



## MINUTES

### REGULAR CITY COMMISSION MEETING

MONDAY, FEBRUARY 3, 2020 AT 6:00 P.M.

CITY OF ST. AUGUSTINE BEACH, 2200 A1A South, St. Augustine Beach, FL 32080

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I. CALL TO ORDER

Mayor England called the meeting to order at 6:00 p.m.

II. PLEDGE OF ALLEGIANCE

Mayor England led the Pledge of Allegiance.

III. ROLL CALL

Mayor England asked City Clerk Raddatz for roll call.

Present: Mayor England, Vice Mayor Kostka, Commissioner George, Commissioner Rumrell, and Commissioner Samora.

Also present were: City Manager Royle, City Attorney Wilson, Police Chief Hardwick, Finance Director Douylliez, City Clerk Raddatz, Building Official Law, and Public Works Director Tredik.

Mayor England moved on to Item IV, Approval of Minutes.

IV. APPROVAL OF MINUTES OF REGULAR COMMISSION MEETING ON JANUARY 6, 2020 AND SPECIAL COMMISSION MEETING ON JANUARY 13, 2020 AND CONTINUATION MEETING OF REGULAR COMMISSION MEETING ON JANUARY 14, 2020

Mayor England asked if there were any comments from the Commission regarding the minutes.

Commissioner Samora advised that there were minor corrections in the minutes, which he stated. He also requested that the exhibits be sent with the draft minutes to the Commission in the future.

**Motion:** to approve the minutes of the Regular Commission meeting on January 6, 2020 and the Special Commission and Continuation Regular Commission meeting on January 13, 2020 and the Continuation of the Regular Commission meeting on January 14, 2020 with proposed amendments. **Moved by** Commissioner Samora, **Seconded by** Commissioner George. Motion passed unanimously.

Mayor England moved on to Item V, Additions or Deletions of the Agenda.

V. ADDITIONS OR DELETIONS OF THE AGENDA

Mayor England asked if there were any additions or deletions on the agenda.

City Manager Royle advised that Item VII.A. should be deleted due to Ms. Wilson withdrawing her application because she felt that she would be unable to put the time in on the Sustainability and Environmental Planning Advisory Committee (SEPAC). He also advised that staff would like to reschedule Item 11 to the March 2, 2020, Regular Commission meeting.

It was the consensus of the Commission to delete Items VII.A and 11 from the agenda.

VI. CHANGES TO THE ORDER OF TOPICS ON THE AGENDA

Mayor England asked if there were any changes to the order of topics on the agenda.

City Attorney Wilson advised that he would like to have Item VII.B. changed to the end of the meeting.

It was the consensus of the Commission to change the order on Item VII.B.

VII. PRESENTATIONS

A. Interview of Ms. Jennifer Wilson for Position of Regular Member on the Sustainability and Environmental Planning Adversary Committee

This item was deleted from the agenda.

VIII. PUBLIC COMMENTS

Mayor England opened the Public Comments section. The following addressed the Commission:

Ann Palmquist, 213 10<sup>th</sup> Street, St. Augustine Beach, FL, congratulated the Commission on January's Commission meetings and advised there would be more participation from the citizens if live broadcasts would be done instead of delayed meetings on YouTube.

Ed Slavin, P.O. Box 3084, St. Augustine, FL, agreed with Ann Palmquist and asked to have live streaming of Commission meetings; requested public exit interviews with Attorney West and Ms. Sloan the former Chair and Vice Chair of the Comprehensive Planning and Zoning Board; thanked the Commission for not doing paid parking, no high rises on the beach, no micromobility scooters in the City, and not allowing to amend the sign codes to allow advertising on bus shelters; and City Manager Royle needs to be fired.

Nick Binder, 232 Big Magnolia Court, St. Augustine Beach, FL, thanked the Commission for moving forward on the lighting on State Road A1A; encouraged the Commission to discuss with St. Johns County Beach Services about adding a lifeguard stand near Ocean Hammock Park; and advising the Commission that they approved Anastasia Dunes buildings having a higher impervious surface. He explained that Lots 46 and 47 in Anastasia Dunes has a proposed 6,000 square foot home on those two lots. He remarked that in order to build what is proposed the ground would have to be raised, which may cause flooding to the surrounding area. He suggested that the Building Official and the Director of Public Works look at the stormwater flow from that property closely in order to prevent flooding to the surrounding residents.

John Leslie, President of the Vietnam Veterans Chapter 1084, 205 Bluebird Lane, St. Augustine Beach, FL, expressed his appreciation for allowing his non-profit organization to be a vendor at the Beach Blast Off for the last two years and thanked law enforcement, the special security from St. Augustine, and the first responders at the event. He remarked that this and other non-profit events allows, donations to be sent to deserving veteran programs yearly. He explained that last

year his Chapter sent \$25,000 to those in need. He explained that he is looking forward to next year's Beach Blast Off event.

Craig Thomson, 6 D Street, St. Augustine Beach, FL, handed Exhibit 1 to the City Manager and asked that the Commission receive a copy. He said that there were two alarming issues that happened this month, which were the resignations of the Comprehensive Planning and Zoning Board Chair and Vice Chair and the taking of sand away from the dune at 2 12<sup>th</sup> Lane. He advised that both Chair and Vice Chair noted professional and personal concerns with the Building Official's actions. He explained that he related similar concerns with the City Manager and Mayor regarding the Building Official and had a meeting to remedy the situations. He requested the Commission rectify the situation with the Building Official and asked the Commission to hire a consultant or part-time City Planner to counterbalance the power structure and separate the Building Department from planning issues. He asked why a private owner could take public sand and use it as fill to raise his yard three to four feet. He advised that his neighbors are now subject to more flooding risks and asked why it was not reviewed by a qualified planner and why wasn't the Chair of the Comprehensive Planning and Zoning Board consult if the Building Official didn't have the expertise and why was Land Development Regulations Section 5.03.01 used to deny the request.

Mayor England asked to make sure the Commission receives Exhibit 1.

Mayor England closed the Public Comments section and then moved on to Item IX, Commissioner Comments.

#### IX. COMMISSIONER COMMENTS

Mayor England asked Commissioner Rumrell for his comments.

Commissioner Rumrell advised that he has already spoken to Commander Ashlock about the lifeguard for Ocean Hammock Park and Commander Ashlock advised that he is having a meeting next Thursday with St. Johns County Beach Services.

Mayor England advised that she and City Manager Royle had an informal meeting on January 22<sup>nd</sup> with Mayor Upchurch and City Manager Regan from the City of St. Augustine and they all agreed to work together on sustainability, flooding issues, and sea level rise. She commented that on January 24<sup>th</sup>, she and City Manager Royle met with Mr. Thomson and Dr. Sandy Bond, on what actions they are taking that Mr. Thomson mentioned.

Commissioner George asked if there will be further discussions about this at the Joint Commission and Comprehensive Planning and Zoning Board Workshop on February 10<sup>th</sup>.

Mayor England advised yes, that City Manager Royle will be sending an agenda out for that workshop tomorrow. She asked Commissioner George if she was interested in bringing up the parking issue again.

Commissioner George advised no, that she has not mentioned it to City Manager Royle; however, there was direction from the Commission that parking should be brought back on the March agenda.

Vice Mayor Kostka was pleased that there was a meeting with the City of St. Augustine Mayor and Manager. She asked if City Manager Royle has been able to reach out to Hunter Conrad from St. Johns County.

City Manager Royle advised no, he is busy getting his contract finalized and learning the ropes of his position, but Mr. Royle does intend to meet with him.

Vice Mayor Kostka advised that the City could benefit with a joint meeting with St. Johns County Board of Commissioners. She suggested to revisit the parking issues by placing it on a future agenda. She advised that the City needs to formulate some plans to increase the parking.

Commissioner George explained what the City of Durham in North Carolina did regarding bottled water by taking a formal vote via resolution to prohibit the City or County from purchasing bottled water or single use plastics. She advised that the City should set a standard and if the City is asking the legislature to change the law on it, they should follow what the Commission is requesting. She requested this item be placed on a future agenda to discuss. She remarked that the City instructed the Legislature not to violate the City's Home Rule and Mr. Thomas Bradford sent out another email chain this past month suggesting that the cities who adopted that resolution forward the resolutions with a letter from the Mayor directly to the State Representatives. She did forward the email to City Manager Royle and wanted to make sure that all the Commissioners were aware of it to send them a letter too.

Discussion ensued regarding whether staff receives bottle water from the City; purchasing bottle water for events; and boxed water is available instead of plastic bottles.

Mayor England asked the Commissioners to forward their thoughts on parking if they want it on the agenda.

Mayor England moved on to Item X, Public Hearings.

## X. PUBLIC HEARINGS

1. Allowing Chickens by Exception: Appeal of Decision by the Comprehensive Planning and Zoning Board to Allow by Exception to Section 3.02.02.A.1 of the Land Development Code the Keeping of Chickens at 313 A Street (Lot 14, Block 49, Coquina Gables Subdivision, Ms. Pamela M.M. Holcombe, Appellate) (Presenter: Brian Law, Building Official)

Mayor England introduced Item 1.

Commissioner George explained that she was going to recuse herself because the appellant is an employee at her law firm and due to the appearance of bias, she feels that she should not vote. She discussed this with City Attorney Wilson, and he has agreed. She made it known that she did not necessary share the opinions of everyone who works at her law firm and that the appeal was not submitted by her or by her law firm. She explained that through the years as a Commissioner she has voted on and ruled on applications by friends or colleagues and has always been objective and done what was in the best interest of the City and its residents. She advised that in this instance because of the sake of perceptions and because of the economic entanglements, she will recuse herself (Exhibit 2, Form 8B, Memorandum of Voting Conflict for County, Municipal, and Other Local Public Offers).

Commissioner Kostka disclosed that Ms. Holcombe is her attorney representing her in a legal issue pertaining to her business.

Mayor England suggested Building Official Law give his report and then requested City Attorney Wilson to make his remarks.

Building Official Law advised that this property received a complaint about the alleged presence of chickens, so Code Enforcement investigated and found there were some hens in

the yard. He explained that in the Code it states the keeping, breeding, or raising of poultry is a prohibited use. He remarked that at staff's request the homeowner applied for a variance and went to the Comprehensive Planning and Zoning Board for their decision. Traditionally, there is not a mechanism to appeal a prohibited use and stated the definition of a variance for the record. He explained that the Board denied the variance but approved the use unanimously and did this with discussion of the attorney at the Board. He advised that it was not City Attorney Wilson but was Attorney Jeremiah Mulligan. Since the Board denied the variance and approved the use, the Code Enforcement process stopped. He explained that there was an appeal filed within a 30-day period to appeal the decision based on certain terms. At that point, staff did the paperwork and the application fee was paid.

Mayor England asked the Commission if they would like to ask how this case got here. Being none, Mayor England asked City Attorney Wilson for his comments.

City Attorney Wilson advised that he was not at the Board meeting because he was in Washington, DC that week. He explained that he read the minutes of the Board and discussed the case with Attorney Mulligan, who was there. He remarked that this case was not appropriate to be done in the variance process because it doesn't relate to land issues but relates to a personal matter involving the resident at this property. He explained that the variance was denied by the Board as it should have been but then the Board decided to allow the use anyway, which goes beyond their jurisdiction of the Board and it was inappropriate at the time. He understands how it happened and it is a complex issue under the ADA regulations, and he advised that he is not sure where this case should go from here. The alternative that the City would have is to change their Code and allow chickens within the City as the Commission seems fit or simply not to enforce a Code Enforcement action. He explained that the City is not forced to proceed with a Code Enforcement action even though there is a violation of the Code and explained that this would leave it up to the parties involved whether they would want a judge to decide what would be appropriate in this support animal situation. He advised that he didn't think that the City has any jurisdiction to do anything other than to set aside the Board's decision to allow the use and then have the parties seek other options. He explained that the appeal is inappropriate, and the Board's decision was inappropriate.

Mayor England asked the appellant to come forward.

Attorney Pamela Holcombe, 312 A Street, St. Augustine Beach, FL, explained that for the record, she has had no communication with Commissioner George on any issue of substance. She handed out Exhibit 3, which gives guidance on this issue and supports her arguments that she has made on the appeal. She explained that cities can and do make decisions on reasonable and customary accommodations on the Fair Housing Act regarding zoning. She advised that she would share her information with City Attorney Wilson.

He explained that the appropriate time and place to decide was not under the Board's jurisdiction.

She stated that she was sympathetic to the situation and explained that she loves animals and had chickens growing up on a country property. She explained that when a decision is made by motion instead of the analysis of the facts, sometimes it goes wrong. She commented that as a member of the Florida Bar and independent animal committee, it is hard not to be on the side of the animal. She explained that she wants the right decision because when the decision is wrong it can have consequences to those who have legitimate needs. She advised that the

Department of Transportation (DOT) has just come out two weeks ago that they are going to stop all support animals on planes, and they will only allow service dogs. She advised that City Attorney Wilson has already identified there were procedural issues with this and a lack of notice that didn't allow her to respond. She commented that the prescription of the doctor does not properly prescribe an emotional support animal. Emotional support animals must do things to support the person and the fact that the child is engaging in an activity that is therapeutic is not the purpose of an emotional support animal. It is to allow the disabled person to have equal use of the dwelling as a non-disabled person and that gets to the heart of the issue. She explained that the child is entitled to an equal use, not a preferential use. She commented that no other child in St. Augustine Beach can keep chickens and the chickens are not helping him use the dwellings, so it is a fatally flawed application in that respect.

Mayor England opened the Public Hearing section. The following addressed the Commission:

Patricia Able, 1333 Eisenhower Drive, St. Augustine, FL, explained that this is serious issue for the child, and she has been a volunteer in three different counties, public school systems with children including special needs. She explained that every child counts and if it is chickens that help a child, then they should have them and laws should be changed.

Lila Sleeper, 17 Ocean Woods Drive, St. Augustine Beach, FL, commented that she is a tutor for St. Johns County and has worked with hundreds of children with different needs and all children have different needs to become successful. She explained that if this helps the child having chickens, then the Commission should consider all the children of St. Augustine Beach and St. Johns County.

Ed Slavin, P.O. Box 3084, St. Augustine, FL, advised that the Board got it right to deny the appeal and suggested to have the City Attorney work on an ordinance that would implement 20 CFR Part 25 in this case. He commented that the City Manager years ago should have implemented the Fair Housing Act and ADA reasonable accommodations. HUD has administrative law judges to hear these cases and if there is legal action against the City, there could be \$300,000 compensatory penalties. He would like to know why the appellant filed this appeal.

Ann Palmquist, 213 10<sup>th</sup> Street, St. Augustine Beach, FL, advised that bees are not allowed either and they do no harm and asked the Commission to move very lightly because this is not their expertise. She asked the Commission to listen to the residents and the special needs community. She advised that there are at least four other properties that have chickens, and no one complains.

Jennifer Wildasin, 313 A Street, St. Augustine Beach, FL, explained that she comes to the Commission as a mom and is not an attorney who has fancy language to use. She explained that her son has special needs of different variations. She said that there are so many other things that should be on the news than her chickens in the backyard and she would not be here if it didn't dramatically help her son. She commented that she is humbled by the support she is receiving, and she is praying that God uses this for something even bigger. She wants the people to see the difference it makes in his life. She then read a letter from her son's school, Exhibit 4.

Heather Hall, 312 B Street, St. Augustine Beach, FL, explained that she is Ms. Wildasin's closest neighbor and has witnessed firsthand the effect the chickens have had on the family. She commented that the chickens have not impacted her family's quality of life and didn't even know they were there until her son was befriended Ms. Wildasin's son. She advised that her

son also has special needs and the chickens help both children. She remarked that she fully supports the family and them keeping their chickens.

Kevin Kincaid, 6 11<sup>th</sup> Street, St. Augustine Beach, FL, advised that he was a member of the Board and stated that there was some confusing regarding the Board's decision. He explained that there was strong and unanimous support on the Board to provide the relief that this child was looking for. He advised that the Board was frustrated that they were told that the Board was not allowed to consider this as a variance and the intent of the motion was to move it on to the Commission for a final decision because the Board was told they did not have the authority to grant the variance and there was no mechanism for the Board to handle it. This was approved by the Board to send this to the Commission with a strong recommendation to find a way to work this out. The Board wants to work with the citizens and to make life a better place in the City and it was frustrating that the Board could not assist the resident and didn't want the applicant to have them go on through another hurdle to get assistance. He said the Board fully supported the intent of the son's doctor's letter. He also advised that the Board wanted to refund their variance fee.

Jorge Ortega, 28 Magnolia Dunes Circle, St. Augustine Beach, FL, explained that he volunteers for the Florida Wildlife Conservation, specifically to the youth hunting program and the other camps in the Ocala Conservation Center. Our organization believes in what a young person obtains from being taught how to ethically treat animals by taking care of them, establish their wellbeing and leaves a mark on how to treat other people. This family has found a cure without medicines and therapy. They found a wholesome solution for their child and should be approved by the Commission and hoped that the appellant would have a heart and a soul to support this.

Mayor England closed the Public Comments section and asked City Attorney Wilson to comment.

City Attorney Wilson advised that the Board was trying to accommodate the wishes of the family and the Commission has the ability to do that by changing the Code or impose certain regulations if the Commission wants to allow this, but it could not be done through the Board. The Commission could resolve the issue without involving litigation. He explained that the HUD rules applies to HUD housing and the City does not have HUD housing. He commented that the City has its own regulations and do not have to follow HUD laws. He advised that the Commission has the right to do whatever they want to do for their own ordinances and make their own recommendations as necessary. That is what Home Rule is.

Mayor England advised that this is an appeal of the Board's decision to deny the variance. She explained that the Board approved a request and the Commission needs to see if there were grounds for the Board to grant the request.

City Attorney Wilson advised that the Board did not have the authority to grant the request and the Board is asking the Commission to make the decision. The Board's motion that they passed has no legal validity at all. He suggested to the Commission to grant the appeal and set aside the decision, but the Board wanted the Commission to find a way to grant the wishes of the mother and the child.

Mayor England advised that once the Commission decides on the appeal, then perhaps the Commission could talk about some alternatives. She advised that it is a Code Enforcement issue and the Commission could change the codes if they choose to.

City Attorney Wilson advised that it is not pending before the Code Enforcement Board, so it is a staff decision whether this goes to Code Enforcement at all.

Vice Mayor Kostka asked City Attorney Wilson how to make this work without changing the codes.

City Attorney Wilson said that the Commission could direct staff not to move forward on a Code Enforcement case, but the Commission could be running the risk that it is doing selective enforcement. The other alternative would be to create a way to have restrictions on how to keep these types of animals.

Vice Mayor Kostka asked if the Commission could add code language on how to bring support animals to the Commission for approval so it could be done case by case basis.

City Attorney Wilson advised yes; it could be regulated.

Vice Mayor Kostka explained that she was concerned about allowing it and instructing staff not to do anything about it because of others doing the same thing, but if the Commission agrees on adding codes for isolated instances on a case by case basis, that would give the Commission the knowledge of where it is within the community.

Mayor England advised that the Commission does not have all the information, and this is an unusual situation. She explained that the Commission has received testimony that there are federal and state laws that should be considered and suggested directing the Code Enforcement and the City staff to research this and then look at the ordinances to see if they need changes. She advised if there is no Code Enforcement case pending and the staff has time to research this issue, such as 90-days with an extension if necessary, then the Commission could learn more about what is under the federal and state laws.

Commissioner Samora agreed to have a mechanism in place in order to analyze each case, but feels that it is a slippery slope not to do any Code Enforcement and suggested researching the issue. He asked how long the process takes to modify an ordinance with public hearings.

City Attorney Wilson advised it would be two public hearings, which would be at least two months, but the Commission needs to explain what they want to do. He explained that it would be difficult for the City to get a Code Enforcement case prohibiting the chickens because of ADA circumstances and advised that he would have to research this further before it is brought up again. He commented that he hates to make law on one unique instance.

Commissioner Rumrell advised that St. Johns County allows only five chickens maximum and would the City have to follow that.

City Attorney Wilson advised that the City makes their own laws and doesn't have to abide by St. Johns County rules. The City has Home Rule. He explained that the best way to deal with this is to have something in the Code to permit this and put restrictions on it to protect the neighbors and ensure that everybody doesn't have a support chicken.

Mayor England made a motion and asked for a roll call vote.

**Motion:** to vacate the Comprehensive Planning and Zoning Board's decision based on the record and the advice of the City Attorney because of the lack of authority, lack of evidence on the record regarding at law. **Moved by** Mayor England, **Seconded by** Commissioner Samora.



Mayor England asked for a roll call vote.

City Clerk called the roll as follows:

MAYOR ENGLAND            YES  
VICE MAYOR KOSTKA        YES  
COMMISSIONER GEORGE    RECUSED  
COMMISSIONER RUMRELL   YES  
COMMISSIONER SAMORA    YES

**Motion passes 4 to 0.**

**Motion:** to give guidance to the City's Code Enforcement to delay any Code Enforcement case on this issue and to give staff and the Code Enforcement Board adequate time to research the issue of reasonable accommodation under federal or state laws for a minimum of 90 days with perhaps an extension. **Moved by** Mayor England.

Commissioner Samora request to give them 120 days due to the change in the City Attorney.

Commissioner Kostka asked to request Building Official Law to develop the additional part of the Code.

Mayor England revised her motion.

**Motion:** to delay Code Enforcement for 120 days to give adequate time for research and to direct City staff to research any changes to our ordinances to accommodate emotional support animals. **Moved by** Mayor England, **Seconded by** Commissioner Samora.

Mayor England asked for a roll call vote.

City Clerk Raddatz called the vote as follows:

MAYOR ENGLAND            YES  
VICE MAYOR KOSTKA        YES  
COMMISSIONER GEORGE    RECUSED  
COMMISSIONER RUMRELL   YES  
COMMISSIONER SAMORA    YES

**Motion passes 4 to 0.**

Mayor England recessed the meeting at 7:19 p.m. and reconvened the meeting at 7:26 p.m.

Mayor England moved on to Item 2.

2. Ordinance 20-01, Public Hearing and Final Reading: Restricting Micromobility Devices in Certain Areas and on Sidewalks (Presenter: James Wilson, City Attorney)

Mayor England introduced Item 2 and asked City Attorney Wilson for a staff report.

City Attorney Wilson advised that the Commission has discussed this issue for a couple of months, and he made some revisions that were requested by the Commission to be done

between first reading and this final reading. He summarized that the City is prohibiting the shared mobility devices from operating on sidewalks and they are restricted to motor vehicle traffic lanes. He explained this description would only apply to business related mobility devices, not other scooters and the City is prohibiting the shared mobility devices from operating in the City limits.

Mayor England asked for Commissioner comments or changes to the ordinance before approving.

Commissioner Samora advised on page 6, Section 19-66, subsection A, he was concerned over the language of (2) that this might be a conflict with the future River to Sea Loop where the paths are going to be eight feet wide and will be shared use paths. He asked if this ordinance accepts those shared use paths, which would be opened to motorized scooters.

City Attorney Wilson explained that the language designates the City Manager the authority for the shared path use. He advised that this is in the future and it is not applicable currently and could be addressed in the future when it comes to pass.

Commissioner Samora asked about page 6, Section 19-66, subsection A, (3) if the River to Sea Loop puts in a 12-foot wide sidewalk.

City Attorney Wilson advised it would be an exception to that language when the River to Sea Loop is done in the future.

Commissioner Samora asked to strike (3) out just in case.

City Attorney advised that would not be a problem if it is in the motion to do so. He then read the title of Ordinance 20-01.

Mayor England opened the Public Hearing. The following addressed the Commission:

Ed Slavin, P.O. Box 3084, St. Augustine, FL, advised the Commission that they did good work on this issue and agrees with the Commission.

Mayor England closed the Public Hearing and asked for any further Commission comments. Being none, Mayor England asked for a motion

**Motion:** to approve Ordinance 20-01 subject to the amendment of removing subparagraph (3) of subparagraph A of Section 19-66. **Moved by** Commissioner George, **Seconded by** Commissioner Kostka. Motion passed unanimously.

Mayor England moved on to Item 3.

3. Ordinance 20-02, First Public Hearing and Second Reading: to Adopt Changes to the Land Development Regulations (Presenter: Brian Law, Building Official)

Mayor England introduced Item 3 and asked Building Official Law for a staff report.

Building Official Law reported that last month the Commission saw the proposed changes from the Land Development Codes and went to the Comprehensive Planning and Zoning Board and recommended the ordinance as written.

Mayor England asked for Commissioner comments. Being none, Mayor England asked City Attorney Wilson to read the title of the ordinance.

City Attorney Wilson read the title of Ordinance 20-02.

Mayor England opened the Public Hearing. Being none, Mayor England closed the Public Hearing and asked for a motion.

**Motion:** to approve Ordinance 20-02. **Moved by** Commissioner George, **Seconded by** Mayor England. Motion passed unanimously.

Mayor England moved on to Item 4.

4. Ordinance 20-03, Public Hearing and Final Reading: to Adopt School Board's Five-Year District Facilities Workplan (Presenter: Max Royle, City Manager)

Mayor England introduced Item 4 and asked City Manager Royle for a staff report.

City Manager Royle advised this comes in front of the Commission every year and explained that by law the City must show support of the School Board's Five-Year District Facility Workplan.

Mayor England asked for Commissioner comments. Being none, City Attorney read the title of Ordinance 20-03.

Mayor England opened the Public Hearing. Being there were no public comments, Mayor England closed the Public Hearing and asked for a motion.

**Motion:** to approve Ordinance 20-03 as read. **Moved by** Commissioner Rumrell, **Seconded by** Commissioner George. Motion passed unanimously.

Mayor England moved on to Item 5.

#### XI. CONSENT

5. Resolution 20-01, Having Canvassing and Certification of Vote-by-Mail Ballots Cast in the March 2020 Presidential Primary Done by the Supervisor of Elections and County Canvassing Board

Mayor England introduced Item 5 and asked City Manager Royle for his report.

City Manager Royle advised that this resolution gives the authority to the Supervisor of Elections and County Canvassing Board for the upcoming election.

Mayor England asked if there were any Commission discussion regarding the Consent Agenda. Being none, Mayor England asked for a motion.

**Motion:** to approve Resolution 20-01. **Moved by** Commissioner George, **Seconded by** Commissioner Rumrell. Motion passed unanimously.

Mayor England moved on to Item 6.

#### XII. OLD BUSINESS

6. Legal Services: Review of Proposed Contract with Paul, Elkind, Branz & Paul of DeLand, Florida, for Legal Services as City Attorney (Presenter: James Wilson, City Attorney)

Mayor England introduced Item 6 and asked City Attorney Wilson for a staff report.

City Attorney Wilson reported he negotiated a new contract with Paul, Elkind, Branz & Paul and the only change they requested was to do 35 hours for the retainer for \$6,000 instead of 40 hours. He advised that the proposed contract is legally sufficient.

Mayor England asked for Commission discussion.

Commissioner George said that they seem to be backtracking by limiting the hours for the retainer. She explained that there were other applicants that were suggesting an hourly rate as opposed to the flat fee that the Commission requested. She commented that she discounted the points regarding the ranking of the applicants when they agreed to the flat rate. She said she was disappointed about the change.

City Attorney Wilson advised that it takes time going to the meetings and staff calls every day. He spoke to the firm about it, but they wanted the change. He commented that it takes him 40 hours, but they might be more efficient and can do the job in 35 hours. He explained that he anticipated changes on the contract when he spoke with them and advised that there are no term limits only a 30-day termination for either party of the contract.

Mayor England advised that the Commission can always renegotiate the terms after a year if the Commission feels they need to so.

Commissioner George advised that Attorney Groot could monitor his hours for a year with the Commission's proposed contract and then change the contract if he needs to after a year.

City Attorney Wilson advised that the Commission has always been responsive to his needs and has never had a problem with his billing. He explained that this firm is a reputable firm and they do a good job.

Commissioner Rumrell advised he reviewed the minutes and on page 6 they agreed to \$175 an hour and agreed to the revised request of the cap of the \$6,000 retainer. He asked about rollover time. He explained that if they don't bill us for time one month for all 40 hours, they could use it on a month that would be more time than 40 hours. He agreed that we need hard data of the time involved to see how much time it takes a month.

Mayor England asked if the Commission wants to go back to the firm to renegotiate.

Commissioner George advised that there was no limit of 40 hours on the retainer and she asked every applicant if they would agree to that, which they said they would. She commented that she would like a one-year cycle to what was agreed to because if they find after tracking the hours that they need more money, they have a 30-day notice to revise it. She suggested that the Commission reject the modification to paragraph B and play a hard bargain with the message that the Commission was negotiating for a flat rate to start out with a new firm and the Commission would be open to modifications when hard data is received.

Mayor England advised that if the attorney is tracking their time, the City may lose out on that.

Commissioner George advised that she doesn't want to lose them, but there were other applicants at the meeting that agreed to the terms provided.

Mayor England asked City Attorney Wilson if he would continue if this contract does not work out.

City Attorney Wilson advised that he would.

Commissioner George suggested approving the contract with the removal the modified language and resend it back to the law firm signed by Mayor England.

Commissioner Kostka advised that changing the terms after-the-fact is disingenuous. She asked who the primary attorney would be.

Commissioner George advised that Attorney Groot would be the primary attorney.

City Attorney Wilson advised that this was the proposal.

Mayor England opened the Public Comments section. The following addressed the Commission:

Ed Slavin, P.O. Box 3084, St. Augustine, FL, agreed with the rejection of the contract and give a counteroffer. He suggested to go with Ralf Brookes, who was the second candidate that the Commission ranked.

Mayor England closed the Public Comments section and asked for any further Commission discussion.

Commissioner Samora asked if it would be in the Commission's scope to give the authority to the Mayor to negotiate the contract. He explained that he hates public negotiations and feels that it is almost impossible to do. He advised that he would not want to go back to the interviewing process again.

City Attorney Wilson advised that Commissioner Samora wants to make that part of the motion, he would let the firm know tomorrow morning and then if the firm rejects the counteroffer the Mayor could negotiate the terms. He advised that he would stay for the duration during the negotiations.

Mayor England agreed to sign the contract with the removal of the changes in Section B and send it back to them. She explained that the firm could start and if they are not happy with the number of hours, the firm can give their 30-days' notice or renegotiate the contract.

Commissioner Kostka asked if the firm does not agree with the contract, does the Commission have to go through the interview process again or can the Commission go to the second ranked firm.

City Attorney Wilson advised that the Commission can go to the second choice or the Commission could revote.

After discussion, Mayor England suggested to remove the changes in Section B and see if the firm will accept it.

Mayor England asked for a motion.

**Motion:** to approve the contract draft as presented subject to the modification of removing the language added to paragraph B's second paragraph starting the reference to see attached Exhibit B for regular scope of work. **Moved by** Commissioner George, **Seconded by** Commissioner Kostka. Motion passed unanimously.

Mayor England moved on to Item 7.

7. Drainage Project to Pipe Alley between 2<sup>nd</sup> and 3<sup>rd</sup> Streets from 2<sup>nd</sup> Avenue to the Sea Oaks Subdivision: Award of Bid to Hassell Co Int of Orange Park, Florida, for \$119,999.00 (Presenter: Bill Tredik, Public Works Director)

Mayor England introduced Item 7 and asked Public Works Director Tredik to give a staff report.

Public Works Director Tredik showed PowerPoint presentation (Exhibit 5) to the Commission. He recommended Hassell Co. Int., LLC, which is the lowest bidder to do the drainage project to the Commission.

Discussion ensued regarding the Public Works Director reviewed the specifications of the contract to make sure that nothing was left out of the contract of change orders will be requested later; staff is using the City's standard contract; has language regarding penalties for any delays; staff checked the firm's references; and staff changing the contract on page 25, Article 3 to 120 days instead of 150 days.

Mayor England opened the Public Comments section. The following addressed the Commission:

Ann Palmquist, 213 10<sup>th</sup> Street, St. Augustine Beach, FL, was concerned over the flooding problems and sea level rise in the area and suggested that the City install outflows and not doing this piece meal.

Mayor England closed the Public Comments section and asked for any further Commission discussion.

Discussion ensued regarding piping having less maintenance than ditches; workers would be able to get into the pipes to clean as necessary; the need for a separation between the houses and ditches for safety reasons; some properties are concerned about their decks being afflicted; and what does the Master Plan have for open ditches.

Mayor England asked for a motion.

**Motion:** to approve the bid as recommended to staff Hassell Co. Int., LLC with correcting typos in the contract. **Moved by** Commissioner George, **Seconded by** Commissioner Kostka. Motion passed unanimously.

Mayor England moved on to Item 8.

8. Ordinance 20-05, First Reading, to Amend Chapter 10 of the City Code re: Garbage and Trash Service (Presenter: Bill Tredik, Public Works Director)

Mayor England introduced Item 8 and asked Public Works Director Tredik for a staff report.

Public Works Director Tredik showed PowerPoint presentation (Exhibit 6) to the Commission. He explained the changes made to the ordinance since the discussion at the January 6<sup>th</sup> Regular Commission meeting. He recommended not keeping the language with non-ad valorem assessments for collection and disposal in this ordinance.

Mayor England asked if the ordinance could be changed to show definitions in Chapter 2 instead of the transient rental's definition in this ordinance so when the definitions change, the Commission would not have to research the full code of ordinances for all the definition changes.

Director Public Works Tredik advised that he could do that.

Mayor England requested to change on page 10, Section 10-4, (1) and (2), to say "either or" have four 32-gallon waste receptacles or two 65-gallon waste receptacles. On page 12, she requested to change the (e) to (f) and on page 16, (e) should be changed from the City's Police Department to Code Enforcement or proper authority of the City.

Commissioner George requested to insert the word "be" before the word constructed on page 8. She advised that on page 17 she wanted to discuss the City purchasing receptacles. She suggested the City provide a decal so the businesses could use the ones they already have.

Discussion ensued regarding the receptacles having to be a certain quality; required special lids so animals cannot get into them; when the business owned receptacle needs replacing, the business would have to replace them with a City receptacle; having consistency with the receptacles; putting decals on cans instead of custom cans being made; having addresses on the cans so people will not take other people's cans; implementing the purchasing of the cans in October; receptacles need to have locking mechanisms on the lids for transient rentals to keep animals out; writing in the ordinance that the receptacle must conform to the minimum requirements and be subject to the Public Works Director approval; and have language for a transition period for businesses using their own cans until the City have them available.

Commissioner Samora asked how many current customers will be affected by the six or more-unit criteria.

Public Works Director Tredik advised he would have to research that.

Finance Director Douylliez advised at last count it was 10 to 15 condominiums that were six or less units.

Commissioner Samora asked how many businesses will be affected with the discontinuation of services by those generating ten 32-gallon receptacles.

Public Works Director Tredik advised four.

Commissioner Samora requested on page 16, Section 10-15 (a), to include transient rental units with the hotels and motels language, since that is a significant change.

Public Works Director Tredik advised that he would make that change.

Mayor England opened the Public Comments section. Being none, Mayor England closed the Public Comments Section and asked City Attorney Wilson to read the title of Ordinance 20-05.

City Attorney read the title of Ordinance 20-05.

Mayor England asked for a motion.

**Motion:** to approve Ordinance 20-05 with the amendments that have be stated including the insertion of the word "be" on page 8, correcting page 12 the labeling of subparagraph "e" to "f", page 16, subparagraph (e) striking the reference to the city police department and inserting instead Code Enforcement, under Section 10-13 (a) on page 16 adding the word "transient rentals" in the list of hotels and motels and removing the reference to the non-ad valorem collection and disposal as recommended by the Public Works Director. **Moved by** Commissioner George, **Seconded by** Commissioner Samora. Motion passed unanimously.

### XIII. NEW BUSINESS

9. Personnel Manual Changes: Consideration of Resolutions re: Additional Holidays, Overtime Pay and Compensation During a Declared Emergency (Presenter: Beverly Raddatz, City Clerk)

Mayor England introduced Item 9 and asked City Clerk Raddatz for a staff report.

City Clerk Raddatz reported that the first resolution, Resolution 20-02, adds Christmas Eve and Good Friday to the holiday listing. She advised that the employees do get a half a day off on Christmas Eve, but as in previous years, most residents or the public think that city hall is closed when St. Johns County and the City of St. Augustine are closed and staff does not have many requests or phone calls on that day. She also advised that it would make the benefits more competitive with neighboring government agencies.

Commissioner Kostka thought it was a good idea because when other offices and banks are closed it hinders employee work but recommended that the City follow the State of Florida holidays since the City is within the State of Florida.

After discussion the Commission agreed to leave the holidays that are proposed in Resolution 20-02; however, the Commission wanted the employees to know that employees can have the opportunity to take vacation days for other religious holidays.

Mayor George asked about Resolution 20-03 regarding exempt employees receiving overtime for declared emergencies.

City Clerk Raddatz advised that the City's Personnel Manual did not have guidelines on what to pay employees during a declared emergency. She explained that she was trying to uniformly follow the Fair Labor Standards Act (FLSA) regarding overtime pay. Currently the employee can receive overtime when taking vacation or compensation time. She requested that we follow the FLSA, which means that the employee would have to work 40 hours a week to get overtime and vacation or compensation time would not count as overtime but would be done as straight time if the employee did not work 40 hours. She explained during a declared emergency and with the City Manager or Chief of Police's authority, employees who work over 40 hours would get overtime. She included exempt employees who work during the emergency because it is mandated by the City. She advised that having a policy or guideline would also help in recovery of the FEMA funds after the emergency.

Mayor England advised that if the employee is exempt then they don't get overtime because it is not mandatory; however, if it is mandatory, then they should get paid overtime.

City Clerk Raddatz advised that it is only during a mandatory declared emergency when the City is closed.

Police Chief Hardwick advised that the Police Department become exempt employees during a declared emergency according to the FLSA. He explained that he managed the employees and sent them home as much as possible, but with three hurricanes in a row, that is difficult. He advised that the Police Department does not have a union because they trust the Commission to do the right thing for the employees.

Commissioner Rumrell advised that when St. Johns County Board of Commissioners declares an emergency then mandatory employees can get overtime, which is reimbursable through FEMA.



Police Chief Hardwick advised that his employees work 12-hour shifts and they will receive overtime if they must complete a report on an accident even though they took vacation during that week because they are subject to special exemptions as sworn police officers.

Finance Director Douylliez advised that federal law says standard employees must work 40 hours a week in order to get overtime. She explained that vacation time, sick time, and compensation time do not constitute hours worked. She advised that staff is trying to make it more standard with federal law. She explained that the City was shut down after the emergency and there were no guidelines that FEMA could go by to reimburse the City.

Police Chief Hardwick advised that when the state and county declares an emergency the City Manager and Police Chief have meetings to decide when to close city hall and they are very careful to wait until the last minute to allow city hall to be closed. After they agree, they close city hall and the employees who are not mandatory leave and the staff according to federal policy must pay the employees because it is out of the control of the employees.

Commissioner George asked to make the language more defined for when city hall is closed.

Mayor England suggested that Resolution 20-03 come back at the March Regular Commission meeting with more defined language.

Mayor England opened the Public Comments section. Being none, Mayor England closed the Public Comments section and asked for any further Commission discussion.

Mayor England asked for a motion.

**Motion:** to approve Resolution 20-02. **Moved by** Mayor England, **Seconded by** Commissioner George. Motion passed unanimously.

Mayor England moved on to Item 10.

10. Ordinance 20-04, to Amend the Land Development Regulations by Establishing Section 5.06.00 for Dune Protection (Presenter: Brian Law, Building Official)

Mayor England introduced Item 10 and asked Building Official Law for a staff report.

Building Official Law reported that with the adoption of the Comprehensive Plan it has given staff direction to amend the Land Development Regulations. He explained that under Section 5.06.00 of the Comprehensive Plan it requires policies to be written and included that the City will not approve nor recommend development that modifies the undisturbed areas of the coastal dune system of the City of St. Augustine Beach. He inserted nor recommend and coastal. He asked for assistance from Florida Wildlife for technical assistance so language can be updated in Section 5.06.00.

Commissioner George asked what the intent means for undisturbed areas.

Building Official Law advised that if an individual modified a dune it would be disturbed but explained that once the modification was done then it would be undisturbed at that point.

Commissioner George asked if the word undisturbed could be removed.

Building Official Law advised that he would. He took the language of what the Comprehensive Plan said and moved it over.

Mayor England advised that Sea Colony or other areas that have dunes that are developed subdivisions explained that those are disturbed, so the Commission wouldn't want this to go that far.

Commissioner George advised that an applicant could come forward with a variance if there is a reason for it.

Building Official Law explained that an applicant would submit an application with an intent to modify a coastal dune, which requires a DEP permit. He commented with the Comprehensive Plan in place and the modified building codes it would be an automatic rejection for the Building and Zoning Department and give a zoning verification letter based on the Comprehensive Plan and the Land Development Code. Then the applicant could apply for a variance and the Comprehensive Building and Zoning Board could decide based on the facts of the case and if they still were not happy, they could appeal it to the circuit court.

Commissioner Samora advised that there are other areas west of A1A Beach Boulevard that have subdivisions next to Hammock Dunes Park that have the same dunes topography. Whispering Oaks homes are cut right into the dunes and they would be affected too.

Mayor England advised that there must be a way to handle a dune if a tree needs to come down in order to build a reasonable home.

Building Official Law advised that was why he included the word coastal.

Mayor England asked to create a definition of coastal dune.

Building Official Law could create a definition and define how far into the City this goes.

City Attorney Wilson asked Building Official Law if he wanted to define the coastal construction control line.

Building Official Law explained the coastal construction control line.

Commissioner George suggested language of ocean fronting coastal dune system. She also suggested coastal dunes system immediately adjacent to the public beach in the City of St. Augustine Beach.

Building Official Law agreed and will modify the language of the ordinance.

Commissioner George asked if this would affect beach renourishment.

Building Official Law advised that he thought about that and would meet with Fish and Wildlife to discuss that aspect.

Commissioner George asked to include in the ordinance the language "with exception to government work."

Building Official Law agreed to put language of beach renourishment under exceptions.

Mayor England opened the Public Comments section. The following addressed the Commission:

Ed Slavin, P.O. Box 3084, St. Augustine, FL, suggested that the Commission contact Michael Shirley who is a scientist and would help draft the ordinance.

Mayor England closed the Public Comments section and asked for any further Commission discussion.

After request from Mayor England, City Attorney Wilson read the title of Ordinance 20-04.

Mayor England asked for a motion.

**Motion:** to approve Ordinance 20-04 with the following amendments: 1) removing the word “undisturbed”, 2) adding language defining the coastal dune system as being immediately adjacent to the public beach, 3) identifying exceptions including nourishment work. **Moved by** Commissioner George, **Seconded by** Commissioner Rumrell. Motion passed unanimously.

Mayor England moved on to Item XIV, Staff Comments.

11. Changes to Zoning and Building Permit Fess: Consideration of Resolution 20-04 to Adopt (Presenter: Brian Law, Building Official)

This Item was rescheduled to March 2, 2020 at 6:00 p.m.

## VII. PRESENTATIONS

- B. Presentation by Mayor Margaret England of Plaque to Mr. James L. Wilson for Four Years of Service to the City as Its City Attorney

Mayor England presented City Attorney Wilson with a plaque for his four years of service. She thanked City Attorney Wilson for being so generous with his time.

City Attorney Wilson thanked the Commission and commented that it has been a pleasure to work with the Commission and it has been fun.

## XIV. STAFF COMMENTS

Mayor England asked City Manager Royle to start staff comments.

Police Chief Hardwick advised he had no comments.

Finance Director Douylliez advised that interviews for the position of Communications and Events Coordinator were complete and an offer has been made so we may have an employee on staff shortly.

City Clerk Raddatz advised that she has been preparing the Request for Proposal (RFP) for the City’s insurances. She commented after speaking with other cities, they advised not to put the Request for Proposals (RFP) for medical and property insurances together in case there is a better bid for medical. Also, she remarked that medical insurance cannot be quoted before July 2020, but the property, auto, etc. RFP would be sent in March.

Public Works Director Tredik advised he submitted the Land and Water Conservation Program for Ocean Hammock Park and will submit for the district wide Cost Sharing Program for the weir project and will be bringing the amber street lighting project back to the Commission next month. He advised that he is still working out a few details before he brings it back.

Building Official Law advised that Jennifer Thompson, Permit Technician, is going to the Florida Association of Code Enforcement conference for training and will test next Saturday for her certification as a Code Enforcement Officer. She is also testing for permit technician certification before that.

City Manager Royle asked for a clarification for the topic of parking as it is not paid parking.

Commissioner Kostka advised that it would be for other parking issues that have not been addressed.

Mayor England asked Commissioner Kostka to get with staff for agenda items.

Mayor England asked if there were any Commissioner comments before adjournment. Being none, Mayor England moved on to Item XV, Adjournment.

XV. ADJOURNMENT

Mayor England asked for a motion to adjourn.

**Motion:** to adjourn. **Moved by** Commissioner George, **Seconded by** Commissioner Kostka. Motion passed unanimously.

Mayor George adjourned the meeting at 9:29 p.m.



Margaret England, Mayor

ATTEST:



Beverly Raddatz, City Clerk