "born" by the arrival of a seed or the rafting of a plant of the cord grass *Spartina alterniflora*. The grass spreads asexually by means of a subterranean rhizome system. The grass becomes dense and forms a baffle, which encourages the deposition of fine particulate sediment, including organic matter (salt marsh peat). This, in effect, causes a rise of the sediment surface and makes the habitat more terrestrial. As this happens, other somewhat less salt-tolerant grasses are able to invade. Eventually, this series of invasions and takeovers leads to a vertical zonation of grasses and a spread of the entire marsh system.**

**SAS = *Spartina alterniflora* - short form**

The gentleman stated that he was on one of the channels that would not be dredged and wanted to know what the standards were for them being excluded and what could be done to fight for them to be included.

Mr. Beam stated that they could have appealed the decision to exclude these channels and still be fighting for the permit. He suggested that the City proceed to get the permit for what has been allowed and then go back and try to amend this permit at the appropriate time. Right now there needs to be something on the books and then they can work with everybody to see if they can get the rest of them done.

Another attendee asked if "Hog Inlet" was going to be included. Mr. Beam stated not at this time. From the technical aspect the inlet would have to be stabilized somehow with jetties and this would be another cost that is not part of this project. The inlet moves around quite a bit.

Mayor Hatley stated that she along with everyone involved did not understand why one channel could be dredged and another could not, but to move this project along to get this much done they have to go with what DHEC has allowed. What the City will turn around

and do is to request a second permit for the channels that have been excluded. One thing that has been learned is that if the Environmental Coalition cannot stop a project they always get something. Obviously the areas shown to not be dredged are the “something” that they got. The City needs to move forward to get the first permit. The City will continue to work to get all the channels dredged.

One homeowner asked if by waiving the rights to dredge these channels now it will affect the future of another request.

Mr. Chris Noury, City Attorney, stated the City is not waiving its rights regarding appealing the issue or applying for another permit for the areas denied. They can apply for a separate permit for that area. If they attempt to amend the permit that they do have it will open the door to people that are already opposed to this project to appeal the original permit.

This man stated that they are going to be assessed like everyone else but they are like interior lots.

Mr. Noury stated that the areas indicated in red (those not to be dredged) will not be assessed at this point. If they are ever included in the dredging area they will be assessed.

Another homeowner stated that previously they had been told that the existing docks would be removed and they would be issued a standard type of floating dock. Is this still the case? It appears that they will come down these channels 20 feet and leave these existing docks. Is this accurate?

Mr. Noury stated that this was accurate. The project does not anticipate interfering with any existing structures being the docks and the sea walls.

The question was asked of Dr. Beam if a subsequent request will be filed to dredge the main channel. He feels that this would be necessary to maintain the area.

Dr. Beam stated that this would be left up to the City. The Council would have to decide if they want to expand the project or have a new project to do this. This would have the potential of jetties on Hog Inlet and would be extensive.

The City Attorney summarized the legal issues since 2004 that have been encountered by the City concerning the dredging. He stated that the City applied for a permit in 2004 from DHEC to dredge, However Gloria Perrone and the estate of Joel Perrone filed an appeal with the Administrative Law Firm regarding that permit and the issuance of that permit by DHEC.

In 2005 that same group also filed a lawsuit against the City alleging that the City had trespassed upon ,caused a nuisance, and condemn the areas that they claim to own, being the finger channels. The appeal of the permit and that lawsuit was held in abeyance because of a separate lawsuit regarding the deed that had been conveyed from C.D.

Nixon to Gloria and Joel Perrone. Wendell Skipper initiated that lawsuit and he was basically challenging the fact C.D. Nixon did not have the correct capacity to convey the deed to Gloria and Joel Perrone. That deed is significant because that is the deed that is the basis of the Perrone's claim to ownership of the finger channels.

In 2007 the court did set aside the deed from C.D. Nixon to the Perrones and the Perrones appealed that decision to the Court of Appeals. In January of 2009, the Court of Appeals upheld the decision of the trial court to set aside the deed from C.D. Nixon to the Perrones. Subsequently the lawsuit filed by the Perrones and the appeal of the DHEC permit was dismissed because they no longer had standing to contest the permit. DHEC then issued the permit to dredge the channels in June of 2009. That permit is going to be valid until 2014. The City must also apply for a permit with the Corps.

After this was done another group came into possession of the deed that was set aside in the Perrone case and that group is bringing a similar challenge to the City regarding inverse condemnation and trespass, basically the same claims that the Perrones had filed earlier.

On June 11, 2009, the City filed a declaratory judgment action to have the court declare that the State of South Carolina owns the lands to be improved. On June 16, 2009, East Cherry Grove Realty which is the entity that has the deed that was set aside by the court, filed for a declaratory judgment action asking that they be named the owners of the channels. The City has since that time, filed for a motion to expedite our declaratory judgment and to consolidate the claims that East Cherry Grove Realty has brought against the City. In the meantime while those two actions are pending the City will attempt to meet with the owners of East Cherry Grove Realty in an effort to resolve any of the property issues that remain unanswered. If the claims cannot be resolved then it may take about a year for the process to move through the court system. The city did file a motion to consolidate the motions into one and if that motion is granted then it will probably speed up the process by approximately six months from the day the motion is granted.

The City is required to resolve the property issues because the State Attorney General and the Corps of Engineers state that an assessment district cannot be established until the property issues are resolved. The City has also looked into the possibility of exercising the City's powers of eminent domain to resolve these issues. Unfortunately, that is not a viable option for the City to pursue. The City's position is that the State of South Carolina owns those lands and a local government cannot condemn lands owned by the state.

A resident of 59<sup>th</sup> Avenue asked Mr. Noury to identify the owners of East Cherry Grove Corporation.

Mr. Noury stated that he could not identify the owners of East Cherry Grove Corporation but they are represented by the firm of Gene Cannell. The City has filed for documents of discovery regarding their claims of ownership to this area because all of the City's

research indicates that the State of South Carolina owns these areas and East Cherry Grove Realty issued a Quit Claim Deed in 1996.

The resident then asked if in fact the State of South Carolina owns these channels, why the help of the Attorney General has not been enlisted. The Attorney General has been involved in three lawsuits over this Cherry Grove Marsh over the last 50 years.

Mr. Noury stated that the Attorney Generals office has been named in the action suit.

The resident asked if they are actively participating.

Mr. Noury stated that they would be required to do so.

The gentleman then stated that he would encourage Senator Dick Elliott to contact the Attorney General on behalf of the citizens of Cherry Grove.

John Smithson, City Manager and Randy Wright, Finance Director discussed the establishment of an assessment district to do the project.

Mr. Smithson stated that the estimate for the cost of the project would be \$3,250,000 or \$3,500,00 with additional \$700,000 as a cushion for the project. This is roughly \$4,200,000 total.

The City has in a separate reserve fund \$1,000,000 which Representative Tracy Edge delivered to the City last year which was set aside for the dredging project. In addition to that the City is attempting to receive other funds through the Federal Government, also any additional State funds that can be obtained.

The basis for the property assessment at this time is based on these figures. The assessment will only be on those properties that are affected by the project. Those areas that are not to be dredged at this time will not be part of this assessment district. The area of the general canal will also be removed from the assessment. The estimated number of property owners to be affected is 600. The amount will be between \$4,500.00 to \$5,400.00 per property at this time. That is not a final number because the City will have to go back and look at the actual front foot assessment for the property involved. This will necessitate a change in the Legislature to allow the City to establish an assessment district.

Someone asked if this would be a one time assessment.

Mr. Smithson stated that they have talked about a ten year bond and the assessment would be collected over the ten year period on a consistent basis.

Someone asked Mr. Smithson what other sources of revenue the city looked at.

Mr. Smithson stated that the City working with a group in Washington, D.C. to try to find some additional funding that can be used to help defray the cost of this project. The City has been actively seeking those funds and will pursue any other grants that may come through the stimulus program. The \$1,000,000 contribution from the State of South Carolina has been a big help in lowering the amount of the total project cost.

A citizen asked if the City has considered suing for the legal cost and the difference of the cost of dredging three years ago versus now.

Mr. Noury stated that this is a possibility and it would be looked into.

A lifetime resident stated that he feels that to prevent these channels from filling up again, the main channel must be dredged and jetties must be put at "Hog Inlet".

A resident of 57<sup>th</sup> Avenue asked who paid tax on the channels.

Mr. Noury stated that there are no tax map numbers assigned to the channels, so it is the City's position that the State owns the Channels.

A resident of 56<sup>th</sup> Avenue stated that he felt that the Attorney General should make it clear that the State owns this property and give clear title to it. He asked if the City would appeal to the Attorney to rectify the situation.

Mr. Noury stated that the Attorney General's office has been named in the lawsuit and have been asked specifically about the Attorney General's involvement in the case. In the prior decision made about the claims, the Attorney General did take the position that the State owns those lands. The Attorney General's Office is part of the lawsuit but it is going to take the action of the Court to declare who the owner is. The State of South Carolina is asserting that they own the lands but a court has to declare who the actual owners are. The State of South Carolina cannot do that by itself.

A resident of 60<sup>th</sup> Avenue thanked the City for taking the time to share this information. He asked if there is any indication of when a second permit will be requested for the areas that are not included in this project. Is there anything that the homeowners in the areas that are not included can do? Who could bring some pressure to DHEC to allow this?

Dr. Beam stated that he felt it would be helpful to those who are in the excluded areas to meet with the representatives of DHEC. He stated that he would work with Mr. Smithson to set up this meeting.

A resident asked Mr. Noury about his deed that states that his property extends in the canal 25 feet. Is this deed still good?

Mr. Noury stated that the deed was valid.

This same gentleman asked for the estimate of what the water will be at low tide.

Dr. Beam stated that if the project is constructed as designed there will be 3 feet of water at low tide.

Mr. Noury stated that he wanted to assure the people that are in the areas that are not a part of this project that the City will act as soon as possible for a permit for these areas.

One resident asked Mr. Noury if the City had given notice to East Cherry Grove Realty that if this suit fails that they would be taxed on this property.

Mr. Noury stated that they have not because they are taking the position that the State owns the property. There are tax map numbers for very narrow strips in the channels that are assigned to East Cherry Grove Realty. One of the strips that East Cherry Grove Realty owns is a very narrow strip about 10 feet wide. The City does not intend to dredge anywhere near that area. They have paid taxes on those small strips that they own.

One resident stated that he felt that every homeowner in Cherry Grove will benefit from this and should contribute.

Mr. Smithson replied that the City will continue to seek funds. The cost is based on the information at this time. The City will consider the ideas put forth.

Mayor Hatley stated that the City will do all it can to secure as much of the cost as it can.

A property owner from 62<sup>nd</sup> Avenue thanked the City for their efforts. The City has spent years trying to get this project to work. His concern is if the scope of this project is what the City wants to end up with. Years ago the plan was to dredge all the Channels, dredge out to the ocean and the possibility of jetties being put in place to maintain ocean access for many years into the future, and also replacing old seawalls and docks that are of higher quality. It seems that the project has receded to a smaller project. He wants to know if the City is looking far enough down the road to the future. He feels that all of Cherry Grove would benefit. He would like to see Ocean access and make Cherry Grove something that the City could be proud of.

Mayor Hatley agreed. If the City could do what Ocean Isle has done it would be wonderful but now the City is working with DHEC and the Corps of Engineers to get as much as possible done. The City has worked since 2004 to get this much. She agreed that it would be an advantage to make the Cherry Grove area a destination place.

Mr. Tommy Fennel reviewed the process that is before the City. The City of North Myrtle Beach will submit an application. The Corps will publish a Public Notice to all the property owners to be affected and all of the resource agencies involved. These agencies provide expert information concerning on endangered species, the impact on the environmental resources, the food web, the importance of the marsh to the food web, for the fish along the east coast and the fisheries. Everyone will be given 30 days to comment

to the Corps of Engineers. The information will then be combined with any concerns that the Corps has and be given back to the applicant. The applicant will have about 30 days to answer this letter. There are two types of review that the Corps does, an environmental assessment and an a environmental impact statement. Something the size of the project that some of you have suggested with dredging the channel and putting the jetties would require an impact study that costs millions of dollars and take several years. What the City is trying to do is what Holden Beach and others have done is to scope the project so that it can be afforded and it won't have an impact considered significant degradation by the Corps of Engineers. There are a lot of significant hurdles that have to be overcome.

Mr. Fennell stated that he would be the project manager on this project when it comes through. He stated that he would be happy to answer questions once the project comes through.

Prepared by: Merideth Smith, City Clerk