

CITY OF ST. AUGUSTINE

Regular City Commission Meeting  
August 23, 2004

The City Commission met in a formal session Monday, August 23, 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  
Loran Lueders, Assistant Chief of Police  
James Owens, Fire Chief  
Karen Rogers, Recording Secretary

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**2. INVOCATION AND PLEDGE OF ALLEGIANCE**

Pastor Randy Hezekiah Jr., Shiloh Baptist Church, delivered the invocation, and the Mayor Gardner led the Pledge of Allegiance.

**3. ADMINISTRATIVE ITEMS**

**3.A/ Modification of Agenda**

Mayor Gardner stated that he would like to address Item 11.A.1., Resolution 2004-17, after the general public comments, as one of the people involved had an early flight to catch.

**3.B/ Approval of Minutes**

The minutes of the Regular City Commission Meeting of August 9, 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).**

Elizabeth Holiday, 11 Aviles Street, spoke regarding the horse drawn carriages chastising the Commission for not allowing the transfer of Mr. Gamsey permits to Ripley's Entertainment, as the horses would have gotten better facilities, the drivers would have received better benefits, and the permits that Mr. Gamsey had not used would have continued to be kept out of use. She questioned whether the Commissioner's idea of attaching permits to carriages meant they wanted more carriages on the street. She stated that as a result of the deal with Ripley's falling through Mr. Gamsey would transfer his permits a block at a time, and the City could prepare itself for a bunch of new horse and carriages on the streets. She stated that the Commission had stuck their nose into some else's affairs creating a problem.

Commissioner Burk noted that the Folio had misquoted her regarding the horse drawn carriages, because she had said that the horses should not live in the City, but she had not said that they did not belong in the City.

Virginia Whetstone, 297 St. George Street, read and submitted a letter requesting 15 horse drawn carriage regulatory licenses.

Patrick Canan, 43 Cincinnati Avenue, attorney for Mr. Gamsey, expressed concern about issuing any additional horse drawn carriage permits, as it could create the larger problem of devaluing his client's business. He pointed out that according to the current ordinance there were no grounds for the Commission to be issuing additional licenses, nor was there a need on the street for additional carriages. He added that the existing ordinance limited the number to that which currently existed. He said that Mr. Gamsey had taken

steps to try to eliminate the perception of monopoly by transferring the permits to different entities, which was more appropriate than the Commission issuing additional permits. He pointed out that if the Commission decided to issue additional permits, they should consider who was qualified. He pointed out that Mr. McDaniel had violated the existing ordinance, which he substantiated with police and arrests reports from numerous occasions.

Mr. Wilson explained that the requests for horse drawn permits on the consent agenda were not currently intended for public hearing, as the Commission had to determine whether there should be an investigation, after which the ordinance would be scheduled for a public hearing.

Hank Whetstone, 400 Old Quarry Road, stated that the City was spending \$25 million for the proposed parking garage at the VIC where no one wanted to park. He said that the current Commission had cancelled a \$5 million parking garage behind City Hall, and he repeated that the proposed project was \$25 million. He stated that in addition the City sold off the San Sebastian property, a part of which was intended for a third parking structure. He said that since 1985 the City property taxes had increased from \$1.1 million to \$5.1 million, which was a 400% increase. He said that property values continued to increase and everyone was paying more, while the Commission proposed a \$25 million bond issue with a \$1.8 million annual debt service after the first five years, which represented a potential property tax increase of 33%. He stated that he believed the voters would have a referendum concerning the subject on the November election, because it was not a well conceived plan. He said that if the Commission thought that they could force people to park at the VIC they

needed to expand the ground parking and force them to park there now rather than build a concrete and steel structure that would obligate tax payers for 30-years. He stated that he would closely look at the underlying premise in the bond issue, and he assured the Commission that it would be challenged and the project held up long enough for the voters to vote on whether their property should be mortgaged.

John Prosser, 128 San Marco Avenue, told the Commission that he intended on soliciting counsel in effort to get the street musicians back on St. George Street.

Mayor Gardner stated that he had done his personal best to help the street entertainers and the community as a whole.

Sandra Parks, 105F Arricola Avenue, spoke regarding the San Sebastian project in relation to parking, and she said that if the Commission considered the proposed parking structure at the VIC as the ultimate answer to the parking problem they should give serious consideration to the cost and how it would be paid for. She noted that the original intention for the San Sebastian site was to serve a public good. She added that if the property was to be sold to a private developer the Commissioners should get the best deal possible for the citizens. She stated that \$3.1 million was not enough for the property if the developer would not provide sufficient parking.

**11.A.1/ Consideration of Resolution 2004-17 authorizing the issuance of the Capital Improvement and Refunding Revenue Bonds, Series 2004.**

John Regan, Chief Operations Officer, stated that phase I construction work associated with the multi modal transportation system at the VIC was complete, and they expected to receive bids by September 8, 2004. He stressed that the cost for the project was \$16.5 million.

Mitch Owens, RBC Dain Rauscher, Jacksonville, stated that resolution was in its final form with a minor adjustment to page four, which correctly defined the term Vice Mayor. He said that the resolution authorized Dain Rauscher and staff to move forward with issuance of, up to and not to exceed, \$25.5 million in capital improvement revenue bonds. He said that number was not the actual number based on the market place, which would be \$22.8 million. He said that the \$25.5 million was a projected number with the conservative factor built in to give them leeway. He said that \$1.8 million was intended to refund the 1995 bonds, which represented a savings to the City of approximately 9.5-10%, and a little more than \$20 million would be used for the new money issuance for capital improvements for the historic area transportation and parking redevelopment area. He said that the resolution would allow them to prepare the necessary preliminary offering document, go to the market place, return to the Commission on September 13, 2004 for approval and have a closing around October 14, 2004. He said that it was their intent for the bonds to be issued with a triple A rating, they felt certain that the City would maintain a strong A underlying rating, which made the bonds desirable in the Municipal Bond Market, and they were comfortable that the existing market was in a good position. He offered to answer questions.

Commissioner Crichlow said that the public processes for the garage had

determined that the community was overwhelmingly behind the project. He said that they were heading in the right direction to solve the parking problem for the City. He said that the City would put elements in place that would insure that people parked in the garage. He stated that he was ready to take the next step and approve the resolution.

**MOTION**

**Commissioner Jones MOVED to approve Resolution 2004-17. Commissioner Burk SECONDED the motion**

**VOTE ON MOTION**

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

**NAYES: None**

**MOTION CARRIED UNANIMOUSLY**

Non Agenda Item

Mayor Gardner stated that there had been an article in the newspaper about the City's water tank breaking down.

Mr. Regan reassured the public that the water supply was fine. He said that the article represented a misunderstanding on the part of the St. Augustine Record, as the City was in the middle of planned expansion of the water facility.

**5. PRESENTATIONS AND STAFF REPORTS**

(None Scheduled)

**6. ITEMS BY CITY ATTORNEY**

(None scheduled)

**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 an Agreement with Flagler College for Police Services.**

**8.A.3/ Consideration of request by Robert M. McDaniel and Kelly D. McDaniel regarding carriage permits.**

**8.A.4/ Consideration of request by Mark K. Cosgrove regarding carriage permits.**

**8.A.5/ Consideration of request by William Cushion, Country Carriages, regarding carriage permits.**

**8.A.6/ Consideration of modification to the contingency period of the San Sebastian Property Agreement for Sale and Development.**

Mr. Harriss suggested that if the Commission approved the two items regarding horse drawn carriage permits that they include the request for permits by Virginia Whetstone as well.

Commissioner Crichlow said that Item 8.A.6. was the result of additional testing that the City wanted to conduct on the San Sebastian property; therefore, the City wanted to extend the time before closing. He added that the closing would be delayed approximately 30-days.

Mr. Harriss said that the request was for an additional 90-day extension; however, he did not believe that 90-days would be required. He said that they had to do further testing on the basin to quantify

how much and what type of soil Atlanta Gas would have to remove.

Commissioner Crichlow noted that there was no hesitation on the developer's part.

Paul Meredith indicated that he wanted to speak regarding the horse drawn carriages, and it was recommended that he utilize the public comment time in Item 12. to do so.

#### **MOTION**

**Commissioner Burk MOVED to approve the consent agenda items 8.A. through 8.A.6. Commissioner Crichlow SECONDED the motion.**

#### **VOTE ON MOTION**

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

**NAYES: None**

**MOTION CARRIED UNANIMOUSLY**

#### **MOTION**

**Commissioner Crichlow MOVED to add Ms. Whetstone's request to the investigation for carriage permits. The motion was SECONDED by Commissioner Jones and approved by UNANIMOUS VOICE VOTE.**

Commissioner Jones clarified that Mr. Meredith had requested to speak at the public hearing regarding acquiring additional permits for his client Mr. McDaniel. He explained that the public hearing would take place after the investigation, but not during the current meeting.

#### **8. B/ Discussion Items**

(None Scheduled)

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

#### Commissioner Crichlow - Campaign Signs

Commissioner Crichlow stated that the City had an ordinance stating that campaign signs could not be placed on public right-of-way, they could only be placed on private property. He distributed photographs showing campaign signs on the public right-of-way, and he opened discussion to enforce the existing sign ordinance.

Commissioner Burk said that every election year the topic had come up and each time the matter had been put off until later, but later never happened. She said that she had resisted putting her signs in the public right-of-way; therefore, she strongly suggested gathering the illegal signs and notifying the owners as to where they could retrieve them. She said that the situation amounted to trashing the City.

Commissioner Crichlow suggested setting a date after the primary that the sign owners would have to remove their signs or the City would gather them, and from that point in time new signs would have to be placed legally. He stated that the signs were unsightly.

Mr. Harriss stated that staff had no problem with picking up the signs that were on public right-of-way. He said that there had been discussions regarding where right-of-way and private property existed; therefore, they would gather signs with an abundance of caution. He noted that the subject had been a topic of discussion for years, but they were the first Commissioners to request enforcement.

Mayor Gardner said that if a sign was between the sidewalk and the curb it was in public right-of-way.

Mr. Harriss agreed and stated that it would not be staff's intention to remove signs that were on private property, and staff would put the signs in the City Public Works compound where they would be accessible to the owners.

Commissioner Burk said that it was the Commission's job; moreover, it was time to do it. She said she would prefer that they remove the signs immediately, but she would support setting a date.

#### **MOTION**

**Commissioner Crichlow MOVED to direct staff to remove campaign signs from the public right-of-way as of September 1, 2004.**

Mr. Harriss stated that staff would send out a letter to all political candidates registered in the City to advise them of the Commissioners decision.

**Commissioner Jones SECONDED the motion.**

Mayor Gardner questioned whether the County had the same type of ordinance.

Mr. Harriss replied that the County did not allow signs on state and county roads, but they were larger and had a limited amount of resources; therefore, they did not push the issue. He said that the City was more compact and could enforce laws within the confines of the City.

#### **VOTE ON MOTION**

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

**NAYES: None**

**MOTION CARRIED UNANIMOUSLY**

Commissioner Burk – Town Hall Meeting

Commissioner Burk announced that she would hold a town hall meeting at Gypsy Cab Restaurant on Wednesday, August 25, 2004, from 4:00 until 6:30 p.m.

#### Mayor Gardner – Announcements

Mayor Gardner delivered announcements regarding people and community events.

#### Handicap Accessibility

Mayor Gardner stated that a citizen had pointed out to him the lack of wheelchair accessibility on Charlotte Street and the safety hazard for wheelchairs at the intersection of Charlotte Street and Cathedral Place. He said that there had been a brief discussion during the previous meeting regarding a handicap parking space in the plaza, and he questioned whether there was anyway the City could bend the rules and incorporate sidewalk areas adjacent to parking spaces for handicap off-load spaces.

Mr. Harriss replied that could be an acceptable alternative as long as it provided the required 11-feet. He pointed out that the suggestion would change the sidewalk configuration of the Plaza, which had historical significance. He said that perhaps the end area of the market place could be designated for handicapped spaces, as the road was wide enough there, especially considering the bridge rehabilitation.

Commissioner Crichlow said that area was often reserved for special events in the park.

Mr. Harriss said that was a downside, and it was also a trailer train drop-off point. He said that staff had been discussing the pros and cons of doing something in that location. He stated that cutting into the Plaza could be a bad

thing to do. He added that they would need permission from the state to do anything on Cathedral Place or King Street, but they would probably grant their permission.

Mayor Gardner said the request was not to reconfigure the Plaza, but to provide some handicap parking in the vicinity.

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

### **10.A/ Tabled Public hearing and appeal of a Planning and Zoning Board decision relative to property located at 243 South Matanzas Boulevard.**

Mark Knight, Director, Planning and Building Department, was sworn and reported that on May 4, 2004 the PZB had reviewed an application to construct a 50 X 30 foot deck with a 15 X 30 half round at the end in Conservation Zone One. He said the request was denied and an appeal had been filed on June 4, 2004, and it was deemed sufficient for hearing on June 14, 2004. He said that pursuant to Section 28-29 of the City Code the Commissioners would have to determine whether the PZB had erred and either affirm, reverse or modify the decision of the board. He stated that if the applicant presented modifications the Commission could deny the appeal or remand the matter to the PZB for reconsideration. He distributed photographs of the property in question to aid the Commission with their decision.

Mayor Gardner questioned whether the request was unique or how it compared with other requests.

Mr. Knight replied that decks of that size were not routinely requested. He said that five years earlier a 900-foot dock was requested.

Mayor Gardner questioned the situation with a deck over City owned bottom land.

Mr. Knight replied that decks were routinely approved over City owned bottom land, such as terminal ends on docks, but not to the extent and size requested.

### Exparte Communications

Commissioner Crichlow reported that he had spoken with the Whittaker's, the applicant, and he had gone to their residence.

Mayor Gardner reported that he had visited the Whittaker's and discussed the appeal application with John Valdes who was assisting them with the design for the deck.

Commissioner Burk reported that she had spoken with some of the Whittaker's neighbors, Eileen Whittaker, Tom Richards, Doug Adams who lived adjacent to the property in question on the north side and to the neighbor adjacent to the south side, and she had spoke with Leanna Freeman regarding the matter.

Mayor Gardner added that he had received e-mails from some of the surrounding neighbors.

Commissioner Jones reported that he had received several e-mails from neighbors and the applicant.

Doug Burnett, 170 Malaga Street, representative for the applicant, stated that the appeal was for a building permit application and the PZB's denial. He said that Sections 11-28 and 11-29 of the City Code addressed the factors for consideration in that type of application. He submitted that according to the record from the PZB there were six

letters in opposition and four letters opposed to the matter. He said that there was no real evaluation of the factors to be considered in the aforementioned Code sections referred to in the staff report. He said that the PZB's primary concern had been whether approval of the application would set a precedent, but their concern had not been based on the criteria in the Code.

Mr. Burnett provided the Commission with a notebook of photos of other docks in the area with similar configurations. He said that the properties were on Dolphin Drive, Matanzas Boulevard, Coquina Street etc. and had similar types of terminals close to the bulkhead and property line and some were larger. He added that there were also photographs of his client's property that were different from the photographs taken by City Staff. He said that those photographs were not taken from the neighboring dock, which did not indicate whether the deck would impact the scenic vista, but if they had taken the photos from the dock they would have revealed that the proposed structure could not be seen from the adjacent properties. He said that his client's property was also walled; therefore, the neighbors could only see so much.

Mr. Burnett submitted that a similar structure had been approved in the past at 235 Matanzas Boulevard; the property belonging to the Runk's. He said that in the past year the Runk's had been approved for a terminal dock at the property boundary bulkhead.

Mr. Burnett said that the staff report had nothing in it to support denial of the application, and he listed the different factors involved that he suggested the PZB had not addressed. He again referred to the photographs and pointed out that the bottom land in front of his

client's property was mud at low tide, as there was no vegetation. He said that approving his client's permit was subject to obtaining state and federal approvals, as the City did not have an environmentalist on staff. He said that Code Section 11-29 addressed standards for review, imposing limitations but not outright denials.

Mr. Burnett displayed a rough drawing of his client's property and pointed out that the property was on a curvature in the road. He said that because the property jutted out to the back the adjacent property on the north side would naturally have a view to the north not the southwest and his client's property. He submitted four other citizen letters in support of his client's project.

Gary Whittaker, 243 South Matanzas Boulevard, stated that it had been a dream for him to live on waterfront property in St. Augustine for 24-years. He described his last year in college in California when he had lived on a cliff over looking the Pacific Ocean. He pointed out that it cost a lot of money to live on the waterfront in St. Augustine and one had to be part of a pretty exclusive club, as it cost over \$1 million to have a view of the City. He said that typically people accumulated that kind of money later in life, for example his neighbors were predominantly older people. He stated that older people had different needs than younger people, and his needs and what he wanted from a dock were different from his neighbors. He said that his biggest responsibility was to create a good environment for his children. He said that because of his needs the type of dock that he wanted was different from his neighbors, as he wanted one that would enhance the type of life that he had. He noted that the structure he wanted to build was a viewing dock and not a deck, because it

was over the Intracoastal Waterway but closer to his property. He concluded that he wanted the Commissioners to take his special needs into consideration. <sup>1</sup>

Commissioner Burk stated that Mr. Whittaker already had a 300-foot dock with a 29 X 10 terminal, and he was requesting a second structure that he preferred to call a dock.

Mr. Whittaker retorted that he did not prefer to call it a dock; it was just the way it was legally.

Commissioner Burk noted that Mr. Whittaker already had a dock.

Mr. Whittaker replied that he inherited a dock that did not meet his needs, and he planned to modify the existing dock.

Mayor Gardner opened the public hearing.

Martha V. (Nell) Porter, City Clerk, swore in all of the citizens that intended to speak on the matter.

Mrs. Porter pointed out that she had put the returned comment sheets in front of Commission. She stated that she had notified ten property owners within 150-feet of the property in question, and she had received 19 comments sheet along with a petition signed by an additional 19 citizens, all of which supported the PZB decision and encouraged the Commission to deny the appeal.

Mayor Gardner noted that the City Clerk had received more comment responses than she had sent out.

The following citizens spoke in support of the Planning and Zoning Boards decision denying the deck:

- Heywood Stackhouse, 247 South Mantanzas Boulevard
- Nick McAuliffe, 115 Ferdinand Avenue
- Judith Foxworth, 52 Coquina Avenue
- Patricia Poshva, 274 South Matanzas Boulevard
- Ronald Cobb, 239 South Matanzas Boulevard

Some of the comments that were made in support of denying the appeal were as follows:

- The Whittaker's already had a 300-foot dock.
- The proposal would obstruct and mar the view of the neighbors.
- What purpose would the proposed dock serve when the Whittakers already had a dock.
- The deck would not provide the safety for the Whittaker children that a railing would.
- Concern was expressed about setting a precedent or repeating a precedent.
- The proposal was for construction on conservation zone land and birds fed in the area.
- The bottomland was public land.
- The size (1,700 square feet) of the proposed dock was larger than an average home.
- PZB denied the proposal unanimously and the Commission should support the board's decision.
- The Whittakers had built and filled their pool before they moved into the house and there was no fence around it, which had posed a safety hazard for the neighborhood children.
- It was a state law that any pool had to be fenced.
- The general public should not have to put up with a request to extend the Whittakers property; thereby, using public land for private use.

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

- The pool was constructed three feet from the sea wall when, by law, it should be five feet from the sea wall.
- There was sea grass all along the bulkhead.
- The Whittakers were misrepresenting themselves and the situation.
- It was untrue that there were numerous similar docks or decks.
- The adjacent neighbors were vehemently opposed to the proposal.
- The Whittakers had created their hardship.
- The Whittakers should have as much compassion for the neighborhood children as they had for their own children.
- The Whittakers put the pool in fully aware that they would not have room, so why should the public furnish them with space for their amusement.
- If the size of the deck was reduced the same citizens would continue to protest.

The following people spoke in support of the applicant's appeal:

- Cece Reigle, 99 Coquina Street
- Mary Pat Fischer, 65 Avista Circle
- Brent Woolbright, 5140 Shore Drive
- Cynthia Woobright, 5140 Shore Drive
- John Valdes, 226 Rainey Avenue
- Eileen Whittaker, 243 South Matanzas Boulevard
- Charles Wilson, 43 Miruela Avenue
- Evelyn Roper, Palm Coast

Some of the comments that were made in support of the appeal were as follows:

- The Commission should approve the appeal as the request would make the property safer for the Whittaker's small children.
- Other property owners had docks, decks, boats, restaurants and bars that had been approved by somebody.

- People should not be told what they could and could not do with their personal property.

Mayor Gardner noted that it was not the Whittaker's personal property, as it was City owned bottom land.

- It was the Whittaker's dream house, and they should be able to have the deck.
- The dock would not be so horrible.
- The scale of the deck could be reduced.
- There were already a lot of docks in the area.
- The proposal would not present an obstruction for the neighbors view.
- A dock adjacent to a bulkhead was not a big issue.
- The deck was 58 X 29 feet, but the arch could be removed.
- People had been misinformed about the proposal.
- The proposal would not have a negative impact on property values
- The appeal should not be denied, because the deck represented convenience and safety for the Whittaker children.

Mrs. Whittaker stated that she would be willing to reduce the scale of the proposal

Mr. Burnett pointed out that it was apparent in the staff photographs and the photographs he provided that there was an absence of marsh grass along Mr. Whittaker's bulkhead. He said that typically there was less discretion when reviewing permits than applying for a variance, as permits were issued based on certain criterion, and if the criterion was met the permit should be issued. He said there was a staff report that did not identify a criterion for denial of the permit. He submitted that the application had been appropriate and

should have been approved. He noted that Mr. Whittaker was willing to compromise and reduce the size of the deck, and they would like to make that modification with the Commission rather than going back to the PZB.

Commissioner Burk referred to the photographs of the marsh grass and questioned why there was marsh grass all along the bulkhead to the north and south of Mr. Whittaker's bulkhead but there was a mysterious absence in front his bulkhead.

Mr. Burnett pointed out that there was very little marsh grass along the seawall in front of Mr. Stackhouse's bulkhead.

Commissioner Burk disagreed and stated that there was marsh grass all along the wall, as she had been at Mr. Stackhouse's house and saw it.

Mr. Burnett said that there was marsh grass there to a small degree as there was a wide body of water running through that area. He stated that the marsh grass was sporadic at best.

Mrs. Whittaker stated that it was that way when they purchased the house, and Mr. Valdes had taken photographs of the house before they purchased it. She said they had no idea why there was an absence of marsh grass in front of their seawall.

Mayor Gardner closed the public hearing.

Mayor Gardner questioned whether the matter had gone before the PZB as a request to build in Conservation Zone I.

Mr. Knight replied that was correct and there had been some references to a variance for hardship.

Mayor Gardner questioned whether there was any knowledge or background regarding other similar decks that the applicants had submitted for consideration to support their case.

Mr. Knight replied that he had tried to do a summary, and he briefly reviewed the distributed photographs.<sup>2</sup>

Commissioner Burk noted that a couple of the docks against the bulkhead were in the yacht basin.

Mr. Knight replied that they appeared to be decks that were against bulkheads on 209 Inlet Drive and 99 Dolphin Drive, but they appeared to be much smaller.

Commissioner Crichlow pointed out that under the staff summary and analysis for the PZB meeting it indicated that the impact of development on vegetation and animal communities and the affect of shade on vegetation on shell fish was not known. He questioned whether those items were reviewed by the DEP.

Mr. Knight said that the City did not have an environmentalist on staff; therefore, they depended on the expertise of the state and federal agencies.

Commissioner Burk stated that she had taken a great interest in the appeal, as she was familiar with the area, and she knew Dr. Adams whose property was adjacent to the property in question. She said that one of Dr. Adams' concerns was that people on the deck would be looking directly into his backyard. She said that Dr. Adams would request that a wall be placed along the dock to maintain his privacy. She stated that setting a precedent for people to build their backyard out onto the City bottom land was something the City would not want to do, because they would get

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<sup>2</sup> Attached to original minutes

requests from all the surrounding properties to expand their backyards.

Commissioner Burk said that she had visited the area in question and saw indigenous birds feeding in the area, which was their natural habitat while simultaneously people were fishing from a small boat. She continued that Dr. Adams was vehemently against the proposal, as the proposal would destroy his home and his privacy. She stated that just because the surrounding neighbors were older than the applicant and younger people wanted Jet Ski's, decks and docks was not a good reason to change the climate of the community. She said that building 1,700 square feet over the marsh, prohibiting the wading birds and flat bottom boats was wrong, and she did not want to go there. She concluded that she did not believe that the PZB had erred, it had been a unanimous decision, and she thought the Commission should uphold the board decision.

Commissioner Jones stated that in his opinion the PZB had not erred, and he could find no reason to reverse their decision. He said that the applicants had made a choice to build a pool rather than provide a safe green space in the backyard for their children, and to expect the City to supplement their property to make up for their mistake was unreasonable. He said that he could not see how he could possibly reverse the PZB decision and allow the Whittaker's to use City bottom land to extend their backyard, plus he did not see how the proposal would provide more safety for the Whittaker's children.

Mayor Gardner said that he had tried to make some idea work, such as a shallower boardwalk, but he could not make a decision until he had heard all the pros and cons. He said that it had

been pointed out that the request was to use public land for private use. He said that the applicant had created a hardship, which he claimed could only be correct by using public land. He said that the PZB minutes reflected that Mr. Whittaker had questioned, before the motion was made to deny, whether the board would approve the application if the deck was smaller. He said that to him the bottom line was how the neighbors would be impacted, and there had been overwhelming opposition to the proposal with genuine concern for the environmental, ecological and public nature of the land. He questioned the avenue for the applicant should the Commission deny the appeal. He answered his question stating that they could forget the whole matter, go to court or make reapplication to the PZB.

Mr. Wilson agreed that those were the alternatives.

Commissioner Crichlow said that to him it did not appear to be a vista issue, although it was a big dock. He said that the fact that the deck would be over marsh bothered him the most. He added that even if it was not over a lot of marsh in the current case, the next applicant's request could be over more marsh. He stated that the proposal worried him when considering the living grass and shellfish that would try to live under the deck. He noted that docks were a right-of-way across public land to the waterway, and they were not really utilizing public land. He said that the precedent set by the proposal would result in a deluge of similar requests.

Commissioner Burk interjected that she saw it as a vista issue as both of the adjacent neighbors would be affected.

Commissioner Jones said that when referring to water front property the City

accepted the property owner's right to make use of bottom land to get to navigable water if possible. He stated that the property in question already had a dock, and if they approved the appeal they would be allowing the applicant a second dock for recreational purposes and not access to water. He said that everyone on the waterway would have a right to request a second dock if they approved the proposal. He said that he did not see how the Commission could allow a second dock.

### **MOTION**

**Commissioner Burk MOTIONED that for all the reasons stated by the Commissioners that they uphold the Planning and Zoning Board's decision. Commissioner Jones SECONDED the motion.**

Mr. Burnett stated that his clients would be willing to drastically reduce the size of the structure, including removing the 15-foot half circle at the end of the deck and cutting the size to 15 X 58 feet.

Commissioner Burk replied that, in fairness to the neighborhood, if they wished to make that drastic of a change to their proposal they should reapply to the PZB.

Mayor Gardner noted that public comment had not been based on decreasing the size of the proposal. He stated that the Whittaker's had done an excellent job contacting people that made decisions, and he suggested contacting the PZB to see whether a revision would be acceptable.

Commissioner Crichlow stated that the Whittaker's had been led to believe that they could build a deck on the public bottom lands.

Mayor Gardner questioned who led them to believe so.

Commissioner Crichlow said that he was not certain, which was a lesson to the public that they should not make assumptions until they received an answer from people that knew what they were talking about.

Commissioner Burk commented that she believed that Mrs. Whittaker suspected her of being rude; however, Ms. Whittaker kept asking her for legal opinions and conclusions for the hearing, and she had advised her to seek legal counsel because she could not answer the questions as an appeal was pending. She said that she had gotten uncomfortable, and she was sorry that she had to walk away.

Mrs. Whittaker stated that was just not true. She said that she had asked the Commissioner to her house, because Commissioner Burk had gone to her neighbor's houses.

### **VOTE ON MOTION**

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

**NAYES: None**

**MOTION CARRIED UNANIMOUSLY**

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

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

**11.A.1/ Consideration of Resolution 2004-17 authorizing the issuance of the Capital Improvement and Refunding Revenue Bonds, Series 2004.** <sup>3</sup>

(Heard after Item 4.)

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

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<sup>3</sup> Item 11.A.1. heard after Item 4.

(None Scheduled)

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

(None Scheduled)

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

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

Paul Meredith, Coastal Highway, stated that his client had tried to get more horse drawn carriage permits for twelve years. He said that fact was something that a Civil Rights Action would expose as a persistent policy by a City that deprived a citizen of equal protection. He stated that Mr. McDaniel had never had the same opportunity to buy the permits in the past, as they had never been on the market for sale, and if there had been a market it would have been a violation of the City Code. He stated that an anti trust violation rose to federal criminal law; therefore, the situation was not minor nor could the City disregard it.

Mr. Meredith pointed out that two permits had been sold to Mrs. Cushion who was an employee of Mr. Gamsey. He suggested that selling those permits to Mrs. Cushion was a sham. He questioned what stables etc. Mrs. Cushion was using. He said that the situation amounted to dissembling. He concluded that the transfers were a scam.

Mr. Meredith stated that he had been told that he was too late to be put on the agenda, but that was not true. He said it appeared that the City was interested in protecting the monopoly. He said that the Commission could take away the permits that Mr. Gamsey did not use, and in fact they had a legal duty to do so. He stated that it was the City's

business to find out if a Civil Rights violation and an anti trust violation was being fostered by the City and if it was they needed to stop it, as it was the City's responsibility to follow the law. He suggested that his client had been harassed by Mr. Gamsey who kept calling the police about Mr. McDaniel, but none of the calls had resulted in conviction.

Mr. Meredith stated that he did not want to start a lawsuit. He pointed out that the Super Bowl was getting close, and it would be an opportunity for national exposure. He said that he wanted to resolve the matter before the event, and if it could not be resolved then he would take out an injunction from Federal Court.

Mayor Gardner questioned the criteria for horse drawn carriage permits.

Mr. Wilson said that staff looked at whether public need and convenience would be served by issuing permits, and whether the applicant was capable of following and obeying the law and operating the business. He said that it would be foolish to go out and buy horses and carriages before issuance of permits. He added that the City had tried to limit the number of horse and carriages on the street, and the fact that the permits had fallen into the hands of two operators had nothing to do with the City. He stated that the transfers had taken place in the free market system and over a period of time most of the permits were acquired by one company. He said that the City had no right to interfere with the exchange of permits; moreover, the City had done nothing to create a monopoly. He said that limiting the number of permits was a matter of trying to manage the current traffic problems, because the horse drawn

carriages were not safe with the City's traffic conditions.

Mayor Gardner noted that staff would conduct a study and bring the results to the Commission.

Patrick Canan, 43 Cincinnati Street, representative for Stewart Gamsey, stated that there had been no suggestion by Mr. Meredith that there was a need for more carriages. He said that there was question as to whether Mr. McDaniel was qualified as a horse drawn carriage operator, as he had been cited many times and actually convicted of violating the ordinance. He clarified that the transfer of permits to Mrs. Cushion was not a sham. He said that Mrs. Cushion was incorporated, and she had purchased carriages and horses with her own money, and currently she would be a competitor with Mr. Gamsey and Mr. McDaniel. He said that was important as his client was sensitive of the perception of monopoly; however, Mr. McDaniel did not appear to want Mr. Gamsey to do anything about the matter. He stated that as it was Mr. McDaniel wanted more permits, and if the concern was truly for a perceived monopoly then what did it matter who got the permits. He said that the matter would probably have to be figured out in the courtroom, as there were legitimate reasons for the government to restrict commerce, and horse drawn carriages on the heavily trafficked roads was a good enough reason to restrict the licenses. He stated that the City did not have to be bullied into doing something inappropriate.

Commissioner Crichlow stated that he wanted to work the situation out in a manner that no one was hurt.

William Cushion, 2945 B. Stratton Boulevard, stated that he was the main driver for Country Carriage, and he

offered his help with conducting the investigation. He added that there was little space to board horses and carriages in the downtown area; therefore, his wife rented space from Mr. Gamsey.

**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 8:00 p.m. <sup>4</sup>

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MAYOR

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CITY CLERK

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