

CITY OF ST. AUGUSTINE

Regular City Commission Meeting  
November 8, 2004

The City Commission met in a formal session Monday, November 8, 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  
Donald A. Crichlow, City Commissioner  
Errol D. Jones, 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  
Mark Litzinger, City Comptroller  
William H. Harding, Director, Public Works  
Dr. William Adams, Director, Heritage Tourism  
Paul K. Williamson, Director, Public Affairs  
Loran Lueders, Chief of Police  
James Owens, Fire Chief  
Karen Rogers, Recording Secretary

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**2. INVOCATION AND PLEDGE OF ALLEGIANCE**

Mayor Gardner delivered the invocation, and Commissioner Lennon led the Pledge of Allegiance.

**3. ADMINISTRATIVE ITEMS**

**3.A/ Modification of Agenda**

Mr. Harriss said that he had received a letter of retirement from Chief of Police, David Shoar. He said that the Chief would be hard to replace and wished him well with his new endeavors as Sheriff of St. Johns County.

Mr. Harriss announced that he had appointed Assistant Police Chief Loran Leuders as the new Chief of Police for the City of St. Augustine. He stated that there would be an official swearing in ceremony on December 4, 2004 during Chief Shoar's retirement party.

Mr. Harriss said that Item 11.B.2. regarding the PUD ordinance for Whispering Creek Town Center had been withdrawn by the developer to resolve some inconsistencies.

**3.B/ Approval of Minutes**

The minutes of the Regular City Commission Meeting of October 25,

2004 and Special City Commission Meeting of November 3, 2004 were approved as presented.

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

#### **3.C.1/ Prematurity Awareness Day**

Mayor Gardner read and presented the proclamation to Jennifer English, Director of the March of Dimes.

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

Robin Moore, 162 Nautilus Road, President of the St. Augustine Archaeological Association, stated that he was speaking on behalf of the association regarding the proposed Conservation Zone Easement, Item 8.6. on the Consent Agenda. He said that the board of directors had voted in favor of pursuing an agreement with Empire Development Limited to protect and preserve the archaeological resources buried under one of the lots at 11 Tremerton Street. He said that the association welcomed the opportunity to be stewards in preservation of the sacred site and hoped the associations intentions were shared by the developers, the current and future City Commissioners and the future home owners of Bonita Bay, as it was a long-term project. He said that although they were in favor of pursuing the contract the full board had not had the opportunity to read the current revised version of the Conservation Zone Agreement.

Commissioner Jones stated that he would request removing the item from the Consent Agenda for discussion.

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

(None Scheduled)

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

(None Scheduled)

### **7. ITEMS BY CITY CLERK**

#### **7.A/ Consideration of one Appointment to the Code Enforcement Adjustment and Appeals Board.**

Martha V. (Nell) Porter, City Clerk noted that there was a vacancy on the Code Enforcement Board, and she had received applications from the following citizens:

1. Irene Arriola, 81 Magnolia Ave.
2. Robert Hall, 52 Spanish St.
3. Thomas Parrish, 26 Dolphin Dr.

After two written ballots the Commission appointed Irene Arriola to the board.

### **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 Notification of four upcoming term expirations on the Historic Preservation Advisory Committee.**

##### **8.A.3/ Consideration of waiving certain parking restrictions on Saturdays in December.**

##### **8.A.4/ Approval of Bad Debt Write-Off.**

**8.A.5/ Approval of a Grant Award from the Florida Department of Law Enforcement.**

**8.A.6/ Approval of Conservation Easement at 11 Tremerton.**

**8.A.7/ Ratification of Memorandum of Understanding with the Professional Firefighters of St. Augustine.**

**8.A.8/ Approval of a Grant Award from the Florida Inland Navigation District (FIND).**

Commissioner Jones requested removing Item 8.A.6. for discussion. He clarified that Item 8.A.3. waived the meter fees and time restricted parking in the downtown area for the month of December to encourage shopping during the month.

**MOTION**

**Commissioner Lennon MOVED to approve the consent agenda items except 8.A.6. The motion was SECONDED by Commissioner Crichlow and approved by UNANIMOUS VOICE VOTE.**

**8.A.6/ Approval of Conservation Easement at 11 Tremerton.**

Commissioner Jones questioned who had made the revisions.

Mark Knight, Director, Planning and Building Department, replied that the revision had been made at the request of members of the St. Augustine Archaeological Association Board, and the revision that went to Mr. McClure's office to be incorporated was currently before the Commissioners. He described the revisions to the easement as follows:

- First page the addition of - *Purpose of Easement*
- #2. Addition of - *to maintain the sanctity of the mission church and cemetery and stricken - which would destroy or impair such subsurface deposits including, and this provision does not include those structures already existing on the property which do not penetrate the surface of the property, such structures may be maintained, improved, repaired, replaced from time to time as needed, and added, as well as the removal of concrete foundations presently existing over the burial site*

Mayor Gardner questioned whether there were currently structures on the site, and the response was negative.

- #2.h. a typographic correction *any other or uses* corrected to *any other uses*
- #7. the addition of - *It is not the responsibility of the Grantee, should its organization default, to find another organization to hold such interests under the applicable state laws. Should this occur, the Grantee will notify the grantor. Stricken - Grantee will not assign its rights and obligations under this conservation easement except to another organization qualified to hold such interests under the applicable state laws.*
- #8. was stricken and replaced with - *Enforcement of the terms and provision of this Conservation Easement shall be at the reasonable discretion of Grantee and the City of St. Augustine, and any forbearance on behalf of the Grantee to exercise its rights hereunder in the event of any breach hereof by Grantor, shall not be deemed or construed to be a*

*waiver of Grantee's rights hereunder.*

- #12. stricken - *first attempting mediation under the rules of the American Arbitration Association or other mediator and added - by binding arbitration agreed upon by the parties, with the understanding that the Grantee will not be held accountable for any fees.*

Commissioner Burk expressed concern for the developer considering that the Commission would not meet for another month due to the holiday, plus the archaeological association had to review any changes. She said that the revisions had raised questions for her; therefore, she suggested scheduling a special meeting to avoid further delay.

Commissioner Burk referred to the revised version of the Conservation Easement and recommended the following amendments:

- 2<sup>nd</sup> whereas clause, 1<sup>st</sup> sentence add - *grantee and the City of St. Augustine* after grantor and *show the respect for the memory of*
- #2. end of first sentence the addition of - *and the City of St. Augustine*

Commissioner Jones questioned whether there would be concern about inserting the City of St. Augustine.

Commissioner Burk clarified that she was not trying to insert the City as a grantee but in effort for the City to have some control over decisions made by the grantee to alter the terms of the easement.

Mr. Wilson said that he saw no problem with the Commissioner's suggestion.

Commissioner Burk said that the archaeological association was currently a solid organization; however, she was considering 50-100 years into the future, because the site was forever.

Mr. Harris pointed out that if the archaeological society agreed to the Commissioner's modifications there would be no reason for a special meeting. He said that the Commission could approve the document in the current format subject to the archaeological society's final approval.

Commissioner Burk replied that she was not finished with her revisions; moreover, she would like to review the easement in its final version, as there was the future potential for the association to default.

Commissioner Jones questioned whether the matter should revert to the Commission in the event that the association defaulted.

Mr. Knight said that the association could be subject to find someone else to hold the easement that was approved by the City.

Commissioner Burk noted that she did not want to put the burden on the association; however, they needed to consider what could happen in the future. She questioned the situation if the association did not enforce the terms of the easement.

Mr. Knight replied that the association had limited funding and they were concerned about significant or costly enforcement. He added that there was a level at which the City conducted enforcement through the Archaeology

Ordinance and the PUD. He explained that to build a structure would require a permit, and if someone were to start digging on the site the City would use enforcement through the Archaeology Ordinance.

Commissioner Burk stated that she was not comfortable with the potential for park benches and swing sets etc. that would not require a permit.

Mr. Knight replied that the Archaeology Association would enforce at that level.

Mr. Wilson noted that all the potential scenarios would be in violation of the PUD; therefore, if the association was unable to enforce the easement the City had the right to step-in.

Mayor Gardner stated that essentially the association could notify the City of any violations.

Mr. Harriss added that essentially they were looking for an association that would be a *cop on the scene* to pay attention to the intent of the original easement and report to the City when necessary.

Commissioner Burk said if that was the case the grantor should have no objection to adding language that *in the event the grantee failed to enforce the terms (of the Conservation Zone Easement) the City had the right to enforce them.* She concluded that she wanted to add into the easement that *the City was as an enforcer.* She continued:

- #11. add - *and the approval of the Commission and the City of St. Augustine*

- #12. last sentence add after grantee - *and the City of St. Augustine*

Commissioner Lennon questioned whether the Commissioners recommendation would jeopardize the City's liability, and he was assured that it would not.

Mr. Harriss clarified that he was asking the Commission to approve the Conservation Easement in the current form subject to the archaeological association and Commissioner Burk's personal review and without their approval the Conservation Easement would not be approved.

George McClure, 170 Malaga Street, stated that the developer had no problem with the additions, because Commissioner Burk's original concern had been that the Commission could change its mind about the terms of the PUD, which had resulted in the Conservation Easement. He said that currently Commissioner Burk was saying that the board of the Archaeology Association could change their minds, and at the same time the Commissioner was saying that the association could not make changes without the Commissions approval. However, he said that any change would always require the concurrence of the City and the Archaeological Association. He concluded that if the board approved the language they would record it, but if they did not accept it they would go before the Commission during the consequent meeting.

Mr. Moore agreed that the proposed changes seemed acceptable, and he said that he would bring the changes to the board.

**MOTION**

**Commissioner Jones MOVED to approve the Conservation Easement Agreement with the changes as stated by Commissioner Burk with the stipulation that (approval would be) upon her and the St. Augustine Archaeological Society's sign-off. Commissioner Lennon SECONDED the motion.**

**VOTE ON MOTION**

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

**NAYES: None**

**MOTION CARRIED UNANIMOUSLY**

**8. B/ Discussion Items**

(None Scheduled)

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

Commissioner Crichlow - Night of Lights and City's Birthday

Paul K. Williamson, Director, Public Affairs, delivered an update regarding the upcoming holiday events and encouraged public participation.

Commissioner Lennon - Election

Commissioner Lennon thanked all those citizens that supported him during his campaign and during the past 10-years. He concluded that he might be back.

**10. Appeals and Public Hearings**

(None Scheduled)

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

**11.A/ Resolutions**

**11.A.1/ Consideration of Resolution 2004-27, authorizing a Christmas Bonus for City officers and employees.**

Mr. Harriss stated that the City Charter allowed for a Christmas bonus for all City employees. He said that the bonus was based on the number of years employed and not the level of seniority.

**MOTION**

**Commissioner Lennon MOVED to approve Resolution 2004-27. The motion was SECONDED by Commissioner Jones and approved by UNANIMOUS VOICE VOTE.**

**11.A.2/ Consideration of Resolution 2004-29, authorizing the City Manager to execute documents relating to the Disaster Relief Funding Agreement.**

Mr. Harriss explained that the resolution was in regards to reimbursement from FEMA for expenditures by the City throughout the three hurricanes.

Commissioner Crichlow questioned what the City would be reimbursed for.

Mr. Harriss replied that it would be for employee overtime used for cleanup, documented damage to public property and operating supplies in anticipation of the storms, such as purchasing generators. He noted that the City had made money on Hurricane Floyd. He added that the City was still trying to reconcile the cost incurred during the hurricanes.

Mayor Gardner questioned whether there had been any damage to City Hall.

Mr. Harriss replied that there had been minor damage during the first storm; however, the second storm had caused a great deal of water damage.

**Commissioner Lennon MOVED to approve Resolution 2004-29. The motion was SECONDED by Commissioner Jones and approved by UNANIMOUS VOICE VOTE.**

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

**11.B.1/ Consideration of Annexation of Property located northeast of Nix Boatyard Road.**

**11.B.1.a/ Consideration of a Petition for Voluntary Annexation.**

Mr. Knight explained that the property in question was located on the northeast side at the end of Nix Boatyard Road. He continued that it was northeast of the Home Depot and the property had access to the waterway. He said that the proposal was for a dry boat storage facility with a PUD, and if the PZB approved, the applicant would return to the Commission for the second reading of the ordinance.

Commissioner Burk questioned what the current zoning was on the property.

Mr. Knight said it was currently a County zoning, but he did not recall what it was.

Mr. Harriss stated that currently it was a boat repair yard, which was as close to industrial as one could get, and it was adjacent to a mobile home

park on one side and a single family residence on the other.

Commissioner Burk questioned whether the property was restricted to 35-foot height limit.

Mr. Harriss replied that he did not believe that the County zoning went over 35-feet.

Commissioner Burk clarified that the applicant was asking for the annexation with a 50-foot height limit in the PUD. She stated that currently a PUD allowed the PZB to amend a PUD if the amendment was minor as determined by staff.

Mr. Knight said that the Code set forth criteria that determined major amendments.

Commissioner Burk stated that she had a problem with the process. She said she felt that any amendment to a PUD should go before the Commission, as she did not believe that staff should determine whether amendments were major or minor; because she had witnessed minor revision go through PZB that she considered major. She stated that the City did not have that many PUD's to create a burden on the Commission.

Commissioner Crichlow agreed that any amendments should go before the Commission in the form of site plans.

Commissioner Burk agreed and stated that the first public hearing regarding PUD amendments should be conducted at the City Commission level. She said that the PUD system did not make her feel comfortable. She said at first she thought that it was a good way to control projects, but she had learned that it was a good

way for developers to play the PZB against the Commission.

Mayor Gardner stated that PUD's were a huge weapon in the hands of City Government, but the Commissioners had been using the process to shoot themselves in the foot.

Commissioner Lennon stated that the City would not need the Planning and Zoning Board.

Commissioner Burk stated that she did not believe that the PZB had to be involved in PUD's.

Mayor Gardner stated that the preliminary review by the PZB was good, but final action should go before the Commission.

Mr. Harriss said the suggestion that minor modifications go before the Commission would be a philosophical decision that would have to be made by the Commission. But, he said the theory that the Commission should hear an application before the PZB, went back to development regulations that meant such matters went to the PZB before going to the Commission. He pointed out that PZB meetings were public including public forum; moreover, the public attended those meetings to express their opinions. He stated that the meetings played a necessary role that the Commission should not belittle.

Commissioner Burk stated that the PUD process broke down when annexations and PUD's went to the Commission first, but the applicant was requesting a 50-foot height limit. She suggested that the neighbors would be outraged.

Mr. Harriss explained that staff would do a preliminary regarding the petition for annexation on first reading. He stated that the process was to go before the PZB, and he suggested that the Commission really would not want to stop the process.

Commissioner Burk clarified that she was only referring to PUD's.

Mr. Harriss pointed out that the PZB made no final decision, only recommendations. He said that the process amounted to a change in zoning, which went to the PZB before going to the Commission with two readings and a public hearing.

Commissioner Lennon pointed out that the board had the expertise that the Commissioners did not have.

Mr. Harriss said that Commissioner Burk was suggesting that every modification to a PUD should be considered major and should go before the Commission. He said that would not be a problem, but they would have to change the ordinance and the Code.

Commissioner Burk said that sometimes minor things became major.

Mr. Harriss pointed out that the Commissioners were the final decision in a PUD.

Commissioner Crichlow said that many applicants reserved the right to make modifications prior to submittal of the final site plan, and a lot of times the changes to the final site plan could be significant and impact neighboring property.

Mr. Harriss suggested that staff draft the difference between minor and

major amendments for the Commission to examine and to add their input.

Commissioner Burk insisted that there were not that many PUD's; therefore, they should all go before the Commission.

Mr. Harriss recommended that the Commissioners get all the facts before making a decision.

Commissioner Burk stated that she wanted the applicant for the current PUD to be aware that the Commission wanted to review all changes to the PUD.

Mr. Harriss stated that making changes meant a PUD was in place, but currently there was not one in place. He said that he had no problem with tightening the philosophical reins of minor modifications, but he would like the Commissioners to consider the current Code, as perhaps it was not as bad as Commissioner Burk was supposing.

Mayor Gardner said that if the Commission approved the annexation and PUD the matter would go to the PZB for their recommendation on the proposal, after which the matter would go before the Commission again.

Mr. Harriss agreed and said that the Commission was putting the developer on notice that he/she might be asking for something that the Commission was not prepared to grant.

Commissioner Crichlow suggested that annexation of the property would create an enclave.

Mr. Harriss said that staff and attorney Dobson had allegedly worked that problem out.

**MOTION**

**Commissioner Lennon MOVED to approve the consideration of petition for voluntary annexation. Commissioner Crichlow SECONDED the motion.**

**VOTE ON MOTION**

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

**NAYES: None**

**MOTION CARRIED UNANIMOUSLY**

**11.B.1.b/ Introduction and consideration of Ordinance 2004-12, concerning a Petition for Annexation.**

**MOTION**

**Commissioner Lennon MOVED to place Ordinance 2004-12 on first reading, read by title only and approved. Commissioner Crichlow SECONDED the motion.**

Mr. Wilson read the title as follows:

ORDINANCE NO. 2004-12

AN ORDINANCE OF THE CITY OF ST. AUGUSTINE, FLORIDA, ANNEXING APPROXIMATELY 8.92 ACRES OF PROPERTY IN ST. JOHNS COUNTY, FLORIDA, LYING EAST OF U.S. HIGHWAY 1 AND NORTHEAST OF THE TERMINUS OF NIX BOATYARD ROAD, AS DESCRIBED HEREIN; REDEFINING THE BOUNDARY LINES OF THE CITY OF ST. AUGUSTINE TO INCLUDE SAID PROPERTY; AMENDING SECTION 1.08 OF THE CHARTER LAWS OF THE CITY OF ST. AUGUSTINE, FLORIDA; PROVIDING FOR FILING OF A COPY HEREOF

WITH THE CLERK OF THE CIRCUIT COURT OF ST. JOHNS COUNTY, FLORIDA, WITH THE CHIEF ADMINISTRATIVE OFFICER OF ST. JOHNS COUNTY, FLORIDA, AND WITH THE DEPARTMENT OF STATE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CITY CODE; AND PROVIDING AN EFFECTIVE DATE.

**VOTE ON MOTION**

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

**NAYES: None**

**MOTION CARRIED UNANIMOUSLY**

**11.B.2/ Introduction and consideration of Ordinance 2004-21, amending the North Florida Commerce Center Planned Unit Development (PUD) to the Whispering Creek Town Center PUD.**

(Withdrawn) <sup>1</sup>

**11.B.3/ Introduction and consideration of Ordinance 2004-23, establishing the San Sebastian Inland Harbor Planned Unit Development (PUD).** <sup>2</sup>

Rich Newton, 755 Spinnaker Reach, Ponte Vedra, said that he worked with San Sebastian Harbor Partners. He explained that the change in the site plan was due to a problem with the parking deck on Malaga Street. He said that they had planned on a two level deck, but they ran into a problem related to the entrance to the police station that would not allow a wide enough isle to accommodate two vehicles. He said that the architects came up with a resolution by shifting the parking under the condominium buildings, which created four floors

with parking underneath. He said that they were glad to get rid of the parking deck; however, they had a large parking lot at the entry to the project. Therefore, he said that the architect had moved the buildings around a little bit to create a public edge throughout the project from the King Street retail to Lorida Street. He referred to the architectural rendering of the modified site plan. He pointed out that the number had been reduced from 128 to 110 condominium units. He said that the retail was roughly the same, but the site of the hotel had been shifted to Lorida Street to continue the public edge.

Commissioner Lennon questioned the original size of the hotel.

Mr. Newton replied that in the original contract it had been up to 103 rooms and currently in the PUD they were asking for 110; however, currently it was planned with 85 rooms.

Russ Irvin, 447 St. Johns Golf Drive, referred to the architectural renderings of the site plan, and he said that they were pleased with the final outcome, as they had been able to mask a lot of the parking from the public edges. He pointed out some other changes to the site plan, as well as the disguised parking. He said that the hotel located on Lorida was the centerpiece of the project and accessible to the main entrance and within closer proximity to the parking deck, which had been disguised with retail shops and residential lofts. He pointed out the glass condominium building with parking underneath on the eastern end of the 65 boat slip marina, and he indicated the heavy landscaping.

<sup>1</sup> A brief recess from 6:10 until 6:26 p.m.

<sup>2</sup> Item heard after Item 11.D.1.

Mayor Gardner questioned the total height from the first floor to the top of the living levels.

Mr. Irvin said that they had lowered the parking down into the grade, which was almost subterranean with about five feet exposed. He said that the roof line from grade was 46-feet and with the pitch of the roof it would be 50-feet; therefore, they were asking for elevator penthouses and cupolas in the architectural (inaudible) to go above 50-feet, but the main body of the roof would be at 50-feet.

Mayor Gardner expressed concern for what would be seen from US 1 in terms of the elevation, as there were great concerns in the City generally that new development was going from the FEMA flood level at 9-feet and building up, which just did not fit.

Mr. Irvin agreed that they were concerned about the overall look of the project, as it would be the gateway into the historic district. He said that their thought was toward the architectural variety in building character and heights; therefore, they had not planned all 50-foot buildings. He pointed out the variety of heights in the plan and surrounding structures. He stated that the FEC buildings were 67.5-feet tall with another 9-foot for the elevator shafts.

Mat Meredith, 1186 Ponte Vedra Boulevard, Ponte Vedra Beach, stated that the lofts on the condominiums would be the only things that exceeded the 50-foot height. He said they planned that the project would look as though it had been built over time rather than in one year.

A brief discussion resulted regarding the variety of heights that existed throughout St. Augustine.

Commissioner Crichlow stated that he had seen project designs change drastically in a negative way, but he was pleased with the evolution of the proposed project. He expressed his appreciation for the softened design and public accessibility.

Mayor Gardner expressed his pleasure in working with the development team in effort to have a public/private partnership to develop and preserve the City.

#### **MOTION**

**Commissioner Crichlow MOVED to place Ordinance 2004-23 on first reading, read by title only and approved. Commissioner Lennon SECONDED the motion.**

Mr. Wilson read the title as follows:

#### ORDINANCE NO. 2004-23

AN ORDINANCE OF THE CITY OF ST. AUGUSTINE, FLORIDA, ESTABLISHING THE SEBASTIAN INLAND HARBOR PLANNED UNIT DEVELOPMENT (PUD) PURSUANT TO SECTION 28-289 OF THE CODE OF THE CITY OF ST. AUGUSTINE; PROVIDING FOR TERMS AND CONDITIONS OF THE PUD; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE

#### **VOTE ON MOTION**

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

**NAYES: None**

**MOTION CARRIED UNANIMOUSLY**

Mayor Gardner questioned the timeline for the project.

Mr. Meredith replied that the agreement with Atlanta Gas was almost finalized and should go before the Commission in a Special Meeting before December 1, 2004, and the only remaining items were the Army Corps and FDEP permits. He said that the Army Corps permit was out for public notice, and they anticipated receiving it late December or early January. He said that they should have everything done within 60-days. He said that after the marina was completed the anticipated timeline for the project was 14-months.

Mr. Harriss said that they would call a short meeting to approve the three-way agreement with Atlanta Gas before December 1<sup>st</sup>.

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

**11.C.1/ Public Hearing – Ordinance 2004-20, concerning adding Assisted Living Facility to the Residential and General Office (RGO) Zoning Category.**

Mr. Knight stated that the ordinance had been reviewed and approved by the PZB, and they recommended that the City move forward with adoption.

Sid Ansbacher, 780 North Ponce de Leon Boulevard, said that he was representing the owners of the Allegro on Plantation Island. He explained that his client had created an assisted living facility definition for the Allegro that was consistent with the definition of ALF in Chapter 400 of the Florida Statutes. He said that it was a senior living facility with 110-units and approximately 180-residents, and

currently the facility was at 100% capacity. He added that presently there was no ALF in the Municipal Code. He said that discussion with staff and the Commissioners had raised serious reservations regarding the potential extent of an ALF at the facility, but what his client needed was not the full extent of an ALF. He said that his client recognized the municipality concerns related the kind of residents that should live at an ALF, considering it was an island community with limited access. He continued that there were four different types of ALF's. He said that currently the facility had a limited type of ALF consisting of basic assistance, and the only addition they were requesting was administration by a licensed nurse for minimal medication: topical, oral, as well limited injection. He described the different levels of ALF's as defined at a state level. He assured the Commission that his client was not trying to convert the facility into a quasi-mental health center or nursing home.

Mayor Gardner questioned whether the City Code defined any kind of assisted living.

Mr. Ansbacher replied negatively and stated that there was a gray area as to whether his client required an ALF zoning designation for the request, but they wanted to minimize any question through caution.

Mayor Gardner noted that the request would create a narrow definition of low intensity ALF. He questioned the type of zoning attached to nursing homes in the City.

Mr. Knight replied that there were definitions for intermediate care

facilities and hospitals that could be used with a broader definition, but the request was for a limited type of facility.

Mr. Crichlow questioned the difference in terminology of a low intensity facility.

Mr. Ansbacher said that it could be considered a standard facility if the Commission found that easier, but his intention had been to delineate to make the nature of the facility clear.

A discussion ensued regarding the different levels of ALF's under State Statutes, in which standard facility was defined as barely above a standard senior citizens facility.

Commissioner Burk recommended that the ordinance should specify level one including the same wording as the Florida Statutes.

Mr. Ansbacher pointed out that if they referred to a standard facility and nothing more they would have to go through a number of statutes to find the criteria that he had set forth.

Mr. Wilson said that the way Mr. Ansbacher had presented the matter the terms described specifically what was allowed.

Mr. Harriss pointed out that there was no reason to replicate Florida Statute. He continued that they had improved on the statute with a clearer definition.

Commissioner Crichlow agreed that the definition was concise. He said that he would hold any further comments until after the public hearing.

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

Mr. Wilson pointed out that he had included an amendment to the ordinance.

Commissioner Crichlow expressed concern that in modifying the zoning the City would be required to meet the requirements of the Regional Land Use Plan, which did not allow assisted living or nursing homes on barrier islands. He said that it was a Comprehensive Land Use Plan, and he wondered whether the City would be in trouble for modifying the zoning laws by allowing assisted living on a barrier island. He referred to a letter from Edward Lehman, Director of Growth Management.<sup>3</sup>

Mr. Wilson said it was his understanding that adoption of the ordinance would not be in violation of the City's Comp Plan or any other plans in affect.

Commissioner Crichlow questioned why not when it was his understanding that assisted living facilities were not supposed to be on barrier islands.

Mr. Ansbacher said that a new assisted living facility would not be allowed on a barrier island; however, in March of 2003 they had gone to the Regional Council with their proposal and they had determined that it was not a matter for the council because the proposal was not of that magnitude; therefore, staff had dealt with the matter. He added that his client's proposal did not constitute a new facility.

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<sup>3</sup> Letter and Disaster/Evacuation Plan attached to original minutes

Commissioner Crichlow pointed out that it had been a staff decision, not the board itself.

Mr. Ansbacher suggested that it was a catch-22 situation, because the Council stated that it was not an issue for them to consider.

Commissioner Crichlow said that his concern would be about setting a precedent.<sup>4</sup>

Mr. Ansbacher reiterated that the level of care allowed only for distributing pills, administering ointment and a licensed nurse to provide injections; things for which they had sent the residents to Flagler Hospital.

Commissioner Crichlow noted that the residents were ambulatory and only required monitoring.

Mr. Ansbacher said that the Commissioner could presume that all the residents were ambulatory with only a few exceptions. He said that currently there were residents using scooters, but the vast majority was self sufficient.

Commissioner Lennon noted that the majority of the residents drove and had their own vehicles. He added that the facility was close to SR 312 with a four lane bridge; therefore, the facility should not pose a threat during evacuation.

Commissioner Jones said that a key term used was that it was a 110-units 180-person *existing* facility. He said that the Commission's approval would not be consent to allow a new facility of the same level, because if they

added any units they would not be applicable to the modification.

Mr. Ansbacher used the example of an ALF level that might typically exist in a house, which represented a grey area currently existing in houses on barrier islands. He said that the City would only have the situation by license, review or special exception which was a discretionary function.

Mr. Wilson explained that just because the use existed in a zoning district did not mean that it would supercede state law. He continued that it was a general ordinance that applied to RGO wherever it existed, but a new facility would not be approved on the island.

Commissioner Crichlow expressed concern about approving the facility as an existing facility, because it was not an existing assisted living facility, it was existing elderly housing. He said that he was not attempting to deny the matter; he was looking for a way to approve the proposal. He said that if the Commission wanted to allow a new exception in RGO Zoning as a standard, low intensity or minimal Assisted Living Facility it was one thing, but he could not say that it was an existing facility.

Commissioner Burk agreed, and she suggested that they eliminate the language Assisted Living Facility but include that certain things could be allowed by exception.

Mr. Ansbacher said that he could care less what they called it as long as it provided for the services that they had to meet under Chapter 400. He noted that when they went to the Regional Council they had wanted to get full council approval, as they were not

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<sup>4</sup> End of audio tape one

trying to side step anything. He said that the PZB had already approved the special exception, and they were before the Commission for legislative action. He said that they were not there to discuss whether the facility was an existing ALF; they were there for a legislative determination of whether to create the category in the zoning definition.

Commissioner Burk suggested that Mr. Ansbacher find a way to make the Commission feel comfortable that the direction they were taking was correct.

**MOTION**

**Commissioner Burk MOVED to amend Ordinance 2004-20 pursuant to the motion to amend. Commissioner Lennon SECONDED the motion.**

**VOTE ON MOTION**

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

**NAYES: None**

**MOTION CARRIED UNANIMOUSLY**

**MOTION**

**Commissioner Burk MOVED to place Ordinance 2004-20 on first reading, read by title only and approved. Commissioner Lennon SECONDED the motion.**

Mr. Wilson read the title as follows:

ORDINANCE NO. 2004-20

AN ORDINANCE OF THE CITY OF ST. AUGUSTINE, FLORIDA, AMENDING SECTION 28-165 OF THE CODE OF THE CITY OF ST. AUGUSTINE TO ADD ASSISTED LIVING FACILITY AS A USE BY EXCEPTION IN THE RESIDENTIAL AND GENERAL OFFICE (RGO) ZONING DISTRICT; PROVIDING

FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF THE CITY OF ST. AUGUSTINE; AND PROVIDING FOR AN EFFECTIVE DATE

Mr. Harriss stated that the State guidelines that prohibited new ALF's on barrier islands would not prohibit the proposal. He said that his concern was about an extra 110 people for him to worry about in the event of evacuation, but the proposed facility would not represent that type of problem. He recommended that they include the term ALF as it was in the ordinance before them, as he did not believe that Mr. Ansbacher could make a dramatic change and still get the necessary licensing.

Commissioner Crichlow suggested that they use the term low intensity.

Mr. Harriss replied that it would satisfy the licensing requirement.

Commissioner Crichlow said he wanted to be certain that it did not open the door for other assisted living facilities on a barrier island; however, he admitted that the allowance was quite limited.

Mr. Ansbacher stated that he would get a copy of the letter from Edward Lehman, Director of Growth Management, Northeast Florida Regional Council, to the Commission indicating that his client had gone to them regarding the evacuation issue, and including the response from the Council that it was an existing facility. He continued that he would talk with the AHCA (Agency for Healthcare Administration) legal staff, as he believed that if there was a zoning determination meeting the standard for an ALF license under Section 400.407, he was not certain that

AHCA would require the facility to be called an ALF under the local Code. He said that AHCA did not want to look at the local Code they simply wanted to know whether the City had zoning that would allow his client to do what he wanted to do. He said that it might be sufficient without using the ALF label. He thanked the Commission for their patience.

**VOTE ON MOTION**

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

**NAYES: None**

**MOTION CARRIED UNANIMOUSLY**

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

**11.D.1/ Public Hearing - Ordinance 2004-22, increasing the Maximum Archaeology Fee.**

Mr. Knight stated that the ordinance established a maximum archaeology fee of \$25,000. He said that several years earlier a fee of \$15,000 was established; however, at that time development activity was on a smaller scale in St. Augustine.

Mr. Harriss clarified that the fee was only for larger projects.

Commissioner Lennon questioned whether the fee was standard in the State of Florida.

Mr. Knight replied that there was no other City with an archaeology ordinance like St. Augustine.

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

**MOTION**

**Commissioner Crichlow MOVED to place Ordinance 2004-22 on second reading, read by title only and approved. Commissioner Jones SECONDED the motion.**

Mr. Wilson read the title as follows:

**ORDINANCE NO. 2004-22**

AN ORDINANCE OF THE CITY OF ST. AUGUSTINE, FLORIDA, AMENDING SECTION 6-8 OF THE CODE OF THE CITY OF ST. AUGUSTINE TO INCREASE THE MAXIMUM ARCHAEOLOGY FEE FROM \$15,000 TO \$25,000; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF THE CITY OF ST. AUGUSTINE; AND PROVIDING FOR AN EFFECTIVE DATE

**VOTE ON MOTION**

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

**NAYES: None**

**MOTION CARRIED UNANIMOUSLY**

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

(None)

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

(None Scheduled)

**13. Adjournment**

There being no further business, the meeting was adjourned 7:33 p.m. <sup>5</sup>

<sup>5</sup>Transcribed by Karen Rogers, Recording Secretary

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MAYOR

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CITY CLERK