

CITY OF ST. AUGUSTINE

Regular City Commission Meeting
December 9, 2002

The City Commission met in a formal session Monday, December 9, 2002, at 7:30 p.m. in The Alcazar Room at City Hall. The meeting was called to order by Mayor George Gardner, and the following were present:

1. Roll Call:

George Gardner, Mayor/City Commissioner
Susan Burk, City Commissioner/Vice Mayor
William Lennon, City Commissioner
Errol D. Jones, City Commissioner
Donald A. Crichlow, City Commissioner

William B. Harriss, City Manager
Jack E. Cubbedge, Assistant City Manager
James P. Wilson, City Attorney
Martha V. (Nell) Porter, City Clerk
Timothy A. Burchfield, Director, General Services
Mark Knight, Director, Planning and Building Department
Mark Litzinger, Director, Financial Services
Paul Williamson, Director, Public Affairs
Dr. William Adams, Director, Heritage Tourism
William H. Harding, Director, Public Works
John Regan, Director, Utilities
Loran Leuders, Assistant Chief of Police
James Owens, Fire Chief
Orfeo Paolini, Sound Technician
Karen Rogers, Recording Secretary

2. INVOCATION AND PLEDGE OF ALLEGIANCE

Mr. Lorenzo Laws presented the invocation, and Commissioner Lennon led the Pledge of Allegiance.

3. ADMINISTRATIVE ITEMS

3.A/ Modification of Agenda

Mayor Gardner informed the public that Item 10.C.1.a., a petition to vacate a portion of Ponce de Leon Avenue, had been withdrawn.

3.B/ Approval of minutes

The minutes of the Regular City Commission meeting of October 28, 2002 and Special City Commission meetings of November 6th and December 2nd, 2002 were approved as presented.

4. PRESENTATIONS AND STAFF REPORTS.

4.A/ Presentation by staff – status of the Lightner Parking Facility.

Mr. Cubbedge stated that the City had solicited bids for the proposed parking facility and received bids on November 3, 2002. He said the low bidder was Elkins

Constructors, Inc., of Jacksonville with a 90-day hold, therefore the City could exercise options. He said the City was also waiting for a decision from the Circuit Court on a previously filed challenge of HARB's approval. He said that they should be informed shortly of the Division of Historic Resources findings on the submittal for the parking garage. He requested directions from the Commission on how to proceed.

Mayor Gardner questioned the amount of the low bid.

Mr. Cubbedge replied that the amount was \$4,426,000 and the second place bid had been \$4,497,000.

Mayor Gardner questioned whether those amounts represented the total bid.

Mr. Cubbedge responded that the amount was for the parking facility not including the flex space, landscaping, fountain, and treatment of the greenery between the existing building and the northern edge of the parking facility.

Mayor Gardner said that it was his understanding that the bond intended to fund the project could be used for any project they chose.

Mr. Harriss replied that they had allowed as much flexibility as they could, therefore the bond could be applied to any lawful capital project within the City's purview.

Commissioner Lennon suggested that the Commission withhold any presentation until the state responded to the City's submittal, as there were many people waiting for the report.

Mr. Cubbedge said that was possible, as they had 90-days.

Mr. Crichlow clarified that the bond money could be used for any valid

project, but the debt on the bond could not be paid by the CRA unless the funds were used in connection with the parking blight.

Commissioner Burk stated that she had supported the garage when it was intended for a particular purpose and size to cost justify itself, but she could not support downsizing the structure. She said that she did not believe the Commission would vote to build the garage as designed and funded, therefore she suggested they abandon the project and look for another location to build a parking facility and use the funds within the CRA. She noted that no matter where they built a garage they would receive opposition. She suggested that it was time for healing and working together to run the City as well as it had been run in the past.

MOTION

Commissioner Burk MOVED to abandon the Lightner Museum site for a parking garage and look for an alternative site for a garage. Commissioner Jones SECONDED the motion.

Commissioner Crichlow stated that he would like to schedule a workshop in January to address the parking problems.

Commissioner Lennon exclaimed that the idea of abandoning the project was disastrous. He stated that the City had spent over 500,000 taxpayer dollars, met the public's criteria on the project, submitted documentation to Tallahassee for approval and there was still a court hearing in progress, therefore the motion was disastrous. He pointed out that a motion was being entertained without a resolution for the parking problem.

Commissioner Burk agreed that it would be good to have that information, but if

they had the information she would still make the motion to abandon the project. Commissioner Lennon exclaimed that he was shocked.

VOTE ON MOTION

AYES: Burk, Jones, Crichlow, Gardner

NAYES: Lennon

MOTION CARRIED 4/1

MOTION

Commissioner Crichlow MOVED to set a time for a workshop in January to address plans for the Lightner parking lot, the abandoned fire station, the Flagler College student parking situation, a decal system, and satellite parking. Commissioner Jones SECONDED the motion. (No formal vote was taken.)

Mr. Harriss said that he would have his administrative assistant coordinate the day and time for the workshop.

Mr. Gardner stated that it would be a public workshop. He continued that the City's Parking Committee had requested guidance regarding their role. He added that the committee had recommended the parking garage project that the Commission had just abandoned.

Commissioner Burk suggested including the committee in the workshop.

Mr. Gardner questioned the conditions that created the Parking Committee.

Mr. Harriss explained that former Mayor Len Weeks had recommended the current parking committee to address the parking situation downtown, and he had suggested that each Commissioner select two members with as much diversification as possible. He added that disbandment was at the discretion of the Commission.

Mayor Gardner noted that there were many outstanding citizens on the committee; however, it was overloaded on the business side.

MOTION

Mayor Garner MOVED to disband the Parking Committee, without prejudice to the membership, and reorganize with a balanced committee as the current Commission saw it. Commissioner Crichlow SECONDED the motion.

Commissioner Burk pointed out that the current committee members had an abundance of valuable information and she would like to meet with the members before making such a decision. She suggested that the committee's expertise could help the Commission discover an alternate solution.

Mayor Gardner reiterated that his motion was without prejudice, but it was not like the committee had been hired from New York, therefore they would still be around and could be part of studying the parking and transit situation.

Commissioner Burk suggested that the Mayor talk with the committee during their meeting on the 12th and see what they would like to do. She recommended giving the members the option of serving, and if all the members did not want to serve, the current Commissioners would have the option of selecting two members. She emphasized that disbandment was an insult to a committee that had worked hard.

Commissioner Jones agreed with Commissioner Burk and suggested that they investigate the desires of the committee, after which the Commission could make a decision whether to appoint alternative members.

VOTE ON MOTION

AYES: Gardner, Crichlow
NAYES: Burk, Jones, Lennon
MOTION FAILED 3/2

5. ITEMS BY CITY ATTORNEY

(None Scheduled)

6. BY CITY CLERK

6.A/ Consideration of three appointments to the Code Enforcement Board of Adjustments and Appeals.

Mayor Gardner reported that two appointments were due to expire on December 27, 2002 and Mr. Solana had resigned from the board. He said that Mr. Chase and Mr. McMahon were eligible for reappointment and applications had been received from the following residents of the City:

1. Robert H. Burrell, 27 Seminole Drive
2. Robert W. Chase, 189 Inlet Drive
3. James (Jim) Eubank, III, 15 Pine Street
4. Douglas A. Ferrell, 311 Ribault Street
5. Jackie Leslie, 39 Water Street
6. Gary G. McMahon, 25 Vedder Street
7. John Valdes, 226 Rainey Avenue

Commissioner Crichlow pointed out the criteria for members of the board, noting that currently there were four business representatives, one contractor, and one in government. He suggested that the Commission vote for a diversified board.

Mayor Gardner reported that there had been audio difficulty during the initial part of the meeting and extended his apologies to the public.

Commission Burk announced, for the benefit of the public, that the Commission had voted to abandon the

proposed parking garage behind the Lightner Museum.

The Commission voted by written ballot and Mr. McMahon, Mr. Valdes and Ms. Leslie were appointed. They encouraged the public to support the City by applying for board positions.

6.B/ Request to postpone appointments to the Firefighters' Retirement Board of Trustees.

Mayor Gardner reported that there were three vacancies on the Firefighters' Retirement Board of Trustees, but no applicants. He explained that the City would re-advertise for the position and action would be taken during the subsequent meeting.

MOTION

Commissioner Crichlow MOVED to postpone appointments to the Firefighters' Retirement Board of Trustees until suitable candidates were available. Commissioner Burk SECONDED the motion.

VOTE ON MOTION

AYES: Crichlow, Burk, Jones, Lennon, Gardner

NAYES: None

MOTION CARRIED UNANIMOUSLY

7. ITEMS BY CITY MANAGER (Includes Consent Agenda)

7.A. Preview of upcoming Commission meetings.

7.B. Consideration of Release of Lien on Unit Connection Fee Mortgage.

7.C. Consideration of the City of St. Augustine Deferred Compensation Plan.

7.D. Ratification of Letter of Agreement Modifying Contract with

the Florida Council of Industrial and Public Employees, Local 2038.

Mr. Harriss stated that he had four items, and he read them by title for the public.

MOTION

Commissioner Lennon MOVED to approve items 7.A. through 7.D. on the Consent Agenda. Commissioner Burk SECONDED the motion.

VOTE ON MOTION

AYES: Lennon, Burk, Crichlow, Jones, Gardner

NAYES: None

MOTION CARRIED UNANIMOUSLY

8. ITEMS BY MAYOR AND COMMISSIONERS.

8.A/ Election of Vice Mayor

The Commissioners voted by written ballot and Commissioner Burk was appointed Vice Mayor.

8.B/ Commission assignment to boards and organizations.

Mayor Gardner appointed Commissioner Jones to the Intergovernmental Committee, Commissioner Lennon to the St. Augustine Sister Cities Association, and he appointed himself to the Tourist Development Council (TDC) and the Visitors and Convention Bureau (VCB).

A discussion was held regarding Commissioners Crichlow or Burk serving on the Northeast Florida Regional Planning Council (NEFRPC), and it was determined that a representative for the NEFRPC was selected by the St. Johns County Commission; however, the council charter required that a City Commissioner be appointed. Mr. Harriss said that he would research whether both Commissioners could share the appointment.

8.C/ Operating policies, rules and procedures.

Mayor Gardner stated that after reading through the resolution he found things he wanted changed, as well as grammatical errors, therefore he suggested going through the document.

Commissioner Crichlow offered some research that he had conducted regarding the length of Commission meetings for the past three years, which indicated that 71.6% of the meetings lasted between 2-4 hours. Therefore, he suggested taking meetings of that duration into consideration. He said some suggestions from the public were as follows:

- Starting meetings earlier in the winter and later during the summer
- Set a time limit for meetings and continue issues at the subsequent meeting
- Add a third meeting to the monthly calendar

Mr. Crichlow said that if the meetings started at 5:00 p.m. they would rarely continue past 9:00, an hour at which he felt became too late for the public's attention.

Commissioner Jones adhered to 6:00 p.m. He pointed out that the St. Augustine Record had conducted an on-line survey, which indicated that 47% preferred 5:00 p.m. and 33% preferred 7:00 p.m., therefore 6:00 p.m. was the medium.

Commissioner Burk stated that she supported 5:00 p.m., and she pointed out that the majority of people had voted for 5:00 p.m.

Commissioner Lennon stated that he still preferred 4:00 p.m. because the first

hour of a meeting had less public input; however, he would support 5:00 p.m.

Mayor Gardner stated that he would support 6:00 p.m., because he believed that all the work of the Commission belonged to the public. He said that it was his responsibility to put a time limit on speakers should they talk for extended periods of time. He suggested that changing the meeting time according to the season would be confusing. He noted that any changes they made to operating procedures could be amended at any time by vote of the Commission.

MOTION

Commissioner Lennon MOVED to start City Commission meetings at 5:00 p.m. Commissioner Burk SECONDED the motion.

VOTE ON MOTION

**AYES: Lennon, Burk, Crichlow
NAYES: Jones, Gardner
MOTION CARRIED 3/2**

Mayor Gardner referred to Section 2. and stated that in the agenda after approval of the minutes he would like to insert General Public Comments with a 3-minute time limit to accommodate citizens by not having to wait through a long agenda to speak. He suggested that they allow for longer comments at the end of the agenda.

Commissioner Burk agreed that it was a good idea.

Commissioner Lennon clarified that the 3-minute comment did not allow the speaker to talk about items on the agenda.

MOTION

Commissioner Burk MOVED to amend the Operating Polices, Rules and

Procedures to add the aforementioned. Commissioner Lennon SECONDED the motion.

VOTE ON MOTION

**AYES: Burk, Lennon, Jones,
Crichlow, Gardner
NAYES: None
MOTION CARRIED UNANIMOUSLY**

Mayor Gardner referred to Section 2. number 7. and suggested that the City Manager read the Consent Agenda items by title. He said that Section 2. numbers 11. and 12. said the same thing, therefore he suggested combining the two for General Public Comments.

Commissioner Burk expressed concern that some citizens might be tempted to speak inordinately long, at which time the Mayor would have to take control.

Mayor Gardner stated that he wanted to ease up on the public speaking; however, the public would have to appreciate the time element.

MOTION

Mayor Gardner MOVED to amend the Operating Polices, Rules and Procedures Section 2. numbers 7., 11. and 12. as aforementioned. Commissioner Jones SECONDED the motion.

VOTE ON MOTION

**AYES: Gardner, Jones, Crichlow
Burk, Lennon
NAYES: None
MOTION CARRIED UNANIMOUSLY**

Mayor Gardner referred to Section 4.a. suggesting that they amend the section to read *Individuals wishing to comment during public hearing shall indicate their desire...*

Mayor Gardner recommended combining Section 4.b. and c.

MOTION

Commissioner Crichlow MOVED to change Section 4.a. as aforementioned and combine Section 4.b. and c. Commissioner Burk SECONDED the motion.

VOTE ON MOTION

AYES: Crichlow, Burk, Jones, Lennon , Gardner

NAYES: None

MOTION CARRIED UNANIMOUSLY

Mayor Gardner referred to Section 5.c. and said that he would prefer that workshop meetings be opened to public hearing, and he read his suggested amendment. ¹

Commissioner Burk pointed out that a workshop provided the Commission with the opportunity to talk freely and uninterrupted during a public hearing without violating the Sunshine Law. She noted that the current language for the section allowed the public to be heard at the discretion of the Commission.

Commissioner Crichlow suggested having either public hearing or non-public hearing workshops at the discretion of the Commission.

A discussion resulted, whereupon it was determined that they would allow Section 5.c. to remain as written with the understanding that the Commission could conduct public hearing workshops.

Another brief discussion occurred regarding the proposed workshop in January, and it was determined that staff would coordinate with the Commission for the day and time.

¹ End of audio tape one

Mayor Gardner referred to Section 6. and the agenda packet insert regarding audio visual plans for the Alcazar meeting room, in which there would be monitors to project exhibits to the public, as well as more cameras to allow the public to view the City Manager, City Attorney, and City Clerk.

Commissioner Lennon questioned whether the cable television company would be responsible for the cost of the proposed audio visual improvements.

Mayor Gardner stated that the City would be responsible.

Mr. Harriss indicated that the funds for the proposal had been set aside until the proper room configuration could be achieved. He added that the cable company obligations extended only so far.

Mayor Gardner MOVED that until the work on the Alcazar room was completed he wanted to insert that *all exhibits would be presented in a manner to be viewed by the public.* The motion was SECONDED by Commissioner Crichlow and approve by UNANIMOUS VOICE VOTE.

Mayor Gardner referred to Section 7.b. and recommended adding *however, any activity or item disapproved can be appealed to the full Commission.*

MOTION

Commissioner Burk MOVED to approve the amendment. The motion was SECONDED by Commissioner Jones and approved by UNANIMOUS VOICE VOTE.

Mayor Gardner pointed out that there were two grammatical corrections in Section 8. He said that in 8.b. *will* should be replaced with *would* and 8.d. be corrected to read *Applicants for any*

City board or committee currently on file will receive notification of the scheduled term expiration and be requested to update or confirm their application.

MOTION

Commissioner Burk MOVED that Section 8.b. and 8.d. be amended as aforementioned by the Mayor. The motion was SECONDED by Commissioner Jones and approved by UNANIMOUS VOICE VOTE.

Mayor Gardner referred to Section 8.f. and suggested amending the item to read *Citizen boards which assist in the governing of the city of St. Augustine, and governed by ordinance, shall be made up of but not limited to persons who either reside in the City or who own real property or a business within the City and are residents of St. Johns County.* He explained that the purpose of the amendment was that the City was small and there were businessmen, managers and others with valuable expertise in tourism that might not live in the City. He pointed out that Herschel Shepard, who lived in Jacksonville, served on the Historic Preservation Advisory Committee, and he was an eminent historical architect for the state of Florida. He noted that Mr. Shepard had developed the historic architectural guidelines for the state. He said that without the amendment someone like Mr. Shepard could not serve on the board.

Commissioner Crichlow stated that he was not certain that he could agree with the amendment for all the boards. He said the PZB and HARB members should be residents of the municipality in which they were making decisions, as it would impact their decision making. He disagreed that they could not find qualified people in the City to fill the positions. He emphasized that he felt strongly about his position on the issue.

However, he said that that it would not be a critical issue with HPAC or the retirement boards.

Commissioner Burk agreed and suggested that they amend the section to allow the Commission to waive the requirement on a case by case basis.

Commissioner Crichlow noted that an applicant that resided in the City should always receive preference, and if there were no applicants after an extensive search, he might be willing to discuss whether to search outside the City limits.

Mayor Gardner stated that he liked to think they would not have a problem finding applicants; however, the question was one of quality.

Mr. Crichlow stated that the most important qualification was being a resident of the City.

MOTION

Commissioner Crichlow MOVED that applicants for all City boards and committees shall be residents of the City of St. Augustine, and the City Commission had the authority to make exceptions in the event of difficulty filling positions.

Mayor Gardner noted that the motion would not recognize a real property or business owner. He clarified that if a businessman owned a business in the City, but lived in the county they would not qualify to serve on a board unless the Commission made the exception.

Commissioner Burk SECONDED the motion.

VOTE ON MOTION

**AYES: Crichlow, Burk, Jones,
Lennon**

NAYES: Gardner

MOTION CARRIED 4/1

Mr. Wilson advised the Commission to adopt the resolution.

MOTION

Commissioner Crichlow MOVED to adopt Resolution 2002-24 as amended. Commissioner Burk SECONDED the motion.

VOTE ON MOTION

AYES: Crichlow, Burk, Jones, Lennon, Gardner

NAYES: None

MOTION CARRIED UNANIMOUSLY

Commissioner Lennon – Men of Menendez

Commissioner Lennon reported that the Men of Menendez had been asked to perform in Aviles, Spain. He explained that they needed to raise \$7,000 to make the trip to Aviles, and he encouraged the public to support their effort.

Commissioner Crichlow – Christmas Boat Parade

Commissioner Crichlow informed the public that the Christmas Boat Parade would take place on Saturday, December 14th at 6:30 p.m.

Mayor Gardner – St. Augustine High School Football team

Mayor Gardner stated that he would be preparing a proclamation recognizing the outstanding achievement of the team.

**9. APPEALS AND PUBLIC HEARINGS
(Not pertaining to ordinances and resolutions)**

9.A/ Public hearing and appeal of a Planning and Zoning Board decision relative to property located at 5 Indian Mound Drive.

Mark Knight, Director, Planning and Building Department, was sworn and explained that on October 1, 2002 the PZB had considered and denied an application for a boatlift on the dock at 5 Indian Mound Drive. He said the applicant had filed an appeal, and it was the job of the Commission to determine whether the PZB had erred and affirm, reverse or modify the action.

Commissioner Lennon questioned staff's opinion, and he was informed that staff had approved the application.

Mayor Gardner questioned whether the Commission could remand the application.

Mr. Knight replied that traditionally a case could be remanded in the event that changes were made. He said that he did not know why an application would be remanded without changes.

Commissioner Burk questioned whether they could remand it for findings on particular issues.

Mr. Wilson replied that the Commission could remand an application for clarification.

Commissioner Lennon noted that the PZB minutes indicated that there had been concern about the weight of the boat.

Mr. Knight replied that there had been concern that the boat weighed more than 12,000 pounds; however, the attorney was emphasizing that the matter before the board was the boatlift, not the boat.

A brief discussion was held regarding more information about the item, and it was determined that the PZB Chairman would be allowed to speak; however, he and the applicant's attorney could not introduce new evidence.

Exparte Communication

Commissioner Lennon reported that he had received a telephone call.

Mayor Gardner reported that he had discussed the matter with a neighbor.

Allison Curry, 43 Cincinnati Avenue, representing the applicant Richard Davis, explained that the dock in question was located at Hospital Creek. She suggested that there was irregularity in the way the case had been considered by the board. She stated that the initial complaint had been made by Gerry Dixon, a member of the PZB, and he was the only person to have complained about the boatlift. She said that during the PZB meeting in question there were no speakers or comment cards in opposition to the application. She added that Mr. Dixon had been the vocal opponent of the application, and he ultimately made the motion to deny the application without disclosure of his position, which she believed was a violation of the Florida Supreme Courts rules governing procedures and Chapter 112 of the Florida Statutes governing the code of ethics for public officers.

Mayor Gardner questioned whether a board member had the right to complain about violations.

Ms. Curry replied that at a minimum Mr. Dixon should have made disclosure of his involvement.

Mr. Wilson replied that it would have been appropriate for Mr. Dixon to disclose his position under exparte communications.

Mayor Gardner questioned whether Mr. Dixon should have recused himself.

Mr. Wilson replied that under statute he did not believe that Mr. Dixon could have recused himself.

Commissioner Burk pointed out that they could cure the defect by remanding the matter to PZB; therefore allowing Mr. Dixon to make the necessary disclosure.

Ms. Curry referred to the code which addressed when there could be a remand, and she said that it was not clear that there could be a remand without her client taking modification action first.

A discussion resulted regarding what constituted new information.

Richard Davis, 5 Indian Mound Drive, was sworn and stated that he had been aware that Mr. Dixon was the complaining party at the time of the PZB meeting. He noted that his neighbors had no complaints about the boatlift.

Ms. Curry stated that even given the knowledge there had been no disclosure by the board member, they had not had the opportunity to cross examine that board member or address the issue. She continued that according to the code Mr. Davis had met the necessary requirements.

Mayor Gardner stated that according to the code, staff reported that the impact of the boatlift on vistas and scenic opportunities was not known.

Ms. Curry agreed and referred to the statements by the board which revealed little evidence about the scenic vista. She pointed out that there was a dock adjacent to Mr. Davis' that had an approved boatlift. She referred to minutes in which Mr. Dixon suggested that her client get a different boat and that Mr. Davis was applying for a permit after-the-fact, which the PZB routinely encountered. She said the primary issue raised by staff had been the boat, but according to the code there were no requirements for boats other than the

weight. She concluded that there had been no specific finding by the board regarding impact on the scenic vista, and the scenic vista issue pertained to the boatlift and not the boat itself.

Mayor Gardner questioned whether the dock in question was closest to the bridge, and the response was affirmative.

Commissioner Burk said that code allowed the Commission to approve up to a 12,000 pound boatlift, and it was reasonable to assume that a boatlift would lift a boat.

Ms. Curry suggested that perhaps the PZB was dissatisfied with the code; however, her client was entitled to have his application reviewed under the code that existed at the time of his application.

Commissioner Burk questioned whether the City had to accept an after-the-fact application, and in that situation whether an applicant had the right to a review or if the boatlift had to be removed and then applied for.

Mr. Wilson replied that after-the-fact permits were common, and the City provided for the matter; therefore he would agree the City had to accept after-the-fact applications.

A brief discussion resulted regarding the code reference to after-the-fact applications and it was determined that the City was lenient, but the applicant was still required to meet regulations for acceptance.

Ms. Curry informed the Commission that Mr. Davis had hired a contractor to install the boatlift, and he had not been aware that a permit was not obtained prior to construction.

Mayor Gardner requested that the PZB Chairman address the Commission.

Ms. Curry objected to further comment by a PZB member on the basis that the Commission was sitting as a quasi-judicial body and should not take further testimony.

Mr. Wilson stated that the objection could be noted for the potential of going to court; however, the Mayor could hear the witness without new evidence.

Bruce Dufresne, PZB Chairman, noted that the applicant had focused exclusively on the 12,000 pound boatlift, and his attorney had advised that the boat should not be taken into consideration. He noted that the PZB was charged with protecting the scenic views and vistas of the City of St. Augustine; therefore the type of boat on the lift would make a difference. He explained that the boat in question had a fly bridge; therefore the boat was exceptionally tall, which heavily impacted the City.

Commissioner Lennon said the Commission had amended the ordinance to limit boatlifts to 12,000 pounds to prevent big boats from being lifted out of the water, as the City could not dictate size or type of boat.

Commissioner Jones clarified that the request was to permit a 12,000 pound boatlift.

Commissioner Crichlow questioned whether the contractor hired to install the boatlift in question was experienced and whether he had installed many boatlifts, and the response was confirmatory.

Ms. Porter informed the Commissioners that certified notice had been mailed to four residents within 150-feet of the applicant's property, but no comment sheets had been returned to the City.

Mayor Gardner opened the public hearing.

Charles Spires, 35 Magnolia Avenue, was sworn and spoke on Mr. Davis' behalf, as he owned the adjacent property with a dock and boatlift, and he found no objection to the boat or boatlift. He said the view from his property was the Vilano Boat ramp, the boat in question was not visible from A1A, and the boat was not a problem for him. He added that he could put a boat just like Mr. Davis' on his boatlift, therefore the boat should not be an issue.

Commissioner Jones questioned when Mr. Spires boatlift had been constructed.

Mr. Spires replied that it was 2-3 years old.

Gerry Dixon, PZB member requested to address the Commission.

Commissioner Burk stated that it would be prudent not to have any further testimony from the PZB.

Norbert Tuseo, 101 La Quinta Place, was sworn and expressed concern about after-the-fact permitting, as most citizens could not possibly know the extent of the code. He pointed out that if Mr. Davis sold his property there was no way to know what size or shape boat the subsequent owners might own.

Mayor Gardner closed the public hearing.

Commissioner Burk agreed that an after-the-fact permit was not punishable, nor did she believe the board harbored punishment in their decision. She noted that the scenic vista had been referred to six times in the PZB minutes, along with many comments about the view. She stated that the matter of the scenic view had been clearly considered, and it was apparent that the application was denied

based on the scenic vista. She agreed there had been conversation about the boat; however, she did not believe the boat was the main consideration; moreover, she believed the PZB would have denied a request for a 12,000 pound boatlift to preserve the scenic vista. She pointed out that she used the Vilano Beach Bridge regularly, and she had been totally aware of the Mr. Davis' boatlift, because the boat was so apparent. She said that there may already be a dock and boatlift next to Mr. Davis'; however, the City did not want to keep littering the waterfront with docks and boats. She added that she hoped the Commission would address the matter in a workshop soon.

Commission Lennon stated that he believed the PZB had erred as Mr. Davis had followed the rules for a permit. He pointed out that the scenic vista from the east consisted of the homes behind the boat, therefore he questioned where the scenic vista existed, as he did not consider Mr. Davis' boat an obstruction to the vista. He concluded that in his opinion the applicant was entitled to the boatlift.

Commissioner Burk clarified that Mr. Davis could in fact install a 12,000 pound boatlift with approval; however, the application for that approval had been unanimously denied based on the scenic vista.

Commissioner Lennon again questioned where the vista existed, as he believed that it existed as a view looking toward the water.

Commissioner Crichlow agreed with Commissioner Burk, as the PZB was the only review board charged with protecting the scenic vista, and he was confident that had been the board's consideration when denying the application. He concluded that he did not believe the PZB had erred or acted

beyond their scope of responsibility when denying the application.

Commissioner Jones questioned whether the City Attorney felt the PZB had erred in their decision.

Mr. Wilson advised that answering the Commissioners question would be giving his legal opinion over the Commissioner's consideration of the facts before them; therefore he declined.

Commissioner Jones stated that he did not find where the PZB had erred. Commissioner Burk added that who made the complaint was a non-issue.

A brief discussion resulted regarding docks, the scenic vista and appeals.

MOTION

Commissioner Burk MOVED to deny the appeal based on the discussion and that the PZB had not erred and had appropriately reviewed the scenic vista when denying the application. Commissioner Crichlow SECONDED the motion.

Commissioner Lennon asked Mr. Dufresne how the board had determined the allowable vista for the location in question.

Commissioner Burk pointed out that Mr. Dufresne could not speak for the other six board members.

Mr. Dufresne stated that after viewing the location, it was his opinion that it was a problem of the scenic vista for the greater residents of the City of St. Augustine.

Mayor Gardner indicated the three reasons given for the denial were as follows:

1. Application was after-the-fact

2. Would not approve a boat at that location
3. Type of boat on lift

Commissioner Burk said that she based her motion by reason of the total transcript.

Mayor Gardner recommended that in the future the PZB clearly state the premise of their motions. He stated that the aerial photograph did not indicate there was much of a vista to interfere with.

VOTE ON MOTION

AYES: Burk, Crichlow, Jones

NAYES: Lennon, Gardner

MOTION CARRIED 3/2 ²

9.B/ Public hearing and appeal of a Planning and Zoning Board decision relative to property located at 157 Marine Street.

Mr. Knight reported that Views at Baypointe Condominium project had submitted an application to install boatlifts on the existing dock. He said that on August 6, 2002 the PZB denied the application and on August 26, 2002 an appeal was filed, whereupon during an October 2002 City Commission meeting the matter had been tabled. He noted that according to the City Code the Commissioners were required to decide whether the board erred, and then affirm, reverse or modify the decision of the PZB.

Gary Aligood, 157 Marine Street, was sworn and stated that they were no longer requesting boatlifts. He explained that the condominiums had 59 units and 24 owners had purchased boat slips. He said they had determined that the use of the boat slip was less than adequate, as the area was not a no-wake zone. He stated that they had spoken with the Army Corps of Engineers and DEP about a possible breakwater being placed on an

² A brief recess from 10:20 p.m. until 10:31 p.m.

existing sandbar to no avail. He said they had determined that the only alternative for the marina was to apply for boatlifts. He clarified that the term marina was used for the private docking facility for the condominiums.

Mr. Aligood continued that they had discovered an alternative that provided safe use of the docks. He said they would like to withdraw the boatlift appeal, and he distributed the revised plans.

Commissioner Lennon pointed out that the reason for the appeal was the boatlifts, therefore he questioned whether the matter should go back to the PZB.

Mr. Aligood stated that he hoped to circumvent that process for the sake of time.

Mr. Wilson stated that the Commission could consider a modification and approve or remand to the PZB.

A brief discussion resulted, and it was determined that the Commission had the power to approve or remand.

Mr. Aligood referred to the original plan and the revised plan, which depicted turning the entire marina around with the fingers pointing toward the condominiums, therefore allowing the 8-foot main section of the dock to serve as a breakwater.

Commissioner Lennon questioned whether there was deep enough water for the revised plan.

Mr. Aligood said the marina was never intended for access and egress at low tide, therefore that was not an issue.

Commissioner Burk questioned whether the footage of the walkway would remain

125-feet, or were they pushing the whole project further out into the water.

Mr. Aligood replied that they had received permission from the DEP for the plan, but they were not allowed to move the dock further out.³

A brief discussion was held regarding the new plans to further clarify that the dock would not be moved further out.

Mr. Aligood noted that he had a contractor that could turn the dock around, by special assessment they all had agreed to pay for the work, therefore if the Commission would consider the new project it would be appreciated. He explained that the window of opportunity was narrow as the contractor was scheduled for a large project within the next 30-60-days, therefore he would value action as soon as possible.

Commissioner Crichlow questioned whether all the components of the docks would be reused.

Mr. Aligood replied that all of it would be used. He explained that the south dock would be removed from the main walkway dock, and at high tide the whole unit would be turned around to become the north dock while the north dock would be moved to the south. He said it was a matter of a disconnect and a reconnect.

Exparte Communication

Commissioner Crichlow reported that some months earlier he had spoken with the marina association for the condominiums in effort to determine a solution. He said that he had also addressed the issue as a PZB member.

Commissioner Jones reported that he had spoken with one of the owners.

³ End of audio tape two

Mayor Gardner reported that he had contact with one owner who requested that he visit the site.

Mr. Dufresne stated that the solution was outstanding for a complex problem. He urged the Commission to seize the opportunity to move forward with the project.

Mayor Gardner opened the public hearing.

Ms. Porter reported that the Clerk's Office had sent out 66 notices to surrounding property owners within 150-feet and received eight responses, of which seven were in favor and one was opposed.

Norbert Tuseo, 101 LaQuinta Place, stated that Mr. Aligood had done everything he could to solve the problem, and he suggested a positive vote for the project.

Robert Rowe, 157 Marine Street, was sworn and stated that he was in favor of the withdrawal of the original application, and he supported the new proposal. He suggested that the proposal would create a safer environment for children and families.

Mayor Gardner closed the public hearing.

MOTION

Commissioner Lennon MOVED to accept the revised project as drawn. Commissioner Jones SECONDED the motion.

Mayor Gardner questioned whether the drawings provided enough information for acceptance.

Mr. Knight replied affirmatively.

Mr. Wilson suggested that they include the condition that all state permits were obtained, and that the project complied with the City Code.

Mayor Gardner questioned whether the Commissioner accepted the added conditions, and Commissioner Lennon agreed.

VOTE ON MOTION

AYES: Lennon, Jones, Crichlow, Burk, Gardner

NAYES: None

MOTION CARRIED UNANIMOUSLY

10. RESOLUTIONS AND ORDINANCES (To include public hearing)

10.A/ Resolutions

10.A.1/ Consideration of Resolution 2002-19, concerning a request for transfer of the cable television franchise.

James Whitehouse, Staff Attorney, reported that the resolution was to transfer the current cable franchise. He assured the Commission that the operation would remain under the same local management, and the system would not be altered.

Commissioner Lennon stated that he had spoken with the General Manager, Mark Russell about improving the sound for the City Commission meeting video tape.

Mark Russell, General Manager, Time Warner Cable, St. Augustine, informed the Commission that the transfer represented house cleaning inside the AOL Time Warner organization, and the new legal entity would be named Time Warner Cable Inc. He explained that the transfer was intended to straighten out another partnership that involved AT&T, because the FCC wanted them out of the organization as a requirement of the transfer.

Mr. Russell referred to the volume on the video tapes and noted that often the Commissioners forgot to pin on their microphones. He noted that Paul Williamson was working with one of his employees on the system.

Mr. Whitehouse noted that the negotiations were underway for the new franchise. He said the current franchise was for 10 years, and the operation would remain the same.

Commissioner Lennon questioned whether the transfer would generate a fee increase for the public.

Mr. Russell stated that customers had been notified of a price increase in January 2003; however, that had nothing to do with the transfer. He added that there were no fee regulations included in the current franchise.

Mayor Gardner questioned when the current franchise expired, and the response was October of 2004.

MOTION

Commissioner Jones MOVED to pass Resolution 2002-19, concerning request for transfer of the cable television franchise. Commissioner Lennon SECONDED the motion.

VOTE ON MOTION

AYES: Jones, Lennon, Crichlow, Burk, Gardner

NAYES: None

MOTION CARRIED UNANIMOUSLY

10.A.2/ Consideration of resolution 2002-21, supporting an initiative to amend the Florida Constitution regarding greater home rule authority and outdoor advertising (billboards).

Mayor Gardner stated that The Scenic Beauty, Inc. had begun a petition drive for the placement of an amendment to

the Florida Constitution, which would appear on a future general election ballot and would prohibit the construction of new billboards along public streets. He said the amendment also reinforced local home rule to allow local governments' greater authority regarding the removal of billboards.

Commissioner Lennon stated that the City had taken a beating the last time he had not been in favor of amending the Constitution.

Mr. Crichlow pointed out that based on the current state regulations to remove billboards the City would be forced to pay hundreds of thousands of dollars, therefore he was in favor of the amendment. He suggested that they add, *whereas, in order to conserve and protect Florida's scenic beauty, a just compensation ceiling should be established for billboard removal except where greater amount is required by federal law or federal constitution.*

Mr. Crichlow suggested that on the last page of the resolution they add, *That the St. Augustine City Commission determines that it serves a public purpose to permit city employees to distribute by electronic and paper means the constitutional amendment form attached hereto as Exhibit A.* He invited Wilton Rooks to speak to the Commissioners.

Wilton Rook, 151 Santa Monica Avenue, explained that the catalyst was the action of the state legislature during the 2001 session when they had stripped home rule from local counties and municipal governing bodies over signed ordinances. He said the legislature removed amortization provisions from sign ordinances, as well as development orders that required billboards to be taken down. He said that the industry expected to be paid for that removal and under the passed legislation it could prove expensive for cities and counties.

He added that typically billboard companies expected to receive 5-6 times the annual revenues as compensation. He said that the proposed initiative was generated by the action of the state legislature. He agreed with Commissioner Lennon; however, the proposal was the only recourse to return authorization to local authorities. Commissioner Lennon suggested that citizens speak with their local representatives to promote a new bill.

Mr. Rooks replied that the people had votes, and the billboard industry had money, and unfortunately the legislature was persuaded by money rather than votes. He said that citizens exercised that vote through constitutional amendments. He added that many constitutional amendments cost vast amounts of money, but the proposed amendment would save the state considerable funds, because it would not require DOT to purchase billboards at enormous rates

Mr. Rooks stated that the *Just Compensation Provision* addressed the core of how billboards were evaluated. He said the form submitted by the billboard industry to the county tax appraiser's office indicated that the value of a billboard was determined by a depreciated cost basis. He added that billboards were the only type of property to reap that benefit, as they were taxed at one level but paid for at a much higher level. He said the initiative was new and had been passed by a number of counties including St. Johns.

Mayor Gardner questioned whether the additional *whereas* clause required the City to disseminate the material.

Mr. Rooks replied that it simply permitted employees to do so.

Commissioner Burk questioned whether they would be permitted to do so as employees of the City.

Mr. Rooks replied not as an employee function but as an encouragement to do so.

Mr. Crichlow clarified that the language would not discourage City employees from getting involved in the effort, but it did not demand involvement.

Mr. Wilson expressed concern about encouraging City employees.

Commissioner Burk stated that she did not care for the addition pertaining to City employees.

Following additional discussion, it was determined that they would eliminate the second clause.

Commissioner Burk questioned who would establish the ceiling.

Mr. Rooks replied that the ceiling would be established by a replacement cost type of assessment valuation of the billboard, therefore each billboard would be different and issues such as how long the billboard had existed, the size, and the cost etc. would dictate the ceiling. He explained that they were trying to correct the disparity in the way the industry evaluated the billboards for taxing purposes and the way a billboard was evaluated for eminent domain proceeding purposes.

MOTION

Commissioner Crichlow MOVED to approve Resolution 2002-21 with the addition of, *Whereas, in order to conserve and protect Florida's scenic beauty, a just compensation ceiling should be established for billboard*

removal except where greater amount is required by federal law or federal constitution. Commissioner Jones **SECONDED** the motion.

Commissioner Lennon stated that amendments generally cost cities a great deal of money in grants, therefore he did not believe the amendment should be part of the constitution.

Commissioner Crichlow disagreed stating that the amendment would save the City money.

VOTE ON MOTION

AYES: Crichlow, Jones, Burk, Gardner

NAYES: Lennon

MOTION CARRIED 4/1

10.A.3/ Consideration of Resolution 2002-22, setting the rates for franchised sightseeing motor vehicular tours.

Mayor Gardner stated that the St. Augustine Sightseeing Trains had requested to increase adult fares to \$15.00 and children's fares to \$5.00.

Commissioner Burk questioned whether the resolution was intended to increase the St. Augustine Sightseeing Trains fares to be equal to the fares of Historic Tours of America, and the response was affirmative.

MOTION

Commissioner Burk MOVED that Resolution 2002-22 be approved. Commissioner Lennon SECONDED the motion.

VOTE ON MOTION

AYES: Burk, Lennon, Jones, Crichlow, Gardner

NAYES: None

MOTION CARRIED UNANIMOUSLY

10.A.4/ Consideration of Resolution 2002-23, supporting the preservation of the area adjacent to the historic site known as Fort Mose.

Commissioner Lennon stated that he had supported preservation of Fort Mose; however, he questioned whether the resolution entailed any cost to the City.

Mayor Gardner replied that the resolution supported the effort, but the City was not financially committed.

Commissioner Lennon noted that the County supported the resolution; therefore the City should not be committed financially, as it would represent double taxation.

MOTION

Commissioner Jones MOVED that Resolution 2002-23 be approved. Commissioner Lennon SECONDED the motion.

VOTE ON MOTION

AYES: Jones, Lennon, Crichlow, Burk, Gardner

NAYES: None

MOTION CARRIED UNANIMOUSLY

10.B. Ordinances – First Reading

10.B.1/ Introduction and consideration of Ordinance 2002-26, correcting a scrivener's error in Ordinance 2002-20.

Mr. Knight noted that he had mixed-up east and west. He clarified that it was the east half of the parcel that had been annexed and rezoned to the comp plan amendment and the proposed Ordinance represented that correction.

MOTION

Commissioner Crichlow MOVED to place Ordinance 2002-26 on first reading, read by title only and

**approved. Commissioner Jones
SECONDED the motion**

Mr. Wilson read the title as follows:

ORDINANCE NO. 2002-26

AN ORDINANCE OF THE CITY OF ST. AUGUSTINE, FLORIDA, CORRECTING A SCRIVENER'S ERROR IN ORDINANCE NO. 2002-20; PROVIDING FOR FILING OF A COPY HEREOF WITH THE CLERK OF THE CIRCUIT COURT OF ST. JOHNS COUNTY, FLORIDA, WITH THE CHIEF ADMINISTRATIVE OFFICER OF ST. JOHNS COUNTY, FLORIDA, AND WITH THE DEPARTMENT OF STATE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF THE CITY OF ST. AUGUSTINE; AND PROVIDING AN EFFECTIVE DATE

VOTE ON MOTION

**AYES: Crichlow, Jones, Burk,
Lennon, Gardner**

NAYES: None

MOTION CARRIED UNANIMOUSLY

10.B.2.a/ Consideration of a Petition for Voluntary Annexation of property located at Cervantes Avenue east of Masters Drive.

Mr. Knight said the parcel of property was located immediately south of Pomar Park and east of Masters Drive with a Residential Low Density designation on the future land use map. He said that the request was for Residential Low One category for construction of four duplexes on the property. He said the matter had gone before the PZB, and the board had recommended approval of the land use and zoning change. He said that additionally the proposal included a petition to vacate a portion of Cervantes Avenue, which was not open. He said half the road would revert to the City, and the other half would become part of the duplex project.

MOTION

Commissioner Crichlow MOVED to approve the petition for voluntary annexation of property located at Cervantes Avenue east of Masters Drive. Commissioner Burk SECONDED the motion.

VOTE ON MOTION

**AYES: Crichlow, Burk, Jones,
Lennon, Gardner**

NAYES: None

MOTION CARRIED UNANIMOUSLY

10.B.2.b/ Consideration of Resolution 2002-20, concerning a petition to vacate a portion of Cervantes Avenue.

MOTION

Commissioner Crichlow MOVED to adopt Resolution 2002-20 to vacate a portion of Cervantes Avenue. Commissioner Burk SECONDED the motion.

VOTE ON MOTION

**AYES: Crichlow, Burk, Jones,
Lennon, Gardner**

NAYES: None

MOTION CARRIED UNANIMOUSLY

10.B.2.c/ Introduction and consideration of Ordinance 2002-27, concerning the voluntary annexation of property located at Cervantes Avenue East of Masters Drive.

MOTION

Commissioner Burk MOVED to place Ordinance 2002-27 on first reading, read by title only and approved. Commissioner Lennon SECONDED the motion

Mr. Wilson read the title as follows:

ORDINANCE NO. 2002-27

AN ORDINANCE OF THE CITY OF ST. AUGUSTINE, FLORIDA, ANNEXING APPROXIMATELY 3.27 ACRES OF PROPERTY IN ST. JOHNS COUNTY, FLORIDA, LYING SOUTH OF CERVANTES AVENUE AND EAST OF MASTERS DRIVE, AS DESCRIBED HEREIN; REDEFINING THE BOUNDARY LINES OF THE CITY OF ST. AUGUSTINE TO INCLUDE SAID PROPERTY; AMENDING SECTION 1.08 OF THE CHARTER LAWS OF THE CITY OF ST. AUGUSTINE, FLORIDA; PROVIDING FOR FILING OF A COPY HEREOF WITH THE CLERK OF THE CIRCUIT COURT OF ST. JOHNS COUNTY, FLORIDA, WITH THE CHIEF ADMINISTRATIVE OFFICER OF ST. JOHNS COUNTY, FLORIDA, AND WITH THE DEPARTMENT OF STATE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CITY CODE; AND PROVIDING AN EFFECTIVE DATE.

VOTE ON MOTION

AYES: Burk, Lennon, Crichlow,
Jones, Gardner

NAYES: None

MOTION CARRIED UNANIMOUSLY

10.B.3/ Introduction and consideration of Ordinance 2002-28, establishing a land use designation of Residential Low Density relative to property located at Cervantes Avenue east of Masters Drive.

MOTION

Commissioner Burk MOVED to place Ordinance 2002-28 on first reading, read by title only and approved. Commissioner Lennon SECONDED the motion

Mr. Wilson read the title as follows:

ORDINANCE NO. 2002-28

AN ORDINANCE OF THE CITY OF ST. AUGUSTINE, FLORIDA, AMENDING THE CITY OF ST. AUGUSTINE COMPREHENSIVE PLAN, FUTURE LAND USE MAP,

TO INCORPORATE AND DESIGNATE APPROXIMATELY 3.27 ACRES OF PROPERTY, LYING SOUTH OF CERVANTES AVENUE AND EAST OF MASTERS DRIVE, AS RESIDENTIAL LOW DENSITY; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

VOTE ON MOTION

AYES: Burk, Lennon, Crichlow,
Jones, Gardner

NAYES: None

MOTION CARRIED UNANIMOUSLY

10.B.4/ Introduction and consideration of Ordinance 2002-29, establishing a zoning classification of Residential Low One (RL-1) relative to property located at Cervantes Avenue east of Masters Drive.

MOTION

Commissioner Lennon MOVED to place Ordinance 2002-29 on first reading, read by title only and approved. Commissioner Burk SECONDED the motion

Mr. Wilson read the title as follows:

ORDINANCE NO. 2002-29

AN ORDINANCE OF THE CITY OF ST. AUGUSTINE, FLORIDA, ESTABLISHING THE ZONING FOR PROPERTY CONTAINING APPROXIMATELY 3.27 ACRES LYING SOUTH OF CERVANTES AVENUE AND EAST OF MASTERS DRIVE, AS MORE PARTICULARLY DESCRIBED HEREINAFTER, TO THE CLASSIFICATION OF RESIDENTIAL LOW-ONE (RL-1); REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; AND PROVIDING AN EFFECTIVE DATE.

VOTE ON MOTION

AYES: Lennon, Burk, Crichlow,
Lennon, Gardner

NAYES: None

MOTION CARRIED UNANIMOUSLY

10.B.5.a/ Consideration of a Petition for Voluntary Annexation of property located on the west side of Whitney Street.

Mr. Harriss informed the Commission that they need only consider 10.B.5.a. currently, and the other items concerning Whitney Street would be addressed at another meeting.

MOTION

Commissioner Jones MOVED to accept the petition for voluntary annexation of property located on the west side of Whitney Street. Commissioner Burk SECONDED the motion.

VOTE ON MOTION

**AYES: Jones, Burk, Crichlow,
Lennon, Gardner**

NAYES: None

MOTION CARRIED UNANIMOUSLY

10.B.5.b/ Introduction and consideration of Ordinance 2002-30, concerning the voluntary annexation of property located on the west side of Whitney Street.

(Postponed until a later date)

10.B.6/ Introduction and consideration of Ordinance 2002-31, establishing a land use designation of Residential Medium Density relative to property located on the west side of Whitney Street.

(Postponed until a later date)

10.B.7/ Introduction and consideration of Ordinance 2002-32, establishing a zoning classification of Residential General-One (RG-1) relative to property located on the west side of Whitney Street.

(Postponed until a later date)

10.C/ Ordinances – First Reading – Public Hearing Required

10.C.1/ Tabled - Public Hearing – Ordinance 2002-24, concerning a petition to vacate a portion of Ponce de Leon Avenue.

(Petition withdrawn)

10.D/ Ordinances – Second Reading – Public hearing.

10.D.1/ Public Hearing – Ordinance 2002-25, concerning a petition to vacate a portion of Palm Place.

Exparte Communication

Commissioner Crichlow reported that he had spoken to Mr. Blow concerning the matter in effort to better understand the location of the property in question.

Commissioner Burk reported that she had spoken with Mr. Blow.

George McClure, 170 Malaga Street, counsel for Carl and Lynne Blow, stated that his clients owned property at the end of Santa Monica Avenue, which was the first privately owned lot on Salt Run located south of the Lighthouse Boat Ramp. He distributed photographs of the location and explained that most of Palm Place had been vacated in the 1960's because the street was almost entirely located in the marsh of Salt Run. He said the Property Appraiser's map had indicated that the portion of the road adjacent to Mr. Blow's property had not been vacated, but Mr. Blow's dock crossed the road. He said the road did not provide access to the public, and to open the road would require filling salt marsh; therefore he was requesting that the portion of Palm Place be vacated. He

distributed the Property Appraiser map of the area in question.

Commissioner Lennon questioned whether Mr. Blow had been paying taxes on the property.

Mr. McClure stated that the property was considered waterfront, and the tie bar indicated that it was included as part of Mr. Blow's assessment.

Mr. Blow explained that he and the previous owner thought the road was closed; however, when he was in the process of refinancing his mortgage he discovered the portion of Palm Place in front of his house had not been closed. He stressed that his request did not affect Santa Monica Avenue, which provided access to the water.

Mayor Gardner opened the public hearing; however, there was no response.

Ms. Porter reported that she had notified the four adjacent residents, but there had been no response.

MOTION

Commissioner MOVED that Ordinance 2002-25, a petition to vacate a portion of Palm Place, be placed on second reading, read by title only and approved. Commissioner Crichlow SECONDED the motion.

Mr. Wilson read the title as follows:

ORDINANCE NO. 2002-25

AN ORDINANCE OF THE CITY OF ST. AUGUSTINE, FLORIDA, TO VACATE, DISCONTINUE AND ABANDON A PORTION OF PALM PLACE, WITHIN THE CITY LIMITS OF ST. AUGUSTINE AND MORE PARTICULARLY DESCRIBED HEREIN; PROVIDING FOR RESOLUTION OF CONFLICT WITH OTHER ORDINANCES; PROVIDING FOR INCLUSION

IN THE CODE OF THE CITY OF ST. AUGUSTINE; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Commissioner Burk pointed out that the Commission was being asked to vacate a piece of waterfront property that had public access from Ocean Vista and could be used. She said the public owned and currently had rights to the property, and the City was being asked to give it away. She stated that she found it hard to give the property away. She pointed out that giving the property away would increase lot coverage calculations and allow for a larger structure to be built on the property.

Mr. Wilson suggested that the area not buildable would not be included in lot coverage.

Commissioner Burk suggested that if they vacated the property they should include a provision that it would not be included in lot coverage calculations. However, she stated that she did not agree with the vacation, as it was City owned waterfront property that was adjacent to a City boat ramp, therefore it was valuable, and the City might have a use for it some day.

Mayor Gardner questioned the width of the property in question.

Mr. McClure replied that it was 50-feet.

Mayor Gardner said that 25-feet would go to Mr. Blow and 25-feet would belong to the City.

Mr. Wilson stated that he was not certain that the City would get 25-feet of the property.

A discussion resulted and it was determined that the City owned the bottom lands, and that the City could

never do anything with the property in question except use it as a road.

Mr. Blow assured Commissioner Burk that his intention was for the property to remain salt marsh, and the issue was purely a matter of clearing the title.

Commissioner Burk suggested that in the future Mr. Blow might want to utilize the property otherwise.

Mr. Blow said that with septic field regulation he doubted that he could add-on to his house.

Commissioner Burk pointed out that she was not concerned about only him, but also future owners of the property.

Mr. Crichlow noted that development in that location would be in Conservation Zone One, which required PZB approval.

Mr. Wilson noted that the City would not be issuing a deed for the property; therefore he was not sure how they could put conditions on the vacation. He said they could consider a conservation easement through the area, which would require Commission approval to develop in any way.

Mr. Blow said that it was his understanding that he could not do anything with the property; however, he did not want to cloud the title.

Commissioner Burk said a conservation easement would not cloud the title. She said that she also wanted it to be clear that the property would not be used for lot coverage.

Mr. Harriss pointed out that the City would not use anything below mean high water when calculating coverage, and the entire road was below the high water mark.

Commissioner Crichlow questioned whether a conservation easement would affect Mr. Blow's title to the property.

Mr. Wilson replied that the easement would allow Mr. Blow to own the property; however, he could not do anything with it. He said that the practice was common in residential development to preserve sensitive areas.

Commissioner Jones questioned specifically why Mr. Blow wanted the road vacated.

Mr. McClure explained that there was the risk that at sometime the City could demand that the dock be removed because it was in City owned right-of-way.

Mr. Jones questioned whether the land could be walked on at low tide.

Mr. McClure pointed out that the area between the mean high and low water mark would always remain public.

MOTION

Commissioner Burk MOVED to amend the previous motion to reserve the vacated land as a conservation easement for the City. Mayor Gardner SECONDED the motion.

VOTE ON MOTION (to amend)

AYES: Burk, Gardner, Jones, Crichlow

NAYES: Lennon

MOTION CARRIED 4/1

Mr. McClure clarified that the conservation easement prohibited dredging, fill, or construction without the consent of the City, but the existing dock could remain.

VOTE ON MOTION (Ordinance 2002-25 as amended)

AYES: Lennon, Crichlow, Jones,

Gardner

NAYES: Burk

MOTION CARRIED 4/1

11. GENERAL PUBLIC PRESENTATIONS AND COMMENTS (15 minutes per presentations)

(None Scheduled)

12. MATTERS NOT ON THE AGENDA (Items not addressed elsewhere on the agenda – three-minute time limit).

Ralph Hayes 1505 SR 207, spoke on behalf of twelve street musicians, and he requested that the Commission readdress the matter of the musicians performing on St. George Street. He said the radicals were gone.

Mayor Gardner offered to give Mr. Hayes his card to contact him, and he requested that Mr. Hayes get organized and present his solution to the problem.

14. Adjournment

There being no further business, the meeting was adjourned at 12:10 a.m. ⁴

MAYOR

CITY CLERK

⁴Transcribed by Karen Rogers, Recording Secretary