

# CITY OF ST. AUGUSTINE

Regular City Commission Meeting  
Monday July 13, 2009

The City Commission met in a formal session Monday, July 13, 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  
John Regan, Chief Operations Officer  
Mark Knight, Director, Planning and Building  
Jim Piggott, General Services Director  
Mark Litzinger, City Comptroller,  
Paul K. Williamson, Director, Public Affairs  
Carlos E. Mendoza, Assistant City Attorney  
Steve Fricke, Commander, SAPD  
Mike Arnold, Fire Chief  
Martha Graham, Director, Public Works  
Bill Adams, Director, Heritage Tourism  
Dana Ste. Claire, 450<sup>th</sup> Celebration Executive Director  
Darlene Kirkland, Recording Secretary

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

Pastor Jeff Gatlin, Freedom Baptist Church, delivered the invocation, and Commissioner Jones led the pledge of Allegiance.

## **3. ADMINISTRATIVE ITEMS**

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

Report by Dana Ste. Claire on the 450<sup>th</sup> Commemoration Celebration added to agenda.

Item 9.A. heard before item 4.

Bill Harriss, City Manager, stated that Alfred Peyton Holtz, a life long resident and recent West Point Military Academy graduate, was unable to attend and that Mr. Holtz wished to thank the community for their support.

### **MOTION**

**Commissioner Jones MOVED to approve the modification of agenda. The motion was SECONDED by Commissioner Crichlow and approved by UNANIMOUS VOICE VOTE.**

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

#### **MOTION**

Commissioner Crichlow **MOVED** to approve the minutes of the regular meeting of June 22, 2009, the Budget Workshop of June 8, 2009 and the Joint Workshop of June 3, 2009. The motion was **SECONDED** by Commissioner Jones and approved by **UNANIMOUS VOICE VOTE**.

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

(None)

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

(None)

### **4. Appeals**

(None)

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

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

(None)

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

(None)

#### **5.C/ Resolutions**

(None)

### **6. General Public Comments and Presentations**

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

James Bullock thanked the following for their support of the Gulla-Geechee Heritage Corridor Resolution 2009-17:

- City of St. Augustine
- National Park Service

- Castillo de San Marco
- Fort Mose
- Fort Mose Historical Society
- Lighthouse Museum

Mr. Bullock described the corridor and gave a brief history. He stated that it was an opportunity for the Gulla-Geechee Cultural Heritage Corridor to be a part of modern history. He noted what the economic impact could be on the community if the corridor was recognized. He stated that creating a related tourism plan could bring positive and lasting benefits to the area.

B.J. Kaladi noted that the City received reimbursement from the Casa Monica for over payment related to Menendez Gala. She also mentioned the following:

- Against the millage rate increase
- City should not pay employee water bill
- Deny use of City right-of-way
- Deny water and sewer rate increase
- Stop paying employee insurance
- Issue Code enforcement fines for Code violations
- Failure to enforce codes
- Fire hydrant on Medore and Newcomb still not working
- Park-now passes not working

Ed Slavin addressed the following:

- National Scenic Coastal Parkway
- National Seashore
- National Park
- Stop proposed Fish Island Project

Phil McDaniel supported Resolution 2009-17 and provided a report on economic development through art and culture.<sup>1</sup> He also commented on the following:

- Increase credibility of destination
- Access to federal funding

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

- Promote African American and multicultural awareness
- Cultural Tourism
- Diverse cultures travel longer and spend more
- Related economic benefits of arts and cultural development

Derrick Hankerson stated that St. Augustine was the birth place of freedom, and he spoke in support of Resolution 2009-17. He suggested that benefits could be as follows:

- Strengthen the economy
- Vision for the future
- Would support the 450<sup>th</sup> commemoration
- Community effort to promote

Mayor Boles noted that Florida Senator Tony Hill supported Resolution 2009-17, but he was unable to stay for comment.

Susie Kontul, represented Scenic A1A Historic and Coastal Byways, and she stated that she supported Resolution 2009-17.

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

(None)

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

**7.A/ Ordinances – First Reading**

(None)

**7.B/ Resolutions**

**7.B.1/ Consideration of Resolution 2009-14, Authorizing the State Highway Maintenance Agreement with the Florida Department of Transportation.**

Martha Graham, Director, Public Works, reported that Resolution 2009-14 was an annual contract renewal to conduct right-

of-way lawn maintenance along state highways in the City limits.

**MOTION**

**Commissioner Jones MOVED to pass Resolution 2009-14. The motion was SECONDED by Commissioner Crichlow and approved by UNANIMOUS VOICE VOTE.**

**7.B.2/ Consideration of Resolution 2009-16, Adopting Construction Value Tables.**

Mark Knight, Director, Planning and Building Department, stated that Resolution 2009-16 was to establish standard guidelines to determine permit fees and fair market value for construction.

**MOTION**

**Commissioner Jones MOVED to pass Resolution 2009-16. The motion was SECONDED by Commissioner Sikes-Kline and approved by UNANIMOUS VOICE VOTE.**

**7.B.3/ Consideration of Resolution 2009-17, Supporting the Gulla-Geechee Cultural Heritage Corridor.**

Dana Ste. Claire, Executive Director, 450<sup>th</sup> Commemoration, stated the Resolution 2009-17 supported the inclusion of St. Augustine in the historical Gulla-Geechee Cultural Heritage Corridor, which would support the 450<sup>th</sup> Commemoration.

Commissioner Crichlow questioned whether the City would have any participation in the decision making in the Gulla-Geechee Cultural Heritage Corridor initiative.

Mr. Ste. Claire replied that the Commission could appoint a representative, and he recommended Derrick Hankerson.

## MOTION

Commissioner Sikes-Kline **MOVED** to pass Resolution 2009-17. The motion was **SECONDED** by Commissioner Jones and approved by **UNANIMOUS VOICE VOTE**.

### **7.B.4/ Consideration of Resolution 2009-18, Adopting a Revised Local Mitigation Strategy.**

Mr. Knight stated that Resolution 2009-18 created a plan to allow the City project selection and distribution of funds under the State Hazard Mitigation Program.

## MOTION

Commissioner Sikes-Kline **MOVED** to pass Resolution 2009-18. The motion was **SECONDED** by Commissioner Crichlow and approved by **UNANIMOUS VOICE VOTE**.

### **7.B.4/ Consideration of Resolution 2009-19, Concerning the Tentative Proposed Millage Rate for Fiscal Year 2009-2010.**

Mark Litzinger, City Comptroller, proposed an increase of the millage rate to 8.046 mills. He stated that the increase was one of the three potential funding sources to offset the revenue shortfall for fiscal year 2009-2010. He clarified that it would be a starting point for further discussions, and it would be easier to lower the millage than to raise the rate.

Mayor Boles clarified that the proposed millage rate would be the maximum.

## MOTION

Commissioner Crichlow **MOVED** to pass Resolution 2009-19. The motion was **SECONDED** by Commissioner Jones and approved by **UNANIMOUS VOICE VOTE**.

## 8. Staff Reports and Presentations

### **8.A/ "Recap of July 4<sup>th</sup> Fireworks over the Matanzas" by Paul Williamson.**

Paul Williamson, Director, Public Affairs, stated that the event was a success. He said there were approximately 45 thousand attendees. He explained that the "staycation" concept and some communities cancelling their holiday events may have contributed to the increased attendance. He stated that some of the key points of the event were as follows:

- 44 City personnel worked the event
- Total hours worked - 247
- Total cost \$50,000
- Event advertisement and other costs \$22,000
- Tourism Development Council paid \$35,000
- Would improve traffic plan for future
- No plans to change event
- Event an economic boost for downtown merchants

### **Non-Agenda Item**

Mr. Ste. Claire stated that the 4<sup>th</sup> of July celebration was an interesting case study to assist in the planning of the 450<sup>th</sup> Commemoration events. He reported that a steering committee meeting was held and Mayor Jean Zeidler of Williamsburg, Virginia gave a presentation concerning the Jamestown 400<sup>th</sup> celebration including successes to be used as a possible models for the 450<sup>th</sup> Commemoration. He noted that some objectives were as follows:

- Increase international and national awareness
- Sustainable tourism
- Economic impact on local business
- Infrastructure development
- Enhance current projects

Mr. Ste. Claire stated that the celebration would be a multicultural event. He requested that the Commission expand the steering committee to include a diverse

cultural representation by adding the following people:

- Consulate General of Spain
- President of Espania La Florida Foundation
- Consulate General of Britain
- Consulate General of France

## MOTION

**Commissioner Jones MOVED to expand the committee to include the aforementioned delegates. The motion was SECONDED by Commissioner Crichlow and approved by UNANIMOUS VOICE VOTE.**

Mr. Ste. Claire stated that the Secretary of Interior issued letters to the Governor's Office asking for referrals to the 450<sup>th</sup> Federal Commission. He explained that the appointments were Congressional and were made by the Secretary of Interior, and the recommendations were as follows:

- Chairman of the Seminole Tribe of Florida
- British Ambassador to the United States
- Spanish Ambassador to the United States

Mr. St. Claire stated that the City Commission was mandated to recommend three members to the Secretary of Interior, and his suggestions were as follows:

- Catholic Diocese representative chosen by the Catholic church
- Colin Powell former Secretary of State
- Bob Graham former United States Senator

Mr. Ste. Claire stated that the recommendation for the Honorary Chair was Michelle Obama, and her staff had already been contacted.

## 9. ITEMS BY CITY ATTORNEY

Mr. Brown reported that the applicant for 180 St George Street filed a writ of certiorari seeking review of the Commission's decision. He stated that it would be reviewed by a judge and if the judge found it sufficient he would issue an order to show cause. He noted that the City retained Lewis, Longman and Walker for representation. He stated that the applicant desired an early mediation to attempt to resolve the matter.

Mayor Boles volunteered to represent the Commission for mediation.

### **9.A/ Discussion regarding the Fish Island Development LLC v. City of St. Augustine Settlement Agreement.**

Mayor Boles stated that the Commissioners had met individually with counsel prior to the meeting.

Mr. Brown stated that the item concerned a Conservation Overlay Zone permit for the construction of a marina/dock facility. He detailed that the matter went before Judge Traynor to determine whether the ordinance was valid, whether it was properly applied, whether the applicant was afforded due process and whether the decision was supported by substantial and competent evidence. He stated that, based on the judge's decision, the City had the right to deny the permit to build a boat dock. He explained that the current lawsuit claim was based on the Bert Harris Act and whether the City had created an inordinate burden through a taking and therefore compensable for possible damages. He described the settlement agreement as follows:

- Location of the dock moved slightly farther north
- Narrowed board walk from 10' to 8'
- Composition of boardwalk to be see-through for greater marsh protection
- Reduction in number of private slips
- Addition of five public slips

- Public accommodations for restroom facilities
- Portable pump out facilities
- Covenant and restriction eliminating any further dockage
- Certain time frame for permitting

Mayor Boles questioned the process if an agreement was not reached and the issue went to court.

Mr. Brown responded that if the judge did not find an inordinate burden, the city would have no liability; however, if the judge found the city liable, the matter would go before a jury to determine the compensation to be awarded. He noted that, under the Bert Harris Act, the applicant could apply for another structure if the City prevailed in court and a new lawsuit could be brought against the City.

Mayor Boles remarked that the compensation amount could be anywhere from zero to nine million dollars.

Commissioner Crichlow questioned if the jury awarded compensation, would the city then own rights to the property.

Mr. Brown replied that the Bert Harris Act indicated that the City would get something in return but was not clear as to what that might be. He stated that the owner could still reapply for a new dock even if they were awarded compensation.

Commissioner Freeman stated that there had not been a single case in Florida, under the Bert Harris Act, where compensation had been awarded. She felt that, if the judge found the City created an inordinate burden, the decision could be appealed or a settlement agreement could be made at that time.

Mr. Brown referred to an article that suggested the applicant should have applied for a full service marina that could include fuel, sanitary pump-out facility, motel and restaurants. He said under the law, if there was an environmental circumstance involved, was it necessary to

grant the maximum allowed if an environmental ordinance could be satisfied by allowing something less.

Commissioner Freeman felt that the definition of marina included fuel, which meant more strict environmental regulations and public accessibility. She felt that five of seventy-five slips were not enough to be considered public access. She expressed concern that the agreement did not define public use, but if there were marina facilities available for public use the decision to accept the settlement agreement would be justified.

Mr. Brown replied that the agreement stated that the dock and facilities would be available to the public during reasonable operating hours.

Mayor Boles stated that the Planned Unit Development (PUD) had been approved for a boat dock, and the City argued in court against the dock due to negative impact to the environment and scenic vista. He did not feel that the Commission could argue whether there was fuel available.

Commissioner Jones stated that all the comments he had received from the public had been against building a dock and no comments were expressed about the public's right to use the dock facility.

Commissioner Crichlow stated that property rights were important to the general public, but without a referendum the decision had to be based on the advice of an attorney, public input and the judgment of the Commission.

Commissioner Crichlow addressed the possibility of renegotiating the settlement to add more public slips; however, he felt that if a new agreement settlement was made, it should be a final unanimous decision.

Commissioner Sikes-Kline felt that it was more important to discuss the settlement rather than changes to the proposal.

Commissioner Jones stated that after discussing the matter with the attorneys he felt the chance of winning in court was not favorable.

Commissioner Freeman noted that the property was zoned for a commercial marina.

Mayor Boles said that he felt meeting with the attorneys had been helpful and worth the expenditure.

Mr. Brown stated that Bert Harris cases were decided by the Commission not the public, and it was at the Commission's discretion to allow public input.

Commissioner Jones stated that most citizens cared about the environment and the scenic views, and they did not want the dock built. He said that most people that had contacted him wanted the City to fight it in court and not to build a dock, and if the City lost at that point negotiate a settlement. He stated that most citizens were not prepared to pay the cost of loosing in court.

Commissioner Freeman stated that if an agreement was reached, it should be in the best interest of the public.

Mayor Boles replied that during Shade Meetings on the issue, he felt that the best interest of public was always considered.

Commissioner Crichlow stated that negotiations should have already been made, and the Commission should be prepared to make a decision.

## **MOTION**

**Commissioner Crichlow MOVED to add to the settlement agreement, relocate the dock further north, additional public slips and additional public parking. The motion was SECONDED by Commissioner Freeman.<sup>2</sup>**

Mr. Brown stated that there was a PUD approved for three condominiums, and moving the dock north would create public access to private residential areas. He displayed an original proposal that showed the dock further north with the slips farther out and into the channel.

Mr. Knight stated that the developers would need to redesign the public access if the boardwalk was moved north.

There was a brief pause for counsel to discuss the motion and possible changes to the settlement agreement.

Mr. Brown stated that according to the discussion with the applicant's attorney, if an offer was made they would sign it. He noted that relocating the dock to the north would change the upland development and the City would have to agree to any necessary changes to the PUD. He stated that in order to have more public slips, the Commission would have to approve seventy-eight slips in the settlement agreement. He noted that there were twenty-eight parking spaces that would be considered public.

Commissioner Jones stated that he was concerned with negotiating a new agreement due to the considerable uncertainty. He stated that he would prefer to vote for a proposal that he understood as opposed to the unknown.

**Commissioner Crichlow withdrew his MOTION and Commissioner Freeman withdrew her SECOND on the motion.**

## **MOTION**

**Commissioner Crichlow MOVED to accept changes to the proposal as presented. MOTION FAILED FOR LACK OF A SECOND.**

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<sup>2</sup> Brief recess from 6:09 to 6:22.

## **MOTION**

**Commissioner Crichlow MOVED to leave the proposal unchanged. The motion was SECONDED Mayor Boles.**

### **VOTE ON MOTION**

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

**NAYES: Freeman**

**MOTION CARRIED 4 / 1**

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

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

2009-22 Greek Landing Day

## **11. ITEMS BY CITY MANAGER (Includes Consent Agenda)**

### **11.A/ Consent Agenda**

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

**11.A.2/ Notification of two upcoming term expirations on the Planning and Zoning Board.**

**11.A.3/ Consideration of Release of Lien on a Unit Connection Fee Mortgage.**

**11.A.4/ Consideration of Contract Negotiations relative to the Construction of Safety Improvements of State Road A1A at Castillo de San Marco.**

**11.A.5/ Consideration of License for Use of City Right-of-Way relative to property located at 69 Abbott Street.**

**11.A.6/ Consideration of License for Use of City Right-of-Way relative to property located at 100 Malaga Street.**

**11.A.7/ Authorization of Expenditure from the Utility Reserve Fund relative to the Oyster Creek Force Main Break.**

Commissioner Jones asked for an explanation of item 11.A.5.

Mr. Harriss explained that if a homeowner wanted to improve the right-of-way the City would not be liable for damages in the event of repairs.

### **MOTION**

**Commissioner Freeman MOVED to approve consent agenda items 11.A.1 through 11.A.7. The motion was SECONDED by Commissioner Jones and approved by UNANIMOUS VOICE VOTE.**

### **11.B/ Discussion Items.**

## **12. Items by Mayor and Commissioners**

### **Commissioner Freeman**

Commissioner Freeman questioned how the opinion of the Commissioner's would be known if the Mayor represented the Commission in mediation for 180 St. George Street.

Mr. Brown replied that a meeting could be held either prior to or after mediation.

### **Mayor Boles**

Mayor Boles stated that he received a letter from Dr. Bill Proctor supporting Resolution 2009-13 concerning the Intercity Rail Component of the FEC Corridor Project.

### **Commissioner Sikes-Kline**

Commissioner Sikes-Kline stated that she attended the 40<sup>th</sup> Accord luncheon with Commissioner Jones, Commissioner Freeman and Mayor Boles and she appreciated the effort that was being put into raising awareness of the City's Civil Rights History.

Commissioner Crichlow

Commissioner Crichlow thanked the St. Johns County Sherriff's Office for their assistance with the 4<sup>th</sup> of July Celebration. He noted that he attended the Greek Landing celebration. He stated that there would be a Catholic History Museum ground breaking at the Mission grounds in the coming weeks.

**13. Adjournment**

There being no further business, the meeting was adjourned at 7:58 P.M.<sup>3</sup>

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MAYOR

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CITY CLERK, CMC

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<sup>3</sup> Transcribed by Darlene Kirkland