

CITY OF ST. AUGUSTINE

Regular City Commission Meeting  
June 14, 2004

The City Commission met in a formal session Monday, June 14, 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

Absent:

William Lennon, City Commissioner

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

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**2. INVOCATION AND PLEDGE OF ALLEGIANCE**

Pastor John Beard, Hineni Messianic Fellowship, delivered the invocation and Mayor Gardner led the Pledge of Allegiance.

**3. ADMINISTRATIVE ITEMS**

**3.A/ Modification of Agenda**

(None)

**3.B/ Approval of Minutes**

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The minutes of the City Commission Regular Meeting of May 24, 2004 were approved with the following amendments: page 5, right column was amended to read *Commissioner Jones stated that they should not appoint a committee*, page 17, top right column was amended to read *Commissioner Crichlow pointed out that a vote for short-term leases would eliminate restaurants or museums*, and page 19, middle of the right column was amended to read *Commissioner Crichlow pointed out that a larger amount of money would go to Heritage Tourism if the leases were long-term.*

### **3.C/ Proclamations**

#### **3.C.1/ Neighborhood Week.**

Mayor Gardner read and presented the proclamation to Dale DiLeo, President of the Neighborhood Associations, who expressed appreciation for the proclamation and stated that they expected to initiate 3-4 more associations during the upcoming year.

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

Paul Meredith, 2960 Coastal Highway, stated that he represented Murphy McDaniel of Avalon Carriages. He said that Mr. McDaniel was on the agenda regarding a transfer of a Horse Drawn Carriage permit to him from R. H. Jones. He pointed out that Mr. Jones had not participated in the partnership for several years; therefore, his name should be removed from the license. However, he stated that he did not believe the transaction should be a transfer, nor did he believe that the transaction could be a transfer, because there was no ownership involved with the permits. He noted that he also wanted to speak during Item 8.B.1. on the agenda regarding Gamsey transferring permits to Ripley's Entertainment, Inc.

After some discussing it was determined that Mr. Meredith would be allowed to speak during Item 8.B.1. as his input could be helpful.

Mr. Meredith continued that the permit amounted to an occupational license and not an ownership asset. He explained that the permit was issued in the name of a partnership and one of the partners had dropped out without providing anything in writing. He said that under

the partnership laws of the state of Florida when someone left a partnership the assets remained components of the partnership. He stated that they were seeking a clerical adjustment to the name on the license, as they did not believe a transfer was necessary or proper.

Commissioner Burk suggested that Mr. Meredith meant that the business was not divided 50%, but that the partners both owned the totality of the license.

Mr. Meredith pointed out that there was no ownership of permits in the City Code. He said that it had been a partnership asset owned in its entirety, and when Mr. Jones left the business that asset remained in the partnership, which was currently named "McDaniel"; therefore, it was not a transfer but a clerical adjustment.

Commissioner Burk clarified that Mr. Meredith did not want a transfer to take place, but simply to remove Mr. Jones' name from the permit.

James P. Wilson, City Attorney, stated that the City Code required that anytime ownership of a permit transferred the City Commission had to approve the action. He said that if no action was taken regarding the transfer he was not certain what the situation would be for Mr. McDaniel.

Commissioner Burk stated that Mr. Meredith wanted the Commission to approve removal of Mr. Jones' name from the license.

Mr. Wilson replied that essentially that would be a transfer. He emphasized that the status of the partnership was not for the City to determine, but the license to operate was the City's determination, which required a transfer from two

people to one person; moreover, it was a Code requirement. He suggested that the transfer was a technical step to comply with the Code and not a big problem.

Mr. Harriss explained that a number of years earlier the license had been solely in Mr. Jones' name, but it had been transferred to the partnership of Jones and McDaniel by a vote of the Commission.

Mr. Meredith stated that the point he was trying to make was that there was no ownership interest in permits, and he noted that ownership was not the correct phrasing. He added that he did not want to over-complicate a matter that was a procedural technicality. He said that whatever it took to put the permit in Mr. McDaniel's name would be fine.

Commissioner Jones questioned whether the Code indicated that occupational licenses could be revoked, withdrawn, cancelled or anything the City wanted.

Mr. Wilson pointed out that carriage permits were not simply occupational licenses, as they allowed the City to regulate the conduct of the carriage drivers and owners. He added that the City could revoke the licenses in the event of misbehavior.

Juanita Nadine Davis, 8 Saragossa Street, encouraged the Commission to allow the Rainbow Flags to fly on the Bridge of Lion for the Gay Pride Festival. She pointed out that the flags were displayed in the public schools representing diversity, tolerance and acceptance of all citizens. She pointed out that Rainbow Flags were recognized nationally and internationally.

Jason Relph, 6310 Gomez Road, appealed to the Commissioners, for the

second year, to allow Rainbow Flags to fly on the Bridge of Lions. He pointed out that the previous year a workshop with a public hearing had been recommended for discussion about the matter; however, to his knowledge no public hearing had taken place. He pointed out that policy had been established with one criteria being a direct correlation with a historical landmarks or events and historical association with the City. He questioned what the Commissioners considered historical, and how they could deny their application over another organization. He asked the Commissioners to define historical.

Ruth Kay Jensen, 2905 CR 214, Lot H, thanked the Mayor for his letter welcoming people to the City to celebrate Gay Pride. She acknowledged that policy was in place, and she noted that the Commission had indicated that a public hearing might take place regarding the matter; however, it had not, which was the basis for people losing their faith in government. She suggested that the people most affected by an issue should have the right to voice their opinion, and she recommended more workshops and public hearings to allow for public input.

Paul K. Williamson, Director, Public Affairs, said that on June 9, 2003 a number of people spoke regarding clarity of the City's policy for flying flags on the Bridge of Lions. He said that staff had researched other Cities and brought a revised policy to the Commissioners. He said that on October 13, 2004 the matter had gone before the Commission, the meeting had been advertised, and the Commissioners had tweaked the policy. He said the policy had then gone before the Commission on October 27, 2003, and it was approved unanimously.

Commissioner Crichlow questioned the criteria in the policy.

Mr. Williamson replied that the flags had to be durable and represent a non-profit event, no commercial advertising, in direct correlation to a historic landmark or event in the City and have historical significance associated with the City. He said that since establishing the policy flags had been flown for Flagler College, Las Floridanans, Greek Landing Day, and the Lighthouse Festival. He added that the Civil Rights Committee of St. Augustine would be flying an approved flag for a week commemorating the 40<sup>th</sup> anniversary of the Civil Right activities.

Commissioner Burk reiterated her position that anyone should be able to petition the City to fly flags. She said that she did not like the restrictions and suggested that the market place of ideas should be opened to anyone. She said that the City should not be afraid of ideas that they did not agree with.

Commissioner Crichlow disagreed that the issue was fear, and said it amounted to limiting the matter to avoid changing flags every week. He suggested that the City could not take on the job of hanging so many potential flags. He stated that the established policy was appropriate for the City.

Commissioner Jones stated that he had no comment.

Mayor Gardner said that he agreed with Commissioner Crichlow. He said that diversity, religion, democracy etc. were concepts with history attached, but if the City expanded its criteria to accept concepts the bridge would be like billboard alley every week. He said that the uniqueness of flags on the bridge would become diluted and lost.

Commissioner Crichlow pointed out that the City was not closing the door on the Gay Pride Festival, as they had issued a permit to close a portion of Cuna Street for the festival and flags could be flown there. He said that flags could also be flown on the special events field. He stated that the City was only controlling the flags that could be flown on the Bridge of Lions.

Mayor Gardner noted that the City always intended to provide the public the necessary input in the governing body's decision making. He said that they welcomed comments; however, the protocol would remain in place.

Commissioner Jones agreed with the Mayor and said that the Commission had indicated that they would hold a workshop/public hearing; therefore, he would work toward that meeting in the future, as the subject obviously was not settled for the people who had spoken.

#### Non Agenda Item

Mr. Harriss reported that the City had experienced a serious power interruption a week earlier when the main transformer that ran City Hall had been incapacitated. He said that without the help of Tim Shirley and the FPL crews they could not have gotten City Hall functioning. He thanked Florida Power and Light.

### **5. PRESENTATIONS AND STAFF REPORTS**

(None Scheduled)

### **6. ITEMS BY CITY ATTORNEY**

**6.A/ Discussion concerning Special Masters Recommendation regarding 10 Marine Street.**

Mr. Wilson reported that David White and Barbara Rice had appealed a HARB decision related to 10 Marine Street, and the City Commission had denied the appeal. He explained that the structure in question was built in the early 1900's with a flat roof and picture windows, which was documented with photographs. He said that in the interim the building had been modified to depict a Spanish Colonial building, which was more in keeping with the area. He stated that Mr. White and Ms. Rice wanted to renovate the building by removing the smaller colonial windows to restore the picture windows and replace the cedar shake roof with metal. He noted that HARB had not approved the windows, they would not allow a metal roof, but they allowed for replacing the roof with an alternate material that was not cedar.

Mr. Wilson said that as a result of the HARB decision Mr. White and Ms. Rice filed a petition under Florida Statute 70.51 requesting the appointment of a Special Master. He said that the process was completed and the Special Master had recommended, by his interpretation of the HGHP, that the larger divided light windows could be installed, but he upheld the City's decision regarding the roof.

Mr. Wilson said that a portion of the City's decision had been upheld and a portion had been overturned. He clarified that a Special Master's finding was simply a recommendation, and the City could accept, modify, or reject the recommendation; whereupon, the petitioner could file an appeal in the court.

Mr. Wilson pointed out that Commissioner Crichlow had attended the Special Master hearing and would want to address the process.

Mayor Gardner requested a definition of a divided light window.

Mr. Wilson explained that it was separate panes of glass with dividers in between that met the historical accuracy of the period as opposed to large plate glass windows.

Commissioner Crichlow stated that during the Special Master proceeding different options had been offered to the applicants, but no common ground had been reached. He said that it bothered him that the matter had gone before HARB, a board with the expertise of an architectural historian and an architect, but the applicant had disagreed and appealed the board's decision. He said the Commission denied the appeal in support of the HARB decision, and the matter had gone before a Special Master or an attorney that had no expertise in the field in order to make a recommendation. He said the situation was ludicrous.

Commissioner Crichlow spoke in support of the 1960-1970's renovation of the building in question. He said that one could not pick different elements of different historical architecture styles and place them in any building. He said that originally the building was close to St. Augustine commercial style with a flat roof and currently it was Spanish Colonial, but the applicant wanted to go back to the big windows. He stated that it just would not be right to do that. He said that if they approved it they would have to add a new page to the HGHP for St. Augustine Colonial Commercial Revival, because if the windows were enlarged it would not match any current style. He sympathized with the Special Master, but he thought it was the Commissioner's responsibility to uphold what was right within the HARB guidelines. He added that the lack of

authenticity was exactly what the Commission was trying to prevent in St. Augustine.

Commissioner Burk agreed with Commissioner Crichlow and stated that she respected HARB and their decision. She said that she was certain the Special Master had good intentions, but the decision "split the baby", which was not conducive to the HARB guidelines.

Commissioner Jones noted that the record would reflect that he was opposed to the Commission's position on the matter, because he did not see anything historical about the original structure, as it was built in 1925. He said that the latter renovation was an attempt to match a particular period, but the business had not been successful; therefore, the building had been boarded up for approximately 12-years, and it was an eyesore. He said that reviving the building and making it a profitable enterprise was the intention. He questioned which history the applicant should fabricate 1925 or the 1960's, and he answered that he felt it should be 1925, which was the real history, as the 1960 renovation was a Disneyland attempt to look like the past. He added that it would be an undue burden on the owners when they were making an attempt to make the structure viable.

Commissioner Jones said that the Special Master was an attorney, but he was a third party with the objective to oversee what was fair to all parties. He stated that the Special Master's recommendations were reasonable and fair to the property owner while giving the structure character to blend in with the surroundings. He emphasized that the building never was what they were now trying to make it.

Mr. Wilson clarified that the building had been modified in the 80's and it might not have been a business after that point.

Commissioner Crichlow clarified that he had no problem with remodeling the structure to be as it had been in 1925, and he did not believe that HARB would object. He said the structure was currently St. Augustine Colonial Revival, but if they allowed the picture windows without making the roof flat in the commercial style it would be a combination of styles. He added that the owner did not want to put a flat roof on the building and make the structure commercial; he only wanted to bring the windows back to commercial and leave the rest of the building St. Augustine Colonial Revival.

Commissioner Jones stated that he did not believe that it was feasible to remodel the roof for commercial. He said that he understood what Commissioner Crichlow was saying, but he thought allowing picture windows and the roof to remain was okay. He stated that he thought that they should accept the Special Master's recommendation.

Mayor Gardner stated that Commissioner Jones said there was nothing historic about the building, but the entire historic district was not original, as it was generally restoration. He said that he wondered how the Hilton Garden Inn would look if it was lined with plate glass true divided windows across the front of it or how the two buildings adjacent to the structure in question would look if the Commissioners accepted the Special Master's recommendation. He said that the building currently had a historical appearance and it was part of a historic setting. He said that millions of visitors came to St. Augustine annually, and

they did not seem to mind the Spanish Colonial style that had been reconstructed. He said that HARB had already approved architectural shingle roofing.

Commissioner Crichlow pointed out that it was a compromise made by HARB for the benefit of the owner.

Mr. Wilson added that it was also for fire proofing, and he said that there were acceptable alternatives to cedar shake.

Commissioner Crichlow added that it was also to give a break on cost, as cedar shake was expensive.

**MOTION**

**Commissioner Burk MOVED to reject the Special Master recommendation (restating the Commissioners decision which supported HARB's recommendation to the City Commission). Commissioner Crichlow SECONDED the motion.**

**VOTE ON MOTION**

**AYES: Burk, Crichlow, Gardner**

**NAYES: Jones**

**MOTION CARRIED 3/1**

**7. ITEMS BY CITY CLERK**

(None Scheduled)

Mayor Gardner noted that there were 226 members of the Florida Association of City Clerks in St. Augustine for their annual conference.

**8. ITEMS BY CITY MANAGER (Includes Consent Agenda - noted with an asterisk)**

**8.A./ Consent Agenda**

**8.A.1/ Preview of upcoming Commission Meetings.**

**8.A.2/ Consideration of Release of Lien on a Unit Connection Fee Mortgage.**

**8.A.3/ Consideration of an Easement Agreement with the Hannah's Walk Development.**

**8.A.4/ Designation of a Commissioner to represent the City as a Voting Delegate at the Florida League of Cities Conference.**

**8.A.5/ Determination of legal sufficiency and acceptance of an application to appeal a Planning and Zoning Board decision relative to property located at 243 South Matanzas Boulevard.**

**8.A.6/ Consideration of request to transfer a Horse Drawn Carriage permit from R. H. Jones to Murphy McDaniel.**

Commissioner Jones requested removing Items 8.A.4. and 8.A.6. for discussion. He added that he would recuse himself from Item 8.A.6., due to a conflict of interest as R. H. Jones was his brother.

**MOTION**

**Commissioner Jones MOVED to approve the consent agenda with the two aforementioned items removed for discussion. The motion was SECONDED by Commissioner Burk and approved by UNANIMOUS VOICE VOTE.**

**8.A.4/ Designation of a Commissioner to represent the City as a Voting Delegate at the Florida League of Cities Conference.**

**MOTION**

**Commissioner Jones MOVED to designate the senior Commissioner**

**Lennon as voting delegate at the Florida League of Cities. The motion was SECONDED by Commissioner Burk and approved by UNANIMOUS VOICE VOTE.**

**8.A.6/ Consideration of request to transfer a Horse Drawn Carriage permit from R. H. Jones to Murphy McDaniel.**

Mr. Wilson summarized that under the City Code the transfer of permits to operate a horse drawn carriage had to be approved by the Commission. He added that it was a housekeeping measure.

Mr. Harriss added that he did not believe that the matter could be handled at the staff level.

**MOTION**

**Commissioner Crichlow MOVED to approve the transfer of the horse drawn carriage permit from R. H. Jones to Murphy McDaniel. Commissioner Burk SECONDED the motion.**

**VOTE ON MOTION**

**AYES: Crichlow, Burk, Gardner**

**NAYES: None**

**MOTION CARRIED UNANIMOUSLY**

**8.B/ Discussion Items**

**8.B.1/ Consideration of request to transfer Horse Drawn Carriage permits and lease agreements from Stuart Gamsey to Ripley's Entertainment, Inc.**

Commissioner Crichlow recused himself, as one of the parties involved was a client of his.

Mr. Harriss said the item requested the transfer of horse drawn carriage permits currently in the name of Stuart Gamsey

to Ripley's Entertainment. He said that in addition there was a request to transfer the VIC lease to Ripley's. He said they were also asking that the current lease with the City for the stables on the south end of Riberia Street be transferred to Ripley's with a modification of the terms. He suggested addressing the items individually.

Patrick Canan, 43 Cincinnati Avenue, representing Stuart Gamsey, explained that Mr. Gamsey had two corporations for the horse drawn carriages with thirty nine licenses under Gamsey Horse Carriages and five licenses under Gamsan Inc. He explained that Mr. Gamsey had been involved with horse drawn carriages for 30-years.

Mr. Canan referred to the booklet he had distributed and said there was information in the booklet describing how important the horses had been to the community for over 100-years. He said that Mr. Gamsey had decided to make a change and see whether anyone wanted to buy the business and after consideration they had contacted Ripley's. He said they had determined that because of Ripley's great presence in the community it would be the perfect organization to take over and upgrade the carriages. He said that currently they had a purchase and sale agreement contingent upon the aforementioned items. He stated that the transfer of the licenses and the lease at the VIC should be simple matters, but the stable lease on Riberia Street was more complicated.

Mr. Canan said that when considering a long-term lease on Riberia Street he had questioned whether it was in the best interest of the City, would a long-term lease benefit the service provided by the horse drawn carriage industry, and would a long-term lease ultimately benefit the horses. He stated that he

believed the answer to all three questions was yes. He explained that Mr. Gamsey had a lease on the property and had run his business from there for 20-years, but in 1996 he also began leasing property on the corner of LaQuinta Place and Riberia Street from Ms. Colee.

Mr. Canan said that Mr. Gamsey's stables etc. located on Ms. Colee's property were a potential eyesore when considering the City's plans for the San Sebastian Project. He suggested that the City would benefit by moving Mr. Gamsey's business to the site on south Riberia Street, which Mr. Gamsey currently leased because of the aforementioned project, and because the horses and barn were currently located next to residences. He described the property on south Riberia Street to substantiate his case. He continued that the current location for the horses was not large enough and there was no grass; whereas, the acre that Mr. Gamsey leased from the City at the end Riberia Street had grass; moreover, Ripley's planned to ask the City to lease more space to accommodate the horses. He pointed out that leasing more land from the City would represent more income for the City. He explained that Mr. Gamsey had two more years on his lease for the property on south Riberia Street with a five year option, and they were requesting thirteen more years on the lease. He said that he understood the concern regarding long-term leases; however, the location was conducive for a long-term lessee. He stated that if the Commission approved the request, Ripley's would spend capital outlay to build a nice facility for the horses. He pointed out that Ripley's would not enter into an agreement unless they got the long-term lease with the City. He said that the goal was to maintain the operation on La Quinta Place and Riberia Street with the understanding that the La Quinta location would phase out

within five years, at which point they would move to the new upgraded facility on south Riberia Street. He added that there was concern that Ms. Colee's property would still be able to house horses as the location was grandfathered, but the true value of the property was not in housing horses; therefore, he suggested that in the future it would be developed consistent with the San Sebastian Project. He urged the Commission to think in probabilities not possibilities.

Darren Loblaw, Chief Financial Officer, Ripley's Entertainment, stated that Ripley's had a long history in tourism in St. Augustine. He stated that they believed in the strength of the market here, and that was why they had purchased the oldest sightseeing train company in St. Augustine. He said that it seemed to be a natural fit for Ripley's to purchase Mr. Gamsey's business. He stated that Ripley's would keep all of the current employees working for Mr. Gamsey, and they would offer a higher level of benefits with health benefits, life insurance and a pension plan. He said that Ripley's would invest capital where required in the business. He concluded that they were excited about the opportunity and looked forward to the Commission's approval.

Commissioner Burk clarified that the VIC lease would be an assignment and not an extension.

Paul Meredith, Attorney for Avalon Carriages, stated that his client objected to the transfer of the assignments. He stated that his client had hired him to analyze whether the matter was lawful in what appeared to be a monopolistic franchise allowed by the City and in violation of the City Code. He said that in an attempt to settle the matter and mitigate damages he had sent a letter to

Mr. Gamsey attempting to purchase some of his permits to break up a monopoly amicably, although he did not believe Mr. Gamsey had the lawful ability to sell the permits. He noted that Mr. Litzinger had suggested that if Mr. McDaniel wanted more permits that he should buy them from Mr. Gamsey.

Mr. Meredith pointed out that City Code Section 27-159A of the ordinance stated that the *permits were not property and no permit holder shall have ownership interest*. He referred to a letter sent by Mr. Gamsey in which he referred to transferring all the permits he owned. He pointed out that the permits had *Occupational License* written on them, although not in the traditional manner, as they were permits. He said that according to 27-128 *the City Manager was hereby authorized and directed to promulgate reasonable rules to insure equality of opportunity to prevent discrimination and unfair practices*.

Mr. Meredith said that in the 1980's four permits had been issued to Mr. Gamsey in order to increase competition and comply with the ordinance, because Mr. Colee had, in effect, a monopoly. He said that Mr. Gamsey had acquired a fifth permit and later bought Mr. Colee's business. He said at that time Mr. Gamsey held 44 of 46 permits, thereby thwarting any attempt to increase competition and comply with the ordinance. He stated that it was time to fix a problem that violated the Equal Protection clause of the United States. He said that he had cases that he would present to the City Attorney regarding the matter. He said that in one case it was indicated that if the City did not follow its own ordinances it was arbitrary and capricious under the Constitution.

Mr. Meredith noted that Mr. Gamsey did not have a property interest, and he

questioned why his attorney would care whether it was considered a transfer or a clerical change. He stated that the current matter was not a transfer similar to what had just taken place with Avalon Carriages; because it had not been a transfer of interest it was changing the name on the license. He used the example of the lawsuit for Duck Tours in Key West, and he claimed that the City was granting a franchise to Mr. Gamsey, because he held 44 out of 46 permits.

Mr. Meredith stated that the City had the opportunity to resolve a long-term problem. He noted that he had been working on the problem for approximately six months, and although his research was not completed the unique opportunity had presented itself. He noted that he had been considering possible executive deprivation under oath. He asked the City not to allow the transfer, because if the City allowed the transfer it would amount to a legislative deprivation. He suggested tabling the transfer to allow the time to arrange the assignment and issuance of the permits to achieve the purpose of the ordinance.<sup>1</sup>

Mayor Gardner questioned the situation with the Key West lawsuit and Mr. Meredith explained and concluded that the State Legislature never empowered municipalities in Florida to create monopolies in the area of tour operations. He reiterated that 44 of 46 permits held by one person who was planning to sell the permits was a violation of City Ordinances and the Anti Trust Law. He repeated that it was a wonderful opportunity to straighten out an important industry.

Commissioner Jones questioned how the transaction had taken place in the 1980's when the City originally granted

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<sup>1</sup> End of audio tape one

permits to Mr. Gamsey to provide for equality of opportunity for a competitive market in the field. He questioned whether the City had taken permits from Mr. Colee or created new permits.

Mr. Meredith replied that he did not know.

Mayor Gardner questioned whether the ordinance limited the number of permits.

Mr. Wilson replied that his recollection was that the number of permits had been fixed at a specific time and date. He added that there were regular and special permits.

Commissioner Burk noted that the number had not been fixed by ordinance.

Mr. Wilson said he believed that the number had been fixed as of a certain date.

Commissioner Burk questioned whether the number had been fixed administratively.

Mr. Wilson replied that the number had been fixed by ordinance.

Mayor Gardner questioned whether the City Attorney felt comfortable to respond to Mr. Meredith at that time.

Mr. Wilson said that he would not; as he had not read any of the cases that Mr. Meredith would refer to. He added that he did not believe that the situation was a monopoly under the laws regulating monopolies, but he was not prepared to respond in legal terms.

Commissioner Burk commented that when she first became a Commissioner she had a problem with the way carriage permits were issued and arranged. She said that basically one person controlled

all the permits but was not using them all, hence that person grabbed them all up and sat on them so nobody else could use them. She clarified that there were not 46+ carriages operating, but she felt the situation was not right. She said that it did not make sense for the City to allow the situation.

Mr. Meredith stated that obtaining and withholding permits from competition was a distinct characteristic of a monopoly.

Commissioner Burk stated that she would like to see Ripley's enter the market, and she suggested that there might be another way of accomplishing the goal, such as issuing new permits. She said that the City might not need to limit the number of permits. She suggested that there were a lot of different avenues to explore.

Mr. Canan pointed out that they were not there to determine the Constitutionality of property issues related to the carriages. He said that he could not see a huge difference between the transfer of permit to Mr. McDaniel and his clients request for transfer. He stated that the request for a transfer had no relative relationship to whether there was a monopoly. He added that Mr. McDaniel had inquired about buying some of Mr. Gamsey's licenses. He stated that the permits were valuable, as Mr. Gamsey had paid for them, and he had worked in the industry for 30-years. He pointed out that Mr. McDaniel would not be objecting or suggesting a Constitutional violation had he been able to purchase permits from Mr. Gamsey. He suggested focusing on the three issues that were presented to the Commission. He stated that Mr. Gamsey could transfer or sell his business to another entity, which was precisely what

Mr. McDaniel had wanted him to do a few weeks earlier.

Mayor Gardner stated that he agreed with Commissioner Burk's point of view regarding a monopoly. He said that taking further action at that time could perpetuate a wrong. He recommended no action until the law was properly interpreted, and he suggested a workshop.

Commissioner Burk stated that she was generally not in support of workshops, but in that instance she would support one. She suggested that the Commission needed to explore ideas, as her first reaction was to issue more permits.

Mayor Gardner noted that the matter was fraught with danger, as Mr. Gamsey had a substantial investment to be considered. He compared the permits to liquor licenses.

Commissioner Burk noted that someone who did not like alcohol could buy all the liquor licenses and close all the bars.

Mayor Gardner agreed, and noted that he had no idea what the solution to the situation was. He said that he was not prepared to take action, but he appreciated that the parties involved wanted the matter determined quickly; therefore, he suggested scheduling a workshop as quickly as possible.

After a brief discussion it was determined that staff would pole the Commissioners to determine a date for a workshop.

Commissioner Burk suggested that the Commissioners address all the issues surrounding the horse and carriages, including their presence in the City when considering the changes that had occurred in the City.

Mr. Harriss said that staff would compile a list of items for discussion.

Commissioner Jones said that it seemed there was an easy solution to the matter, but he would leave the legal aspects to the attorneys. He recommended setting the workshop date as soon as possible.

#### **MOTION**

**Commissioner Burk MOVED to table the item to a date to be determined. Commissioner Jones SECONDED the motion.**

#### **VOTE ON MOTION**

**AYES: Burk, Jones, Gardner**

**NAYES: None**

**MOTION CARRIED UNANIMOUSLY <sup>2</sup>**

#### **9. ITEMS BY THE MAYOR AND COMMISSIONERS**

##### Commissioner Jones – Willie Galimore Center Pool

Commissioner Jones read a statement of condolences regarding Marquis Fuller, the young man who had lost his life in a drowning accident at the Willie Galimore Center Pool. <sup>3</sup>

##### Northrup Grumman

Commissioner Jones stated that he had attended a brunch sponsored by Northrup Grumman to recognize various agencies in St. Johns County with awards. He expressed appreciation for Northrup Grumman giving back to the community.

##### First United Methodist Church

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<sup>2</sup> A brief recess from 6:50 until 7:14 p.m.

<sup>3</sup> Statement attached to original minutes

Commissioner Jones said that during the last Sunday service the First United Methodist Church had extended apologies for having denied admittance to the church for some people during the 1960's.

#### Town Hall Meeting

Commissioner Jones noted that he would hold a town hall meeting in the Opus 39 Restaurant on June 27, 2004 at 7:00 p.m.

#### Mayor Gardner – Announcements

Mayor Gardner congratulated Carl Halbirt, Staff Archeology, for earning his Master's Degree in public administration. He congratulated Detective Diane Ham for being the first female detective in the St. Augustine Police department. He thanked St. Augustine Beach Mayor, Frank Charles, for his efforts on behalf of the stranded Russian students. He acknowledged Flagler College as national champions for Students in Free Enterprise. He announced that events would take place during the weekend for the 40<sup>th</sup> anniversary of the Civil Rights demonstration in St. Augustine.

#### **9.A/ Consideration of supporting Bicycle Lanes within the Community – Mayor Gardner.**

Mayor Gardner stated that Sumner Gray was seeking community support to create bicycle lanes on US 1 and other major arteries, and FDOT stated that they would honor the request if the community supported it. He said that he had taken the liberty of preparing a letter, which he would mail with the approval of the Commission.

Commissioner Jones suggested that the Commission allow the Mayor to submit the prepared letter in support of the

bicycle lanes, and the consensus was affirmative.

#### Tree Ordinance

Mayor Gardner stated that Fred Halback had completed his review of the City Tree Ordinance and the revision would go before the Street Tree Advisory Committee and the Planning and Zoning Board for approval before going the Commission.

Mr. Harriss stated that the City Attorney would review the ordinance for legal sufficiency. He noted that there would be public hearings during the committee, board and Commission meetings.

Mayor Gardner encouraged the public to take part in the aforementioned meetings.

#### **10. Appeals and Public Hearings**

(None Scheduled)

#### **11. RESOLUTIONS AND ORDINANCES (To include public hearing)**

##### **11.A/ Resolutions**

##### **11.A.1/ Consideration of Resolution 2004-11, supporting an amendment to the First Coast Metropolitan Planning Organization.**

Mark Knight, Director, Planning and Building Department, stated that the resolution provided the City's support for the addition of Nassau County into the MPO.

#### **MOTION**

**Commissioner Burk MOVED to adopt Resolution 2004-11. Commissioner Jones SECONDED the motion.**

**VOTE ON MOTION**

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

**NAYES: None**

**MOTION CARRIED UNANIMOUSLY**

**11.B/ Ordinances - First Reading**

(None Scheduled)

**11.C/ Ordinances - First Reading -  
Public Hearing Required**

(None Scheduled)

**11.D/ Ordinances - Second Reading  
Public Hearing**

**11.D.1/ Public Hearing - Ordinance  
2004-07, concerning a petition for  
voluntary annexation of property  
located at 1869 A1A South (south of  
312 and west of Santander Street).**

Mr. Knight explained that the three ordinances annexed, designated Commercial Medium Intensity Land Use and Commercial Medium One zoning for property located at the southwest corner of Santander Street and SR 312. He said that the intention was to construct approximately 20,000 feet of commercial retail.

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

**MOTION**

**Commissioner Burk MOVED to place Ordinance 2004-07 on second reading, read by title only and approved. Commissioner Jones SECONDED the motion.**

Mr. Wilson read the title as follows:

ORDINANCE NO. 2004-07

AN ORDINANCE OF THE CITY OF ST. AUGUSTINE, FLORIDA, ANNEXING APPROXIMATELY 2.6 ACRES OF PROPERTY IN ST. JOHNS COUNTY, FLORIDA, LYING SOUTH OF S.R. 312 AND WEST OF SANTANDER STREET, 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, Jones, Crichlow,  
Gardner**

**NAYES: None**

**MOTION CARRIED UNANIMOUSLY**

**11.D.2/ Public Hearing - Ordinance  
2004-09, amending the land use from  
County Public to City Commercial  
Medium Intensity relative to property  
located at 1869 A1A South (south of  
312 and west of Santander Street).**

**MOTION**

**Commissioner Burk MOVED to place Ordinance 2004-09 on second reading, read by title only and approved. Commissioner Jones SECONDED the motion.**

Mr. Wilson read the title as follows:

ORDINANCE NO. 2004-09

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 1.6 ACRES OF PROPERTY, LYING SOUTH OF STATE ROAD 312 AND WEST OF SANTANDER STREET, AS COMMERCIAL MEDIUM INTENSITY; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

**VOTE ON MOTION**

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

**NAYES: None**

**MOTION CARRIED UNANIMOUSLY**

**11.D.3/ Public Hearing - Ordinance 2004-10, rezoning property located at 1869 A1A South (south of 312 and west of Santander Street) from County Commercial General (CG) to City Commercial Medium-One (CM-1).**

**MOTION**

**Commissioner Burk MOVED to place Ordinance 2004-10 on second reading, read by title only and approved. Commissioner Jones SECONDED the motion.**

Mr. Wilson read the title as follows:

**ORDINANCE NO. 2004-10**

AN ORDINANCE OF THE CITY OF ST. AUGUSTINE, FLORIDA, ESTABLISHING THE ZONING FOR PROPERTY CONTAINING APPROXIMATELY 1.6 ACRES LYING SOUTH OF STATE ROAD 312 AND WEST OF SANTANDER STREET, AS MORE PARTICULARLY DESCRIBED HEREINAFTER, TO THE CLASSIFICATION OF COMMERCIAL MEDIUM-ONE (CM-1); REPEALING ALL ORDINANCES OR PARTS OF

ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING AN EFFECTIVE DATE.

**VOTE ON MOTION**

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

**NAYES: None**

**MOTION CARRIED UNANIMOUSLY**

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

(None)

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

(None Scheduled)

**13. Adjournment**

There being no further business, the meeting was adjourned at 7:32 p.m. <sup>4</sup>

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CITY CLERK

<sup>4</sup>Transcribed by Karen Rogers, Recording Secretary