

## CITY OF ST. AUGUSTINE

Regular City Commission Meeting  
June 23, 2008

The City Commission met in a formal session Monday, June 23, 2008 at 5:00 p.m. in the Alcazar Room at City Hall. The meeting was called to order by Mayor Boles, and the following were present:

### **Roll Call:**

Joe Boles, Mayor/City Commissioner  
Donald A. Crichlow, Vice Mayor/City Commissioner  
Susan Burk, City Commissioner  
George Gardner, City Commissioner  
Errol D. Jones, City Commissioner

John Regan, Chief Operations Officer, Acting City Manager  
Ron Brown, City Attorney  
Karen Rogers, City Clerk  
Timothy A. Burchfield, Chief Administrative Officer  
Mark Knight, Director, Planning and Building  
Mark Litzinger, City Comptroller  
Jim Piggott, General Services Director  
Dr. William Adams, Director, Heritage Tourism  
Martha Campbell, Director, Public Works  
Paul K. Williamson, Director, Public Affairs  
Loran Lueders, Police Chief  
Mike Arnold, Fire Chief  
Robin Upchurch, Assistant City Attorney  
Susan Goins, Recording Secretary

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

Gabbat Jerry Kass, Congregation Sons of Israel, 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**

Commissioner Gardner noted the following changes to the minutes:

- Page 8., item 12., left column, include that the hearing on Tuesday, June 17, 2008 was regarding a Federal Commission
- Page 8., item 12., right column, include the other organizations and St. Augustine Independent Restaurant Association (SAIRA) should be contacted to determine whether they wanted to use the kiosks

## **MOTION**

Commissioner Gardner **MOVED** to approve the minutes of the regular City Commission Meeting of June 9, 2008. The motion was **SECONDED** by Commissioner Burk and **APPROVED** by **UNANIMOUS VOICE VOTE**.

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

- 2008-19 - Recognizing Reverend C. T. Vivian

Mayor Boles read and presented the proclamation to a member of the 40<sup>th</sup> Accord.

### **4. Appeals and Public Hearings (NOT PERTAINING TO ORDINANCES & RESOLUTIONS)**

(None)

### **5./ Ordinances – Public Hearing Required - First Reading**

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

(None)

#### **5.B./ Ordinances - Second Reading – Public Hearing**

##### **5.B.1/ Public Hearing - Ordinance 2008-11 Amending Chapter 26, relating to Wastewater Pretreatment.**

Martha Campbell, Director, Public Works, explained that Ordinance 2008-11 brought the city's wastewater pretreatment ordinance into compliance with the requirements of the Florida Department of Environmental Protection and the Code of Federal Regulations.

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

## **MOTION**

Commissioner Gardner **MOVED** to place Ordinance 2008-11 on second reading, read by title only and passed. The motion was **SECONDED** by Commissioner Burk.

Mr. Brown read the title as follows:

### **ORDINANCE NO. 2008-11**

AN ORDINANCE OF THE CITY OF ST. AUGUSTINE, FLORIDA AMENDING CHAPTER 26 OF THE CODE OF THE CITY OF ST. AUGUSTINE IN ORDER TO BRING THE CODE PROVISIONS AND THE OPERATION OF THE CITY'S WASTEWATER TREATMENT FACILITIES INTO COMPLIANCE WITH THE REGULATORY REQUIREMENTS OF THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION AND THE CODE OF FEDERAL REGULATIONS; SPECIFICALLY AMENDING CODE SECTION 26-3 TO MODIFY THE DEFINITION OF "SIGNIFICANT NONCOMPLIANCE" AND TO ADD THE DEFINITION OF "UPSET;" SECTION 26-79 TO ADD A REFERENCE TO THE CODE OF FEDERAL REGULATIONS; SECTION 26-109 TO ADD REFERENCES TO "UPSET," TO ADD A REFERENCE TO "INDUSTRIAL USER RESPONSIBILITY IN CASE OF UPSET" AND TO REDESIGNATE THE SUBPARAGRAPHS OF THE SECTION; 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.

### **VOTE ON MOTION**

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

**NAYES:** None

**MOTION APPROVED UNANIMOUSLY**

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

Mayor Boles stated that the Fish Island discussion would not include a public hearing; therefore, citizens wanting to speak regarding the matter should do so during the public comment period.

Peter Romano referred to the following:

- Concerned that Heritage Tourism budget was \$4.2 million and did not generate \$1 of surplus
- Wanted transparency to ensure that issues not related to Heritage Tourism were not in that budget

B.J. Kalaidi referred to the following:

- Tax money should not be used to fund trips by city officials until after the November 2008 election
- Residents should be given a \$10 credit for days that the city had water restrictions
- City should not pay water bills of city employees
- Code violations
- Citizens do not have to put money in parking meters after 5:00 P.M. and on Sundays

Yvonne Rice referred to the following:

- Promoting family movies and programming in the city

Derek Hankerson referred to the following:

- Planning independent film projects in the city
- Working toward bringing more commercials, catalog shoots films and television series into the city to maximize economic potential

Dwight Hines, referred to the following:

- City was not in compliance with public records
- City had filed false documents and sworn affidavits in county court

- City should settle with the Fish Island developers
- Illegal dumping of raw sewage

Ed Slavin referred to the following:

- Commission should stand firm on the Fish Island decision
- City should consider making the Fish Island property a park for the St. Augustine National Historical Park and National Seashore and National Scenic Coastal Highway
- Sewage from Water Treatment plant
- Illegal dumping

Philip Baldwin referred to the following:

- Parking meter had been placed in front of his house
- Only resident on the street without a driveway or onsite parking

Commissioner Crichlow recommended that staff investigate the matter.

John Regan, Chief Operations Officer, stated that he would discuss the matter with the Parking and Traffic Committee at the subsequent meeting. He added that they were updating the Master Plan and the matter could be a component of the discussion.

Commissioner Burk questioned whether alleviating parking before 10:00 A.M. would help, and the response was affirmative.

Several residents spoke in support of the Commission upholding their decision regarding the Fish Island property and referred to the following:

- The Commission should remain firm on the discussion regarding the Fish Island project
- The court upheld the city's decision
- PZB requested that the developer propose a price for purchase of the property

- Options for the developer included acquisition of the property
- The developer rejected two offers by the PZB including modifications to the project and possible acquisition
- Top of the "T" and the section for boat slips was not on the developer's property
- Thanked the Commission for protecting history and the last resting place of Jessie Fish

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

(None)

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

**7.A. Ordinances – First Reading**

**7.A.1/ First Reading - Introduction and consideration of Ordinance 2008-13, allowing dogs within certain outdoor portions of public food service establishments.**

Ron Brown, City Attorney, stated that Ordinance 2008-13 was predicated on a State Statute passed in 2006 where the legislature created a three year trial program to allow dogs to dine in restaurants with their owners in outdoor seating areas. He said the dogs were not allowed inside the restaurant, could not eat off dishes, and employees must clean up accidents. He added that Code Enforcement would enforce the rules, which would be primarily complaint driven.

Commissioner Crichlow stated that the ordinance seemed complicated and referred to the entry ways and exits, waterless hand sanitizers provision for patrons, dogs not allowed contact with dishes and utensils, tables and chairs must be cleaned and sanitized between seating, and the city had to enforce the rules.

**MOTION**

**Commissioner Burk MOVED to place Ordinance 2008-13 on first reading, read by title only and passed. The motion was SECONDED by Commissioner Jones.**

Mr. Brown read the title as follows:

**ORDINANCE NO. 2008-13**

AN ORDINANCE OF THE CITY OF ST. AUGUSTINE, FLORIDA ALLOWING DOGS WITHIN CERTAIN DESIGNATED OUTDOOR PORTIONS OF PUBLIC FOOD SERVICE ESTABLISHMENTS; IMPLEMENTING SECTION 509.233, FLORIDA STATUTES; AMENDING CHAPTER 15 OF THE CODE OF THE CITY OF ST. AUGUSTINE AND CREATING A NEW SECTION 15-2, PUBLIC FOOD SERVICE ESTABLISHMENTS, AUTHORIZING THE PERMITTING OF DOGS WITHIN CERTAIN DESIGNATED OUTDOOR PORTIONS OF PUBLIC FOOD SERVICE ESTABLISHMENTS; PROVIDING FOR A FEE; PROVIDING FOR EXPIRATION OF PERMITS ON JULY 1, 2009; PROVIDING FOR PENALTIES; PROVIDING FOR ESTABLISHMENT OF PROCEDURES BY THE PLANNING AND BUILDING DEPARTMENT; PROVIDING FOR ENFORCEMENT; 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.

Commissioner Crichlow stated that the ordinance would have several impacts and he encouraged residents to voice their concerns at the subsequent commission meeting.

Commissioner Gardner stated that the ordinance enabled restaurants to participate if they chose, and many restaurant owners had been enthusiastic about the ordinance.

Following a discussion Mr. Brown clarified that the ordinance would terminate July 1, 2009 unless the legislature decided to reinstate it.

**VOTE ON MOTION**

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

**NAYES:** None

**MOTION APPROVED UNANIMOUSLY**

**7.B/ Resolutions**

(None)

**8. Staff Reports and Presentations**

**8.A. Presentation regarding the Study of the Castillo de San Marcos Pedestrian Enhancement Area.**

Mark Knight, Director, Planning and Building, stated that the city had a contract to perform a study for an underground pedestrian walkway for access from the Visitor's Information Center crossing to the Fort. He said they counted up to 6,000 over an eight hour time frame and estimated that 8,000 pedestrians could cross in that area on a Saturday, plus there was also a lot of vehicular traffic. He explained that they looked at various solutions to improve pedestrian movement between the east and west sides of Castillo Drive, such as an overpass or underpass. He said several options to improve traffic flow had been identified, such as improved roadway lighting, wider crosswalks and sidewalks, new signal equipment and illuminated street signs.<sup>1</sup>

There was Commission consensus to perform improvements.

**8.B. Overview of the Department of Heritage Tourism.**

Mr. Regan and Dr. William Adams, Director, Heritage Tourism, provided a presentation regarding the Heritage Tourism Department

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

prompted by questions from Commissioner Gardner.<sup>2</sup>

Mayor Boles stated that if funding was available from the legislature, the University of Florida could take over total management of the historic properties, but he preferred waiting to see what they would do with the properties.

Commissioner Gardner questioned the current annual attendance.

Dr. Adams replied that they would receive approximately 65,000 visitors to the Spanish Quarter. He pointed out that the number did not include free admissions to the museum.

Commissioner Gardner stated that according to a study performed by the FDOT the Castillo received 500,000 visitors yearly. He commended the interpretive staff at the Spanish Quarter Museum. He said the city had a venue including interpretive staff. He asked why the interpretive staff at the Castillo attracted more visitors than the Spanish Quarter.

Mr. Regan replied that staff wanted to build a tighter integration with the Fort to attract some of the visitors. He said they were trying different things to attract people such as modifying the fence line and right-of-way issues, which would allow them to create an atmosphere with volunteers in costumes to encourage visitors.

Commissioner Gardner suggested evening programs in the Spanish Quarter to compete with the Ghost Tours. He said the city could bring in thousands of dollars because people wanted something to do at night. He expressed concern about not renovating the properties when they could be taken over by the University of Florida. He pointed out that he had suggested changes that would not cost the city or that had been budgeted. He said the properties belonged to the people of Florida and if there was a way to improve the properties,

<sup>2</sup> Attached to original minutes

they should do so. He said the legislature had unanimously approved the University of Florida take over of the historic properties; therefore, it was unrealistic for the city to seek a long term lease. He said if he could get Commission support for a resolution for one cent bed tax funding over five years dedicated to the Government House, he would support a 99 year lease.

Mayor Boles replied that he supported asking for historic preservation support for buildings they had a long term relationship with. He reiterated that he did not want to ask for support of state buildings.

Mr. Regan asked for Commission consensus to work toward the business opportunity in the de Mesa Yard and bring the business model and projected expenses forward at a later time.

Mayor Boles stated that he was in support.<sup>3</sup>

## 9. ITEMS BY CITY ATTORNEY

### **9.A. Discussion regarding proposed response to the claim filed by Fish Island Development, LLC.**

Mr. Brown stated that there was a proposal developed by the PZB regarding a response to a lawsuit filed against the city under the Bert Harris Private Property Rights Protection Act.<sup>4</sup> He explained that the Bert Harris Act required that the city to provide two responses; a written statement derived from the eleven options described in the statute and a written Ripeness Decision describing the allowable uses for the property. He stated that the first time the city was taken to court by Fish Island Development they sought a Writ of Certiorari, which was a determination by the court whether the city followed the requirements of due process of law, followed the essential requirements of law, and the decision of the city was supported by substantial and competent evidence. He

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<sup>3</sup> Brief recess 7:10 P.M. to 7:21 P.M.

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

said the court ruled in the city's favor on those points, which meant the city was found to have, in terms of the application, a valid Code and a valid application. He said the Bert Harris Act went into play after the city applied the Code and whether the Code created a taking under the law. He pointed out that there could not be a taking unless they had a valid Code and valid application of the Code. He said the city's response could trigger various responses such as modifications by the developer, negotiations or the developer filing suit. He said there was an attempt for negotiations; however, it had not been successful; therefore, the PZB recommended the following written settlement offer:<sup>5</sup>

- A. Adjustment of land development or permit standards or other provisions controlling the development or use of land, revised marina plan including an enhanced commercial and retail use available to the general public and enhanced preservation of the natural habitat around the Jesse Fish burial site
- B. Modifications in density, intensity or uses of areas of development; allow public access by land and water to dock/marina, allow public use of marina slips, develop retail and other commercial uses of the property consistent with public use
- C. Location of the proposed development on the least sensitive portions of the property. Relocating the proposed dock/marina to the northernmost area of the property near the SR-312 bridge, reducing the number of boat slips to minimum number economically justifiable and employing dock/marina construction systems which maximized environmental protection of estuaries, wetlands and waters
- D. Purchase of a portion of the property

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<sup>5</sup> Attached to original minutes

Mr. Brown referred to the Ripeness Decision and stated the following:

- The city recommended a redesign of the uses for the riparian area on the northern end of the property, employing a blend of commercial, retail and residential uses in conjunction with full public access to a full service marina by land and sea; reduction in number of marina boat slips to the smallest possible economically justifiable number and with a marina design with maximum protection of the marsh and estuaries affected by the marina structures and use
- Recommended an increase in preserved natural lands and relocation of a park closer to the Jessie Fish burial site in order to maintain the maximum amount of natural habitat

Commissioner Burk expressed concern that the settlement offer was vague. She said the offer should contain more specific language, considering that the developer could abide with minimal change. She said the changes by the developer should be substantial changes; moreover, the city put the number of boatslips for determining economic feasibility on the developers.

Commissioner Crichlow stated that the proposal was oversized in terms of impact on the environment and vista, and the city had no responsibility to approve the project at that size.

Following a discussion regarding the offer, it was determined that the language would be changed to the following:

- Item C. - remove the language "to minimum number economically justifiable" and replace with "significant reduction in the number of boat slips"
- Item B. - significant decrease in density and significant reduction in

the intensity or uses of areas of development

## **MOTION**

**Commissioner Burk MOVED to send the letter as amended. The motion was SECONDED by Commissioner Jones.**

## **VOTE ON MOTION**

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

**NAYES: None**

**MOTION APPROVED UNANIMOUSLY**

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

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

(None)

## **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/ Consideration of Cost Share Agreement with PDG IV, Inc. (Walgreens Drug Store) regarding utility construction.**

**11.A.4/ Consideration of an Interlocal Agreement with the St. Augustine Port, Waterway and Beach District regarding the purchase of a Fire Boat.**

**11.A.5/ Consideration of Amendment No. 2 to the Cost Share Agreement with the St. Johns River Water Management District for the Low Pressure Reverse Osmosis Plant.**

Mr. Regan, Acting City Manager, read the consent agenda items.

## MOTION

Commissioner Burk **MOVED** to approve the consent agenda. The motion was **SECONDED** by Commissioner Crichlow.

### VOTE ON MOTION

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

**NAYES:** None

**MOTION APPROVED UNANIMOUSLY**

### Non-Agenda Item

Commissioner Jones stated that he believed the ordinance had been modified to change the setback requirements. He expressed concern because the back of Walgreens faced the street. He recommended that the City Attorney write an ordinance to prevent similar situations in the future.

Commissioner Crichlow stated that the city could change the zoning category to modify the setback on roads like US.1 to allow a deeper setback. He recommended that the matter go before the PZB.

Commissioner Jones stated that he was in support of the PZB hearing the matter and providing a recommendation.

### 11.B/ Discussion Items

Mayor Boles asked Mr. Regan to clarify the matter regarding the waste water treatment plant pipe.

Mr. Regan explained that in 2006 the Waste Water Treatment Plant pipe was inspected and breaks were repaired. He exhibited aerial photos of the Wastewater Treatment Plant pipe in the marsh. He said that in 2007 the city applied for a permit (state and federal) to investigate and repair the pipes if technically possible. He said the city was getting the second permit and would check the material quality in the marsh. He stated that there was no solid waste or raw sewage going through the pipe, and the

DEP had indicated that the city was not in violation.

## 12. ITEMS BY THE MAYOR AND COMMISSIONERS

### Commissioner Jones - Senator Barack Obama

Commissioner Jones stated that he had met Senator Barack Obama at a reception, and he gave him a city lapel. He said that he informed Senator Obama of the city's upcoming 450<sup>th</sup> anniversary celebration and asked for his support if he became President.

### State Representatives

Commissioner Jones stated that he had met with some of his former students that were currently State Representatives and requested their support for the 450<sup>th</sup> anniversary celebration.

### Commissioner Crichlow - Oviedo Street Repairs

Commissioner Crichlow reported that the bump at Oviedo Street and Riberia Street had been repaired.

## 13. Adjournment

There being no further business, the meeting was adjourned at 8:32 P.M.<sup>6</sup>

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MAYOR

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CITY CLERK, CMC

<sup>6</sup> Transcribed by Susan Goins