

## **CITY OF ST. AUGUSTINE**

Regular City Commission Meeting  
Monday June 8, 2009

The City Commission met in a formal session Monday, June 8, 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 Knight, Director, Planning and Building  
Mark Litzinger, City Comptroller  
Jim Piggott, General Services Director  
Martha Campbell, Director, Public Works  
Paul K. Williamson, Director, Public Affairs  
Loran Lueders, Police Chief  
Mike Arnold, Fire Chief  
Darlene Kirkland, Recording Secretary

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### **2. INVOCATION AND PLEDGE OF ALLEGIANCE**

Pastor Mattie Taylor, Hurst Chapel AME Church, delivered the invocation, and Commissioner Jones led the pledge of Allegiance.

### **3. ADMINISTRATIVE ITEMS**

#### **3.A/ Modification of Agenda**

(None)

#### **3.B/ Approval of Minutes**

#### **MOTION**

Commissioner Crichlow **MOVED** to approve the minutes of the regular meeting of May 11, 2009. The motion was **SECONDED** by Commissioner Freeman and approved by **UNANIMOUS VOICE VOTE**.

#### **3.C.1/ Proclamations**

(None)

#### **3.C.2/ Recognitions**

2009-14 Honoring the Birthday of Linda James.

Mayor Boles read and presented the Certificate of Recognition to Linda James.

#### 4. Appeals

Ron Brown, City Attorney, explained that according to Code they were required to review the record and make a determination according to the criteria that a reviewing court would apply, which including the following:

- Was the applicant afforded due process of law; was there a fair opportunity to be heard
- Was the ordinance applied in a non arbitrary manner
- Did the decision follow the essential requirements of law and City Code
- Was the decision supported by substantial and competent evidence

#### **4.A/ Appeal of an Entry Corridor Review Board’s decision regarding property located at 100 San Marco Avenue.**<sup>1</sup>

Mark Knight, Director of Planning and Building was sworn in by Karen Rogers, City Clerk.

Mr. Knight stated that the appeal was for a sign replacement for Dairy Queen in the San Marco Avenue entry corridor. He displayed photos of the proposed and current sign. He explained that the request was for a new corporate logo and a back lit changeable message reader board. He stated that during the appeal process, the owner decided not to include the back lit illumination but still wanted the reader board. He said the Entry Corridor Review Committee (ECRC) upheld staff’s decision not to issue a permit. He noted that pursuant to City Code 28-29 the Commission must determine if an error had been made and either affirm, reverse or modify ECRC’s decision.

Commissioner Donald Crichlow suggested that the City draft a sunset resolution for all non conforming signs in the HP districts.

<sup>1</sup> Attached to original minutes.

#### MOTION

**Commissioner Sikes-Kline MOVED to deny the appeal. The MOTION was SECONDED by Commissioner Freeman.**

#### VOTE ON MOTION

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

**NAYS:.....None**

**MOTION APPROVED UNANIMOUSLY**

#### **4.B/ Appeal of a Historic Architectural Review Board decision regarding property located at 22 Avenida Menendez.**

Commissioner Donald Crichlow recused himself due to conflict of interest.

Mark Knight<sup>2</sup> explained that the application was to replace a terra cotta tiled roof with concrete terra cotta colored tiles. He said the item was reviewed by the Historical Architectural Review Board (HARB) on March 19<sup>th</sup> and April 16<sup>th</sup> 2009. He stated that upon review, HARB denied the application to replace the existing terra cotta tiles with the concrete tiles. He displayed pictures showing the existing terra cotta roof. He explained that the Planning and Building Department received the appeal to HARB’s decision on April 20, 2009, and the appeal was found to be sufficient for public hearing. He concluded that the Commission’s decision would be to either deny the appeal or remand the issue.

Commissioner Freeman questioned whether the photos were of the existing terra cotta roof tiles.

Mr. Knight pointed out the color and shape variance of the existing roof in comparison to the existing concrete terra cotta color roof tiles on the adjacent building, Tavern on the Bay.

<sup>2</sup>Mark Knight was still under oath.

Commissioner Errol Jones questioned the shape of the proposed tile.

Mr. Knight replied that one of HARB's concerns had been the proposed wavy shape in contrast to the original barrel shaped tiles.

Gaere MacDonald, contractor for property owner, was sworn in, and he recapped the hearing process as follows:

- The first hearing had been for concrete tile approval, but HARB recommended finding more of the existing tiles and replacing the bad tiles. The application was tabled to allow the applicant to bring alternatives to the board.
- During the second hearing the applicant pointed out the color difference between the existing tiles and the new matching tile.
- HARB suggested a possibility of approval if all the tiles used matched in color and style.
- During the third hearing HARB again suggested reusing the existing tiles.

Mr. MacDonald expressed confusion why HARB would deny the request for concrete tiles when there were many examples throughout the city that had been approved by HARB, such as Tavern on the Bay, the City Marina, and the tour train building near the City Gates.

Commissioner Freeman stated that she did not feel a ruling could be made without seeing an example of the tile.

Mayor Boles questioned the part of the code that applied to the use of the concrete tiles versus the terra cotta tiles.

Mr. Knight replied that HARB wanted the contractor to reuse as many of the existing material as possible.

Mayor Boles questioned whether the Code specified the existing material had to be reused.

Mr. Knight replied that there was a section of the guidelines that pertained to avoiding roof removal in totality. He clarified that the appeal applied to the first two hearings on the proposal only, after which the applicant insisted on a decision and HARB had denied for lack of samples of the concrete tile. He further explained that the current appeal was filed at the same time as the application for a third hearing when the applicant had questioned why HARB denied a concrete tile roof. He said that HARB had expressed concern that the concrete tiles would not look like the original roof, and due to lack of information HARB had denied the proposal again.

Mayor Boles questioned precisely what had been denied.

Mr. Knight replied that the concrete tiles were acceptable; however, the guidelines recommended salvaging roof material for reuse; therefore, HARB recommended reusing the original terra cotta tiles on the front of the building and new terra cotta tiles on the back.

Commissioner Jones questioned why a third hearing was granted after an appeal had been filed. He also asked who determined how much of a roof needed to be replaced.

Mr. Knight explained there was no time limit on applications for hearing, and the third hearing was to review a different color concrete tile, which was denied. He also stated that the contractor generally determined the salvageable material, and Mr. MacDonald indicated that 70% of the original tiles still could be reused.

Commissioner Jones recommended remanding the issue to HARB for a final hearing, and he stated that HARB should not have allowed a third hearing.

Mr. Brown explained that if the Commission remanded the issue to HARB, they should specify the board's error in

their decision and provide the board with direction.

A brief discussion determined that the tile proposed to HARB had been less of a barrel shape than the original.

Commissioner Sikes-Kline noted that according to the Architectural Guidelines of Historical Preservation (AGHP), the tiles should be barrel style terra cotta, and salvage and reuse as much of the existing roof material as possible. She said the question was whether HARB had followed the Code when making their decision.

Mayor Boles pointed out that the criteria for review was:

- Had HARB followed the City Code
- Had the board followed due process
- Was the decision supported by competent evidence

In response to a question, Mr. Knight replied that the owner had insisted on a vote during the second hearing; therefore, HARB denied on the following:

- Color concerns
- Concern whether the proposed tile would look like the existing tile
- HARB wanted as much of the original tile be used as possible

Commissioner Sikes-Kline stated that she felt HARB had followed Code and due process. She said that the question was whether HARB based their decision on well substantiated and competent evidence.

Commissioner Jones felt that HARB:

- Had not received adequate information
- Two different color tiles would go against regulations

## **MOTION**

**Commissioner Jones MOVED to deny the appeal. The motion was SECONDED by Commissioner Freeman.**

### **VOTE ON MOTION**

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

**NAYS:.....None**

**MOTION APPROVED UNANIMOUSLY**

## **5. Ordinances and Resolutions - Public Hearing Required**

### **5.A/ Ordinances – First Reading**

(None)

### **5.B/ Ordinances - Second Reading**

#### **5.B.1/ Public Hearing - Ordinance 2009-10, establishing the 180 St. George Street Planned Unit Development (PUD).**

Commissioner Critchlow recused himself due to conflict of interest.

Mr. Knight<sup>3</sup> delivered a brief summary of the PUD application for a proposed retail/hotel structure. He said the Historical Architecture Review Board (HARB) requested the matter be addressed in order to issue a Certificate of Appropriateness, they were as follows:

- Lighting and fixtures
- Offsite improvements such as side walk repairs
- Color scheme to be uniform
- Resolve issues with the adjacent property owner

Mayor Boles questioned the lot coverage of the proposed structure.

Mr. Knight replied that, according to Code, the maximum lot coverage allowed for primary structures was 50% with a maximum foot print of 2,500 square feet per unit. He stated that the proposed building would be 62 - 64% of lot coverage

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<sup>3</sup> Mr. Knight is still under oath.

with 10,000 square feet of foot print. He noted that the proposed lot allowed 8,500 square feet of primary structure.

Mr. Knight stated that the PUD application also requested two dedicated parking spaces and a designated loading zone on Cathedral Place.

Commissioner Freeman asked about the seven retail spaces on the site plan.

Mr. Knight stated that the retail spaces were to be approximately 1,060 square feet and 14 feet wide.

George McClure, attorney for property owner, summarized the application review process. He pointed out that there had been unanimous recommendations by the HARB and the PZB to pass the PUD. He also noted that the question of a designated loading space was not relevant to the application; however, he had agreed to a review process with the Parking Advisory Committee. He stated that he was there to establish that all requirements had been met. He noted that the rezoning application was not to change the use but to implement a turn of the century structure. He said the purpose was to restore a historic structure. He referred to AGHP noting that the guidelines stated that new construction should compliment existing architecture and patterns in the HP districts. He cited the McCrory building as an example. He gave examples of structures that had not met current Zoning Code as follows:

- A1 Ale Works
- Wachovia Bank
- The Oldest Store Museum
- The Episcopal Church
- The Cathedral
- The Government House

Commissioner Freeman asked if he agreed that a PUD was necessary, because the proposed structure exceeded zoning requirements for square footage and setbacks.

Mr. McClure explained that there were other structures in the HP districts that did not meet current setback requirements.

Mayor Boles asked Mr. Brown to clarify that any action taken with regard to resolution 2009-12 did not effect this application in anyway and architecture was not part of the issue.

Mr. Brown replied that land owners seeking to rezone property had the burden of proof that the proposal was consistent with the Comprehensive Plan. He said the review board had to demonstrate that maintaining existing zoning classifications accomplished a legitimate public purpose; therefore, architecture and aesthetics could be considered a legitimate public purpose.

Robert Buckmaster, Broker for the property owner, was sworn in and he presented a petition that had been circulated and signed by adjacent business owners on St. George Street supporting the application.

All public speakers were sworn in at the same time.

Mayor Boles opened the public hearing for comments.

Jerry Dixon presented historical and current photos to show the different architecture through out the city. He mentioned that resolution 2003-01 interfered with the Comprehensive Plan. He stated that, in his opinion, the 2003-01 resolution is invalid, and he included a copy of the AGHP.<sup>4</sup>

The following people spoke in favor of the PUD, Carol Cohen, Patricia Jilson, Maurine Boles, Rabbi Schmuel Novack, Emanuel Itzhakov and Robert Buckmaster, and some of their remarks included:

- Would create jobs
- Get rid of an unsightly parking lot

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<sup>4</sup> Attached to original minutes.

- Brings back part of a rich history
- Preference to historic buildings
- New opportunity for merchants
- Parking lot not a good use of property

The following People spoke against the PUD Howard Davis, Kimmarie Bouza, Peter Ruple, Charles Pellicier, Robert Hall, Ed Slavin and B.J. Kalaidi some of their remarks included the following:

- Would set a terrible precedence for future building
- Not consistent with current style
- Additional parking would be needed
- Impact the traffic flow
- Area was Spanish Colonial
- Would create a false since of history

William Smith, representative of adjacent property owner, stated that most of the concerns regarding the building project had been fulfilled with the exception of the following:

- Concerned about damage caused to their building in construction
- Impact on their business
- Impact on traffic flow
- Lost income

Mr. Smith indicated that as long as the concerns had been addressed the adjacent property owner had no objection to the project.

Mayor Boles closed the public hearing.

There was a discussion concerning resolution 2003-01 and how it could override the guidelines set forth by AGHP.

Mr. Brown explained that the AGHP guidelines stated all new construction in HP1, 2 and 3 must conform to the pre 1821 colonial standard. He said that a decision must be made as to the validity of the resolution 2003-01. He stated that resolutions were created to amend ordinances and to avoid writing new

ordinances. He noted that all land use ordinances must be consistent with the Comprehensive Plan. He stated that the Commission's decision should be made based on the following:

- Substantial and competent evidence related to an appropriate style for the area
- Whether the structure satisfied the Code requirements
- Was the resolution inconsistent with the Comprehensive Plan

Commissioner Freeman stated that the size of the project was not conducive to the surrounding area, would not comply with the current building Code nor was there enough substantial competent evidence to support a change in zoning.

Mayor Boles expressed his belief that the Spanish Colonial style was the trademark of St Augustine. He further expressed concern with the increased size and height of the proposed building.

Commissioner Sikes-Kline stated there was substantial and competent evidence to show the PUD would not comply with the Comprehensive Plan regarding style, size and surrounding design.<sup>5</sup>

## **MOTION**

**Commissioner Sikes-Kline MOVED to deny Ordinance 2009-10. The motion was SECONDED by Commissioner Jones.**

## **VOTE ON MOTION**

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

**NAYES: None**

**MOTION APPROVED UNANIMOUSLY**

Mr. Brown read the title as follows

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<sup>5</sup> Recess from 8:04 P.M. until 8:34 P.M.

ORDINANCE NO. 2009-10

AN ORDINANCE OF THE CITY OF ST. AUGUSTINE, FLORIDA ESTABLISHING THE 180 ST. GEORGE STREET 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 REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERENCE OF INVALID PROVISIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

**5.C/ Resolutions**

(None)

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

Mayor Boles opened the floor for public comment.

Chuck Lippi stated suggestions to be included in the pending tree ordinance as follows<sup>6</sup>:

- Current space limitations hindered tree protection
- Suggested three times the tree diameter or a minimum of ten feet from tree or to the tree drip line
- Would give builders flexibility
- Would provide more tree protection and growth

Commissioner Freeman thanked Mr. Lippi for his time and assistance with rewriting tree the ordinance and his efforts to protect the City's tree canopy.

BJ Kalaidi's comments were as follows:

- Police had failed to protect and control Newcomb Street

- Rental property located at 9 Newcomb Street owned by Skeeter Key was a nuisance.
- Fire Hydrant located at Medore and Newcomb Streets needed to be repaired
- City Code Enforcement advised that they were unable to enforce ordinance 2003-23

Gina Burrell's comments were as follows:

- Encouraged the commission to vote first hearing on Ordinance 2009-19
- Referred to article written by Bill Leary regarding beautifying the City
- Did not think the City used the Street Tree Advisory Committee to its full potential
- Suggested planting wild flowers along San Marco Avenue and around the City

Robert Hall expressed concern:

- PZB or HARB members were not prepared or sure of their authority.

Merrell Rowland referred to the following:

- motorcycles being denied parking in the parking garage
- Motorcycles are not welcome in St Augustine
- Being charged for handicapped parking on some occasions and was allowed to park for free on others
- Attendants working in the parking garage needed to be consistent.

Ed Slavin suggested the following:

- The need for a scenic coastal highway
- A national sea shore
- A national historical park
- Would bring in revenue and more tourists
- The warning signs in regard to the sewer spill were poor and better

<sup>6</sup> Attached to original minutes.

notification for residents was needed.

Mayor Boles closed the public comment.

**6.B/ Presentations (15 minutes per presentation)**

**6.B.1/ Presentation by Dave Mancino regarding the rehabilitation of the North City Water Works.**

Dave Mancino, Architect, gave a presentation regarding the Rehabilitation of the North City Water Works building.<sup>7</sup> He noted that the assumption was the building was originally constructed in 1896 as the water works facility; however, after extensive research it was believed the original construction took place in 1883 for a train depot. Some of the indications were as follows:

- The original rafter beams
- Offset bay feature typical of train depots built during that time
- Indications in historical records
- Amount of money Henry Flagler paid for the property in comparison to monies paid for adjacent properties

Mr. Mancino discussed the plan for rehabilitation including:

- Stabilizing the building
- Restoration design style would emulate the original train depot
- Additions would possibly include a catering kitchen and restrooms
- The uses for the building could be for meetings, public functions and a community center

Commissioner Sikes-Kline questioned the estimated cost would be to stabilize the building.

Mr Mancino noted that it would be an on going process to stabilize, because the

building was in danger of imminent collapse. He stated that cost estimates would not be available until the reconstruction plan was determined.

John Regan, Chief Operations Officer informed the commission that there were enough funds to move forward with the restoration of the building, as it might be helpful for the 450<sup>th</sup> Celebration. He stated that it would be a two to three million dollar restoration effort. He explained that the facility could seat up to 150 people and would be a good source of income.

Commissioner Sikes-Kline recommended considering whether it would be better to restore than preserve the building.

Mr. Mancino responded that they were in the process of getting funding for the rehabilitation; however, funding was necessary immediately to stabilize the structure.

After a brief discussion there was a general consensus to proceed with the project plan.

**7. Resolutions and Ordinances- No Public Hearing Required**

**7.A/ Ordinances – First Reading**

**7.A.1/ Introduction and consideration of Ordinance 2009-19, defining Tree Protection Zones and to Modify Tree Protection Standards for Preserved Trees.**

Mr. Knight explained the changes in the ordinance as follows:

- Sets forth a tree protection zone
- Applied to permitted construction sites
- An arborist would be required for construction projects
- Identified 100 square foot minimum protection area or three times the diameter of tree, whichever is greater

<sup>7</sup> Attached to original minutes.

**MOTION**

Commissioner Freeman **MOVED** to place Ordinance 2009-19 on first reading, read by title only and passed. The motion was **SECONDED** by Commissioner Jones.

**VOTE ON MOTION**

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

**NAYES:** None

**MOTION APPROVED UNANIMOUSLY**

Mr. Brown read the title as follows:

**ORDINANCE NO. 2009-19**

AN ORDINANCE OF THE CITY OF ST. AUGUSTINE, FLORIDA AMENDING SECTIONS 25-52, 25-53(d)(4) AND 25-53(d)(5) OF THE CODE OF THE CITY OF ST. AUGUSTINE TO DEFINE "TREE PROTECTION ZONE" AND TO MODIFY TREE PROTECTION STANDARDS; 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 AN EFFECTIVE DATE.

**7.A.2/ Ordinance 2009-20, establishing a Non-exclusive Franchise Agreement with Peoples Gas System.**

Tim Burchfield, Chief Administrative Officer, presented a fifteen year agreement with Peoples Gas System to use the Cities Rights-of-Way. He stated that there would be a 6% charge on gross revenues for natural gas distribution.

**MOTION**

Commissioner Jones **MOVED** to place Ordinance 2009-20 on first reading, read by title only and passed. The motion was **SECONDED** by Commissioner Crichlow.

**VOTE ON MOTION**

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

**NAYES:** None

**MOTION APPROVED UNANIMOUSLY**

Mr. Brown read the title as follows:

**ORDINANCE NO. 2009-20**

AN ORDINANCE OF THE CITY OF ST. AUGUSTINE, FLORIDA GRANTING TO PEOPLES GAS SYSTEM, A DIVISION OF TAMPA ELECTRIC COMPANY, ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE NATURAL GAS FRANCHISE AGREEMENT TO THE USE THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF ST. AUGUSTINE, FLORIDA; PRESCRIBING THE TERMS AND CONDITIONS UNDER WHICH SAID FRANCHISE MAY BE EXERCISED; MAKING FINDINGS; PROVIDING FOR SEVERANCE OF INVALID PROVISIONS; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE.

**7.A.3/ Introduction and consideration of Ordinance 2009-21, providing a Definition of the Terms "Heating" and "Purchase" relative to the Public Service Tax.**

Mr. Brown explained that the ordinance was in conjunction with Ordinance 2009-20 to clarify terminology within the ordinance.

**MOTION**

Commissioner Jones **MOVED** to place Ordinance 2009-21 on first reading, read by title only and passed. The motion was **SECONDED** by Commissioner Sikes-Kline.

**VOTE ON MOTION**

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

**NAYES:** None

**MOTION APPROVED UNANIMOUSLY**

Mr. Brown read the title as follows:

**ORDINANCE NO. 2009-21**

AN ORDINANCE OF THE CITY OF ST. AUGUSTINE, FLORIDA AMENDING SECTION 17-31 OF THE CODE OF THE CITY OF ST. AUGUSTINE IMPOSING A PUBLIC SERVICE TAX ON ELECTRICITY, METERED OR BOTTLED GAS, FUEL OIL AND KEROSENE BY THE ADDITION OF A DEFINITION OF THE TERM "HEATING" AND THE TERM "PURCHASE;" AMENDING SECTION 17-32 OF THE CODE OF THE CITY OF ST. AUGUSTINE TO CLARIFY THE APPLICATION OF THE PUBLIC SERVICE TAX TO SALES OF ELECTRICITY, METERED AND BOTTLED GAS, FUEL OIL AND KEROSENE; 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 AN EFFECTIVE DATE.

**7.B/ Resolutions**

**7.B.1/ Consideration of Resolution 2009-12, eliminating Alternate Architectural Design, other than Colonial in Historic Preservation-Two (HP-2) and Historic Preservation Three (HP-3).**

Mark Knight stated that originally resolution 2003-01 had been considered to allow alternative styles for newly constructed buildings in HP-1. He stated that HARB recommended that the resolution include HP-2 and HP-3, and after a public workshop the districts were added to the resolution. He noted that resolution 2003-01 had been passed with a three to two vote.

Mayor Boles clarified that resolution 2009-12 removed HP-2 and HP-3 from

resolution 2003-01 and allowed Alternate Architectural Designs only in HP-1.

Ron Brown explained that it may be necessary to amend the Comprehensive Plan by ordinance regarding HP-1.

Mayor Boles stated that prior to 2003 HP-1, HP-2 and HP-3 were governed by the same AGHP guidelines. He proposed that a new ordinance be written instead of creating new resolutions.

Commissioner Crichlow urged his fellow commissioners to consider that by allowing only Spanish Colonial Architecture it would not allow architectural design to be based on fact.

**MOTION**

**Mayor Boles MOVED to pass Resolution 2009-12. The motion was SECONDED by Commissioner Sikes-Kline.**

**VOTE ON MOTION**

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

**NAYES: Crichlow**

**MOTION CARRIED FOUR TO ONE**

**8. Staff Reports and Presentations**

(None)

**9. ITEMS BY CITY ATTORNEY**

**9.A/ Discussion regarding Plaza Vending.**

Ron Brown stated the City is awaiting a final resolution on a motion in the case of Avalon Carriages vs the City of St Augustine. He stated that the motion to tax cost was granted until July 27, 2009 and a final decision would be made. He noted that Avalon Carriages had a balloon mortgage due July 17, 2009. He reported that in regard to the Windler case the City was waiting on the reply briefs from the plaintiffs in order to go to hearing. He stated that he has not yet received a final

document for Fish Island to present regarding the issue. He presented a document summarizing fourteen years of litigation of Burt Harris act. He noted that the City attorney's office was getting a lot of phone calls in regard to that issue. He remarked that St. Augustine and other cities such as San Francisco, Key West, New Orleans, New York and Miami Beach litigation are involved in litigation concerning public spaces and the rights to freedom of expression. He recounted a brief summary of the City of St. Augustine's efforts to regulate expression. He stated that the St. George Street section 22-10 of the City Code was used as a model for other cities. He explained that in 2006 City policy allowed vending in the plaza, however, certain groups of vendors did not need permits such as, photographers, painters, printers and sculptors. He stated that there was a lot of conflict and the Commission stopped all vending except for photographers, painters printers, and sculptors. The City Attorney's office was flooded with questions as to what was included in the four categories. He explained that after a few citations were issued the City was sued. He stated that County Court Judge Tinlin declared the ordinance unconstitutional because it gave the police and the City too much discretion as to what fell into each of the four categories. He said as a result a federal court case challenging ordinance 22-6 was brought against the City and Judge Howard entered an order that declared the ordinance content neutral. He stated that the court also found that the City can have reasonable time, place and manner restrictions, however; if the ordinance was limited to the plaza the City would have fared better because the restrictions need to be as narrow as possible to meet standards. The judge noted in the order that basic sales were limited to visual artist but did not define visual art except to name painters, printers, photographers and sculptors. He explained that federal courts allow banning of all vending. He further explained that there is a struggle with the definition of visual arts and some federal

courts look and each case and decide if the primary function of the artwork would be either visual or utilitarian. He stated some items were protected by freedom of speech which include religious and political messages and in some cases commercial speech.

Mayor Boles asked if a vendor was ticketed would it be enforced by the local court.

Mr. Brown replied that only if there was a clear enough standard for the police and City management to go by.

Mr. Brown stated that it was recommended by Michael Kahn that the City withdraw section 22-6 of the City Code. He further stated that a new ordinance would need to be drafted.

Commissioner Freeman recommended holding a special workshop to discuss the issue.

Mr. Harriss stated that he wanted the rescission of the ordinance added to the agenda for the next Commission meeting.

## **10. ITEMS BY CITY CLERK**

### **10.A/ Notification of Proclamations.**

**10.A.1/ 2009-20 Certificate of Recognition for the 60<sup>th</sup> Anniversary of John and Mary Williams.**

## **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 Unit Connection Fee Mortgage.**

**11.A.3/ Municipal Marina Emergency Dock Repairs.**

**11.A.4/ Rehabilitation of the Media Filtration System.**

Mr. Harriss read the consent agenda

**11.B/ Discussion Items.**

(None)

**MOTION**

**Commissioner Jones MOVED to approve consent agenda. The motion was SECONDED by Commissioner Freeman. Motion Approved by unanimous voice vote.**

**12. Items by Mayor and Commissioners**

**13. Adjournment**

There being no further business, the meeting was adjourned at 10:39P.M.<sup>8</sup>

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MAYOR

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CITY CLERK, CMC

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<sup>8</sup> Transcribed by Darlene Kirkland