

CITY OF ST. AUGUSTINE

City Commission Workshop Meeting
June 29, 2004

The City Commission met in a workshop session Tuesday, June 29, 2004, at 1:30 p.m. in the Alcazar Room at City Hall. The meeting was called to order by Mayor George Gardner, and the following were present:

1. Roll Call:

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

William B. Harriss, City Manager
Martha V. (Nell) Porter, City Clerk
Tim Burchfield, Chief Administrative Officer
John Regan, Chief Operations Officer
Mark Litzinger, City Comptroller
Jason Sheffield, Administrative Services Group Manager
James Wilson, Attorney
James Whitehouse, Staff Attorney
Orfeo Paolini, Sound Technician
Karen Rogers Recording Secretary

2. Discussion concerning horse drawn carriage permits.

Mayor Gardner stated that the purpose of the workshop was to discuss the horse drawn carriage system and the perception that it was a monopoly of that element of the City's tourism experience. He stated that the Commissioners might have other concerns, which he had asked the City Manager to make note of, but they would limit the workshop discussion to the permitting process.

Commissioner Burk agreed that the public and staff should limit their comments to the permit process, but she said she had made it clear that the purpose of the workshop was to provide the Commissioners with the opportunity to discuss horse drawn carriages in general.

Mark Litzinger, City Comptroller, stated that currently there were 46 active horse drawn carriage permits. He said that 44 of the permits were operated by Mr. Gamsey under the corporate names *Gamsan* and *Gamsey Carriage Inc*, and two of the permits were operated by Murphy McDaniel under the names of *Murphy McDaniel* and *C. B. Hinson*. He said that regulatory licenses were issued annually in the amount of \$80 for active permits and \$40 for inactive permits, but both companies kept their permits active. He explained that payment for the licenses was due on September 30th of each year, and if the payment was not made by November 15th the permits became void.

Mr. Litzinger noted that the carriages required a \$25 annual inspection by the City garage by November 15th and upon passing inspection the owner received an

inspection medallion that was attached to the carriage. He added that the carriages were required to display a current license plate with a current sticker issued upon payment of the regulatory license. He said that the horses required inspection twice annually by November 15th and May 15th. He mentioned that the City paid the veterinarian for the inspections and invoiced the carriage companies.

Mr. Litzinger stated that carriage routes were set by ordinance, and the carriage fares were set by resolution. He said that the permit holders were allowed by City Code to provide one time special charter tours. He said that the drivers were required to have a For Hire Permit, and a guide license, which consisted of a \$25 for hire permit, \$12 test booklet, \$8 for the occupational license and \$10 for the badge issued by customer service.

Mr. Litzinger noted that the City required the horse drawn carriage companies to keep a certificate of insurance on file. He said that currently the City Code limited the number of permits to 46 with the option of applying for a special permit issued by demonstrating a public need or convenience, which had a \$200 non-refundable application fee, plus the Commission had to grant a special permit.

Commissioner Burk questioned whether there were any special permits issued currently.

Mr. Litzinger replied that there were not. He said that the Commission had approved seven special permits in the 1980's that became regular permits by Commission action, at which time it was established that no more regular permits would be issued.

Mayor Gardner questioned the function of a one-time charter license.

Mr. Litzinger replied said that the companies had the option of giving a one-time charter that was not on their regular route.

Mr. Harriss said that there was no charter license and the carriages strayed from their routes regularly, but more regulation entailed expense.

A brief discussion revealed that the licenses were not attached to particular horses or carriages.

Commissioner Lennon questioned what the concern about the carriages was.

Mayor Gardner said that Mr. McDaniel and his attorney raised the question of a monopoly for the horse drawn carriage permits.

Commissioner Lennon pointed out that in the past Mr. McDaniel had gone before the Commission wanting something for free. He added that Mr. McDaniel had the same chance to purchase the permits as Mr. Gamsey had years ago, but he had chosen not to do so. He noted that he did not believe the situation was a monopoly, because Mr. McDaniel had the opportunity to purchase the permits.

Commissioner Burk noted that the workshop was not about anyone it was about the City and the horse drawn carriage business.

Commissioner Crichlow said that according to Section 17-68 of the City Code the City Commission could change, alter, increase, decrease or revoke any of the licenses at any time.

Mr. Wilson replied that was correct. He said that from a legal standpoint the City had the right to regulate the horse drawn carriages, but he wondered whether the regulations were legal. He said that the existing regulations had been challenged on a number of occasions, and they had held up in court; however, the law could change. He said that he had read the lawsuit that the Mr. McDaniel's attorney had presented, but it was questionable whether it applied to the current situation. He said that regarding a monopoly the situation was strictly defined by law, and some were legal and some were not legal. He said that if the present situation was challenged he believed that the situation could be sustained, but he did not believe a case would get that far. He said that the workshop was to determine whether the Commission felt that there was something wrong with the regulations or to amend the regulations. He stated that he would work on whatever goals the Commissioners chose.

Commissioner Crichlow questioned the previous challenges to the ordinance.

A brief discussion noted that the challenges had taken place before Mr. Wilson started working for the City, but all the challenges had failed.

Commissioner Lennon questioned how the whole thing got started, and he was informed that during Mr. Gamsey's request to sell his business and permits to Ripley's, Mr. McDaniel's attorney had brought the subject of potential monopoly to the forefront.

Paul Meredith, Attorney for Mr. McDaniel, stated that the sale was illegal because according to City Code there was no ownership of the horse drawn carriage permits. He continued that

when a City violated its Code the action committed an arbitrary and capricious act as defined by the federal courts, Constitution and the state courts. He said that he had been hired to present the matter to the Commission, but he had not threatened a lawsuit. He added that before he had been able to present the memorandum to the Commission his client had received notice that Mr. Gamsey intended to sell his 44 permits; thereby, forcing them to address the matter sooner than he intended.

Mr. Meredith urged the Commission to read a recent case in Key West regarding Duck Tours, in which there were two operators for tours and a third operator wanted to go into business. He said that the ordinance had been written in a manner that a third company was prevented from going into business. He said that the City was sued on several counts including a commerce clause violation, a civil rights action and anti-trust violation. He continued to describe the situation in support of his case.

Commissioner Lennon interjected that he failed to see the relativity of the two cases.

Mr. Meredith argued that the permits could not be bought or sold as property. He noted that Mr. Gamsey had 16 carriages and he was holding 44 permits preventing someone else from competing. He added that he believed the Code attached permits to individual carriages, and he referred to Section 27-136 and stated that if an operation had 16 carriages there should only be 16 permits. He added that he had not had the time to study the issue, and he encouraged the Commissioners to analyze the aforementioned section. He continued to support his claim that the City was violating its' code. He added

that his client would be better off if the matter could be resolved amicably.

Mr. Meredith noted that the number of permits and carriages that were on the street related to a traffic control and congestion problems; however, Key West felt that their ordinance eliminating a third competitor regulated their traffic, but the courts held that traffic control could not be an issue or excuse for establishing a defacto monopoly. He stated that the current problem was that Mr. Gamsey held 44 of 46 permits with only 16 carriages making it incumbent on the Commission to take action. He noted that the Commission had stated that they recognized there was a problem, and they were glad that the opportunity had arrived for resolution.

Commissioner Lennon questioned whether putting the other 18 carriages in operation would solve the problem.

Mr. Meredith replied that the situation would still violate the anti-trust law, because the City had allowed, through implementation of an ordinance, one business to dominate the entire market. He said that it was his understanding that the sale between Mr. Gamsey and Ripley's was terminated as a result of his objection, but he was not concerned because a monopolistic practice was illegal. He pointed out that his client had repeatedly tried to obtain fairness in the market by purchasing permits at a fair price, because they were not a market commodity. He said that Mr. Gamsey bought the permits he held and paid a significant sum of money to get them, and for 15-years the monopoly had existed. He stated that Mr. Gamsey had his return on his investment by operating a business in violation of the anti-trust law and profiting from it handsomely, and currently he wanted to

profit further. He stated that his client wanted fair competition among the tourist trade; therefore, he asked that the Commission put a stop to the monopoly.

Mr. Meredith added that Mr. Litzinger had suggested that Mr. McDaniel's buy more permits if he wanted them, which was a violation of Code and illegal. He pointed out that Mr. Gamsey only needed 16 permits; moreover, the Commissioners had the authority to rescind the other permits or determine that since Mr. Gamsey was not using the permits that Mr. McDaniel could purchase them according to the procedures established in the Code. He added that the Commission had the right and power to do so, and he was not certain that they could do otherwise under the circumstances. He concluded that he hoped the Commissioner's rational assessment continued and the matter was resolved within the month.

Mayor Gardner questioned the status of the permits issued to Mr. Gamsey in the instance of selling his business.

Mr. Meredith stated that in the past Mr. McDaniel had attempted to buy the business, at which time he had been informed by the bank that he could buy the horses and carriages but he could not buy the permits, because no one owned them. He said the ordinance was ambiguous, but his understanding was that when the ordinance was written the permits were to be issued to specific carriage drivers, but a company owning the permits, as opposed to individuals, was not contemplated in the ordinance and transference of a permit was indicated to be within the same company. He said there was one a provision in the Code indicating that permits were individual occupational

licenses and that one driver could transfer their permit to another driver, but nowhere did the Code indicate anything about 16 drivers or 44 permits. He said that the permits were personal in nature to the drivers, the drivers were employed by a company, the company paid the active use fee and when the company hired a new driver to take someone's place a transfer for the permit had to be applied for. He added that was his interpretation of the ordinance. He suggested that the ordinance be clarified.

Mayor Gardner questioned whether there was a process for transferring permit applications mentioned in the Code.

Mr. Meredith replied that the process was described in a paragraph saying that it could be done at the City Commission's discretion, but the process was not specific. He said that the City must ask itself if the state had given it permission to create or sustain a monopoly, because the state allowed some monopolies, such as liquor licenses and utilities. He said that in Key West the state said that traffic control did not allow them the right to create monopoly practices. He pointed out that the state had not given the City authority to create or allow monopolies in the tourist trade; moreover, the tour vehicles for the tourism trade were not exempt from the anti-trust law.

Commissioner Lennon questioned the situation with Mr. Jones transferring his permit to Mr. McDaniel.

Mr. Meredith replied that Mr. Jones had been in partnership with Mr. McDaniel.

Commissioner Lennon questioned whether he sold his permit to Mr. McDaniel or gave it to him.

Mr. Meredith replied that Mr. Jones had stopped participating in the partnership and his name was taken off the permit; therefore, there was no exchange of money.

Pat Canan, Attorney for Mr. Gamsey, stated that he thought the Commissioners were being misguided as to what their role was in the process. He acknowledged that Mr. Gamsey owned 44 of the 46 licenses, and he recognized that the industry had been in St. Augustine for over 100-years and Mr. Gamsey had taken advantage of practices that the City had approved in the past. He said that in the past when the Colee's owned the permits many people wanted to buy them; however, they were not for sale, which was the reason that the Commission had issued special permits in the 1980's and Mr. Gamsey and another party had acquired some.

Mr. Canan stated that it was important to identify what a monopoly was. He said that the City controlled most of the horse drawn carriage industry; furthermore, there were instances in which monopolies were acceptable. He stated that they were witnessing regulation, and regulation and monopoly were not necessarily unfriendly; moreover, he had cases to support his broad theory. He said that the way to solve the problem was for Mr. McDaniel to buy one of Mr. Gamsey's permits. He said that if Mr. Gamsey's would not sell the permits the matter would be different; however, the permits were for sale and Mr. Meredith had written letters negotiating to buy some of the permits. However, he said that currently Mr. Meredith claimed the permits were not worth any money and Mr. McDaniel should be given a permit for \$80. He said if that were the case everyone would

want to buy them. He said that the horse drawn carriages were great for the community, but too many carriages would be a nightmare, which was a legitimate reason for regulating the industry.

Mr. Canan stated that the case cited by Mr. Meredith in Key West regarding the Duck Tours was distinguishable and should not be relied on for decision making around the horse drawn carriages. He said there was no language in the ordinance forbidding a permit holder from selling the permits; moreover, he did not agree with Mr. Meredith's interpretation of the Code. He stated that it was not the Commission's business if Mr. Gamsey sold the permits for \$1 or \$6 million dollars, as they were simply asking for approval to transfer the license. He encouraged the Commission to look at Code Section 27-158, and stated that the ordinance did not forbid a permit holder from buying or selling the permits as property. He added that the permits had been traded in the community for 100-years. He stated that it would be inappropriate to make the permits open game or issue new licenses at that time, because the City did not need anymore carriages on the street, and because the Commission had approved Mr. Gamsey's purchase of his permits, hence to begin issuing permits to anyone that wanted them would devalue his purchase.

Mr. Canan stated that if the Commission concluded that the situation was a monopoly he would solve the problem by having Mr. Gamsey sell his permits to different people. He cautioned the Commission not to demand that every permit be sold to a different entity. He concluded that the Commission had the right to regulate.

Commissioner Lennon pointed out the potential disaster of so many carriages on the street with no place to park.

Mr. Canan added that per the current ordinance the City could not issue new permits, and there was no need in the community to issue more permits.

Commissioner Burk expressed concern that there were 44 licenses of which only 16 were being used. She said that the City had allowed the practice to continue as a result of fear that the horse draw carriage industry might increase, but in reality if the 44 permits were transferred to Ripley's they could afford to potentially use all 44 permits and put 44 carriages on the streets.

Mayor Gardner questioned whether the City had the right to regulate carriages for the safety and welfare of the public and the streets, and the response was affirmative. He suggested that there was not the demand for more carriages on the street.

Commissioner Burk pointed out that a new owner could create the demand with better carriages and better marketing. She noted that currently the carriages were run down and the horses were not typical carriage horses. She emphasized that Ripley's would not sit on 28 permits; moreover, they would be fools not to market the situation to put the carriages on the street.

Mayor Gardner stated that according to the City Attorney the Commission had the right to deny the request to transfer the licenses to Ripley's.

Commissioner Crichlow suggested that Ripley's might sit on the 28 permits to avoid the competition.

Commissioner Burk stated that the Commission did not have to approve a transfer of permits that they did not want used. She questioned how many carriages they needed on the street.

Commissioner Crichlow questioned whether the demand for horse drawn carriages would not increase when the VIC parking garage was constructed and the first thing visitors said that was the environment they were creating at the VIC. He questioned whether it was illegal to buy and sell the licenses and whether the City was liable in any way regarding such transactions.

Mr. Wilson replied that according to Code a transfer required City Commission approval, which meant that a transfer was not illegal.

Commissioner Crichlow questioned whether there would be any problem for the City regarding the amount Mr. Gamsey might charge for the licenses in the event that the City asked him to make his licenses available to someone.

Mr. Wilson replied that the price of a permit was something the City did not regulate. He said that if they changed the regulations it would give the City some protection from an action by the permit holder claiming that the City had reduced the value of their product.

Commissioner Burk noted that the Commission was not a party to any money. She said that the only concern for the Commission was whether they wanted to transfer 44 licenses to another entity. She said that the Commission could cancel the permits, but she did not believe the Commission had the right to compel Mr. Gamsey to transfer the permits.

Commissioner Crichlow stated that he did not want to hurt anyone's investment.

Commissioner Burk agreed but said that she did not want to see 44 carriages on the street as a result of transferring the licenses to Ripley's'.

Mr. Meredith once again clarified that he had not threatened suit, and he added that he always tried to settle matters amicably. He said that he told his client that if they could buy the permits cheap and bring them to the Commission with the understanding that Gamsey did not have a legal right to sell them, but they had a legal requirement by law to mitigate their damages. He explained that if they bought 12 permits for \$500 each they had a legal obligation to buy the permits and use them to mitigate their damages. He stated that it was not a concession that the permits could be bought and sold and he doubted that they would be sold for \$80. He said that he had intended on bringing the matter to the Commission and inform them of the no property rights problem.

Mr. Meredith stated that property rights were looked at by federal court as the ability to buy, sell, run with the land, or contained attributes of property. He pointed out that Mr. Gamsey's application for transfer indicated that he owned the 44 permits, but to own them required a property right. He read Section 17-128 b. of the Code, which indicated a clear directive as to how the horse and carriage code should be interpreted, and he requested that the Commissioners follow their law.

Commissioner Lennon expressed his belief on how the permit situation had evolved. He said he agreed that the City

really did not need 46 carriages on the street.

Commissioner Burk suggested that they transfer the same number of permits as the number of carriages Mr. Gamsey used.

Elaine Fraser, 307 Dartmouth Road, stated that she was extremely active in the community looking out for the tourism and attraction industry. She said that she represented Ripley's and they were constantly working on making their attractions better. She stated that Mr. Gamsey's horse drawn carriages constituted a company that included the permits. She pointed out that Commission had transferred the permits to Mr. Gamsey years earlier.

Commissioner Burk questioned whether Ripley's intended on putting more than the existing carriages on the street.

Ms. Fraser stated that the value of the business was based on the number of permits that it carried with it. She said that the City had letters from Fire and Police Chiefs stating that the City should not have that many carriages on the street due to public safety, which was also an issue for Ripley's, and she assured the Commission that they would not put 44 carriages on the street.

Commissioner Burk replied that Ripley's did not require 44 permits in that case. She expressed confusion as to why Ripley's would need more than 16, and she expressed concern for the future of the City.

Ms. Fraser stated that 44 permits was part of the transfer and it should be part of the process; however, if Mr. Gamsey wanted to present another package to Ripley's that was his prerogative. She stated that if they had 44 carriages it

would be a financial and public safety burden, plus there was not the public demand.

Commissioner Jones questioned whether Mr. Gamsey had the right to sell the permits or transfer them in exchange for money. He questioned whether Mr. Gamsey holding the 44 permits represented a monopoly.

Commissioner Burk stated that she did not want the City to make that determination. She repeated that the topic was the transfer.

Mr. Wilson stated that from a business standpoint the City did not care, but the transfer required approval. He said he did not believe that the situation met the definition of monopoly.

Commissioner Burk stated that she did not see how the situation could not be considered a monopoly, but the question was whether it was an illegal monopoly. She expressed concern about the statute stating that the City must prevent unfair business practices and insure equality of opportunity. She said that the current situation was unfair and unjust and did not insure equality of opportunity.

Commissioner Jones questioned whether the solution was whether to distribute the permits amongst 28 individuals.

Commissioner Burk said that she did not know what the solution was. She suggested different tiers of licenses, for instance permits for evening or morning operation. She suggested that they brainstorm ideas, because she would like to discuss regulating hours to take the carriages off the streets during rush hours, investigating a franchise opportunity, and attaching licenses to carriages. She pointed out that the Commission consensus was that they did

not want 44 carriages on the street. She said that if they spread the permits out time wise maybe there could be more licenses. She said that although she saw the situation as a monopoly, it had not been created by the City. ¹

Commissioner Lennon pointed out that Mr. McDaniel had the opportunity to purchase the permits at the same time as Mr. Gamsey. He said that he could not see the situation as a monopoly when Mr. McDaniel had an equal opportunity.

Commissioner Burk said that it was not how Mr. Gamsey obtained the permits, it had to do with the fact that he had obtained them; moreover, it was not wrong it just happened. She reiterated that she wanted to discuss a franchise potential.

Commissioner Jones suggested that if the Commission was going to consider other regulations, they set them prior to approving a transfer.

Mayor Gardner questioned the advantage of franchising the horse drawn carriage industry.

Commissioner Burk replied that she was not well versed in franchising verses licensing, but they might want to look into the matter. She stated that competition had proven positive regarding the trains, but there had not been competition in the horse drawn carriages; therefore, they had gone down hill. She said that she might consider transferring 16 permits to Ripley's and open a few other permits to prevent unfair practices and insure equality of opportunity to all citizens, but they should discuss restricting hours. She added that capping the fares was unfair,

as she believed the operations should go with what the market would bear and improve the quality of the carriages.

Commissioner Lennon disagreed that the quality was poor.

Mayor Gardner noted that the Commission had the authority to regulate traffic on the streets, and he summarized some of the points that had been made.

Commissioner Burk interjected that they could create a rush hour route.

Mayor Gardner continued that the current system had existed for a number of years, and he was not in favor of making any changes with the existing permit system and certainly not to increase the number of permits. He said that he was in favor of regulation for the best carriage system while regulating the streets. He said that regarding appearance of the carriages, Mr. McDaniel had the opportunity to keep his carriages busier than Mr. Gamsey's by fixing them up or putting uniforms on the drivers

Commissioner Jones said that he saw no problem with transferring the permits. He agreed that they should regulate hours of operation or charge for permits based on the hours of the permit. He suggested that if a company had four permits that they would have to have five carriages; therefore, the permits would represent usage. He said that the operations should have carriages equal to the permits with the appropriate number of horses. He suggested that they discuss the matter of Mr. Gamsey having 44 permits and the potential for a monopoly. He said that if the proposed transfer was legitimate they should allow it, but also consider whether the City

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needed to issue additional permits to Mr. McDaniel, but he would have to have the equivalent carriages in order to get more permits.

Mayor Gardner pointed out that Commissioner Jones was dealing with two companies, but he questioned how the City would deal with other people requesting permits.

Commissioner Jones questioned how long the City had been charging \$80 for the permits and what the history was around the permits, as it was his understanding that the permits had belonged to individuals at one time.

Mr. Harriss explained that they were regulatory licenses and not occupational licenses and when the operations began they were small and not worth the extent of work that was required to draw up a franchise agreement or the number of people needed to regulate and watch the operations. He noted that over time the operations had grown and changed. He said that they could turn the existing ordinance into a franchise, and staff would list pros and cons for the Commission to look at.

A brief discussion ensued regarding how the operations began and how they had been small business.

Commissioner Burk questioned whether they could consent to the transfer of the 44 licenses to Ripley's with the restriction that no more than 16 carriages could be on the road simultaneously and also restrict any further transfer.

Mr. Wilson pointed out the paradox of the situation as there was more demand for the carriages due to the traffic situation, but the increased usage of the

carriages impacted the traffic situation further.

Commissioner Crichlow said he thought that the City had a responsibility to allow Mr. Gamsey to recoup his investment in the 44 permits.

Commissioner Burk said that was why she thought they should allow the transfer for the 16 carriages and 16 permits. She said the fact that Mr. Gamsey pocketed the remaining permits was not a fair business practice, although it was understandable, it prohibited competition. She stated that she did not want to take everything away from Mr. Gamsey by allowing the transfer of actively used permits. She added that she wanted to transfer less, because she would like to issue more permits to other people. She concluded that she did not feel compelled to let Mr. Gamsey benefit from the permits that he had been sitting on.

Commissioner Crichlow said that he was led to believe that Ripley's had dropped the purchase for Mr. Gamsey's operation; however, apparently that was not true, and he was uncomfortable with the potential conflict for him.

Mr. Harriss stated that the original transfer was dropped, but that did not preclude them from re-entering into the deal.

Commissioner Burk suggested that the attorneys get together and bring a proposal to the Commissioners.

Mayor Gardner suggested that the staff had to work on the volume of carriages on the street when considering the VIC multi modal parking facility and the reconfiguration of Cordova Street.

Mr. Harriss said that he had noted the Commissioner's ideas, and if the attorneys submitted anything he would forward the information to the Commissioners.

Commissioner Lennon stated that the current Commission was good at creating problems. He said that he did not see the problem; however, the Commissioners were brainwashing the people about potential problems. He suggested that they were stepping on people and their right to make a living; because the Commission thought something might happen. He emphasized that they did not need to have government in everybody's business until there was a problem. He said that currently the Commission was stepping on citizen's toes, and as a business person he certainly did not like it.

Commissioner Jones stated that he thought that Mr. Gamsey should be able to transfer his permits. He said that the Commission needed to look more closely at the industry in general and see what they could do for Mr. McDaniel.

Mr. Canan stated that Ripley's had withdrawn from the agreement, and he was not certain whether they would be willing to purchase the business again, but they were not interested in the 16 licenses. He said that there was value in the 44 permits, and he added that they could break up the perceived monopoly without the City's involvement by issuing more licenses. He said that he would bring a proposal back to the Commission.

3. Adjournment

There being no further business, the meeting was adjourned at 3:34 p.m. ²

MAYOR

CITY CLERK

²Transcribed by Karen Rogers, Recording Secretary