

CITY OF ST. AUGUSTINE

Regular City Commission Meeting
August 9, 2004

The City Commission met in a formal session Monday, August 9, 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
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
Loren Lueders, Assistant Chief of Police
James Owens, Fire Chief
Karen Rogers, Recording Secretary

2. INVOCATION AND PLEDGE OF ALLEGIANCE

Chaplain Ken Asplund, Living Waters Ministry, delivered the invocation and Commissioner Lennon led the Pledge of Allegiance.

3. ADMINISTRATIVE ITEMS

3.A/ Modification of Agenda

Mayor Gardner stated that each Commissioner had received a letter from Paul Meredith, attorney for Avalon Carriages, involving an application for carriage permits and requesting to be informed of all matters that might go

before the Commission related to horse drawn carriages.

Mr. Wilson stated that Mr. Meredith's letter questioned why a request for carriage permits was on the agenda. He said that the City had sent a letter to Mr. Meredith explaining the application for regular and special carriage permits. He explained that the regular permits were limited to the number that existed in 1988 by ordinance. He noted that special permits had a different application process. He said that the attorney had requested new regular permits, which required a change in the ordinance, plus the matter would have to go before the Commission including a

staff investigation and public hearing. He noted that the process would take two meetings before the subject could be addressed to the Commission. He said that rather than go through the burdensome process the City had questioned whether the attorney would prefer to apply for special permits; therefore, the matter would be on the subsequent agenda.

Mr. Wilson said that the other issue raised in the letter was to disqualify Commissioners Lennon and Crichlow. He said that Commissioner Crichlow would only have to disqualify himself in the instance of carriages being sold to Ripley's Entertainment, as he worked for them, but he was not certain whether that business deal existed any longer. He said that, regarding Commissioner Lennon, bias was not a premise for him to be disqualified. He pointed out that the Commissioners could not disqualify themselves from a matter that they were supposed to vote on unless there was financial conflict as established by statute. He added that if bias was a legal ground for disqualification no political body would ever have anyone voting on an issue, as people had political or professional bias.

Mayor Gardner questioned whether there was an application for Ripley's being considered.

Mr. Wilson replied that presently there was nothing pending before the City. He said that, regarding Mr. Meredith's request for the public records, he was welcome to examine any City files that he wished. He suggested that Mr. Meredith might have other issues regarding the proposed transfer of permits, which was different from application for new permits and was in the City Code. He added that Mr. Meredith had not submitted the application in time for the

matter to go before the Commission to vote on and determine whether it would go to public hearing, because staff did not have the authority that belonged to the City Commission.

3.B/ Approval of Minutes

The minutes of the Regular City Commission Meeting of July 26, 2004 were approved as presented.

3.C/ Proclamations

(None Scheduled)

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

Paul Meredith, 2960 Coastal Highway, argued that he had made application and asked to be on the current agenda on time. He noted that it had already been determined that a number of horse drawn carriage permits had been issued that had not been used for years. He said that he had suggested that the situation was a violation of the antitrust law, but the suggestion had been resisted. He stated that the request to transfer two permits, which was on the agenda, was a sale in process that would be used as a precedent to sell the other permits to Ripley's. He stated that he had heard that the Ripley's sale was still in progress.

Mr. Meredith stated that he had not alleged simply bias regarding Commissioner Lennon, as it was not a ground for a Commissioner to recuse themselves. He said he had alleged exparte communication, which was a ground recognized under Florida law. He said that comments made by Commissioner Lennon at the Flagler Hospital board meeting had revealed the

communication; therefore, they had to take action to disqualify.

Mr. Meredith requested that the Commission table the matter and immediately put on the agenda a reconsideration of the horse drawn carriage ordinance and whether the City was going to allow a monopoly to continue.

Harvey Wolf, 200 Salt Grass Court, Ponte Vedra Beach, expressed appreciation for the City changing the day they would move the Mary Peck House.

Linda Black, 14 Marlin Drive, stated that she worked at 147 San Marco Avenue and moving the Peck House would cause considerable distress to Leonard's Photography business, as it was their busiest season, and they could not afford to be without electricity or telephone during that time. She said that they employed 130 people who worked up to 70 hours a week during the busy season. She noted that a survey of the tax rolls indicated that the business contributed \$55,000 a year to the City, and they would have appreciated being notified of the move as it would be a considerable problem for them, because they worked on a timeline.

A brief discussion revealed that the telephone lines should not be impacted, and there would be power interruptions as they moved the Mary Peck House up the street, but not every business would be impacted and the ones that were would only be affected for approximately 30-minutes. It was also determined that the City would look into eliminating any hardship for Leonard's Photography Studio.

Mr. Harriss noted that the move had been in the newspaper and discussed in the Commission meetings, and now that a date had been determined the City

would do a mass mailing to inform everyone in the area.

Barbara Mailer, 200 Salt Grass Court, Ponte Vedra Beach, stated that the City had not notified them of the move quickly, but the City had sent an e-mail to her and addressed the San Marco Merchants Association. She said that the original date was for a Friday, which posed a problem for some of the businesses; therefore, they appreciated staff for making the effort to change to a date and time that was more appropriate for the merchants.

5. PRESENTATIONS AND STAFF REPORTS

(None Scheduled)

6. ITEMS BY CITY ATTORNEY

Mr. Wilson reported that regarding motorcycle noise there were a number of Florida Statutes relating to the matter; therefore, there was no need for the City to adopt any additional ordinances. He added that it looked as though the City of Daytona had enforced the state laws during Bike Week.

Commissioner Crichlow suggested that the City enforce the state law during motorcycle events in the City and eventually the word would get around.

7. ITEMS BY CITY CLERK

(None Scheduled)

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 Interlocal Agreement with Sandy Creek Community Development District.

8.A.3/ Approval of grant for Colonial Spanish Quarter Museum.

Mayor Gardner questioned the agreement with Sandy Creek.

Mr. Harriss explained that Sandy Creek offered to pay the City \$600 a year for some storage space, such as a file drawer.

MOTION

Commissioner Lennon MOVED to approve the consent agenda items 8.A.1. through 8.A.3. The motion was SECONDED by Commissioner Burk and approved by UNANIMOUS VOICE VOTE.

8. B/ Discussion Items

8.B.1/ Consideration of a request to transfer Horse Drawn Carriage permits from Stewart Gamsey to Country Carriages, Inc.

Patrick Canan, 43 Cincinnati Avenue, Attorney for Stuart Gamsey, said that the request was simple, but he felt that he should address the accusation of a monopoly, because he did not want the Commissioners to be apprehensive about a lawsuit. He stated that there were rational reasons, supported by law, for the horse drawn carriages to be under one roof. He said that according to law if there was to be a lawsuit for damages it should have been filed within four years of the action. He said that he had letters from Mr. McDaniel dated as far back as 1996 in which he had complained to the Commission about a monopoly; therefore, a lawsuit for damages under the antitrust law would be fruitless.

Mr. Canan stated that for some reason Mr. McDaniel felt that he was entitled to licenses, but if that were true everyone would be entitled. He said that if the Commission decided to grant more licenses, contrary to the ordinance, Mr. Gamsey would be negatively impacted, but that was not the object of the request. He said that his client wanted to transfer two licenses, and the insinuation that the transfer was a ruse to set a precedent for the Ripley's deal was insulting, because that deal was totally defunct. He said that if his client could find a buyer the matter would go before the Commission again. He added that Jennifer Cushion wanted the licenses to operate her own business and work in competition with Murphy McDaniel and Stuart Gamsey. He said that her business would be titled Country Carriages, for which she had purchased two beautiful horses and a carriage.

Commissioner Lennon spoke in support of the request, because it would resolve the monopoly matter and increase competition.

Commissioner Burk stated that the Commission had not achieved a resolution to the matter during the last workshop. She said she had wanted to achieve a philosophy for the future. She said she thought that the individual permits should be attached to a particular carriage. She added that she had no problem with the transfer, but she felt that the Commission should change the ordinance first.

Commissioner Lennon questioned what would happen in the event that a carriage broke down.

Commissioner Burk suggested that the carriage would have to be repaired or the permit transferred to another carriage.

Commissioner Lennon said that was what they currently did.

Commissioner Burk stated that there would be no record of the permit transfer. She explained that if there were ten permits there should be ten working carriages relating to the permits. She added that perhaps the businesses should have a spare carriage in the event of a carriage break down.

Commissioner Lennon stated that in all the years that the horse drawn carriages existed there had not been a problem, and it appeared that Commissioner Burk was creating a problem.

Commissioner Burk debated that the City was not the same as it had been, and she said that she recognized a potential problem.

Mayor Gardner suggested that the City Attorney draft a possible revision of the ordinance incorporating the Commissioner's ideas, because he did not want to debate and settle the matter during the current meeting.

Commissioner Burk stated that she wanted to know whether there were two other Commissioners that agreed with her idea.

Mayor Gardener replied that it sounded like a good idea to him.

Commissioner Burk stated that she would like to table the matter until they resolved the issue of attaching permits to carriages, at which point she would more then likely be willing to make the transfer according to the amendments to the ordinance.

Commissioner Crichlow said that meant the City would not issue a permit

without a carriage. He questioned whether the City would have to dissolve the extra permits that Mr. Gamsey had, as he had 16 carriages and 44 permits.

Mayor Gardner stated that the permits would not be useable unless Mr. Gamsey purchased more carriages.

Commissioner Burk suggested a sunset provision in the revised ordinance indicating that if the permits were not attached to a carriage within a certain period of time the permits would lapse.

Mayor Gardner questioned whether the City Attorney should be revising the ordinance.

Mr. Wilson stated that from a legal standpoint the ordinance was easy to modify, but the problem was the effect on the current request to transfer, as the City could not change the rules in the middle of issues.

Commissioner Burk stated that was why she wanted to table the matter, so that all parties involved would have full knowledge of the ordinance.

Mayor Gardner stated that he had been in favor of tabling the matter during the previous meeting because of the appearance of a monopoly. However, he had no problem acting on the current request, as he could not see how Commissioner Burk's suggestion would conflict with the transfer.

Commissioner Lennon agreed and pointed out that Commissioner Burk was responsible for the failure of the transfer of the permits between Mr. Gamsey and Ripley's, and she was currently jeopardizing the current transfer.

Commissioner Burk stated that she was looking out for the good of the entire City.

Commissioner Lennon disagreed.

Commissioner Crichlow pointed out that the City Commission (not the current Commission) had allowed the appearance of a monopoly.

Commissioner Burk stated that just because they had done something wrong for years and years did not mean that it could not be fixed.

Commissioner Crichlow agreed and stated that it would be a major financial hit for Mr. Gamsey.

Commissioner Burk emphasized that she had no problem with transferring the permits that Mr. Gamsey used, but she could not see how the unused permits constituted a financial hit unless the intention was to put another 20+ horse and carriages on the street. She said if that was not the intent, then why would Mr. Gamsey need to transfer the permits. She said the logic did not make sense. She stated that she would never try to take away what Mr. Gamsey had and was using, but she was asking to cancel that which he had been sitting on for a number of years.

Commissioner Crichlow questioned the definition of the terms transfer and sale of the permits, and whether the City had any involvement with the exchange of money when transferring permits.

Mr. Wilson replied that the Code was vague regarding the matter; therefore, the burden was on the City Commission to determine whether to deny a request to transfer the permits. He said that the City did not address whether they were sold or not, but it was easy to assume

that a sale took place during a transfer, but it was unlikely that a recorded price was available to the public. He said he presumed that any time a transfer of permits took place it was for monetary reasons. He added that people made a living using the permits; therefore, they had a value, but the City had never been involved with sale prices; the City was involved with determining whether the holder of the permits was able to operate in the expected manner.

Commissioner Lennon noted that the exchange of money was not the business of the City.

Commissioner Crichlow noted that the City would not want 46 carriages on the street; therefore, they had to determine an acceptable number of carriages and the impact on the City. He suggested that the Commission make that determination before limiting or issuing permits.

Mr. Wilson stated that in 1988 the Commission had taken the matter into consideration and determined not to issue anymore permits. He said he believed that the City had tried to limit the number of horse drawn carriages since the 1930's; moreover, there had originally been a specific number of carriages in the Code, but it had been amended to include all the existing special and regular permits.

Commissioner Burk stated that simple logic indicated that with the traffic increase over the years 44 carriages on the street would not be a good number. She suggested that the current number of carriages operating was a good number, but the problem was the 20+ permits that were not being used.

Mr. Harriss suggested that if the Commission required that a carriage be

connected to a permit they would be encouraging and even requiring that 46 carriages be on the street.

Commissioner Burk suggested that the market would dictate the number of carriages.

A discussion resulted, and it was determined that staff and the City Attorney would examine the matter including routing and time limits and present a report to the Commission.

Commissioner Crichlow said that he agreed with Commissioner Burk to a degree, but he was not certain how many permits should be available.

Mr. Harriss said that if the matter was market driven the permits could be granted and then see if they survived the market, but if there was a sunset clause he believed Mr. Gamsey would set up every carriage that he could and sell them one at a time or all at once. He said that the time it could take to determine the market would prove competitive and interesting for everyone.

Commissioner Jones asked Jennifer Cushion, 2945B Stratton Boulevard, (the party that Mr. Gamsey wanted to transfer the two permits to) whether she intended to purchase a second carriage for the second permit she was requesting, and the response was affirmative, as she said that she could have it by the following week. He suggested addressing Ms. Cushion's situation as she was currently before them. He said that he was the one who had talked about attaching a carriage to a permit, because he thought that it was reasonable. He suggested that the business owners should probably have extra carriages in different sizes for different occasions.

Commissioner Burk pointed out that special permits were issued for different occasions, such as weddings.

Commissioner Jones said that he would not have a problem if the operators had carriages equal to or exceeding the number of licenses. He said he agreed that the ordinance required modification and Ms. Cushion was aware of the situation; therefore, he approved the transfer of the two requested licenses with the understanding that carriages would be attached to licenses and she would have to have a second carriage within a reasonable period of time.

MOTION

Commissioner Jones MOVED to approve the transfer of the two carriage permits. Commissioner Lennon SECONDED the motion.

VOTE ON MOTION

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

NAYES: None

MOTION CARRIED UNANIMOUSLY

9. ITEMS BY THE MAYOR AND COMMISSIONERS

Commissioner Crichlow – VCB

Commissioner Crichlow said that he had attended a Visitor & Convention Bureau meeting during which time it was reported that the summer had been good with a 10-12% increase in tourism above the previous year.

A brief discussion followed regarding different streets that had been patched and how they appeared.

Budget

Commissioner Crichlow stated that some citizens had expressed interest in seeing the budget before the budget meetings to prepare to support or oppose it.

Mr. Harriss said that it should be complete within a week or so; however, the numbers would not be firm, as the process was evolving.

Commissioner Crichlow stated that he wanted the public to know that the budget would be available after the workshops on August 26th and 27th.

Commissioner Lennon – Parking

Commissioner Lennon noted that the parking lot on Cathedral Place had charged \$10 for the previous Sunday, which he considered a rip-off.

Mr. Wilson said that there was no City ordinance or state regulation to regulate parking fees.

Commissioner Lennon stated that the parking lot had not filled, and they were currently charging \$5.00. He added that the City should not be in the market to take unfair advantage of the visitors.

Old Record Building Parking Lot

Commissioner Lennon questioned whether the City was paying rent for the parking lot at the old Record building.

Mr. Harriss replied affirmatively and said that the lot had not been opened because a seal coat had been applied, but it was currently open. He said that the City had only sold three permits out of the 40 spaces.

Commissioner Lennon questioned whether the permits would be for 24 hours, and the response was affirmative. He suggested that the space be available

to the public until such a time as the spaces were leased.

Mayor Gardner – Announcements

Mayor Gardner delivered announcements regarding people and events to the community.

10. Appeals and Public Hearings

(None Scheduled)

11. RESOLUTIONS AND ORDINANCES (To include public hearing)

11.A/ Resolutions

11.A.1/ Consideration of Resolution 2004-14 concerning permit and application fee reduction.

Mr. Harriss reported that the item was on the agenda annually for the Commissioners consideration. He explained that the resolution allowed the City to claim a status with the state of Florida for the filing of permits for the Water Management District and the Department of Environmental Protection. He said that the City declared hardship because the advalorem taxable value percentage was higher than the state wide average. He said that the City's current exemption was 34%+ and the state wide average was 28%; therefore, the City claimed hardship and the state waived permit fees down to \$100, which saved the City money on the water/sewer permits.

MOTION

Commissioner Burk MOVED to approve Resolution 2004-14. The motion was SECONDED by Commissioner Lennon and approved by UNANIMOUS VOICE VOTE.

Non Agenda Item

Commissioner Lennon questioned whether the property that businesses and homeowners were forced to use for retention was taxable.

Mr. Harriss suggested that he should direct that question to the Property Appraisers Office, but his experience with unusable property for easements or right-of-way was that the value was on the entire property.

Commissioner Lennon noted that the retention was forced on the public by the state, and he felt that it was denying people's property rights and then asking people to pay tax on it. He noted that some of the required retention areas were quite large.

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 2004-11 vacating a portion of Tremerton Street.

Mark Knight, Director, Planning and Building Department, stated that the PZB had reviewed and approved a minor amendment to the PUD for 11 Tremerton Street. He said that the amendment added the property subject to the vacation and eliminated the multifamily section. He said that the PZB had also approved a final development plan identifying nine lots, a preservation area for the cemetery and a conservation zone development approval for an additional boat slip with boatlift.

Mr. Knight stated that it was the second hearing on the vacation of a portion of Tremerton Street south of South Street. He said that during the first hearing concern had been expressed regarding archeological remains in the vacated area. He said that the archeologists had identified a British period trash pit; however, no human remains.

Mr. Knight pointed out that the next item on the agenda was the final plat approval. He said all that remained was the entity to accept the conservation easement and a third party survey review for sufficiency of Florida Statutes. He added that the surveyor had conducted a review but modification had not been in conjunction with the third party surveyor.

Commissioner Burk questioned whether the conservation easement details had been worked out.

George McClure, 170 Malaga Street, summarized that Mr. Jonegan had been approved months earlier for an eight lot single family development on the site, but during the construction process archeological remnants of buildings and human remains from a mid 1800 century, 1740's-1760's Catholic mission had been discovered; therefore, the development was halted for evaluation. He said the find was exciting for the archeologist and a surprise for his client. He said that his client voluntarily revised his plan to set aside tract A on the plat and prohibit construction or any activity that would disturb the remains on the site.

Mr. McClure said that, for valid economic reasons, his client would recover some of the value of the lost land by granting a conservation easement to a charitable entity. He said that they intended for the

St. Augustine Historical Society to be the grantee of that easement. He added that his client could not do a vertical development on the site until an appropriate conservation easement was reported. He said the easement would protect the site permanently through the third party entity that would enforce preservation. He said the Historical Society was an appropriate entity; however, if they were not willing there were other entities that would be happy to accept the conservation easement.

Mr. McClure noted that Commissioner Burk had expressed concern that the 205-feet of City right-of-way had not been examined for remains; however, he said that after examination no remains were discovered. He said that they also included in the PUD text a waiver on the part of the applicant to any commercial or multifamily uses. He said he believed that his client had met all the Commission's conditions. He stated that Mr. Knight had determined, for the protection of the City, that the plat could not be recorded until his client was granted the conservation easement and the report had been completed by the independent surveyor. Therefore, they would insure that the easement was drafted, executed and recorded prior to recording the plat.

Commissioner Burk questioned what would happen if the entity granted the easement were to dissolve.

Mr. McClure replied that the charitable entity had to dispose of its assets, which by law would have to be to another charitable entity with a similar objective.

Commissioner Burk questioned who would oversee such a matter.

Mr. McClure replied that when filing articles of dissolution with the state or in

a tax return, the matter would have to be certified, or the tax exempt status could be lost retroactively.

Commissioner Burk questioned whether the City Commission would be included in the process should the Historic Society reject the proposal for the conservation easement.

Mr. McClure replied that they could bring the matter to the Commission.

Commissioner Burk suggested that if they approved the proposal they should include that it would be subject to the Commission's approval of the entity.

Mr. McClure agreed and asked that the Commission approve the St. Augustine Historical Society as the entity. He added that his first inclination was to grant the easement to the City; moreover, if the City qualified for the deduction they would do that; however, there was always the authority of future Commissions to consider.

Mr. Harriss stated that he had asked that they choose another entity.

Commissioner Burk expressed appreciation for the developer's cooperation and stated that ideally she would prefer not to develop the property at all; however, the City could not afford it and no one had stepped forward to purchase the land for preservation.

Mr. McClure stated that the remains had not been returned to the site and if any other remains were unearthed they would be reinterred on the site. ¹

Mayor Gardner questioned the understanding regarding the return of the remains.

¹ End of audio tape one

Mr. Knight replied that the remains would not be returned until establishment of the final plat, as the City needed assurance that the site in question would be a preservation area.

Mayor Gardner questioned whether the area would be walled off as part of the development.

Mr. McClure said that the area would be walled from the exterior, but it might not be walled from the residents within the development. He explained that the north and west side would be walled to create a private garden area. He added that the developer intended on monumenting the area to reflect the historical significance.

Commissioner Crichlow questioned the rights of the future property owners to use the area in question, and he questioned whether they would put recreation in the area or whether it would be respected as a burial site.

Mr. McClure replied that the land was set aside as a passive park area, and the PUD dictated that no activity could take place that disturbed the remains. He said they were considering a garden, but they had contemplated a gazebo or meditative area, but nothing to destroy the subsurface.

Mayor Gardner questioned whether the site could be walled from the inside and left open to the public right-of-way.

Mr. McClure said that was possible; however, that was not his client's intention.

Commissioner Burk expressed concern and stated that it did not have to be a Public Park, but she did not like the idea

that the area could not be seen or shared by the public.

Mr. McClure said that the intention of the wall was not to prohibit visibility but to discourage people from wondering on the property. He said the wall was intended to be 2.5-3 feet tall. He assured the Commission that the wall would not be eight feet high.

Commissioner Burk stated that it was a conservation easement with great historic significance, and she expressed concern about an eight foot wall in the future.

Mayor Gardner opened the public hearing, and he read a letter from Ruth Kendrick Erke, 23 Locust Street objecting to the park being private.

Shannon Larsen, Live Oak, Florida, distributed a handout to the Commissioners that she said corrected erroneous information conveyed by City officials and employees of the City. She stated that the information explained how the indigenous people felt about the matter. She stated that during the February 23, 2004 meeting the Commission made no comment regarding preservation of the entire site, the remains or the burial site, but currently the Commission seemed interested in doing the right thing. She chastised the Mayor, Commissioners and the City for lack of initiative regarding the preservation of the site combined with their profuse consideration for the tax base. She emphasized that the site had historic value to the indigenous people. She disagreed that it was the site of a Catholic cemetery; moreover, the State and City archeologists could not confirm otherwise and she challenged them to prove differently. She stated that she would not want the Historic Society to oversee the property, because

they would turn the site into a dig and disturb the remains. She claimed that remains had been removed unnecessarily and the Commission could have prevented the violation. She stated that at least the owner had taken the initiative to do something to preserve the remains. She concluded that she wished the whole site had been preserved.

David Thundershield Queen, 16 Fountain of Youth Boulevard, said that it had been a month since three members of the Commission had marched with him to impress the importance and dignity of the historic sacred site on the public. He said that the Commission had the choice to have the site developed or preserve the burial site for the descendents and all Americans. He urged the Commission to reject the PZB recommendation for development. He questioned why the remains of ten individuals had not been reinterred, and he suggested that there were many more burials between the existing grave site and the eastern seawall. He questioned why American Indian and Afro American historic sites were destroyed, ignored or marginalized while Anglo American sites were carefully preserved. He concluded that the Florida Supreme and United States Supreme Courts had consistently ruled that no property owner had an absolute right to the use of their property; therefore, local government could and should decide if a development was appropriate for the community, and if it was not it should be rejected or scaled to a tolerable size. He urged the Commission to deny the request and honor their obligation to preserve a rich historical and sacred American Indian site.

Willet A. Boyer, 25105 Harbour Vista Circle, said that he was a graduate student in historic archeology with the University of Florida. He said that he

had worked for the City Archeologist, Carl Halbirt, and he agreed that the find was a historic treasure. He acknowledged Mr. Jonegan for working toward the preservation of the property. He stated that conservation easements were used regularly and effectively in preserving sites of significance throughout the state of Florida. He clarified that the Tremerton Street side was not the total mission site, and he explained that the site extended from the southern end of the National Guard Cemetery to the southern tip of the St. Augustine peninsula, but the Tremerton Street side contained the Catholic mission. He stated that if the Historical Society was willing to accept the conservation easement it would be a good thing, but the City and the State of Florida were also appropriate entities. He described the burial mound that he was working on. He said that Mr. Jonegan and the Commission were on the right track in regards to protecting the site.

Commissioner Burk questioned whether the public had access to the burial grounds that Mr. Boyer was working on.

Mr. Boyer replied that the public had limited access, as the area near the mound was open for the public to look at or walk past, but the mound was protected by a surrounding 2.5-foot high wall. He described the protection provided by conservation easements.

Mayor Gardner questioned whether an entity such as the Historical Society could go into the site for a dig and whether similar sites were generally turned into park or garden sites.

Mr. Boyer replied negatively, and explained that it would be according to the language in the easement, but he said that the intent of a conservation

easement was to protect and preserve property.

Bill Hamilton, 1690 A1A, stated that he was the sponsor for the St. Johns County Environmental Youth Council and Bobby C. Billy (spiritual leader, Independent Traditional Seminole Nation of Florida) had been a good friend to the kids. He said that when knowledge of the burial site had reached Mr. Billy it had disturbed him and his group that the remains of a hundred of his ancestors would be uncovered. He said that due to Mr. Billy's concern he had organized the march to encourage the City to protect the site, for which three Commissioners had taken part. He said that in deference to Mr. Billy and his family the City should protect the site in the way that the indigenous people would expect by:

- Not putting markers or plaques to identify burial areas on the site
- Treating the site like a cemetery by not putting a play area or gazebo on it or allowing people to walk on the site

Mr. Hamilton suggested that the City and Mr. Jonegan work with Mr. Billy to preserve the site accordingly.

Guy Sturgis, 5 Tremerton Street, stated that he had constructed the 8-foot wall on the north end of the property to protect his property, and he objected to any idea of lowering it.

Commissioner Burk noted that her concern was for the height of the wall along the street.

Mr. Hamilton interjected that it was required that a state archeologist monitor the excavations, which had occurred. He added that the area east of lot one had not been examined and the state archeologist should examine that

area, as it was not fair to Mr. Jonegan to be unaware of what was there, because if bones were discovered all future plans would be altered. He added that the City needed to know that there was the possibility of finding additional burial sites in areas that had not been examined; therefore, the development could be halted again. He stated that there were state funds and an emergency archeological fund with \$2 million in it that could be used to protect the heritage and history of the City, as well as Mr. Jonegan's investment.

Mr. Knight stated that Mr. Halbirt had conducted enough of a dig for archeological remains to clear the site. He said that a good deal of the site going east was fill material, but if there were any other bones found east of the areas the archeologist had examined, they would be relocated into tract A.

Mayor Gardner questioned whether there had been any digging for the development in that area.

Mr. Knight said that he did not believe the developer had begun developing the site.

Mr. Hamilton interrupted that the developer had done some digging as pipe had been started on the eastern side; moreover, the state archeological monitor had not been on the site when that work began.

Overton Ganong, Executive Director, St. Augustine Historical Society, stated that there had been no discussion thus far between the Historical Society, Mr. Jonegan and his attorney; therefore, it was the first he had heard that the society was being considered as a possible owner of a conservation easement. He said that before the society took a position on the matter full

negotiations would have to take place to understand the implications, particularly the financial liabilities of such an easement.

Commissioner Burk questioned whether the Historical Society was willing to consider the proposal, and the response was affirmative.

Mr. Queen pointed out that the Commission still had a chance to substantially preserve a greater area or the whole site. He questioned what other American Indian site in the City had been respectfully preserved. He suggested re-creating the original village. He added that he felt ashamed of the City's lack of interest and respect for the indigenous people.

Ms. Larsen stated that indigenous people did not go near their own burial ground unless it was a special time and visited by special people. She said that the City would have a lot of wannabes doing inappropriate and horrendous things at the site, and that scared her.

Carl Halbirt, City Archeologist, stated that he wanted to clarify some misinformation that had been presented, because any decision the Commission made had to be based on the facts. He clarified that for the past two weeks the state archeologist (monitor) and he had been working on the site to the east and south of lot A without finding any human remains. He said they had also conducted shovel tests to the east of the fence without discovering human remains; therefore, he determined that the burial site did not exist outside the boundaries of lot A. He said that he was not an expert on conservation easements; however, he did know that they were a viable approach to the preservation of archeological remains.

Commissioner Burk questioned whether Mr. Halbirt was comfortable with the plat.

Mr. Halbirt replied that it would be nice to preserve the entire site; however, the property owner was doing the right thing by preserving lot A, which had been used as a cemetery from the 1720's until the 1750's when the mission community had been inhabited. He added that it was possibly the best option the City had, as the owner had been cooperative with the City.

Mr. Hamilton stated that he had been on the site the previous Friday when Mr. Halbirt had two bags of suspected human bone chips from digging on the south side of the fence. He reiterated that there were human remains there.

Mr. Halbirt stated that there were human remains scattered throughout the property; however, that was due to historical activities that occurred on the property. He said that 25-years after the mission had been abandoned there was a British military hospital on the site, at which time there had been trenches and trash pits dug in the area disturbing the burial grounds. He said that in the 1920's there was a house constructed on the cemetery with concrete footers and in the 1960's there had been irrigation ditches. He said that there were human bones on the site; however, they were not part of the burial site. He stated that there was rumor that the find represented a mass grave; however, he disagreed, because he could read the archeological evidence. He explained the archeological process comparing it to studying a crime scene. He stated that what he found in the bone bed was not enough to stop construction activities according to the state, as it was not the actual burial ground.

Mr. Hamilton questioned whether Mr. Halbirt had conducted shovel tests to the east of the fence.

Mr. Halbirt said that had been done the previous week, and they had conducted expensive excavations east of the fence a couple of months earlier and found no evidence or human remains east of lot one.

Glenda Bailey (inaudible), 390 Altara Drive, stated that her family had been mixed European and Native American for a number of generations. She stated that in one instance her relatives were buried together in the same cemetery and those that were European had markers that people visited regularly, but in the Native American section it looked neglected, but the burials were appropriately administered to by those that remembered. She said that the workings of a conservation easement depended upon the intentions of those involved and the care they took to do the appropriate thing. She said that they needed to find out that which they did not know to the greatest extent possible. She urged the Commission not to be in a hurry.

Mr. Boyer stated that there was no question that the cemetery was Catholic, because the burial pit ran east to west, a catholic custom from the Middle Ages, as the belief had been that when Christ was resurrected he would come from the direction of the rising sun. He said that the people buried in that location had been practicing Catholics, although evidence indicated Native American and Spanish traditions as well. He said that conservation easements were extremely effective, and he offered to provide examples for reference.

Mayor Gardner questioned whether the Catholics had marked their graves at that time.

Mr. Boyer replied that they had not; moreover, there were no marked burials as when a catholic passed away they were taken into the church, a hole was dug through the earth floor and the bodies were interred without significance.

Mayor Gardner closed the public hearing.

MOTION

Commissioner Crichlow MOVED to place Ordinance 2004-11 on second reading, read by title only and approved. Commissioner Lennon SECONDED the motion. ²

Mr. Wilson read the title as follows:

ORDINANCE NO.2004-11

AN ORDINANCE OF THE CITY OF ST. AUGUSTINE, FLORIDA, VACATING, DISCONTINUING AND ABANDONING THAT CERTAIN PORTION OF TREMERTON STREET, SOUTH OF THE WEST LINE OF SOUTH STREET, WITHIN THE CITY LIMITS OF ST. AUGUSTINE AND MORE PARTICULARLY DESCRIBED HEREIN; PROVIDING FOR RESOLUTION OF CONFLICT WITH OTHER ORDINANCES; PROVIDING FOR INCLUSION IN THE CODE OF THE CITY OF ST. AUGUSTINE; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

VOTE ON MOTION

AYES: Crichlow, Lennon, Jones, Burk, Gardner

NAYES: None

MOTION CARRIED UNANIMOUSLY

² End of audio tape two

11.D.1.a/ Final approval of plat for Bonita Bay, subsequent to the approval of Ordinance 2004-11 vacating a portion of Tremerton Street as referenced above. The vacated property is the location of Bonita Bay.

Commissioner Lennon stated that he did not believe that there should be a playground or a gazebo on the burial site, or that the area should be opened to the public.

Mr. McClure explained that his idea of a conservation easement was to prohibit any disturbance to the site once the bones were reentered. He said that they would not open the ground again or allow any activity to incidentally open the area. He added that they had not had the time to contact the Historical Society, but the recipient would essentially be the policeman of the property with no obligation to dig up or inventory anything except in the event that someone violated the terms of the easement, at which time the entity would have the authority to stop the violation. He clarified that there was no financial responsibility involved. He added that they could include that the main park in the conservation easement would remain a garden area in perpetuity. He said that there would be an irrigation system and perhaps some arbors, but active recreational activities would not be accepted.

Commissioner Burk questioned whether the site was intended to be open to the residents and closed to the public or closed to everyone.

Mr. McClure replied that the intention was for the area to be open for the enjoyment of the residents by walking on it or sitting on a bench and include it as part of the developments open space.

Commissioner Burk said that made no sense; as either the space should be closed or open, and it seemed that the people who spoke with knowledge thought it should be closed.

Mr. McClure questioned whether the grass could be mowed in that case.

Commissioner Burk replied that it should be maintained, but it should be closed to the public, including the residents. She stated that the wall should be three feet or less along the road to benefit the whole community with green space, but the space should not be a park for anyone.

Mr. McClure pointed out that they were there for a plat approval, which was an administrative act of the Commission to determine whether the plat conformed to City rules and regulations. He said that as far as accessibility, his client had demonstrated an abundance of good faith, and it would be a mistake to micromanage the issue.

Commissioner Burk argued that it was not micromanaging it was determining whether the area would be open to the public.

Mr. McClure debated that they could discover in the future that the site was being defaced and to protect the site they might need to raise the wall.

Commissioner Burk suggested that his argument was not valid; moreover, she did not want the space to be a park for the privileged residents.

Mr. McClure questioned whether the Commissioner wanted to purchase the property. He stated that the Commissioner's suggestion would amount to taking the property away from the owner.

Commissioner Burk stated that she had been totally misled, as she was not aware that it was going to be a recreation area for the little community.

Commissioner Lennon stated that it would be a passive park area.

Mayor Gardner said that it would be a conservation area.

Mr. McClure stated that when he granted a conservation area to the wetlands it did not mean he could not walk on them or prohibit someone else from walking across them, because he would be preserving the asset. He said that the objective was to preserve the assets sanctity, not to provide a tourist site.

Commissioner Burk stated that, if she was not mistaken, to preserve the sanctity people should not use it as a park. She suggested that perhaps the developer should talk to the people who thought he was being so wonderful, because it seemed he was creating a park for his little gated community.

Commissioner Lennon repeated that the space would be passive.

Commissioner Burk stated that the people had made it clear that they did not want people walking on that part of the site.

Mayor Gardner remarked "except the residents of the Bonita Bay community." He said that it was one of the most significant historical finds in the community and currently they were debating whether to put a play set on it, which was ridiculous.

Commissioner Burk said that they were not suggesting a play set; they were

suggesting a passive park just for the Bonita Bay residents.

Mayor Gardner stated that it was not a park; it was a historic site, albeit unique due to the customs of the indigenous people.

Mr. McClure stated that they were trying to keep it a green space.

Commissioner Burk said that if it was going to be open it had to be open to the City and not just a privileged few, because then they would be building a gated community within the City with its own recreational facility that happened to be a burial ground; therefore, they got to look good on both sides.

Mr. McClure pointed out that since the 1960's the site housed 6,500 square feet of doctor's office space on top of the bones, and before that there was a house. He said that in a non-consecrated Catholic burial site people would contact the local diocese to relocate the bones, and he emphasized that they were currently considering a Catholic site. He said that they were not dealing with Native American customs or religion, and he suggested that they were complicating matters to the point that DNA samples would be necessary to determine which bones were Native American. He said that Mr. Jonagan was attempting to balance the competing interest of everyone after paying \$2.5 million for his property.

Commissioner Burk pointed out that the City had given him an extra lot for his development, as it had originally been platted with eight lots.

Mr. McClure clarified that the City had not given his client anything, because the PUD allowed for 13 multifamily units on the site. He said that his client had

voluntarily addressed the concern, but currently the Commissioner did not even want lot A walked on, in spite of the fact that for the past 250 year's people had walked on the space.

Commissioner Burk clarified that she did not object to the site being walked on as long as the entire City had the privilege.

Mr. McClure replied no, but he said that if she wished to buy the property she could do it that way. He said that his client was attempting not to make the space a public curiosity.

Commissioner Lennon said that the Commissioners had already agreed that the space could be a passive park; therefore, he would support Mr. Jonegan's request.

Mr. Wilson clarified that there were certain conservation easements for preservation with public access, but it was uncommon. He said that most conservation easements were meant to preserve certain characteristics of a site that were worthy of preservation.

Commissioner Burk interjected that she must be missing something, but it appeared that Mr. Jonegan intended on allowing residents to use the area to the exclusion of the rest of the City, which was not a conservation easement.

Mr. Wilson stated that was the difference between an easement to allow the preservation of an asset and simple title of the land. He added that it was not uncommon for the state to pay for a conservation easement.

Commissioner Burk admitted to being confused, and she questioned whether the residents would be allowed to use the land.

Mr. McClure said that the nine families that would live in the small community would be allowed to walk on the space.

Mayor Gardner questioned the tax benefit from a conservation easement.

Mr. McClure replied that Mr. Jonegan's property taxes would not be reduced, but he would get a deduction on his income taxes for the difference in value between the eight larger lots and the nine smaller lots with lot A set aside. He said that they measured how much the value had been diminished by the conservation easement, which would be determined by an appraiser.

Mayor Gardner questioned what the developer intended for walls around tract A and for the uses within tract A.

Mr. McClure said that against his advice Mr. Jonegan agreed to limit the wall height to three feet on the west side facing Tremerton Street. He said that dog walking would be prohibited, and the uses within tract A would be by the conservation easement granted to the Historical Society or an entity approved by the Commission and limited to passive activities with no structures or active recreational activity and limited to garden and passive activity for the residents of Bonita Bay.

Mayor Gardner questioned whether the Commission could approve the plat subject to the survey and conservation easement being reviewed by the Commission.

Mr. McClure said that the Commission would not have to be concerned about the survey, but the conservation easement language would be their concern.

Mayor Gardner pointed out that there had been a lot of questions raised.

Mr. McClure said the Commission could approve subject to the granting of the conservation easement *in foreign and to a grantee* acceptable to the Commission, which meant the Commission would conduct a review. He added that he doubted that he would have the information in two weeks, but he would try.

MOTION

Commission Lennon MOVED as aforementioned. Commissioner Crichlow SECONDED the motion.

Mr. Harriss said that it was subject to the surveyor's verification and the conservation easement being acceptable to the City Commission.

Commissioner Crichlow stated that he was uncomfortable with the City Archeologist's opinion that the burial site was contained in tract A, but it was a good compromise. He added that preserving the site as a passive green open space was respectable, as people walked in cemeteries all the time. He suggested that it was a good step forward with the conservation easement protecting the site, and he added that he did not believe the public should be allowed on the site.

VOTE ON MOTION

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

NAYES: None

MOTION CARRIED UNANIMOUSLY

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

Merrill Rowland, 6281 Old Dixie Drive, said that there were numerous parking places around the plaza but no handicap spaces. He said that tourists had

brought the problem to his attention, and he suggested using one of the taxicab parking spaces for the request.

A discussion resulted, and because there was a requirement for handicap spaces to be van accessible, and with the width of the spaces and the nature of the streets only a regular handicap space could be provided; however, it was determined that staff would look into the matter.

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 8:03 p.m. ³

MAYOR

CITY CLERK

³Transcribed by Karen Rogers, Recording Secretary