

CITY OF ST. AUGUSTINE

Regular City Commission Meeting
Monday December 14, 2009

The City Commission met in a formal session Monday, December 14, 2009 at 5:00 P.M. in the Alcazar Room at City Hall. The meeting was called to order by Mayor Joe Boles, and the following were present:

1. Roll Call: Joe Boles, Mayor/City Commissioner
Errol Jones, Vice Mayor/City Commissioner
Donald Crichlow, City Commissioner
Leanna S. A. Freeman, City Commissioner
Nancy Sikes-Kline, City Commissioner

William B. Harriss, City Manager
Ron Brown, City Attorney
Karen Rogers, City Clerk
Timothy A. Burchfield, Chief Administrative Officer
John Regan, Chief Operations Officer
Mark Litzinger, City Comptroller
Mark Knight, Director, Planning and Building
Jim Piggott, Director, General Services
Martha Graham, Director, Public Works
Paul K. Williamson, Director, Public Affairs
Dana Ste. Claire, Interim Director, Heritage Tourism and Executive
Director St. Augustine 450th Commemoration Commission
Loran Lueders, Police Chief
Steve Fricke, Commander, SAPD
Barry Fox, Commander, SAPD
Mike Arnold, Fire Chief
Sam Adukiewicz, Harbormaster, Municipal Marina
Todd Grant, Deputy Director, Public Works
Darlene Kirkland, Recording Secretary

2. INVOCATION AND PLEDGE OF ALLEGIANCE

Bishop Mark Kersey, Holy Cross Charismatic Orthodox, delivered the invocation, and Commissioner Jones led the pledge of Allegiance.

3. ADMINISTRATIVE ITEMS

3.A/ Modification of Agenda

William B. Harriss, City Manager, stated that due to the appellant's attorney arriving late, they requested to modify the agenda to hear item 4.A. after item 11.B. and the Commission approved.

Commissioner Jones requested that a discussion regarding vending in the West Plaza be added to the agenda.

3.B/ Approval of Minutes

MOTION

Commissioner Sikes-Kline MOVED to approve the minutes of the regular meeting of November 9, 2009 and the workshop of October 27, 2009. The motion was SECONDED by Commissioner Chrichlow and approved by UNANIMOUS VOICE VOTE.

3.C.1/ Proclamations

(None)

3.C.2/ Recognitions

(None)

4. Appeals

4.A/ Appeal relevant to denial of a use by exception at 156 and 158 Cunningham Avenue.¹

Ron Brown, City Attorney, explained that the City Code provided for the Commission to review the record of an appeal and consider the legal arguments. He advised that the appeal was not a new hearing open for public comment or a time to hear new evidence regarding the matter. He stated that the Commission could affirm, deny, modify or reverse the Planning and Zoning Board (PZB) decision. He explained that, if the appellant modified the application, the Commission could remand it to the PZB for further review. He advised that the Appellate Court would evaluate the criteria regarding the Commission's decision as follows:

- Was appellant afforded due process, and was there sufficient opportunity to be heard
- Were the essential requirements met regarding the law while applying the Code
- Was there substantial and competent evidence to support the PZB's decision

Mark Knight, Planning and Building Director, explained that on October 6, 2009 the PZB reviewed a request for a use by exception for a helium balloon ride located at 156 and 158 Cunningham Avenue. He stated that PZB had lengthy discussions regarding the matter. He submitted the minutes from the hearing for review.² He stated that there had been a motion to table the item for the applicant to submit additional information; however, board members felt the location was inappropriate and ultimately denied the application.

Commissioner Freeman questioned whether the PZB board members had expressed concern regarding public safety, and the response was affirmative.

Doug Burnett, Lawyer for the appellant, stated that the board member's concerns were related to traffic, height of the structure and the scenic vista. He referred to similar case law³ and stated that Florida law regarding substantial and competent evidence required that testimony be provided by an expert or layperson; however, testimony by a layperson had to be fact based. He pointed out that the PZB member Mr. McCune had made the motion to deny based on concern for the scenic vista; however, he felt that the City Code did not provide for a decision based on scenic vista concerning the location. He further explained that height should not be a considering factor, because the balloon was not a structure. He pointed out that the section regarding height restrictions in the City Code defined structures as buildings. He stated that general objections and speculation regarding traffic should not be considered competent substantial evidence, as only expert testimony should be considered. He argued that the denial by the PZB had not met the requirements of the City Code, plus the decision had not provided specific details regarding the reasons for the denial. He concluded that a letter detailing the safety of the balloon had

¹ Item heard after item 5.B.1.

² Copy attached to original minutes

³ Copies of case law attached to original minutes

been submitted by Doug Causey, President of the balloon manufacturer.

Mr. Brown advised that additional evidence could not be submitted to the Commission; however, if the appellant modified the application, the issue could be remanded to the PZB for further review.

Commissioner Freeman questioned whether the appellant's choice was to have a new hearing before PZB or have the Commission make a final decision.

Commissioner Crichlow questioned whether anyone could appeal the PZB decision if the Commission chose to approve the application.

Mr. Brown replied that anyone directly affected could appeal the decision.

Mr. Burnett stated that the appellant would like to have the issue remanded to the PZB, as they had more information that could possibly satisfy some of the PZB's concerns.

Commissioner Freeman questioned whether additional evidence would be a basis to remand the issue to the PZB.

Mr. Brown replied that according to City Code only a modification to the application would be acceptable.

Mr. Burnett questioned whether submitting a more detailed plan would be considered a modification to the application.

Mayor Boles stated that the Commission's decision would be based on whether the PZB applied the Code correctly, and whether they had ruled sufficiently.

Mr. Brown stated that the Commission could uphold the PZB decision if they felt that the modification was insufficient.

Commissioner Freeman pointed out that there had been sufficient testimony by the

applicant and City staff during the PZB hearing.

Mr. Burnett stated that, during the hearing, questions had arisen regarding traffic, safety and specifications of the balloon, and he requested that the application be remanded to the PZB to address those issues.

Commissioner Freeman stated that the applicant had an opportunity to present all evidence to the PZB, and she felt that the suggested modifications were insufficient to remand. She questioned whether the applicant had requested a continuance to present additional evidence to address the board's concerns.

Mr. Burnett replied that there had been a motion by Mr. Leary to table the application to review additional information.

Commissioner Freeman pointed out that the motion had been withdrawn due to lack of support.

Commissioner Crichlow questioned whether using the balloon for advertising had been included as a modification to the application.

Mr. Burnett replied that advertising had not been discussed during the PZB hearing.

Commissioner Freeman clarified that the application was for a use by exception and had not included signage, and she felt that signage could not be used as evidence for a use by exception.

Mayor Boles stated that he felt a permitted use by exception should enhance the City; however, general public opinion would most likely be that a balloon ride would not be an enhancement. He noted that buildings were limited to 35 feet, and the balloon would exceed that height.

Commissioner Crichlow felt that the balloon ride would not have a positive influence on Heritage Tourism or promote the general welfare of the City when considering the

City's vista. He stated that the project in a different location could possibly be approved.

Commissioner Sikes-Kline said that, according to the PZB minutes, it had been clearly stated that the project would not meet that City's criteria to grant an exception, and the burden of proof fell to the applicant whether the project could be a positive addition to the City; however, that had not been accomplished.

Mr. Knight stated that there had been a motion to table the item; however, following a discussion, some board members felt that any new information would not change their decision.

MOTION

Commissioner Crichlow MOVED to uphold and affirm the Planning and Zoning Board's decision, and deny the appeal. The motion was SECONDED by Commissioner Freeman, and she added that the Planning and Zoning Board had heard competent and substantial evidence, and there was competent and substantial evidence to support their decision.

Mr. Brown questioned whether Mr. Crichlow supported the modification to the motion, and the response was affirmative.

VOTE ON MOTION

**AYES: Crichlow, Freeman, Jones
Sikes-Kline, Boles**

NAYES: None

MOTION APPROVED UNANIMOUSLY

Mr. Burnett questioned whether an application could be submitted for the project in an alternative location.

Mayor Boles clarified that the Commission's decision referred to the current application only.

5. Ordinances and Resolutions - Public Hearing Required

5.A/ Ordinances – First Reading

(None)

5.B/. Ordinances - Second Reading

5.B.1/ Public Hearing – Ordinance 2009-38, creating and regulating operations related to mooring fields for anchorage of vessels on the waterways located within the corporate limits of the City of St. Augustine.

Jim Piggott, Director, General Services, provided a Power Point presentation briefing for proposed Ordinance 2009-38 regarding the Harbor Management Plan including the creation and regulation of mooring fields.⁴ He stated that the intent of the Harbor Management Plan would provide safe mooring and anchorage, Clean Vessel Act compliance, clear navigational waterways and create environmental awareness. He pointed out that the plan had been in process for nearly five years. He explained that in 2005 the St. Augustine Port, Waterway and Beach District, funded over \$100,000 for the permitting process and partnered with the City to begin planning. He recounted that there had been four well attended public workshops held during August 2005, October 2007, January 2008 and February 2008. He stated that public input had been considered when determining the number of mooring fields to be installed, and residents expressed concern regarding the following:

- Rates kept affordable
- Priority mooring choice for residents
- Maintenance records kept on each mooring
- GPS mapping of moorings
- Moorings included for larger yachts
- Larger vessels moored in Salt Run
- Grievance process to be included in the Harbor Management Plan
- Waiting list protocol

⁴ Presentation attached to original minutes

Mr. Piggott emphasized that all the concerns had been addressed within the Harbor Management Plan. He explained that Cultural and Natural Resources Surveys had been conducted following the 2008 workshops; after which the permit applications were submitted to the Florida Department of Environmental Protection (FDEP) and the Army Corps of Engineers (ACOE). He reported that the permits were received in October 2009. He stated that the Harbor Management Plan would accomplish the following:

- Provide a safer harbor
- Promote environmental responsibility with a pump-out service
- Establish mooring fields
- Appoint a harbormaster
- Prohibit private moorings within City limits
- Provide free anchorage for non-live-a-boards (wet storage)
- Establish a fee structure with discounts offered to most boaters

Mr. Piggott stated that the Harbor Management Plan would be self sustaining and would not be a burden on taxpayers. He pointed out that the number of registered boats in St. Johns County had increased over an eight year period. He explained that the pump-out boat would service all boats inside and outside of the mooring fields. He quoted the FDEP stating that *the untreated discharge of one weekend boater amounted to equal bacterial pollution from treated sewage of 10,000 people*. He pointed out that the Harbor Management Plan could reduce the number of derelict vessels the City removed annually. He stated that the City identified approximately 75 derelict vessels over the past three years, and removed 20 vessels costing over \$100,000. He continued that the mooring field proposal would provide 178 moorings in the following locations:

- 80 Salt Run
- 28 North of the Bridge of Lions
- 70 South of the Bridge of Lions

Mr. Piggott reported that the number of boats and private moorings currently located within the City limits were as follows:

Boats

- 45-70 Salt Run
- 10-30 North of the Bridge of Lions
- 40-60 South of the Bridge of Lions

Private Moorings

- 80 Salt Run
- 2 North of the Bridge of Lions
- 12 South of the Bridge of Lions

Mr. Piggott stated that a grant from the Clean Vessel Act had been approved in the amount of \$70,000 and a request for an additional \$588,500 was included in the Harbor Management Plan proposal. He reviewed the capital outlay of costs as follows:⁵

\$445,000	Instillation of Moorings
\$ 43,500	Design/Engineering
\$ 36,000	Marina Utility Vessel/Taxi
\$ 94,000	Pump-out Boat
\$ 25,000	Vessel Removal
<u>\$ 15,000</u>	<u>Mooring Field Markers</u>
\$658,500	Total Cost
-\$70,000	CVA Grant
<u>\$588,500</u>	<u>City Reserve Loan</u>
\$658,500	Total Outlay

Mr. Piggott stated that the \$588,500 loan would be repaid to the City at rate of 3% interest in an estimated seven year period.

Commissioner Freeman questioned the annual payment schedule.

William B. Harriss, City Manager, explained that the annual payments for the first two years would be interest only, and the subsequent payments would include principal and interest until the debt service was satisfied.

⁵ Report attached to original minutes.

Mr. Piggott stated that the City had researched occupancy rates for the first few years of operation in other state mooring fields. He said the rate averaged 25% to 35% for the initial year, but the rate increased to an average of 80% to 100% after 5 years. He estimated the City's occupancy rate at 30% for the first year and an increase of 12.5% per year following, and an 80% occupancy rate during the fifth year.

Mr. Harriss stated that the City established a similar five year plan when they built the marina, which became profitable within three years. He pointed out that the Marina had been profitable since, and he felt the mooring fields would be as well.

Mr. Piggott summarized the proposed discounts as follows:

- Residential 40% in all areas
- Wet storage 30% in all areas
- Salt Run field additional 30%
- Weekly rate earned 1 day free
- Monthly rate earned 1 week free
- Annually rate earned 1 month free

Mayor Boles questioned whether the discounts were comparable to the other mooring fields throughout the state.

Mr. Piggott replied that nearly half the mooring fields throughout the state offered discounts.

Mr. Harriss stated that there were certain issues that would require direction from the Commission, such as rates and discounts. He said the discounts and rate proposals were based on the services and efforts the City provided.⁶

Mr. Piggott reviewed the proposed rates, and pointed out that they were comparable to the current docking fees of other marinas in the county. He stated that moorings would provide a more affordable alternative

for extended stays, and the proposed rates were as follows:

San Marco and Menendez Fields

Base Rates- Non Resident – Live-a-Board

- Daily \$ 20.00
- Weekly \$ 120.00
- Monthly \$ 360.00
- Annual \$ 3,960.00

Non Resident - Wet Storage

- Daily \$ 14.00
- Weekly \$ 84.00
- Monthly \$ 252.00
- Annual \$ 2,772.00

Resident Rates - Live-a-Board

- Daily \$ 12.00
- Weekly \$ 72.00
- Monthly \$ 216.00
- Annual \$ 2,376.00

Resident - Wet Storage Rates

- Daily \$ 8.40
- Weekly \$ 50.40
- Monthly \$ 151.20
- Annual \$ 1,663.20

Salt Run Fields:

Base Rates- Non Resident – Live-a-Board

- Daily \$ 14.00
- Weekly \$ 84.00
- Monthly \$ 252.00
- Annual \$ 2,772.00

Non Resident - Wet Storage

- Daily \$ 9.80
- Weekly \$ 58.80
- Monthly \$ 176.40
- Annual \$ 1,940.40

Resident Rates - Live-a-Board

⁶ Addressed on page 13

- Daily \$ 8.40
- Weekly \$ 50.40
- Monthly \$ 151.20
- Annual \$ 1,663.20

Resident - Wet Storage Rates

- Daily \$ 5.88
- Weekly \$ 35.28
- Monthly \$ 105.84
- Annual \$ 1,164.24

Commissioner Jones questioned the rate difference for each field.

Mr. Piggott replied that amenities and services available for each field were factors in the rate consideration.

Commissioner Jones pointed out the discrepancies regarding the additional discount offered to residents in the Salt Run location compared to residents in the San Marco and Menendez locations, which were noted by staff.

Mr. Piggott reported that there was a Florida statute entitled, Anchoring Ordinance Pilot Program, which the City had been reviewing, and he suggested the City submit an application to be considered for the program. He explained that the program had six goals as follows:

- Promote the establishment and use of public mooring fields
- Promote public access to state waters
- Enhanced navigational safety
- Protect maritime infrastructure
- Protect the maritime environment
- Deter improperly stored, abandoned or derelict vessels

Mr. Piggott advised that the procedure for the program required that a letter of interest be sent to the Florida Wildlife Commission (FWC) prior to December 31, 2009, and monthly data collection would begin in March of 2010. He stated that the FWC would select the five cities to participate prior to July 1, 2011. He explained that the

program would allow the City to enact ordinances that could regulate non-live-a-board boats that according to state law, currently could not be done.

Commissioner Crichlow stated that the mooring fields could cause displacement of some boats, but regulations could be put in place accordingly. He felt that being a part of the program could provide more protection for the City's property owners and allow better navigation through City waters.

Commissioner Sikes-Kline stated that the program could give the City another layer of control and possibly provide regulation of anchorage.

Commissioner Freeman questioned whether the mooring fields researched by the City were operating with a profit, and the response was affirmative.

Commissioner Freeman questioned the number of dinghies currently docked at the City Marina.

Sam Audkiewicz, Harbormaster, City Marina, replied that of the boats currently in the harbor approximately 20% (12) were live-a-boards, and paid monthly dockage fees. He stated that the seawall was being illegally used to disembark by some boaters, and the mooring fields could assist in the reinforcement of City laws.

Commissioner Jones questioned whether the live-a-boards would be regulated to the San Marco and Matanzas mooring fields.

Mr. Piggott replied that the decision would be made by the Commission.

Commissioner Freeman questioned the water taxi operations, schedule and cost.

Mr. Piggott replied that the cost associated with the water taxi was included in the budget proposal and two additional staff members would be hired for the Marina. Mr. Harriss stated that there would be three to four Marina staff on hand that would be

licensed to operate the water taxi and pump-out boat; however, a schedule had not yet been determined.

Commissioner Sikes-Kline requested clarification of the density and configuration of the mooring fields.

Mr. Piggott replied that initially 120 moorings were planned for Salt Run; however, due to public input the number had been reduced. He stated that the goal was to maximize use of the area, and based on water depth, the larger boat moorings would be placed in Salt Run. He noted that the number of moorings had been reduced in the San Marco and Menendez fields as a result of archeological surveys of the bottom lands.

Commissioner Jones questioned the number of moorings for larger vessels.

Mr. Piggott replied that there would be two moorings for vessels over 100 feet, which could be used temporarily for smaller vessels.

Commissioner Freeman expressed concern regarding the regulation of free anchored boats in the areas surrounding the mooring fields.

Mr. Piggott replied that the state pilot program would assist in regulating the areas that could not be regulated currently according to state laws. He pointed out that once the mooring fields were established issues could be addressed accordingly with the FWC.

Commissioner Jones questioned whether the City could regulate live-a-board vessels anchored on City owned bottom lands.

Ron Brown, City Attorney, replied that fees could be charged; however, state law preempted city ordinances from regulating free anchorage of non-live-a-board vessels outside the mooring fields. He stated that live-a-boards could be required to be within the mooring fields.

Commissioner Freeman questioned whether the City could define the term live-a-board.

Mr. Brown replied that the state definition did not provide clarity, and other counties had encountered issues in the past attempting to define live-a-boards. He stated that one goal of the pilot program was to regulate free anchorage and to further define the term live-a-boards.

Mr. Piggott presented a video from Andy Schoenberg, transient boater, whom spoke in support of the mooring fields. Some of his comments were as follows:

- The current anchorage in the St. Augustine harbor was hazardous and unsafe
- Would have extended his stay if provided with cost effective moorings⁷

Jerry Dixon, St. Augustine Port, Waterway and Beach District Commissioner, stated that the majority of the waters that they oversaw were within City limits; therefore, they worked closely with the City regarding various issues. He explained that the Port Authority received community complaints, and a number of them concerned derelict vessels damaging property or running ashore on private property. He pointed out that boats were not as regulated as automobiles, and they were not required to be registered and insured. He stated that the Port Authority had attempted to address the issue for some time and supported the Harbor Management Program. He advised that currently there was little recourse in the event a derelict vessel caused damage. He noted that the Port Authority had spent over \$100,000 to remove derelict vessels at the taxpayer's expense. He concluded that a mooring field would assist in preventing those situations.

Commissioner Crichlow commented that the Harbor Management Plan would assume

⁷ Brief recess from 6:23 P.M. to 6:32 P.M.

the funding of derelict vessel removal; thereby, relieving the taxpayers of the financial burden, and allowing the Port Authority funding to be used for needed projects.

Commander Barry Fox, SAPD, stated that fluid spillage and public safety were some concerns regarding derelict vessels. He explained that once the City took possession of a derelict vessel it became City property; however, every effort was made to contact the owner.

Commissioner Crichlow questioned the difficulty in contacting boat owners.

Commander Fox replied that some boats had been sold several times and were not registered in the current owner's name; additionally, many boat registrations were out of date. He stated that as the mooring fields were installed derelict vessels would be identified and notifications to update registrations would also be sent to the owners. He explained that in the event the owner did not respond, removal could only take place if the vessel was deemed inoperable and without intrinsic value.

Commissioner Jones stated that some members of the community had expressed concern regarding non-enforcement of laws pertaining to vessel registrations.

Commander Fox replied that the SAPD had been working with FWC to familiarize themselves with laws regarding boat registration and derelict vessels considering that marine laws were different than standard laws. He pointed out that most vessels without current registrations were generally not being maintained; therefore, all necessary notifications had to take place prior to removal of a vessel. He noted that an unoccupied vessel that became a navigational hazard could be removed immediately.

Lieutenant Steve Zukowski, Fish and Wildlife Commission (FWC), stated that the Vero Beach mooring fields was a model that

had been researched for the Harbor Management Plan. He stated that their waterways were narrow, and the mooring fields provided effective safety and environmental protection. He felt that St. Augustine implementing a Harbor Management Plan and installing mooring fields would provide safe navigation and environmental protection; however, the program could cause displacement and abandonment of some vessels. He stated that the FWC would work closely with the City, St. Johns County and police to handle issues.

Commissioner Sikes-Kline questioned the purpose of the pilot program.

Lt. Zukowski replied that the boating and waterway division of the FWC would review proposed ordinances regarding non-live-a-board vessels for the enhanced regulation of maritime safety or environmental protection, and determine whether an ordinance could be approved.

Commissioner Freeman expressed concern regarding the regulation and definition of a live-a-board vessel.

Mr. Brown clarified that there would not be live-a-board vessels outside the mooring fields within the City limits. He stated that the process of creating ordinances under the pilot program would assist in defining what would be considered non-live-a-board and live-a-board vessels.

Commissioner Freeman questioned the requirements for removing vessels from the mooring fields in inclement weather.

Mr. Piggott replied that the mooring balls would be engineered for up to a Category one hurricane, and the City would require vessel removal for storms graded category one or higher.

Commissioner Crichlow questioned how the FWC addressed issues regarding the discharge of raw sewage from vessels outside of city limits.

Lt. Zukowski replied that Florida Statutes prohibited the discharge of raw sewage into public waters, and random inspections were conducted with assistance by the Coast Guard several times throughout the year. He explained that in most cases a warning was issued for the first violations, and citations were issued for repeat offenses. He pointed out that one advantage of mooring fields would be that pump-out documentation would be kept for each vessel.

Commissioner Sikes-Kline expressed concern regarding displaced boaters that would not be willing to participate with the Harbor Management Plan, and whether the City would work with St. Johns County through the pilot program.

Mr. Piggott replied that St. Johns County might study the mooring fields and consider the possibility of installing mooring fields, and the City had assisted with the removal of derelict vessels outside City limits; however, the County was out of City jurisdiction.

Mr. Dixon stated that the Port Authority's district was greater than the City limits, and they had funded vessel removal for both St. Johns County and the City.

Public hearing opened.

Patrick Cannon stated that the San Marco and Menendez mooring fields would be beneficial, and he added that residents and visitors should be accommodated. He expressed concern about a mooring field in Salt Run, because of possible vessel displacement; therefore, he thought the pilot program was critical.

Col. Henri Erkelens felt that the Harbor Management Plan should not be restrictive, and pointed out the following:

- Insurance requirement should be for liability only, as most boats were not worth the minimum \$300,000 requirement

- Address requirement should be omitted
- City should accept responsibility for its own negligence
- Seven day notice to vacate mooring should be extended to thirty days
- State registration requirements should include foreign flag vessels
- Marine Sanitation Devices not required for older vessels
- Harbormaster office should remain open 24 hours
- Allow swimming around boats in order to maintain equipment

Tom Robinson spoke in favor of mooring fields; however, he felt that the number should be reduced or installed as demand increased. He suggested that additional overnight parking and showers be available for boaters.

Col. Ron Radford stated that Salt Run should be maintained as a recreational area, because the low-mean-tide was insufficient for larger boats. He felt that unused moorings could become a safety hazard. He supported the pilot program.

Jonathan Bickel considered the current anchorage dangerous, and he felt mooring fields would provide safety.

Charles Smith supported mooring fields; however, he expressed concerns regarding costs, difficult insurance requirements, insufficient parking and excessive inspection requirements. He submitted a petition addressing the concerns of some Salt Run residents.⁸

Robert K. Balch stated that being a live-a-board was affordable housing. He felt that the insurance requirements were discriminatory and difficult to obtain.

Commissioner Sikes-Kline questioned the insurance requirements.

⁸ Petition attached to original minutes

Mr. Brown replied that the Harbor Management Plan insurance requirements should read as \$300,000 for liability and salvage value for the hull.

Doris Hondorf felt that the Salt Run moorings were too close to the channel, which could prevent recreational activities and cause congestion; however, she supported the San Marco and Matanzas mooring fields. She expressed concern regarding dinghy docks, boats running aground during low tide, cost to replace moorings and the riparian rights of Salt Run homeowners.

Eugene Hondorf paraphrased letter from Dan and Sue Stegar⁹ stating that mooring fields should not be installed in Salt Run, and the Harbor Management Plan should be separate from the bay front. He noted that parking and dinghy storage in the Lighthouse Park should be addressed.

John Danahy supported the Harbor Management Plan and the pilot program. He felt that live-a-board boaters did not pay taxes, but they should participate in and share the cost of government.

Buzz Johnson expressed concern with vessels being freely anchored in the areas surrounding the mooring fields. He pointed out that by installing moorings only in the San Marco and Matanzas fields would encourage many boats to free anchor in Salt Run.

Dana Hunter felt that mooring fields would create a financial burden, reduce recreational use of waterways and create congestion. He suggested the Harbor Management Plan should allow live-a-board boaters to apply for permanent moorings and supply moorings as needed.

Ken Bryan, St. Johns County Commissioner, requested that consideration be made as to the potential impact on surrounding areas, and he requested that

the City coordinate enforcement with St. Johns County.

Ed Slavin stated that Salt Run should be preserved. He expressed concern with increased pollution and waterway traffic. He suggested including penalties for harm to wildlife, and banning wave runners.

B.J. Kalaidi did not support the moorings fields. She felt that the pilot program would not allow public input.

Larry Kendrick felt that mooring balls could damage vessels during rough seas, and he suggested using the funding to expand the marina.

John Blackford did not support the mooring fields because he felt more secure anchoring his own vessel.

Public hearing closed

Mayor Boles stated that the Harbor Management Plan had been a five year project; however, he agreed that a problem could occur with vessel displacement in Salt Run if mooring fields were not installed there.

Mr. Piggott stated that during discussions with other mooring field operators, they had affirmed that vessels had been displaced to other areas when they constructed their mooring fields; therefore, he felt that a mooring field was necessary for Salt Run.

Mayor Boles clarified that in order to participate in the pilot program, established mooring fields were necessary. He stated that mooring fields would accommodate future boaters in addition to current ones. He questioned the number of moorings that had initially been suggested.

Mr. Piggott replied that a review had been conducted of the current population of anchored vessels, and the initial proposal of 369 moorings was to maximize the space available; however, due to public input and

⁹ Letter attached to original minutes

archeological surveys the number had been reduced to 178 moorings.

Commissioner Jones stated that, while he agreed with the potential changes to Salt Run, he felt that there were just as many residents affected in the San Marco and Matanzas areas; therefore, all areas required the same considerations. He stated that the waters belonged to all residents and visitors. He pointed out that available space for anchoring in Salt Run would be limited after moorings were installed. He questioned whether the number of moorings could be reduced.

Mr. Piggott replied that a permit modification and a redesign of the mooring fields would be necessary in order to reduce the number of moorings.

Mayor Boles questioned whether the goal would be to modify the anchoring regulation with the pilot program, and the reply was affirmative.

Commissioner Jones pointed out that there were currently 80 private moorings in Salt Run that could potentially be hazardous. He stated that the Harbor Management Plan was a proactive measure to address many existing concerns, plus it would provide safer waterways. He recommended that the public work with the Commission to develop resolutions to issues within the pilot program.

MOTION

Commissioner Jones MOVED to have Ordinance 2009-38 read by title only and passed and to include participation in the FWC pilot program. The motion was SECONDED by Mayor Boles.

Mr. Brown read Ordinance 2009-38 as follows:

ORDINANCE NO. 2009-38

AN ORDINANCE OF THE CITY OF ST. AUGUSTINE, FLORIDA CREATING

SECTION 7-93 OF THE CODE OF THE CITY OF ST. AUGUSTINE TO PROVIDE FOR CREATION AND OPERATION OF REGULATED MOORING FIELDS FOR ANCHORAGE OF VESSELS; PROVIDING FOR REGULATION OF ANCHORAGE OF VESSELS ON WATERWAYS LOCATED WITHIN THE CORPORATE LIMITS OF THE CITY OF ST. AUGUSTINE; PROVIDING FOR REGULATION OF ANCHORAGE IN BOTTOMLANDS OWNED BY THE CITY OF ST. AUGUSTINE; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING FOR INCLUSION IN THE CODE OF THE CITY OF ST. AUGUSTINE; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERANCE OF INVALID PROVISIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

Commissioner Crichlow stated that he agreed with Commissioner Jones' remarks and felt that issues would occur; however, the pilot program was timely to assist with addressing those issues. He pointed out that changes had occurred with most aspects of the beaches and waterways creating an impact; therefore, regulations were necessary and unavoidable.

Commissioner Sikes-Kline expressed concern with no provision to prohibit advertising within the mooring fields as recommended by the University of Florida.

Commissioner Freeman felt that more coordination should take place with St. Johns County because of the possible affect on County waters. She expressed concern regarding the lack of support by residents and tax payers. She stated that the financial plan should have been available to the public prior to the Commission meeting. She agreed that there was a need for mooring fields.

Commissioner Sikes-Kline stated that she agreed that more coordination should have taken place with St. Johns County, and she

felt that the pilot program would assist in addressing future issues.

Mayor Boles pointed out that Mr. Piggott had communicated with the County's Parks and Recreation Division regarding the Harbor Management Plan; however, coordination with the County Commission would be necessary.

Commissioner Sikes-Kline stated that preserving public access, safe navigation, and clean waters were critical reasons to develop a Harbor Management Plan, and that it was important to address the issue regarding advertising.

After a brief discussion it was determined that an ordinance regulating advertising within the mooring fields would be developed and presented at a later date.

VOTE ON MOTION

**AYES: Jones, Boles, Freeman
Crichlow, Sikes-Kline**

NAYES: None

MOTION APPROVED UNANIMOUSLY

Commissioner Crichlow expressed appreciation for public input regarding their concerns; moreover, the Commission would make every effort to address each concern.

The Commission reviewed the policy and agreed to the following:

1. What Discounts should be offered?

There was a consensus to offer a 40% discount to residents, 30% discount for wet storage and an additional 30% in the Salt Run field. It was also determined that to receive a discount one would not be required to have a residence in Salt Run.

2. Who should receive resident discount?

There was a consensus that the term resident would apply to all City and County residents and discounts would apply to both.

3. Should the City charge (up to \$5.00) boaters outside the mooring field to get pumped out from the pump-out boat?

There was a consensus to approve a \$5.00 fee to utilize the pump-out boat outside the mooring fields.

4. Who should get first choice of moorings?

It was determined that waterfront residents would get first choice within a specified time frame.

5. Is there a preference which mooring field live-a-board vessels should be assigned to?

It was determined that live-a-board vessels would be prohibited in Salt Run; however, upon gathering further information the Commission would again review the policy at a later date.

6. Which guests should benefit from the water taxi service?

This item was deferred to review further information.

7. Which beach in Salt Run should be used as dinghy storage for mooring customers?

At the recommendation of Mr. Harriss, it was determined that dinghy storage would be constructed at the Lighthouse boat ramp.

There was a final consensus to pursue the FWC pilot program.¹⁰

5.C/ Resolutions

(None)

6. General Public Comments and Presentations

6.A/ General Public Comments (3 minutes per individual)

¹⁰ Brief recess from 9:14 P.M. to 9:44 P.M.

Phillip Mergenthaler questioned the water taxi costs and how it would be regulated.

Commissioner Crichlow stated that it was a concern and a determination would be made after further review. He pointed out that the mooring fields would generate revenue and would not be a financial burden on taxpayers.

John D. Long stated that bikers rode motorcycles to commute as well as for recreational purposes, and reported that the number of riders had increased over the past few years. He felt that safe and secure parking was necessary. He suggested using the spaces that were insufficient for automobiles to park multiple motorcycles within each parking space. He pointed out that all directional signs lead motorist to the Visitors Information Center parking facility; however, motorcycles were prohibited from parking there.

Mayor Boles stated that the City manager had been evaluating other parking structures regarding motorcycle parking.

Mr. Harris stated that a presentation would be made to recommend motorcycle parking options for the Commission to review.

Commissioner Jones stated that the City had considered the concerns of the public regarding motorcycle parking, and they were working toward providing a resolution.

B.J. Kalaidi spoke against passing Resolution 2009-36 approving holiday bonuses for City employees. She felt that the Heritage Tourism and the 450th Commemoration Celebration budgets should not be passed, because City taxes had already been increased to cover the current City budget and services.

Ed Slavin commended the Commission and staff for their work on the 450th Commemoration. He stated that the presentations held at the Flagler Auditorium had been outstanding. He noted that the history of women, gay and lesbian citizens

and Minorcans should be recognized. He stated that the presentations on the First America could pave the way for a National Historical Park, National Seashore and National Scenic Highway. He felt that the P2 project regarding the San Sebastian River sewer main break was insufficient.

Non Agenda Item - Discussion regarding vending in the West Plaza and Ponce de Leon Circle.

Commissioner Jones stated that issues were beginning to occur with vending in the West Plaza and Ponce de Leon Circle.

MOTION

Commissioner Jones moved to place a moratorium on vending in the West Plaza and Ponce de Leon Circle beginning December 15, 2009 at 8:00 A.M. Commissioner Crichlow SECONDED the motion.

Mr. Brown stated that the general opinion was to resolve the growing issue regarding vending in the West Plaza and other areas; however, the City would have to satisfy federal laws when considering to ban vending activities in public places. He reported that the Police Department and Parks Division had been evaluating the situation, and there was evidence regarding vendors stopping vehicular traffic; thereby, causing a public safety problem. He stated that an ordinance was being drafted and would be available for first reading during a January 2010 Commission meeting. He felt that by putting a moratorium on vending at that time would expose the City to possible problems.

Commissioner Jones responded that the previous moratorium banning street vending had not been the cause of litigation. He explained that it had been the result of the original vending ordinance's broadness. He stated that because of limited space and the historical aspects of the West Plaza the City could ban vending there without further issues.

Mayor Boles pointed out that when the current ordinance was passed it had been determined that other areas would be addressed as problems occurred. He clarified that the previous vending suspension was only for permits that were being issued.

Commissioner Freeman stated that the City should hire a First Amendment attorney that could address the entire City instead of certain areas. She expressed concern with the current ordinance grouping artists with street vendors.

Mr. Brown stated that the initial policy request was to address St. George Street and the Plaza, and specific goals had been met. He pointed out that other cities had specified market areas to prevent issues regarding vending, and if the City had an alternative venue the issue could possibly be resolved easier.

Commissioner Freeman stated that she felt the vending ordinance for St. George Street was insufficient, because it prevented artists from painting or drawing, as well as reenactment parades on the street.

Commissioner Jones stated that he felt that the plaza behind the Government House, Ponce de Leon Circle and City Hall should be protected. He suggested that the Visitors Information Center could be an appropriate venue for vending.

Mr. Harriss stated that research would be conducted for seeking council.

Commissioner Crichlow stated that he felt the Commission should review the ordinance that would be presented in January prior to making a decision to suspend vending activity.

Commissioner Sikes-Kline stated that searching for a First Amendment attorney would be beneficial; however, she felt that regulating vending should be done through the Comprehensive Plan, and a legal team

should only be used as consultants to resolve the issues.

Mr. Harriss stated that attorneys would be utilized for legal guidance, but the Commission would make the ultimate decisions.

After a brief discussion it was determined that a workshop would be held to discuss possible vending options.

Commissioner Jones withdrew his motion, and Commissioner Crichlow withdrew his second.

6.B/ Presentations (15 minutes per presentation)

(None)

7. Resolutions and Ordinances- No Public Hearing Required

7.A/ Ordinances – First Reading

7.A.1/ Consideration of Ordinance 2009-39, regulating the operation of cafes on a portion of Aviles Street.

John Regan, Chief Operations Officer, stated that Ordinance 2009-39 would allow café style dining on Aviles Street, and negotiations with Trinity Church for parking were nearly completed. He reported that an article appeared in a magazine showcasing Cellar 6, a business located on Aviles Street, which could enhance the streets marketability.

MOTION

Commissioner Jones MOVED that Ordinance 2009-39 be placed on first reading, read by title only and passed. Commissioner Freeman SECONDED the motion.

Mr. Brown read Ordinance 2009-39 as follows:

ORDINANCE NO. 2009-39

AN ORDINANCE OF THE CITY OF ST. AUGUSTINE, FLORIDA ESTABLISHING SECTIONS 22-500 THROUGH 22-509 OF THE CODE OF THE CITY OF ST. AUGUSTINE, FLORIDA PROVIDING FOR AND REGULATING CAFÉS; PROVIDING DEFINITIONS; REQUIRING PERMITS FOR THE OPERATION OF CAFÉS ON PORTIONS OF AVILES STREET BY ANY AFFECTED TENANTS; PROVIDING FOR PERMIT FEES, RENEWAL FEES AND PENALTIES FOR LATE PAYMENTS; PROVIDING FOR PERMIT APPLICATIONS; PROVIDING FOR STANDARDS, CRITERIA AND CONDITIONS FOR PERMITTING; PROVIDING FOR LIABILITY AND INSURANCE; PROVIDING FOR REVOCATION OR SUSPENSION OF PERMIT; PROVIDING FOR REMOVAL AND STORAGE FEES; PROVIDING FOR NOTICE OF VIOLATION AND ENFORCEMENT; PROVIDING PENALTIES; PROVIDING FOR INCLUSION IN THE CODE OF THE CITY OF ST. AUGUSTINE; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERANCE OF INVALID PROVISIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

Commissioner Sikes-Kline questioned the square footage cost.

Mr. Regan stated that the ordinance was modeled after an ordinance in South Beach.

Mr. Harriss replied that according to a local realtor, the average lease on Aviles Street was \$20 to \$25 per square foot of interior space.

Craig Coolee, owner of Cellar 6, agreed that the average interior lease space was approximately \$20 per square foot; however, lease space varied according to the property owner.

Mr. Harriss stated that many factors had been considered when determining the fee for outdoor dining.

Commissioner Crichlow felt that \$10 per square foot was excessive, and questioned whether adding seats would affect utility fees also.

Mr. Knight replied that the ordinance included a section regarding modifications to use permits to add additional seating; thereby, increasing utility fees.

Commissioner Sikes-Kline questioned whether beer and wine sales would require food to also be served.

Mr. Knight replied that the ordinance referred to full service restaurants only, and food sales had to exceed alcohol sales.

Commissioner Crichlow expressed concern with patron safety regarding automotive traffic on Aviles Street.

Mr. Harriss explained that large planters were included in the proposed design to create a safety buffer.

VOTE ON MOTION

**AYES: Jones, Freeman, Crichlow
Sikes-Kline, Boles**

NAYES: None

MOTION APPROVED UNANIMOUSLY

7.B/ Resolutions

7.B.1/ Resolution 2009-36, authorizing a Holiday Bonus for City officers and employees.

Commissioner Crichlow noted that the Holiday Bonus had been reduced by half, and Commissioners did not receive Holiday Bonuses.

MOTION

Commissioner Crichlow **MOVED** to pass Resolution 2009-36. The motion was **SECONDED** by Mayor Boles and approved by **UNANIMOUS VOICE VOTE**.

7.B.2/ Resolution 2009-37, relevant to a grant from the Florida Department of Environmental Protection/Clean Vessel Act to purchase a pump-out boat and trailer for the Municipal Marina.

MOTION

Commissioner Crichlow **MOVED** to pass Resolution 2009-37. The motion was **SECONDED** by Commissioner Sikes-Kline and approved by **UNANIMOUS VOICE VOTE**.

7.B.3/ Resolution 2009-38, designating property surrounding the Visitor Information Center and Historic Downtown Parking Facility as proprietary City facilities.

Mr. Brown stated that Resolution 2009-38 established the property surrounding the Visitors Information Center and the Historic Downtown Parking Facility as a proprietary interest to the City. He explained that in the event activities took place in those locations, they would require review by the City for approval.

MOTION

Commissioner Crichlow **MOVED** to pass Resolution 2009-38. The motion was **SECONDED** by Commissioner Sikes-Kline and approved by **UNANIMOUS VOICE VOTE**.

8. Staff Reports and Presentations

8.A/ Staff report relative to the Department of Heritage Tourism – Aviles, Spain economic/cultural program in November 2009 and the Colonial Williamsburg data-gathering trip in October 2009.

After a brief discussion it was determined that the report would be presented to the Commission in writing.

9. ITEMS BY CITY ATTORNEY

Mr. Brown reported the following:

- An ordinance regarding solicitation at Malaga and King Streets would be presented during the January Commission meeting
- Increased police presence and installation of lighting at St. George and Cuna Streets to address issues regarding young people in the area

Next St. Johns County Agenda

- A proposed 99 year lease for a St. Francis House homeless shelter, in which the City could possibly reserve beds and alleviate some issues in the City
- Expansion of the hours of alcohol sales to 2:00A.M.
- Consideration to add 1% to the Tourist Development tax
- Confirm the 10 year period tax credit for Historic Preservation Properties
- Resolution regarding continued beach driving

10. ITEMS BY CITY CLERK

10.A/ Notification of Proclamations.

2009-43 Certificate of Recognition – Alfred J. Perrella 100th Birthday

2009-44 Florida Memorial University 130 Years of History

2009-45 Hunger and Homelessness Awareness Week

2009-46 Certificate of Recognition – Dr. Robert B. Hayling 80th Birthday

10.B.1/ Cancellation of certain City Commission Meetings in 2010.

Karen Rogers, City Clerk, stated that the cancellations of Commission meetings thus far were related to the November and December holidays.

MOTION

Commissioner Sikes-Kline MOVED to approve the cancellations. The motion was SECONDED by Commissioner Crichlow and approved by UNANIMOUS VOICE VOTE.

10.B.2/ Consideration of one (1) appointment to the Civil Service Board.

Ms. Rogers stated that the Civil Service Board appointment required a Commission ballot vote. She stated that the applicants were Joan Broudy and Joseph Pierotti.

After the ballots had been counted, Joan Broudy was reappointed by a 5 to 0 vote.

10.B.3/ Consideration of two (2) appointments to the Firefighters' Retirement Board.

Ms. Rogers stated that Mr. Zimmerman had reapplied for his position on the Firefighters' Retirement Board and he was eligible, and Suzanne Brown was applying for the vacant position.

MOTION

Commissioner Sikes-Kline MOVED to accept the two applications to the Firefighters' Retirement Board. The motion was SECONDED by Commissioner Jones and approved by UNANIMOUS VOICE VOTE.

10.B.4/ Consideration of three (3) appointments to the Code Enforcement, Adjustments and Appeals Board.

Ms. Rogers stated that there were three term expirations, and the three applicants, Irene Arriola, William Rosenthal and Chad Smith were eligible for reappointment to the Code Enforcement and Appeals Board.

MOTION

Commissioner Sikes-Kline MOVED to accept the three applications for reappointment to the Code Enforcement, Adjustments and Appeals Board. The motion was SECONDED by Commissioner Jones and approved by UNANIMOUS VOICE VOTE.

11. ITEMS BY CITY MANAGER (Includes Consent Agenda

11.A/ Consent Agenda

11.A.1/ Preview of upcoming Commission meetings.

11.A.2/ Consideration of Release of Lien on a Unit Connection Fee Mortgage.

(None)

11.A.3/ St. Augustine Police Department Improvement Program Award.

11.A.4/ Consideration of initial construction funding related to the Harbor Management Plan – Mooring Fields.

11.A.5/ Consideration of an Agreement to Provide Utilities through West Augustine.

Commissioner Jones clarified that the project to Provide Utilities through West Augustine was not being funded by the City.

MOTION

Commissioner Sikes-Kline MOVED to approve the Consent Agenda. The motion was SECONDED by Commissioner Jones and approved by UNANIMOUS VOICE VOTE.

11.B/ Discussion Items.

11.B.1/ Consideration of Heritage Tourism Budget.

Dana Ste. Claire stated that the proposed budget was included in the agenda packets for review.¹¹

11.B.2/ Consideration of 450th Celebration Budget.

MOTION

Commissioner Freeman MOVED to approve the Heritage Tourism and the 450th Celebration budgets as presented. The motion was SECONDED by Commissioner Sikes-Kline.

Mayor Boles noted that Commissioner Jones had stepped away briefly.

VOTE ON MOTION

**AYES: Freeman, Sikes-Kline
Crichlow, Boles**

NAYES: None

MOTION APPROVED UNANIMOUSLY

12. Items by Mayor and Commissioners

Commissioner Sikes-Kline suggested restoring the title of Heritage Tourism and Historic Preservation to the Heritage Tourism Department.

Mr. Harriss stated that the decision to change the title to Heritage Tourism was because all City departments had a responsibility toward Historic Preservation, the Planning and Building Department was responsible for a great deal of Historic Preservation.

Mayor Boles pointed out that it was better not to include the term tourism when regarding grant funding for Historic Preservation.

Commissioner Sikes-Kline pointed out that the Heritage Tourism Department had the responsibility of handling the grants for Historic Preservation.

Mayor Boles stated that Historic Preservation was a fundable source for grants, and he felt that there should be some effort made to include Historic Preservation in the Heritage Tourism Department.

Mr. Harriss suggested that a separate division could be created within the Heritage Tourism Department.

Mayor Boles announced that he and former Mayor Len Weeks would be in the Nutcracker performance on December 19th and 20th at the Flagler Auditorium.

13. Adjournment

There being no further business, the meeting was adjourned at 11:54 P.M.¹²

MAYOR

CITY CLERK, CMC

¹¹ Attached to original minutes

¹² Transcribed by Darlene Kirkland