

Council (persons to address the Council); Council

2004-0427

PETITION TO ADDRESS THE COUNCIL

St. Charles Parish Council Chairman Today's Date: October 25, 2004

P. O. Box 302

Hahnville, LA 70057

(985) 783-5000

FAX TO 783-2067

9 PAGES TOTAL

Dear Chairman:

Please place my name to address the Council on:

DATE: Monday, November 1, 2004

SPECIFIC TOPIC: Unanswered Questions - The Council needs to take responsibility for answering these questions which the Council and the Administration owe to the public.

one subject only - The need for public disclosure of answers to questions

Parish Charter-

Article VII., Sec. I.)

ADDITIONAL DOCUMENTS INCLUDED - 7 PAGES

NAME: Victor L. Buccola

ADDRESS: 105 Burguieres Lane, Destrehan, La 70047 (District I, East Bank)

PHONE: 985-764-8411 Home 504-310-7728 Office

SIGNATURE: *Victor L. Buccola*

Dear Constituent:

Thank you for your active participation. Your views and comments will be considered by the Council in making our decisions. The Council has a considerable amount of business to conduct in a limited amount of time, therefore, please note the following items that are expected of you;

The Home Rule Charter provides for citizens to address the Council. It makes no provision for initiating debate, discussion, or question and answer sessions with Councilmembers or Administration Officials. Your right is also guaranteed to examine public documents as you prepare your presentation. Should you have any questions for Councilmembers and/or Department Heads as you prepare, please forward such inquiries to the Council Office to insure a timely response. Should you wish to speak to any Official or Department personally, a complete list of contact information will be furnished at your request.

Please be brief and limit your comments to the specific subject matter on which you have requested to

Questions for the St. Charles Parish Council and the Administration (to be answered jointly, but preferably separately so the thoughts, beliefs and answers of the separate branches of local government can be compared).

The St. Charles Parish Council routinely accepts and approves Acts of Dedication, and the Parish President routinely allows them to become law. Question: Once any Act of Dedication becomes law, is it mandatory for the proper public officials, e.g. code enforcement officials, to enforce all of the provisions contained within the Statement of Dedication (which is contained within an Act of Dedication)? If No, a detailed explanation is warranted and please cite specific state and/or local laws which allow for the selective, non-enforcement of code provisions which seemingly indicate that the enforcement of these code provisions is mandatory.

Question: Because any Act of Dedication is mandatory and includes a Statement of Dedication which is printed on every survey as is required by parish code, isn't it true that the enforcement of the Act of Dedication, including the provisions of the Statement of Dedication, are therefore ministerial duties? Yes or No.

Question: If the enforcement of all provisions and stipulations found in the Act of Dedication are ministerial duties, then enforcement is mandatory unless the Council votes to waive the requirements and/or to do otherwise. True or False? If False, please elaborate why.

Ministerial duties are required by law. Question: Are there any penalties (civil or criminal) or other consequences for parish officials not enforcing ministerial duties? If Yes, please elaborate. If no, there should be.

Our Parish Attorney has gone on record (4/21/03) to state the Act of Dedication is mandatory because it is required in our Code, however its enforcement is left to the discretion of the Administration and/or the public officials responsible for protecting and enforcing the provisions which are designed to protect the general welfare, safety and well being of all parish citizens. Question: Is it the intent (belief) of the Council (please poll each Councilperson for his/her response) that the enforcement of any Act of Dedication is mandatory (ministerial) or discretionary?

Question: If enforcement of any of the mandatory provisions required in an Act of Dedication are discretionary, please explain what part of local code or State law authorizes the Administration to designate any Act of Dedication as a discretionary duty? Please explain why and cite legal authority why their enforcement is left up to the discretion of any public official other than the St. Charles Parish Council.

Note: state and local law allows the use of discretion, but within guidelines and specific limits of authority granted by the governing authority. Question: What are the specific limits of any discretionary power which any code enforcement official, or the Administration may wield when faced with the decision to enforce, or not enforce, any provision of an Act of Dedication?

Comment: If the act of enforcement of any part of the Act of Dedication is subject to the discretion of those responsible for enforcing the code, then the Act of Dedication, which includes the Statement of Dedication is a big joke and all the people of St. Charles Parish are the big losers. Question: True or False? If False, a detailed explanation is warranted.

An ACT OF DEDICATION is a living, legal document which is required by and made to St. Charles Parish. Question: Who is St. Charles Parish? Answer: St. Charles Parish is every legal citizen and/or resident within this parish. True or False? If False, then please clearly explain, who is St. Charles Parish?

An Act of Dedication is a mandatory, legal document which developers are required to prepare and submit to the people of St. Charles Parish wherein the developer declares that his dedications and grants shall be used for the benefit of St. Charles Parish or any successor government body of St. Charles Parish, which shall be bound by all the terms and conditions contained within the Act of Dedication. Question: Isn't this provision of the agreement a mandatory obligation, and

therefore a ministerial duty of all parish employees to enforce?

Question: Can the Council or the Administration cite any example in the history of St. Charles Parish when a legal public servitude has been abandoned without Council approval? If Yes, please cite a recent example. If No, please cite any example in the history of St. Charles Parish when a legal public servitude has been abandoned with Council approval.

* Question: Can the St. Charles Parish Administration, by omission or commission, convey property rights (assigned to the general public) without an ordinance by the council? If Yes, please provide specific legal authority of state and /or local law which authorizes the exercise of such power by anyone other than the governing authority. If No, is the mere conveyance (to an individual property owner) of property rights dedicated by ordinance to the public use (e.g., a drainage servitude) a legal option or a use of unauthorized power, or an abuse of authorized power? Please explain in detail.

* Question: Is a legal public servitude for drainage subject to prescriptive use? If yes, please cite legal authority and provide an example of any such situation in St. Charles Parish. If No, is the Parish Administration required to ensure (maintain and police) that the legal public servitude for drainage is not used in any manner by any person or persons which is inconsistent with the purpose for which the servitude was initially dedicated to the general public?

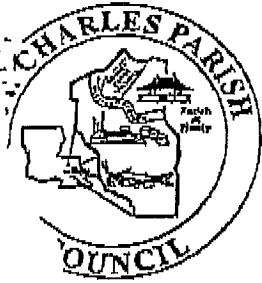
Please cite references to all provisions in local code and state law which apply specifically to situations which allow the Administration to use any measure of discretion when determining when to enforce, or not enforce, any and all provisions of an Act of Dedication.

NOTE: The decision of the Council and the Administration to provide answers to some or all of these questions is not mandatory, i.e. it is not a ministerial duty. If any of the submitted questions can not, or will not, be satisfactorily answered for whatever reasons, please explain those reasons thoroughly and indicate at which time and date the questions will be answered for the benefit of the citizens of St. Charles Parish.

These questions were handed to the Council and the Administration during the Persons to Address the Council session on Monday, May 3, 2003.

* THESE ARE NOT HYPOTHETICAL
QUESTIONS. ANSWER THEM, PLEASE!

FILE



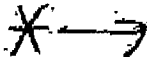
PARISH OF ST. CHARLES

LANCE MARINO

COUNCILMAN, DISTRICT VI

MEMORANDUM

DATE: FEBRUARY 14, 2003
TO: MR. BOBBY RAYMOND
LEGAL SERVICES DIRECTOR
FROM: LANCE MARINO, CHAIRMAN
(COUNCILMAN, DISTRICT VI)



Please address the questions on the attached sheet before the Monday, February 17, 2003, Council Meeting.

Please send response to Ms. Barbara Jacob so she can supply copies for all Council Members.

Mr. Victor Buccola will address the Parish Council on February 17, 2003, requesting answers:

LM/BJJ:ag

attachment

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1/21/03 Parish Council Meeting

**Transcript of Questions made during
Council Address by Victor Buccola**

Mr. Victor Buccola: Comments regarding statements and comments made during public hearing on summary number 2002-0529 on 1/6/03

RE: Public Hearing two weeks ago about drainage servitudes, discussion between Councilman Ramchandran and Legal Services Director Bobby Raymond

Mr. Buccola suggested that someone should ask the following questions:

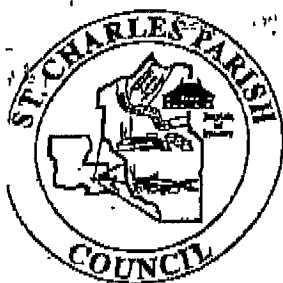
* → Q- Ask Mr. Raymond about the Parish allowing property owners to install fences or any type construction in an open swale ditch or ask about Parish allowing property owners to pave driveways or parking lots over drainage servitudes without first having installed culverts or catch basins every 40 feet and in such a manner to allow all surrounding property owners to benefit from the intended dedicated use of that drainage servitude.

* → Q- Why does this administration allow some property owners whose land is legally set aside for drainage purposes to use their drainage servitude as their personal back yard dump for tree limbs and other debris

Referring to LA Revised Statutes (State Law on exercising police power) 33.4:773.A Scope of Building Codes - there was conflict of what State Law allows

Q- Someone should ask Mr. Raymond to offer additional advice – It is incumbent upon this Council to insist on higher standards from these so-called professionals, whether it be engineers or architects, whatever the case may be, by strengthening or increasing the minimum requirements or standards expected from any of them who want to do or now do business with the Parish or in the Parish.

Q- Ask Legal Services Dept. – if this section of State Law applies, and if he finds it does not apply, then please ask him why it does not apply to St. Charles Parish.



PARISH OF ST. CHARLES
CLAYTON "SNOOKIE" FAUCHEUX
COUNCILMAN AT LARGE, DIVISION B

MEMORANDUM

DATE: NOVEMBER 7, 2002
TO: PARISH COUNCIL MEMBERS
FROM: CLAYTON "SNOOKIE" FAUCHEUX
CHAIRMAN
(AT LARGE, DIVISION B)

At the July 22, 2002, Council Meeting, Mr. Victor Buccola directed
several questions to the Council. Attached are the answers to these
questions from Mr. Bush.

Please contact me if you feel additional information is needed.

SF/BBJ:ppd

attachment

INCOMPLETE & EVASIVE ANSWERS

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ALBERT D. LAQUE
Parish President

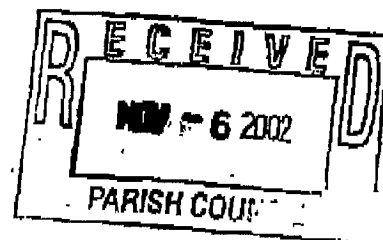
ST. CHARLES PARISH

DEPARTMENT OF PUBLIC WORKS

P.O. BOX 705 • LULING, LOUISIANA 70070
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GREGORY E. BUSH, LTC, USA, Retired
Director

November 4, 2002



TO: Mr. Clayton "Snookie" Faucheux
Councilman-at-Large, Division B

FROM: Gregory E. Bush, LTC, USA, Retired
Director of Public Works/Wastewater

SUBJECT: Ormond Center Canal - Drainage - Victor Buccola

Reference the eleven questions from the July 22, 2002 Council Meeting. Mr. Buccola has an outstanding lawsuit against the Parish; therefore, some of the questions ~~could~~ be answered because of this pending litigation. The questions that can be answered are:

* LITIGATION
IS NO LONGER
PENDING -
ANSWERS
PLEASE

1. Who will be responsible for and pay for excavation of this property, including the utilities (gas, electric and infrastructure therein) when the 5' culvert proves to be inadequate?

Answer: The developer incurs all costs until final dedication to the Parish.

- * 2. If this major drainage canal was not public ownership, why did the developer first ask to install 2-60' culverts then inexplicitly ask to install 1-60' culvert?

Answer: The first part of this question cannot be answered due to pending litigation. The second part of this question should be directed to the developer.

3. Why was he given permission by Public Works on exactly the same date to do both?

Answer: The previous Director would have to answer this question.

4. Who is responsible for preparing the 2 drainage studies that first required 2 culverts than only one 60' culvert?

Answer: J. Michael Dixon was the engineer for the developer.

5. Where are the copies of the drainage studies for this area?

Answer: The Department of Public Works.

6. Does the Parish have another related drainage study -- one which recommends 2-70" culverts upstream from the area we are discussing?

Answer: No.

7. If these conflicting drainage studies do exist the drainage that has been recommended and partially installed is equivalent to putting a hose nozzle on a funnel.

Answer: This question is not applicable.

- * 8. Why does the Parish need servitude to maintain a drainage servitude it already owns?

→ Answer: This question cannot be answered due to pending litigation.

- * 9. Why does the section of state law which pertains to expropriation of land or improvements for drainage canals or drainage projects not apply to St. Charles Parish or to the canal that is the subject of this moratorium?

→ Answer: This question cannot be answered due to pending litigation.

- * 10. Why do the various sections of state law, which prohibits the interference, and obstruction of drainage channels not apply to St. Charles Parish and the canal, which is the subject of this moratorium?

→ Answer: This question cannot be answered due to pending litigation.

- * 11. Why is the major drainage canal that was recently covered over ^{not} subject to prescriptive use by the Parish?

→ Answer: This question cannot be answered due to pending litigation.

GEB:red

* WHY WON'T THE ADMINISTRATION & THE COUNCIL ANSWER THESE QUESTIONS? ARE THEY HIDING THE TRUTH?

VJB 10/22/04