

CITY OF ST. AUGUSTINE

Regular City Commission Meeting
January 12, 2004

The City Commission met in a formal session Monday, January 12, 2004, at 5:00 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
Errol D. Jones, City Commissioner
Donald A. Crichlow, City Commissioner
William Lennon, City Commissioner

William B. Harriss, City Manager
Jack E. Cubbedge, Assistant City Manager
James P. Wilson, City Attorney
Martha V. (Nell) Porter, City Clerk
James Whitehouse, Staff Attorney
Timothy A. Burchfield, Chief Administrative Officer
Mark Knight, Director, Planning and Building Department
Dr. William Adams, Director, Heritage Tourism
William H. Harding, Director, Public Works
Paul Williamson, Director, Public Affairs
John Regan, Chief Operations Officer
Robert Leetch, Director of Utilities
James Owens, Fire Chief
Loren Lueders, Assistant Chief of Police
Orfeo Paolini, Sound Technician
Karen Rogers, Recording Secretary

2. INVOCATION AND PLEDGE OF ALLEGIANCE

Major Tim Roberts, Salvation Army, was unable to attend and deliver the invocation. Commissioner Lennon led the Pledge of Allegiance.

3. ADMINISTRATIVE ITEMS

3.A/ Modification of Agenda

(None)

3.B/ Approval of Minutes

Mayor Gardner referred to page six of the minutes regarding authorizing staff to proceed with closing on the Case Del Hidalgo and Commissioner Burk's suggestion about filing a title action after the closing and while the same Spanish reign was in office. He stated that he wanted the Commission to understand that they had not given instructions for filing the action.

Commissioner Burk stated that they had not closed at that time; therefore, it would have been premature. She questioned whether they needed to take further action.

Mr. Harriss replied that the matter would be addressed after the closing. He said that if taking a title action was necessary the Commission would instruct staff to proceed.

Mayor Gardner questioned whether the Commission should take action at that time.

Mr. Wilson replied that things had changed somewhat since the last meeting and the closing, and taking title action might not be necessary, but he would research the matter and inform the Commission.

Mayor Gardner referred to page seven of the minutes in which Commissioner Lennon clarified that the School Board member would not be a part of the City Commission. He questioned whether that should have said Planning and Zoning Board instead of City Commission.

Mr. Harriss agreed that it should have said PZB; however, the audio tape of December 8, 2003 indicated that Commissioner Lennon clarified that the School Board member would be sitting at the PZB table and not at the City Commission table.

Mayor Gardner referred to page fourteen and questioned whether George Erickson's address of 6170 St. Andrews Court was a correct St. Augustine address. Research into the City Directory revealed that Mr. Erickson lived at 6170 Saint Andrews Court, Ponte Vedra Beach, Florida.

The minutes of the Regular City Commission meetings of December 8, 2003 were approved with the following amendments: page nine, first column, next to the last paragraph, third

sentence, was missing the word *said*, page 16 second column the motion carried 4/1 not 3/1 and page twenty one, second column, Commissioner Burk motioned to table item 10. B. was corrected to read 10.D.

3.C/ Proclamations

3.C.1/ Florida Jewish History Month

Mayor Gardner read and presented the proclamation to Mr. Jerry Kass, a 1997 recipient of the La Florida Award and long-time leader in the Jewish community.

4. General Public Presentations and Comments (3 minutes per presentation with maximum total time limit of 20 minutes)

Charles Kris Shreiner, 5461 2nd Street, stated that he was a concerned citizen not representing a particular group that supported intelligent development. He questioned why a demolition permit had been issued by the City to Mr. Stokes on January 7, 2004 for the Ponce hotel complex, which he considered historically significant for its prominence in the 1964 Civil Rights demonstrations. He said that he shared the sentiments of local historian David Nolan regarding the matter. He stated that the issuance of the permit demonstrated gross insensitivity to any Civil Rights supporter. He said that the speed of issuing the permit had been startling, and he questioned whether the contractor had fulfilled his obligation to insure that hazards, such as asbestos, were not present on the property. He questioned whether it was necessary to begin demolition while efforts were still being made to attract potential buyers and when a final decision regarding the Ponce Tract had not been rendered, as a mediation hearing was scheduled for

February 12, 2004. He said that the situation was a glaring example in a long line of actions taken by the developer and City management demonstrating little regard for the community and its concerns. He suggested that something was wrong far beyond the aforementioned project, although no project had suffered more abuse of the public trust by appointed officials. He said that it was the duty of the City Commission to manage the City for the best interest of the citizens. He said that development at the expense of the City's history and quality of life was not a good option. He stated that no one was above the law of procedure, and he suggested that they work together to stop stupid development.

Commissioner Lennon questioned whether Mr. Shreiner and Mr. Nolan had bid on the Ponce property.

Mr. Shreiner replied that they had not.

Commissioner Lennon questioned why he and Mr. Nolan thought that it was the City's responsibility to use taxpayer's money to purchase the property.

Mr. Shreiner stated the City could not afford to run a golf course, but there were other options with benefits for everyone. He said the property was less than 1,000 yards from Fort Mose where people lived, worked and died, indicating the history of the area. He suggested that they all work together to find a solution. He said there were 419 acres in the parcel and if 750 homes were built the population and service needs would increase significantly.

Doug Warner, Charleston, South Carolina, said that his team was headed by Premier Hospitalities, and they had submitted a nonconforming proposal for the Sebastian Harbor Project. He said

that they had become aware of the project in November and submitted the proposal on December 15th, and they had spent the past month making sure they had the right team members in place to address the project. He explained that the proposal was nonconforming because the finance partner had a minimal requirement for purchase of \$10 million; therefore, if the City wanted a gateway entrance with a mixed used development perhaps they would entertain including more adjacent property to accommodate a larger project.

5. PRESENTATIONS AND STAFF REPORTS.

5.A/ Report on walking tour operations.

Paul Williamson, Director, Public Affairs, stated that the Commission had outlined several elements they wanted the walking tour operators to voluntarily comply with. He said that he had the opportunity to discuss those elements with the majority of companies he was aware of. He noted the elements as follows:

- Limit size of the tours to twenty participants
- Guides carry a light sufficient to be seen by vehicles
- Conduct tours on public property only, unless they have the consent of private property owners
- Be respectful of private property owners that might be affected by the tours close proximity
- Guides manage tours to avoid participants standing in the street, and cross streets as a group with a high regard for safety
- Guides manage tours not to impede normal pedestrian traffic and maintain sufficient distance between

other walking tours to avoid interference with their operations

Mr. Williamson stated that the walking tour responses to the aforementioned requests were unanimously in support of the guidelines except limiting the size to twenty participants. He said that each tour agreed that they limited the participation to 25-30. He said that one tour operation indicated that when the number got close to thirty they automatically split the tour in two. He said that limiting the size to twenty people would not diminish the number of people on the street, because it would create more groups, which could increase congestion. He said that the tour operators indicated that if they increased the number of groups it would require additional guides incurring additional expense. He summarized that the tour groups agreed that the current environment was voluntarily compliant for professional courtesy, they recognized and respected complaints from private property owners; moreover, business was good, and they did not want to jeopardize it.

Commissioner Lennon said that Ms. Pacetti had telephoned him complaining that she did not like any of the tours in the HP-1 district, but if they were allowed to continue they should stop the tours by 6:00 p.m.

Commissioner Burk stated that she had also received a message from Ms. Pacetti, and she suggested having a "no later than" time, but she felt that 6:00 p.m. was unreasonable.

Commissioner Crichlow questioned whether she meant only in HP-1.

Commissioner Burk replied all areas, and she suggested that all walking tours start no later than 9:00 p.m. She said that

she could not agree with more than twenty participants, although she could understand the tour operator's point of view. She said that she also thought they should carry more than one light, and she suggested one at the beginning of the tour and one at the end. She added that she was still receiving complaints about participants standing in the street and blocking parking lots.

Mr. Williamson stated that he was not aware of a ghost tour that went into the HP-1 area, but on any given night they might.

Commissioner Crichlow stated that he had seen tours at the St. Francis Inn, but he did not believe they went any further into the district than that.

Commissioner Jones questioned how many walking tour groups were in St. Augustine.

Mr. Williamson said that he had been able to identify four active groups as follows:

- Ghost Tours of St. Augustine
- Ancient City Tours
- St. Augustine Transfer
- Sheriff's Ghost Walk

Mr. Williamson added that the Sheriff's Ghost Walk rarely had twenty people on a tour.

Mr. Jones questioned the cost of the tours.

Mr. Williamson replied that the cost averaged between \$6-9, and they ran from one hour to 90 minutes.

Commissioner Crichlow stated that he had taken a tour and the guides were conscientious about safety and interfering with another group; however,

places like the Tolomato Cemetery created a space problem where people moved into the street to hear the guide. He said that for safety reasons a limit of participants had to be decided upon, but it would increase the number of tours.

Commissioner Burk stated that if they split groups of thirty in half the tour operations should be satisfied with a twenty participant limit and having more groups was worth the sacrifice.

Commissioner Crichlow agreed.

Commissioner Jones questioned the time of the last tour.

Mr. Williamson replied that he believed it was approximately 9-9:30 p.m. He said that most of them began at 8:00 p.m., but there could be a second tour. He said that the Sheriff's Ghost Walk did offer a small midnight tour, but the route was along St. George Street and in the commercial districts.

Mayor Gardner suggested setting 10:00 p.m. as the ending hour for the tours.

Mr. Williamson pointed out that unlike the motor tours; the walking tours did not follow a route prescribed by the City. He said that if a guide found another tour in front of them, they would naturally change their route.

Commissioner Jones noted that currently the ghost tours were unregulated; therefore, they needed to make recommendations for further negotiations or establish guidelines for regulation.

Commissioner Burk suggested that it was time to regulate the walking tours for their own good, as well as the rest of the City. She said they had not existed ten years ago; however, they currently

flourished and the participants were spilling into the street causing traffic problems. However, she added that she did not want to eliminate the tours because people liked them.

Commissioner Lennon stated that currently they put too much government in people's pockets. He said that thus far the negotiations had been beneficial; moreover, he believed that the walking tours could regulate themselves without the City imposing regulations.

Commissioner Jones stated that the Commissioners had to determine what they accepted and what they would like changed, and send that information back to the tour operators encouraging them to comply voluntarily. He said that if further negotiations failed they could set up workshops for regulations.

MOTION

Commissioner Jones MOVED to recommend that no walking tours be conducted on the street after 11:00 p.m. The motion was SECONDED by Commissioner Crichlow and approved by UNANIMOUS VOICE VOTE.

MOTION

Commissioner Jones MOVED that each walking tour use two lights, one at the front and one at the rear. The motion was SECONDED by Commissioner Burk and approved by UNANIMOUS VOICE VOTE.

MOTION

Commissioner Jones MOVED to limit the number of participants in any walking tour to twenty five. Commissioner Crichlow SECONDED the motion.

Commissioner Burk objected stating that twenty in a tour was sufficient.

Mayor Gardner agreed.

VOTE ON MOTION

AYES: Jones, Crichlow, Lennon

NAYES: Burk, Gardner

MOTION CARRIED 3/2

Mr. Williamson stated that he would bring the information to the walking tour operators for further negotiation and return to the Commission with the results.

5.B/ Update on the Parking and Traffic Master Plan Implementation.

Mr. Harriss announced that staff would deliver a report regarding the Parking and Traffic Master Plan on a monthly basis.

John Regan, Chief Operations Officer, stated that staff wanted to keep the Commission informed of the status of the project, given its magnitude. He said that they had a signed contract with Walker Parking Consultants, the design team, as a result of the Assistant City Manager's negotiations. He said that the characteristics and key issues were as follows:

- January 13, 2004 they would have the first project meeting with the design team and sub-consultants
- The design should take approximately three months
- Construction was scheduled to start in early July of 2004
- There would be multiple public information forums and they would conduct more meetings as necessary

Mayor Gardner questioned who would be at the meeting on January 13th.

Mr. Regan replied that the meeting was for the engaged design professionals including surveyor, geotechnical sub consultant, civil engineers, architects, landscape architects and City Staff. He added that the City Manager would open the meeting with a statement of the City policy and purpose, staff would lead the meeting throughout the day, and the consultant team would lead them through the necessary steps.

Mayor Gardner questioned whether building visuals would be available in three months.

Mr. Regan replied that renderings would be available in approximately three months providing a two and three dimensional view.

Mayor Gardner questioned the bidding process from April until July of 2004, and he questioned the length of time for construction.

Mr. Regan said the bidding process would take place during the month of June. He said the current construction period brought the project up to the Super Bowl with a construction period after the event and final completion and occupancy in December 2005.

Mayor Gardner questioned what exactly would be constructed by February of 2005.

Mr. Regan replied that he would have to bring that information to the subsequent meeting as those were the details that would be discussed at the meeting the following day.

Mayor Gardner questioned whether half the structure could be built allowing for half the current parking area to be used for the Super Bowl.

Mr. Regan repeated that the subject would be addressed the following day, and it would be inappropriate for staff to make that commitment at that time. However, he said that temporary parking facilities would be available, and the City would be ready for visitors during the Super Bowl.

6. ITEMS BY CITY ATTORNEY

(None Scheduled)

7. ITEMS BY CITY CLERK

7.A/ Consideration of four appointments to the Historic Preservation Advisory Committee.

Martha V. (Nell) Porter, City Clerk, reported that there were four appointments to the HPAC, which had been advertised with a January 5th deadline for applications; however, she had received an application for Joseph G. Shannon, 111 Washington Street that day, and the other six applicants for the positions were as follows:

- Donna Delhaye Blair, 160 Anastasia Lakes Drive
- Dan Holiday, 11 Aviles Street
- Jeanne Krausz, 16 May Street
- Phillip J. Moan, 348 Charlotte Street
- Miriam E. Pujals, 72 Sanford Street
- William Spencer, 11 Aviles Street, 2A

Ms. Porter pointed out that Dan Holiday, Jeanne Krausz, and Phillip Moan had served one term on the board and they were eligible for reappointment.

MOTION

Commissioner Lennon MOVED to allow the three available for reappointment to serve another term. MOTION FAILED FOR LACK OF A SECOND.

Commissioner Burk stated that they should vote.

The Commissioners voted by written ballot and appointed Ms. Krausz, Ms. Pujals, Mr. Moan, and Mr. Shannon.

7.B/ Consideration of one appointment to the Firefighters' Retirement System Board of Trustees.

MOTION

Commissioner Lennon MOVED to approve Mr. David W. Quinney. The motion was SECONDED by Commissioner Burk and approved by UNANIMOUS VOICE VOTE.

8. ITEMS BY CITY MANAGER (Includes Consent Agenda)

Mr. Harriss stated that he intended to reformat the Consent Agenda for the subsequent meeting to make it easier to read.

8.A. Preview of upcoming Commission meetings.

8.B. Determination of legal sufficiency and acceptance of an application to appeal a Historic Architectural Review Board decision relative to property located at 32 Avenida Menendez.

8.C. Approval of final subdivision plat for property located at the corner of Bridge Street and Cordova Street.

8.D. Consideration of Release of Liens on Unit Connection Fee Mortgages.

8.E. Consideration of the 2004 City Commission meeting schedule.

MOTION

Commissioner Burk MOVED to approve Items 8.A. through 8.E. on the consent agenda. The motion was SECONDED by Commissioner Lennon and approved by UNANIMOUS VOICE VOTE.

8.F. Sebastian Inland Harbor Development Project Proposal Submittals.

Mr. Harriss stated that the City had received three submittals including the nonconforming submittal referred to earlier in the meeting. He said that the three groups had made additions to their submittals, which would be available for the Commissioners consideration. He recommended that the City Commission conduct a workshop to evaluate and score the three proposals, and he recommended that the real estate attorney, George McClure, attend the workshop to assist the Commission. He suggested considering the services of an architect familiar with such projects for assistance, preferably from Jacksonville, as they would not be influenced regarding the project. He said that the cost would be minimal considering the importance of the project. He recommended conducting the workshop as soon as possible.

Commissioner Burk questioned whether the three applicants would make presentations.

Mr. Harriss replied that the submittals were presentations; moreover, the Commission would end up being lobbied if presentations were scheduled.

Commissioner Burk suggested that because there were only three there should be presentations during the workshop, which should curtail lobbying.

Commissioner Crichlow questioned whether the presentations would be private.

Commissioner Burk said the presentations could be conducted during a public workshop, in which public comment would not be invited.

Mayor Gardner suggested setting a time limit on the presentations.

After a discussion it was determined that the presentations would be fifteen minutes, allow thirty minutes for questions with a five minute opportunity for rebuttal, they would suggest in the spirit of fairness that the companies not giving the presentation wait outside the room, although it would be a public meeting and the architect would be present.

MOTION

Commissioner Burk MOVED to proceed as discussed. The motion was SECONDED by Commissioner Lennon and approved by UNANIMOUS VOICE VOTE.

Another discussion revealed that the City Manager would schedule the meeting as soon as possible, and the City was required to provide twelve hours prior notice to the media about the meeting.

9. ITEMS BY THE MAYOR AND COMMISSIONERS

Commissioner Crichlow – Plaza

Commissioner Crichlow noted that the vendors in the Plaza had destroyed the grass. He suggested revisiting the issue in an effort to remedy the situation. He said that if the City was going to allow vendors in the Plaza they should make specific locations for them and use

mulch or something that would not be destroyed in those locations. He suggested that moving the vendors from area to area and continually replacing the sod was an expensive proposition.

Commissioner Lennon suggested that the vendors be moved to the back of the Government House.

Mr. Harriss explained that currently they rotated the vendors around the Plaza every ten days.

Commissioner Lennon stated that there was no requirement for vendors to be in the Plaza.

Mr. Wilson stated that the City had to provide a reasonable alternative, and the court had viewed the location as a reasonable alternative, as it had been a speech related situation. He said that he was trying to find a way to put the strictly commercial vendors in a different location where they could not damage the grass, such as the Old Market or the bayfront, and the speech and expression related issues could remain in the Plaza. He pointed out that free speech became a problem when a vendor was selling t-shirts, but the shirts had a message on them, similar to the situation the City had faced with the Hari Krishna vendors. He said that putting some durable materials or surfacing the areas of the Plaza that would be used was a good idea to maintain the appearance of the Plaza. He concluded that he wanted to be sure to stay within the parameters the court had set.

Mayor Gardner questioned whether the market area could be the only venue for the vendors, similar to Charleston, South Carolina.

Commissioner Burk said there would be a limited number of spots available in

the market, and when they were gone they were gone.

Mr. Wilson pointed out that Charleston's issue did not involve free speech as it did in St. Augustine, and as far as pure commercial vending was concerned it would not be a problem to regulate.

Commissioner Burk noted that approximately 90% of the vending was purely commercial.

Mayor Gardner pointed out that the City regulated all the vendors in the Plaza by circulating them every ten days.

Mr. Wilson replied that was true, but they remained within the same basic vicinity.

Commissioner Lennon stated that he had a hard time with some of the vendors in the Plaza that also had businesses on St. George Street.

Mr. Wilson said that if the situation was not speech related it would be easy, but when there was a combination of the two it became problematic.

Commissioner Jones noted that the only entertainer in the Plaza was Bob Jones.

Mr. Wilson replied that there were artists in the Plaza also.

Commissioner Jones stated that the foot traffic was killing the grass and basically there was a flea market existing in the Plaza.

Mayor Gardner stated that if they had to have it they might as well set the situation up similar to Charleston. He said that he was in favor of putting lighting in market, which would be cheaper than replacing the grass.

Commissioner Jones stated that the vendors worked in the day time.

Mayor Gardner said that he received complaints all the time about lighting, but he was not talking about elaborate lighting.

Commissioner Jones questioned whether the City had to provide lighting.

Mayor Gardner stated that he did not see the free speech people moving someplace else in the Plaza. He said that he only saw them close to St. George Street and Cathedral Place.

Commissioner Lennon said that they wanted to be there because they were more apparent to the visitors on St. George Street.

Mayor Gardner stated that the vendors might not like it in the market at first, but their presence should attract visitors to the market.

Commissioner Jones stated that they had a problem, because the City Attorney was saying that they had to separate and distinguish free speech from strictly commercial. He suggested that the City Attorney had to make that separation for the Commission in some manner to determine which was which, so they would know what they were dealing with in terms of numbers, and then they could move the commercial vendors into the market place.

Mr. Wilson stated that he honestly did not know what the situation in the Plaza was.

Commissioner Burk stated that the Commission was in agreement.

Mayor Gardner suggested that the City Attorney take a look at the situation to see if it could work.

Commissioner Crichlow stated that perhaps the City could set up a permanent surface situation for the vendors etc. involved with free speech.

Commissioner Burk suggested that they see how separating the strictly commercial vendors and locating them in the market would help the situation.

Commissioner Jones – Riberia and King Streets Flea Market

Commissioner Jones reported that the area where the Commission had denied the tattoo parlor on King and Riberia Streets was being used for an outside flea market. He said that someone had set up tables and racks to sell used or previously owned goods.

Mayor Gardner questioned whether they were on the sidewalk.

Commissioner Jones replied that they were under the overhang, and he questioned whether it was legal.

Mr. Wilson replied that if it was under the canopy it was probably legal.

Commissioner Jones stated that it looked horrible.

Commissioner Burk pointed out a similar situation in which the City required that displayed merchandise had to be new.

Mark Knight, Director, Planning and Building Department, stated that as a result of a complaint staff had spoken with the vendor. He said that the vendor was instructed that he could only sell new merchandise and could not use the required parking area for sales;

therefore, he was using the old pump islands and sidewalk.

Commissioner Jones stated that what he saw took place in the parking area.

Mr. Knight replied that he would have Code Enforcement check the situation.

Commissioner Jones noted that the situation was active on the weekend and after hours.

Mr. Harriss stated that Code Enforcement worked on some Saturdays.

Mr. Knight said that staff could address specific issues.

Commissioner Lennon – Speed Hump

Commissioner Lennon reported that he had received four telephone calls complaining about the new speed hump at Maria Sanchez Lake.

Mr. Harriss replied that there was a process that the community went through to install speed humps; therefore, the installation was the result of the neighborhood going through the process.

Mayor Gardner questioned where the hump was.

Mr. Harriss replied that it was on Cordova Street adjacent to Maria Sanchez Lake. He said that the City installed a 3.5 inch hump with the necessary marking. He noted that any area of the City could petition for a speed hump.

Commissioner Crichlow added that he had received many positive comments regarding the speed hump and questioned why it had taken so long. He said that he had informed the neighbors

of the process for acquiring a speed hump.

Mr. Regan noted that the process took time and he explained the process. He noted that the results from the speed hump had elicited favorable response from the neighborhood.

Commissioner Lennon questioned who had initiated the application.

Mr. Regan replied that it had been Commissioner Crichlow.

Commissioner Crichlow stated that he had not signed the application, but there had been ten signatures. He noted that there had been a significantly positive effect as a result of the speed hump.

Mr. Regan said the process was organizational by making people aware of the process and making certain there was public support through the petition. He added that there was a similar process for removing a speed hump.

Commissioner Lennon questioned why a speed hump had not been installed on Leonardi Street, and the response was that the neighbors had not supported the method.

A brief discussion resulted regarding the speed limit and the height of speed humps as well as the effect some of the existing speed humps had on the neighborhoods.

Commissioner Burk – Old Fire Station

Commissioner Burk questioned whether the Commission wanted to discuss the future of the old fire station

Mr. Harriss stated that some members of staff had approached him regarding use of the building, but he was not ready to

present those suggestions to the Commission.

Commissioner Jones – Santa Domingo Redoubt

Commissioner Jones brought up the situation of the Santa Domingo Redoubt being used as a skate board park.

Mr. Harriss stated that the City was looking for methods to discourage the activity.

Mayor Gardner – Flagler College

Mayor Gardner acknowledged Flagler College for leasing parking spaces for students at the Florida East Coast Railway site.

Announcements

Mayor Gardner announced that the Arbor Day Ceremonies would be held at Lighthouse Park, and the DAR would have their ceremony on January 18th at 8:30 a.m. behind the Lightner Museum.

Ponce Hotel

Mayor Gardner questioned the situation surrounding the demolition permit for the Ponce Hotel. ¹

Mr. Harriss responded that the developer had met all the criteria necessary for demolition.

Mr. Knight reported that the developer had applied for a demolition permit and research revealed that the building was not fifty years or older. He said that at one time there had been a request to place the golf course on the HARB agenda as a local landmark. He explained that the request had to be

made by the land owner, but the landowner had requested that the course not be considered a local landmark.

Commissioner Crichlow questioned what the City did to determine whether a demolition followed the proper criteria regarding asbestos abatement.

Mr. Knight said that the contractor was required to contact the DEP; however, if the City noticed asbestos they would question whether the contractor had been in contact with the DEP. He reiterated that the responsibility was the contractors.

Mayor Gardner noted that the mediation regarding the Ponce was scheduled for February 12, 2004, and Commissioner Burk was representing the Commission during the hearing. He asked for a description of what the City was trying to achieve through mediation.

Mr. Wilson replied that the process was designed to allow reconsideration of changes or settling any problems with certain types of development when developers claimed that a city or government action had reduced the value of his/her property. He said the situation was allowed by statute and was created to avoid litigation by resolving issues before a Special Master proceeding with the input of the government agency, applicant and interested members of the public that had showed interest at previous government meetings.

Mayor Gardner questioned whether it was non-binding.

Mr. Wilson replied that through the Special Master a resolution would go back to the City Commission for ratification, or the Special Master could make recommendations regarding a

¹ End of audio tape one

resolution to the problem, which the City could adopt or reject. He said that in the instance of rejection, litigation was generally the next step.

Commissioner Crichlow questioned what Commissioner Burk's approach would be in the mediation.

Mr. Wilson replied that her approach would be based on the Commission's previous decision, and solutions for problems might be identified where she would be the first person to evaluate those matters and make a recommendation, but she could not bind the Commission. He continued that she would bring the information back to the Commission.

Commissioner Crichlow questioned whether Commissioner Burk was comfortable with her position, or whether she preferred more discussion about the situation.

Commissioner Burk said she might have questions for the Commission at the subsequent meeting. She said that, as a lawyer, mediation was familiar to her and generally meant "let's make a deal". She said that both sides had things they wanted and it was a time to negotiate, hopefully in a way that both parties would be satisfied.

Commissioner Crichlow stated that if he were in Commissioner Burk's position he would be more comfortable if he knew what the Commission's overall opinion was about the situation.

Mr. Wilson pointed out that there were two more meetings prior to the February 12th mediation, and the City would have a better idea of what Mr. Stokes was going to propose, which would be the time for discussion.

Commissioner Burk noted that she planned to ask the Commissioners for their opinion regarding some issues, but she noted that they could not go into specifics, because they could not know what was going to happen before the mediation and often times the situation changed during mediation.

Mayor Gardner stated that he wanted the City Manager to be certain that the matter was included on the agenda, because he had his own recommendations for Commissioner Burk.

Commissioner Burk noted that she wanted the matter on the January 26th meeting agenda.

Commissioner Jones pointed out that no matter what took place the matter would be brought back to the Commission. He added that Commissioner Burk could not go into the mediation expressing five positions; she was representing the entire Commission as one body.

Mayor Gardner emphasized that the Commission might want to vote as a body on a position.

10. Appeals and Public Hearings

10.A./ Public hearing and appeal of a Planning and Zoning Board's decision relative to property located at 11 Tremerton Street. (Tabled from the October 27, 2003 and December 8, 2003 meetings).

George McClure, 170 Malaga Street, stated that the site was on the south end of Tremerton Street on the old Flagler complex property, which was designated for multifamily use of up to eight units per acre. However, he said that the proposed multifamily project had engendered concern from the neighbors;

therefore, his client had modified the proposal to seven detached single family residences. He said that the market was excellent, and his client felt as though he could deliver a quality product. He said only a limited number of the lots had waterfront locations; therefore, his client wanted to provide a waterfront amenity through the dock, which had been approved. However, he said that his client wanted to construct a type of boatlift on the seven slips, and the PZB had a split vote on the matter. He distributed a photograph of Fred Cones dock and boatlift, which was one of a kind. He also presented renderings of the proposed boatlift.

Bruce Floyd, 1003 North 24th, Jacksonville Beach, was sworn and referred to the photograph of a low profile boatlift designed with nothing above the decking. He said the lift was unique, expensive and difficult to install. He referred to the renderings and said that the proposed design was closest to the lift in the photograph, which incorporated a low profile design. He pointed out exhibit A and said that the only thing above the decking would be the four motors that would be covered in wood to hide the mechanical devices, which would resemble a mooring piling without the horizontal cross bar. He referred to exhibit B, which was an overview demonstrating one slip indicating that the deck would extend from catwalk to catwalk to hide the beams that would lift the boat out of the water. He referred to exhibit C and D, which indicated side views from a distance and said that the lift was unobtrusive with no top lifter beam. He said that he believed the objection had been the top "I" beam that was on standard boatlifts.

Commissioner Lennon pointed out that the complaint had been that the pilings

would stick up too high and interfere with the view.

Mr. Floyd responded that they had eliminated that problem by lowering the piling to approximately 36 inches above the deck, which was the normal height for handrails.

A brief discussion resulted about the dock and boatlift in the photograph, which had been introduced for design element comparison.

Commissioner Crichlow noted that Mr. Cone's boatlift was not in production, but if it became available the Commission could address the subject again. He pointed out that the proposed boatlift seemed to be the best one available. He noted that the parts above the decking were well camouflaged. He said that the proposal was a reasonable compromise and it was available. He said that although it was more expensive than conventional lifts it was not cost prohibitive, and it alleviated the visual problem the public was experiencing with boatlifts.

Commissioner Burk commended Mr. Floyd for his compromise and stated that she would support the proposal.

Mr. McClure added that Mr. Cone's lift was a one of a kind that cost \$11-\$12,000 and that amount was less than what it cost to install, and there was no product liability insurance available for it as it had not been engineered to an independent standard, but the proposed dock was. He referred to the visual impact of floating docks and noted that Mr. Floyd's dock did not float or interfere with the view.

Mayor Gardner questioned whether the proposed boatlift had been presented to the PZB.

Mr. McClure replied that the design had been amended since the PZB denied the proposal.

Mayor Gardner said that he would make a motion to approve the appeal with the help of the City Attorney as the PZB had not seen the design for the proposed boatlift.

Mr. Wilson stated that the Commission had the authority to consider options that had not been presented to the PZB. He said that the Commission was finding that the application presented had not been observed by the PZB and was in accordance with the spirit of what the PZB was looking for.

Commissioner Crichlow recommended that the City make the PZB aware of the proposed boatlift for future reference.

Mayor Gardner questioned whether approving the boatlift would be counter to the proposed ordinance that would be introduced later in the meeting.

Mr. Wilson stated that nothing in the proposed boatlift design would be in conflict with the proposed ordinance.

Commissioner Lennon questioned the weight of the proposed boatlift, and he was informed 10,000 pounds.

Exparte Communication

Commissioner Crichlow reported that he had spoken with the applicant.

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

MOTION

Commissioner Burk MOVED to grant the appeal based on the additional

information presented with the appellant complying with exhibits A, B, C, and D at 10,000 pounds.

Mayor Gardner suggested incorporating wording that the application was not the same as had been presented to the PZB.

Commissioner Crichlow SECONDED the motion.

VOTE ON MOTION

AYES: Burk, Crichlow, Jones, Lennon, Gardner

NAYES: None

MOTION CARRIED UNANIMOUSLY ²

11. RESOLUTIONS AND ORDINANCES (To include public hearing)

11.A / Resolutions

11.A.1/ Consideration of Resolution 2004-01, supporting the Florida League of Cities key priority issues.

Mr. Harriss said the resolution was from the Florida League of Cities referencing items they believed were priority. He said the resolution was the result of their legislative session and they requested the City's approval.

MOTION

Commissioner Lennon MOVED to approved Resolution 2004-01. The motion was SECONDED by Commissioner Burk and approved by UNANIMOUS VOICE VOTE.

Commissioner Crichlow questioned whether the resolution was compatible with Resolution 2004-02.

Mr. Harriss replied that there should not be a conflict.

² A recess from 7:02 until 7:32 p.m.

11.A.2/ Consideration of Resolution 2004-02, opposing the creation of a Statewide water authority and the transportation of water from North to Central and South Florida.

Mr. Harriss said that the Governor's office had suggested the possibility of redistributing water resources in the State of Florida. He stated that the southern portion of the state was in need of good water and north Florida had an abundance; however, it was suggested that the City go on record that it would not sell water to the southern portion of the state. He said that it was a matter of home rule.

Commissioner Lennon noted that the Florida League of Cities was totally against the proposal.

Mayor Gardner stated that the County and St. Augustine Beach had approved the resolution.

Mr. Harriss stated that every City in north Florida had also approved the resolution.

MOTION

Commissioner Crichlow MOVED to approve Resolution 2004-02. The motion was SECONDED by Commissioner Lennon and approved by UNANIMOUS VOICE VOTE.

11.A.3/ Consideration of Resolution 2004-03, concerning a petition to vacate a portion of Lake Drive.

Mr. Harriss explained that the resolution was the first step in the process of vacating a portion of right-of-way between Poinciana and Hybiscus Avenues.

Kevin Davenport, 3266 Pacetti Road, stated that he was representing the

owners of the property. He said that after Mi Hogar Avenue all improvements stopped, although the right-of-ways were platted to the marsh. He said that Lake Drive was a 100-foot right-of-way and there were approximately 25-feet of uplands within the right-of-way with a maximum of 50-feet on the north end making it difficult to put in improvements. He said that Poinciana and Hybiscus Avenues were not open, and they would leave them in there existing state as public access to the water. He said Lake Drive could not be used for a road or improvements, and the question was who would maintain it. He pointed out that the site plan provided an internal easement for a turn-around before Lake Drive. He explained that the east end of Poinciana Avenue went dangerously close to the marsh, Lake Drive could not provide access to the three lots and on the south side of Hybiscus Avenue one owner owned the entire block; therefore the internal turn-around to avoid negative impact.

Commissioner Lennon asked for clarity that Poinciana and Hybiscus Avenues would be open for public access.

Mr. Davenport replied that the roads were currently public right-of-way, and it was their desire to have a trail on Poinciana for the future residents, but it was too close to the marsh for paving. He said that they would want feedback from the resident on Hybiscus Avenue regarding a potential trail.

Commissioner Lennon questioned whether the woman who owned the Ponce also owned the back parcel.

Mr. Davenport replied that she had. He said that the thirteen lots had been platted for many years.

Commissioner Lennon questioned whether the City had any interest in the area.

Mr. Harriss replied that there were no utilities.

Commission Burk pointed out that the entire right-of-way was marsh front.

Mr. Harriss said that the Comp Plan provided that right-of-way to water was protected. He said that the right-of-way to water on Poinciana and Hibiscus Avenues was available, but the question was whether Lake Drive was access to water. He pointed out that with the exception of the southeast end of Lake Drive it was all uplands.

Commissioner Jones questioned why Mr. Davenport felt the City should vacate Lake Drive.

Mr. Davenport replied that platted right-of-way was effectively like an easement that could be deeded. He said that when a road was closed it was not sold, it reverted to the people who owned the adjacent property.

Commissioner Jones stated that it could be a City walkway at sometime.

Mr. Davenport stated that they would comply with the Comp Plan regarding access to the marsh on Poinciana and Hibiscus Avenues.

Commissioner Burk clarified that Mr. Davenport's client was not giving anything up as Poinciana and Hibiscus Avenues belonged to the City.

Mr. Davenport agreed that was true, but they would not use them as access to the lots nor try to close them.

A brief discussion took place regarding the exact location of Lake Drive.

Mr. Davenport stated that they had no intention of building in the vacated area and there was a conservation easement. He said that if they could not close the road then under the district rules they only had to have a small piece of conservation easement on the south end.

Mayor Gardner questioned the benefit to the landowner.

Mr. Davenport replied that his client intended on building three houses on that end of the property, and the vacation would provide the homeowner with control of maintenance of the property. He noted that they would limit what the homeowner could do with the property.

Mayor Gardner noted that they were three undisturbed waterfront lots.

Commissioner Burk noted that future homeowners would use fertilize and pesticides.

Mr. Davenport stated that there was a 25-foot buffer without grass or use of fertilizer, and there would be a drainage swale designed to stop the water from going into the marsh.

Commissioner Crichlow noted that the property was upland, and he disliked the idea of the City giving it up. He said that even if the City did not do anything with the property it would still be a benefit to the property owner. He said that he did not want to set a precedent of giving up that kind of property. He concluded that the property might prove to be a benefit to the City one day.

Commissioner Burk stated that she had a problem with vacating a right-of-way on waterfront property. She said that the property belonged to the public, and

it was not the City's to give away because a developer could make better use of the land. She said that type of property was getting scarce and she saw no benefit to the citizens by giving up the property.

MOTION

Commissioner Crichlow MOVED to deny Resolution 2004-03. Commissioner Burk SECONDED the motion.

VOTE ON MOTION

AYES: Crichlow, Burk, Jones, Lennon, Gardner

NAYES: None

MOTION CARRIED UNANIMOUSLY

11.A.4/ Consideration of Resolution 2004-04, creating the Davis Shores Yacht Basin special Assessment District.

Mr. Regan stated that he approached the Commission a few months earlier regarding dredging the Davis Shores Yacht Basin. He said the proposed resolution was the next step in formalizing the project approach, which was required by Florida Statutes to create a special assessment district. He said if the Commissioners approved the resolution the next step would be to finalize the dredging specification, provide public notice to the properties that would be levied to pay back the special assessment and wait thirty days before a public hearing would be conducted.

Commissioner Lennon questioned whether the dotted line in attachment B indicated the wall that had been discussed.

Mr. Regan replied that the dotted line represented the limits of the permanent dredgeable area. He added that they were still working on the technical details of how to sweep the mouth of the

basin, and it had not been determined whether there would be a barrier wall.

MOTION

Commissioner Lennon MOVED to approve Resolution 2004-04. The motion was seconded by Mayor Gardner and approved by UNANIMOUS VOICE VOTE.

11.B/ Ordinances - First Reading

11.B.1/ Introduction and consideration of Ordinance 2004-01, establishing criteria for boatlifts and boats on lifts.

Mr. Knight reported that the ordinance had been initiated by the PZB, as the board had put conditions on boatlifts during the previous few months. He said that staff had listed the conditions and asked the board which ones they wanted to make law. He said the PZB had made improvements determining that the maximum height of a boat would not exceed six feet above the gunnels, excluding masts and antennas. He said that the public hearing on the aforementioned appeal led to the "no" and "low" profile boatlift concept. He said that low profile boatlifts could result in docks being lifted higher out of the water for higher clearance for boats; therefore, they had added that no deck on any private boat dock would exceed six feet above mean high water creating a standard that was measurable based on the water.

Mayor Gardner questioned whether "low" and "no" profile boatlifts suggested different scenarios.

Mr. Knight stated that "low" profile boatlifts were identified as anything less than three feet above the deck. He said they had added the definition for a "no"

profile as a boatlift that did not extend above the deck to provide the PZB with the option.

Commissioner Crichlow suggested redefining low profile to make the maximum allowed the same as had been approved in the appeal for 11 Tremerton Street and without a horizontal cross bar.

Commissioner Burk noted that if there was no definition for "low" profile boatlift they should make a definition.

Commissioner Crichlow noted that currently "low" profile would be interpreted as three foot out and with a horizontal bar.

Mr. Harriss said that it would be "no" profile except that the motors were above the decking.

Commissioner Crichlow noted that the boatlift described in the appeal for 11 Tremerton Street was readily available and reasonably priced; therefore, he would like to see that one defined as the maximum and include the "no" profile in the event that type of lift became available in the future. He added that currently the PZB could not force someone to use the "no" profile boatlift.

Mr. Harriss stated that they could take that information and modify the proposed ordinance for the subsequent meeting.

Mayor Gardner questioned whether the ordinance would eliminate flying bridges.

Mr. Harriss said that the six foot limitation would eliminate tall flying bridges.

Commissioner Lennon corrected that even a small flying bridge would be

eliminated, and he stated that was not fair.

Commissioner Burk stated that stopping boats from blocking the view was the reason for the ordinance.

Commissioner Lennon said that the Commission was jamming ordinances down the throat of the public and taking away people's rights. He suggested that the Commissioners give the people a break, as they could not continue to force government on the public. He emphasized that he was totally against the ordinance.

Mayor Gardner stated that the rights of the few who could afford nine foot flying bridges on fifty foot boats were being trampled for the benefit of the vista of the majority of the community. He said that it was an age old issue that the City had been laboring over for years. He stated that he disagreed with Commissioner Lennon, as it was the greater benefit of the community to have regulation and control over the matter. He said that he would like to think that people who could afford large boats etc. could find other avenues for recreation that were less intrusive.

Commissioner Lennon responded that just because the Mayor could not afford land on the water with a dock did not mean that the people who could afford to do so should suffer with his rules. He said if the table was turned regarding issues that affected the Mayor, he would not care for the control. He stated that the Commissioners should be the last people to take away the rights of the people.

Mayor Gardner suggested that the second reading of the ordinance would allow them to hear public opinion regarding the ordinance.

Mr. Knight clarified that the ordinance would apply to new boatlifts and would not affect the ones currently in existence.

Mr. Harriss further clarified that the ordinance pertained to boatlifts and not to docks.

Commissioner Lennon pointed out that the person with a 12,000 pound lift with a 13,000 pound boat on it could be cited.

Mr. Knight stated that the City would have to find that it was an unsafe structure.

Commissioner Lennon said that the limit was 12,000 pounds.

Mr. Harriss clarified that 12,000 pounds pertained to the boatlift not the boat.

A brief discussion resulted.

Commissioner Burk suggested that the ordinance include that a lift shall not hold a boat greater than its capacity.

Commissioner Crichlow noted that when the PZB had issued the 12,000 pound capacity they had thought that would be the answer to problem, but it was not a matter of the weight it was the matter of the size of the boat. He stated that the City had to control the situation some way and the ordinance was heading in the right direction.

Commissioner Lennon questioned who was complaining about the situation.

Commissioner Crichlow stated that people were complaining about huge boats out of the water on lifts.

Commissioner Lennon stated that he would like to know who those people were.

MOTION

Commissioner Crichlow MOVED to place Ordinance 2004-01 on first reading, read by title only and approved with the modified definition of low profile. Commissioner Burk SECONDED the motion.

Mr. Wilson read the title as follows:

ORDINANCE NO. 2004-01

AN ORDINANCE OF THE CITY OF ST. AUGUSTINE, FLORIDA, AMENDING SECTION 11-29 OF THE CODE OF THE CITY OF ST. AUGUSTINE TO ESTABLISH CRITERIA FOR BOATLIFTS AND BOATS ON LIFTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF THE CITY OF ST. AUGUSTINE; AND PROVIDING FOR AN EFFECTIVE DATE.

VOTE ON MOTION

AYES: Crichlow, Burk, Jones, Gardner

NAYES: Lennon

MOTION CARRIED 4/1

Commissioner Jones noted that the second reading of the ordinance would provide the public with the opportunity to address the matter before the Commission.

11.B.2/ Introduction and consideration of Ordinance 2004-02, rezoning property located on Lewis Speedway to Planned Unit Development (PUD).

Mr. Knight reported that the property in question had been rezoned a PUD for a commerce center when it was annexed, but the timeframe had expired on the PUD. He said the project had been reduced from 200,000 square feet to 160,000 square feet with a smaller

building concept, and the buildings had been moved away from the creek to provide a better buffer. He added that the matter had been worked out with the surrounding property owners.

Commissioner Burk questioned the current situation with the trees.

Mr. Knight stated that the applicant had determined to use a two step process of getting the ordinance approved with the development plan narrative and then return to the PZB with the final site plan including tree removal.

Commissioner Burk questioned whether the plan would result in more or less trees being removed.

Mr. Knight said that he presumed the reduction in the site plan would result in saving more trees.

Mayor Gardner questioned whether the project required a tree survey.

Mr. Knight said that it would when it went back to the PZB for final approval.

Mayor Gardner stated that it was his understanding that a PUD was the most powerful zoning tool local government had. He said that it was also his understanding that once the PZB recommended to the Commission the matter was exclusively in the hands of the Commission; however, that was not what he was hearing currently.

Mr. Knight explained that there were two processes in a PUD, a preliminary and a final plan and the applicant could choose to have the preliminary and final plan conducted simultaneously. He said that the preliminary plan was the recommendation to the City Commission, and the final plan would be reviewed by the PZB.

Mayor Gardner questioned who had the overview of the final building architectural design.

Mr. Knight noted that in the current situation there would not be a detailed architectural design.

Commissioner Crichlow noted that was normal for anything outside of the HP districts, unless it was in the entrance corridors.

Commissioner Jones stated that other than height and setbacks they could build what they wanted.

Mr. Harriss stated that there were certain criteria that had to be met in any zoning category, especially in a commercial district.

Commissioner Burk questioned whether they could grant the PUD with that as part of the criteria, and the response was affirmative.

Commissioner Jones questioned why the Commission should deal with that type of detail in the situation, unless geographically it dictated concern.

Commissioner Burk noted that the Commission could make the decision about how much control they wanted to have over the PUD.

Commissioner Crichlow stated that it would not entail a detailed review; it would be a means of being certain that something terrible was not going to happen.

Mayor Gardner reiterated that a PUD was the most powerful and restrictive type of zoning the City had. He said that the proposed development really did not have much impact on the core City area;

however, when the City approved the Flagler dormitory the architectural renderings were institutional, but the surrounding property consisted of Victorian style homes. He noted that the Commission had not taken any action, but he thought that in those types of situations the PZB should conduct a review. He suggested that they have a workshop to understand the real power in a PUD.

Commissioner Burk clarified that the Mayor wanted to review the PUD ordinance and she agreed.

Commissioner Jones stated that there had been a review, and Flagler College had changed the design of the dormitory. He noted that the real concerns about the dormitory had been location and traffic etc.

Mr. Knight noted that a PUD was a trade off process for the specifics of the land, as in the proposed project there was a 200-foot buffer along the wetland, which the applicant had voluntarily added.

Commissioner Crichlow stated that the architectural design could be significant in many cases. He said that perhaps some kind of review for architectural style would be good as part of the PUD. He suggested that it was a good option to utilize.

MOTION

Commissioner Jones MOVED to place Ordinance 2004-02 on first reading, read by title only and approved. Commissioner Lennon SECONDED the motion.

Mr. Wilson read the title as follows:

ORDINANCE NO. 2004-02

AN ORDINANCE OF THE CITY OF ST. AUGUSTINE, FLORIDA, ESTABLISHING THE NORTH FLORIDA COMMERCE CENTER PLANNED UNIT DEVELOPMENT (PUD) PURSUANT TO SECTION 28-289 OF THE CODE OF THE CITY OF ST. AUGUSTINE; PROVIDING FOR TERMS AND CONDITIONS OF THE PUD; PROVIDING FOR NON-AD VALOREM ASSESSMENT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

VOTE ON MOTION

AYES: Jones, Lennon Burk, Crichlow, Gardner

NAYES: None

MOTION CARRIED UNANIMOUSLY

11.C/ Ordinance - First Reading Public Hearing Required

(None Scheduled)

11.D/ Ordinances - Second Reading Public Hearing

(None Scheduled)

12.A/ General Public Comments (5 minutes per individual).

(None)

12.B/ GENERAL PUBLIC PRESENTATIONS AND COMMENTS (15 minutes per presentations)

(None scheduled for this meeting)

13. Adjournment

There being no further business, the meeting was adjourned at 8:29 p.m. ³

³Transcribed by Karen Rogers, Recording Secretary

MAYOR

CITY CLERK