

CITY OF ST. AUGUSTINE, FLORIDA

Planning and Zoning Board Workshop Meeting
May 29, 2007

The Planning and Zoning Board met in a workshop session at 2:15 p.m., Tuesday, May 29, 2007, in the de Aviles Conference Room at City Hall, St. Augustine, Florida. The meeting was called to order by Deltra Long, Vice Chairperson, and the following were present.

1. ROLL CALL: Deltra Long, Vice Chairperson
Carl Blow
Roxanne Horvath
John Valdes

Excused: Gerald Dixon
Leanna S.A. Freeman, Chairman
William Leary

City Staff: Mark Knight, Director, Planning and Building Department
David Birchim, Planning Manager
Ron Brown, City Attorney
Robin Upchurch, Assistant City Attorney
Maria Carlin, Recording Secretary

Other Attendees: Donald Crichlow, Commissioner
Jay Bliss
Darrell Poli
John Danahy
John Bailey Jr.
Thomas Ankersen, University of Florida, Director, Conservation Clinic,
Thomas Ruppert, University of Florida, CGR Conservation Law Fellow

Ms. Upchurch advised the attendees that there would not be any official action or consensus taken as the meeting was a Workshop.

Presentation on Working Waterfronts Initiative

Mr. Thomas Ankersen, University of Florida, said the University previously worked with the City through the Port and Waterway Authority regarding interest expressed in establishing a mooring field in St. Augustine. He reported that they had been working in collaboration with Florida Sea Grant and Florida Department of Community Affairs regarding working waterfronts. He said that Florida was losing traditional public access as a result of conversions to non-publicly accessible uses,

primary residential. He stated that in 2004 legislature introduced a bill that would have required counties to replace every boat ramp lost with a new one, a study was commissioned in 2005 and based on the results of that study the Working Waterfronts Legislation was passed. He reported that the bill required coastal counties and municipalities to start planning for the preservation of their working waterfronts and created a parcel-based definition of recreational and commercial working waterfronts.

Commissioner Crichlow inquired whether the City was mandated or required to begin planning for the preservation of the local waterfronts.

Mr. Ankersen responded that the City was mandated to develop strategies as a community to be included in the coastal zone elements of the City's Comprehensive Plan and counties were mandated to develop regulatory incentives and criteria. He advised that waterway planning was also encouraged. He stated that in 2006 there was an amendment, which encouraged local governments to begin planning for surface water use policies.

Commissioner Crichlow inquired whether moorings would be included.

Mr. Ankersen responded that moorings and boat zones would be subject to regulatory pre-emption by the State.

Commissioner Crichlow asked how the State would monitor the situation.

Mr. Ankersen said Evaluation and Appraisal Reports would be conducted followed by appropriate amendments to the Comprehensive Plan based on the report. He said that the State in reviewing the Plan would determine whether the changes were made.

Ms. Long questioned when the appraisal for St. Augustine would be.

Mr. Knight responded that the Evaluation and Appraisal Report would be due in October 2008.

Mr. Ankersen said that they developed a series of documents available on their website regarding the issue. He said that and hotels and motels had been included in the definition of a working waterfront in 2006. He reported that there was a provision in the statute that provided for property tax deferral for working waterfronts. He advised that it was not a tax exemption or preferential tax treatment. He stated that legislature created a tax deferral provision allowing a working waterfront property owner to defer paying taxes as long as they maintained the status or until there was a change in ownership, use, or the deferred

taxes equaled 85% of the value of the working waterfront.

Mr. Ankersen directed attention to pages two and three of the UF Waterways and Waterfronts Guide and Policy Tool handout indicating the following information:

- Waterway Access Analysis Manual: A guide for local decision makers
- Preserving Public Access to Public Waters: A Policy Menu for Local Governments
- The Water Dependency Test as a Means to Preserve Recreational and Commercial Waterfronts
- Creating a Recreational and Commercial Working Waterfront Program to Implement Chapters 2005-157 and 2006-220, Laws of Florida: A Model Comprehensive Plan Amendment with Policy Options
- An Annotated Model Tax Deferral Ordinance for Recreational and Commercial Working Waterfronts

Mr. Knight asked if there were any examples available for a simplified version of a Comprehensive Plan.

Mr. Ankersen suggested the Bradenton Beach and Punta Gorda models, but he said that St. Augustine was different as there was significantly more waterfront.

Mr. Knight inquired what standards the FDCA would look for in a Comprehensive Plan concerning working waterfronts.

Mr. Ankersen stated that he did not believe there were any standards established as the procedure was a new one and the FDCA might not be ready to review Comprehensive Plans for compliance. He reported that there workshops were planned for the Waterfronts of Florida Program, which afforded technical assistance and grant money for the development of waterfront plans for communities.

Commissioner Crichlow inquired about the status of the harbor management plan.

Mr. Knight responded that Mr. Reagan was working on the matter.

Mr. Blow said he believed that the plan was temporarily on hold due to the pending Marco Island lawsuit. He said that the Fish and Wildlife Commission was seeking input from residents regarding the development of an ordinance. He stated that St. Augustine did not have a harbor management plan but was looking into the development of mooring fields; however, there was a concern about control over the boats. He inquired whether there was any information regarding the lawsuit or the status of the FWC ordinance.

Mr. Ankersen replied that he did not have any information available, but he might have information on the Ordinance in a few months. He said that a statute had been put in place in 2006 to clarify that the government did not have the authority to govern vessels in navigation. He said that consideration should be given to why mooring fields were needed as follows:

- Primarily to exclude anchoring problems
- To provide public access to the water

Mr. Blow said that, due to growth in the area, the demand for slips was high and considering increased costs, the public was showing more interest in mooring fields.

Mr. Ankersen said it would provide an amenity to the community.

Mr. Blow said part of developing the Comprehensive Plan Amendment would include extensive inventory and determination of the next course of action.

Mr. Ankersen said that Monroe County, Martin County and Palm Beach County had 'no net loss policies'.

Commissioner Crichlow inquired whether legislation discouraged private development on previously undeveloped waterfronts that were not meant for public use.

Mr. Ankersen responded that it did not. He said land use and zoning was a local government decision.

Mr. Bailey questioned whether it mattered if dry slips or marinas were rented or sold in terms of public access.

Mr. Ankersen said there would be a distinction between sold and rented. He said that rentals would have a faster turnover rate and the marina would be zoned according to duration of rentals. He stated that the term public access implied that it was accessible to the public on a first-come first-serve basis.

Mr. Blow inquired how other cities addressed the dockminium issue.

Mr. Ankersen said there were different options available and used Monroe County as an example.

Mr. Knight inquired whether public access had ever been challenged.

Mr. Ankersen responded negatively, but stated that possible challenges could occur in down zoning.

Mr. Ruppert said that, from a constitutional perspective, down zoning was not a significant problem. He said that some primary cases in Florida pre-dated the Bert J. Harris Act.

Mr. Knight said he was referring to public access being challenged regarding opening property to the public.

Mr. Ruppert said that if an area was rezoned to a working waterfront where a marina or residential property was built, the City would be able to attach conditions to the property.

Ms. Long questioned whether the legislature had clearly defined public access because the public would not necessarily have a clear understanding of the term 'public access'.

Mr. Ankersen said restaurants were public access and a marina would also be public access. He clarified that there might be some areas of a working waterfront that would not be public access, such as boatyards and industrial areas that were critical to the operations of a waterfront.

Mr. Ruppert said the legislation was not just about public access.

Mr. Bliss inquired whether it addressed the City's right-of-way for dedicated streets that merged into the water.

Mr. Ruppert said it did not.

Commissioner Crichlow clarified that it was the City's policy not to vacate any water access.

Mr. Ankersen inquired whether it was an informal policy or written.

Mr. Knight responded that it was written in the Comprehensive Plan.

Mr. Ankersen said it could be handled in two ways, one of which would be a policy stating there would be no vacations or you could vacate, offering something comparable in return.

Commissioner Crichlow said there were a number of street vacations in the area.

Mr. Ankersen inquired if they were inventoried.

Mr. Knight responded that they were.

Mr. Bliss asked if an inventory of that type would be demonstrated in the Comprehensive Plan.

Mr. Ankersen said it would be in the form of data and analysis.

Commissioner Crichlow said there had been several requests over the years.

Mr. Ankersen said it should be a part of physical and comprehensive planning.

Mr. Blow stated that if the City had public access they needed to maintain it.

Commissioner Crichlow said it appeared that the Comprehensive Plan would need to be addressed within the next year.

Mr. Knight said a request for proposals would be issued in August or September for the evaluation and appraisal report for the Comprehensive Plan; it would be evaluated by a consultant, and submitted by October 2008 to pursue an amendment to the plan incorporating any changes in the state law, as well as any problems encountered over the past seven years.

Commissioner Crichlow stated that there had been a decrease in the marine industry.

Mr. Poli said the National Oceanic and Atmospheric Administration conducted a survey of fisheries in the United States a few years ago and shared their data with the National Marine Fisheries Service. He said the legislature was trying to address the true definition of a working waterfront. He stated that the demand for fresh seafood was on the increase and the Restaurant Association of Florida was encouraging the preservation of working waterfronts.

Mr. Danahy said he felt that some important issues for consideration were as follows:

- Mooring fields
- Illegal dumping
- Live-aboards

Mr. Danahy said he believed that residents wanted solutions to the above concerns, and he asked for any suggestions or guidance on those issues.

Mr. Ankersen said that he would move forward concerning the mooring fields. He stated that if the existing laws were enforced most of the boating problems would be minimized.

Mr. Bliss responded affirmatively.

Commissioner Crichlow inquired whose authority it would be to enforce concerns.

Ms. Upchurch responded that it would be the responsibility of Florida Fish and Wildlife Conservation Commission. She reported that the St. Augustine Police Department was working with the FWC to clear the derelict and abandoned boats from the waterway. She advised that the FWC had the authority to inspect boats and investigate environmental concerns.

Commissioner Crichlow inquired whether the City had any jurisdiction over boat registration or illegal dumping.

Mr. Blow said that both he and Mr. Bliss were members of the St. Augustine Port, Waterway and Beach District and they were funding the City's efforts in regarding abandoned boats. He said that Commander Fricke of the St. Augustine Police Department was actively working with the FWC and the State of Florida, Department of Revenue to alleviate the problems. He reported that the Port Authority paid for officer overtime on the Police Patrol Boat.

Ms. Upchurch said the SAPWBD also paid for costs incurred by the City for hauling derelict boats.

Mr. Blow said there had been a significant cost increase for removing derelict vessels.

Mr. Bliss replied that the St. Augustine Port, Waterway and Beach District budgeted \$25,000 for enforcement and \$25,000 for removal of derelict vessels.

Mr. Blow reported that the St. Johns County Sheriff's Office was requesting the same arrangement the SAPWBD had with the City, as some officers from FWC were currently employed with the St. John's County Sheriff's Office and patrolling the City's waterways.

Mr. Bliss stated that enforcement of existing laws was a key operational factor that the City should effectively implement. He reported that the SAPWBD had authorized three-months of free pump-out service throughout the area, and they hoped the service would be utilized. He said the Conch House had contracted with the SAPWBD and would be providing two days a week service for the next three months, and the results would be examined.

Mr. Ruppert said that someone needed to take responsibility for enforcement.

Mr. Bliss replied affirmatively and said that there were several agencies involved but the responsibilities were unclear.

Mr. Blow questioned whether the panel envisioned what the San Sebastian River would look like in five or ten years, and whether they should have Sea Grant conduct an inventory and interview property owners regarding the future of their property.

Commissioner Crichlow said that the State encouraged input from municipalities regarding the preservation of working waterfronts. He inquired whether the DCA, when in reviewing the Comprehensive Plan amendments, would refer it to the regional councils.

Mr. Ankersen said he was not certain.

Mr. Blow inquired whether the PZB could take steps to protect an existing facility if an applicant wanted to rezone their property for a condominium or to sell dock-o-miniums. He inquired whether the PZB could say that the State passed a local waterfronts legislation; therefore the board had to take

steps towards protecting an existing facility or existing use of property.

Mr. Ankersen said he believed that would be possible.

Mr. Danahy inquired whether the City's harbor management plan was specific concerning the navigation definition.

Mr. Ankersen said the legislature intended to pre-empt local governments from regulating vessels in navigation and they intended to clarify that term from a prior statute to almost any vessel.

Mr. Bliss inquired whether that was a constitutional change.

Mr. Ankersen replied that it was a statutory change.

Mr. Bliss inquired whether Florida Statutes were aligned with constitutional requirements for freedom regarding interstate commerce.

Mr. Ankersen responded negatively. He said that many people thought that navigational servitude created a federal freedom to navigate, but in truth, the federal governments were free to regulate as necessary and referenced the case in Hawaii where anchoring was restricted. He said this was a state statutory law and could be changed by the legislature.

Mr. Blow inquired whether those cases dealt with timing issues.

Mr. Ankersen responded affirmatively and said the new statute occurred after the cases in question.

Commissioner Crichlow said the pump out system at the marina was in disrepair. He inquired whether there were any grants available to fund the repair of the system.

Mr. Ankersen said Sea Grant offered technical support not funding, but there was funding and some resources available.

Ms. Long inquired if the Florida legislature assisted any other agencies other than Pensacola.

Mr. Ankersen responded affirmatively.

Ms. Long asked if the City could request assistance.

Mr. Ankersen said it was a bi-annual program and the communities were already selected. He said financial assistance was very limited with the program and suggested researching the Waterfronts of Florida Partnership website for more information.

Ms. Horvath said that the Fish Island Development proposed to use the City's pump out facility. She said she was not aware that the pump out facility was in need of repair. She suggested that Fish Island could contribute to the City for use of the facility.

Mr. Ankersen said there would be a level of service on pump out facilities.

Mr. Ruppert stated that one reason for putting the mooring fields in place was to use part of the revenue to support the pump out facility and the mooring field would create it's own demand for pump out.

Commissioner Crichlow said he was unsure if the mooring fields would encompass most of the mooring areas.

Mr. Blow said that when anchoring close proximity to public access was a consideration. He said that support facilities were also needed on shore with mooring fields, such as:

- A dumpster
- Shower
- Parking

Mr. Ankersen said there were a number of active mooring fields presently.

Commissioner Crichlow said he was not aware of anyone that was against the boaters in the bay. He said the City wanted better control and a mooring field would offer better control over the following concerns:

- Registration
- Safety
- Pump Out
- Anchoring

Ms. Horvath inquired whether there would be a time limitation for use of the mooring fields.

Mr. Ankersen said it could be zoned internally.

Commissioner Crichlow said it would be a transit mooring.

Mr. Ankersen said there were generally three types of vessels on the water such as:

- Vessels passing through
- Live-aboards
- Storage vessels

Mr. Blow confirmed that the City saw all three types of vessels. He said that occasionally boaters who resided elsewhere moored their boats here and failed to regularly check their boats or secure them in the event of bad weather.

Mr. Poli asked who would be responsible for liability if a boat incurred damage to another boat.

Mr. Ankersen said most mooring fields required that boats carry insurance.

Mr. Poli stated that the bay front could be volatile and the north side of the bridge was typically used as a temporary anchoring spot.

Mr. Ankersen said that securing space on the water for boats to have a safe harbor was important and he suggested applying

for a mooring place that would be a safe harbor for boats in turbulent weather.

Mr. Blow said they were in the preliminary stages of permitting three mooring fields as follows:

- One north of the Bridge of Lions for transients
- One south of the Bridge of Lions For live-aboards or larger vessels

Mr. Poli said a permanent mooring on the south side of the bridge would be a good idea but there would still be heavy wind and tide, which could be a factor in boats breaking loose of moorings and causing damage. He said that was why he enquired about liability.

Mr. Ankersen said a professional contractor should be used who has liability insurance; the mooring should be designed to a certain standard. He said shipping had diminished in the intra-coastal waterway and as a result, the federal interest in the waterway had decreased and there was a reluctance to fund dredging projects.

Mr. Blow said the Army Corp of Engineer's model was obsolete as it was based on commercial and bulk activities. He said that from an economic standpoint recreational boating was a major economic engine in the area but that was still not used to justify maintenance dredging.

Commissioner Crichlow enquired whether the San Sebastian Inland Harbor would be a positive impact.

Mr. Blow said he did not believe that if the San Sebastian River had considerable boat traffic, it would make much difference.

Mr. Bliss said he was unclear what the requirements of marinas were in the event of a major storm. He said the legislation passed in 2006 dictated that boat owners could not be forced to vacate the marina within a certain time. He said he was unsure what the City would do if a tropical

storm warning was issued and what requirements the City would impose on boat owners. He questioned where the boats would be located in that event, and said community leaders needed to evaluate that possibility.

Mr. Bailey said that it would cost the City money.

Mr. Ankersen said the mooring fields would generate revenue. He said Fernandina Beach just installed a mooring field and they received assistance on their working waterfront design guidelines from a professor at University of Florida.

Mr. Bailey enquired whether any counties adopted the public waterway access and whether properties on the waterfront needed to satisfy those requirements.

Mr. Ankersen replied that there were levels of service for different counties and the Best Policies Practice listed the requirements for boat ramps. He said he was unsure of procedure for boat slips. He reported that if they generated boat traffic then data development might need to be done.

Mr. Blow asked whom the City could contact if they wanted to conduct an inventory of marinas, boatyards to get an idea of services they provided.

Mr. Ankersen said Sea Grant would be able to assist in that area. He said the San Sebastian waterfront was important to the City.

Mr. Blow said it was a good representation of a working waterfront.

Mr. Poli said it was a traditional working waterfront from inception. He said that working waterfronts were chosen for well protected through storms and access to the land.

Ms. Long expressed thanks to the members of the public who attended the Workshop,

the invited speakers and board members in attendance.

ADJOURNMENT

Having had no further business, Ms. Long adjourned the meeting at 3:50 P.M.¹

¹ Transcribed by Maria Carlin

