


MEMORANDUM

TO: Mayor England
Vice Mayor Kostka
Commissioner George
Commissioner Samora
Commissioner Rumrell

FROM: Max Royle, City Manager 

DATE: March 12, 2020

SUBJECT: Ordinance 20-04, Second Public Hearing and Final Reading: to Amend the Land Development Regulations by Establishing Section 5.06.00 for Dune Protection

BACKGROUND

This Ordinance came from two amendments, CC.1.2.9 and CC.1.2.10, to the Conservation Coastal Management Element of the Comprehensive Plan to provide protection for coastal dunes. You reviewed the Ordinance at your February 3rd meeting, when you passed it on first reading.

The Comprehensive Planning and Zoning Board reviewed the Ordinance at its February 18, 2020, meeting, and made the following recommendations:

- That the Commission approve the Ordinance.
- That dune walkovers, sand fencing, beach renourishment, and sea oats plantings be listed in the Ordinance as exceptions.
- That the Commission consider the suggestions from the Sustainability and Environmental Planning Advisory Committee.

At your March 2nd meeting, you held a public hearing on Ordinance 20-04 and passed it on first reading.

ATTACHMENTS

Attached for your review is the following information:

- a. Pages 1-2. The minutes of the part of your February 3rd meeting when you discussed Ordinance 20-04 and passed it on first reading.
- b. Page 3, a memo from the Building Department's Executive Assistant, Ms. Bonnie Miller, in which she provides the recommendations made by the Planning Board at its February 18th meeting.
- c. Page 4, the suggestions from SEPAC.
- d. Page 5, a memo from the Building Official about the link between Ordinance 20-04 and two policies in the Comprehensive Plan.
- e. Page 6, a revised draft of Ordinance 20-04 that includes the Planning Board's recommendations.
- f. Pages 7-8, the minutes of that part of your March 2nd meeting when you discussed the Ordinance.

ACTION REQUESTED

It is that you hold the second public hearing and approve Ordinance 20-04 on its third and final reading.

9. 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 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.

MEMO

To: Max Royle, City Manager
From: Bonnie Miller, Executive Assistant
Subject: Ordinance No. 20-04
Date: Wednesday, February 19, 2020

Please be advised at its regular monthly meeting held Tuesday, February 18, 2020, the City of St. Augustine Beach Comprehensive Planning and Zoning Board voted unanimously to recommend the City Commission approve passage of Ordinance No. 20-04 on final reading.

Passed on first reading by the City Commission at its regular monthly meeting held Tuesday, February 3, 2020, this proposed ordinance amends Article V of the City of St. Augustine Beach Land Development Regulations to establish Section 5.06.01, Protection of Dune Systems, to prevent the modification of undisturbed areas of the dune system with the exception of beach re-nourishments and the planting of sea oats.

The motion to recommend the City Commission approve passage of Ordinance No. 20-04 was made by Mr. Mitherz, with the addition of dune walkovers and sand fencing listed as exceptions along with beach re-nourishments and the planting of sea oats, and including for the Commission's consideration the suggestions made by the City's Sustainability & Environmental Planning Advisory Committee (SEPAC) emailed to staff by SEPAC Chairperson Sandra Krempasky on February 17, 2020. Mr. Mitherz's motion was seconded by Ms. Odom and passed 5-0 by the Board by unanimous voice-vote.

Along with the Planning and Zoning Board's addition of dune walkovers and sand fencing to the exceptions regarding modification of undisturbed areas of the dune system, Building Department staff has added to the list of exceptions "other exceptions approved by the Comprehensive Planning and Zoning Board" to the draft of Ordinance No. 20-04.

Bonnie Miller

From: Sandra Krempasky <sandra.krempasky@gmail.com>
Sent: Monday, February 17, 2020 9:50 AM
To: Beverly Raddatz; Bonnie Miller
Subject: Review of Dune Protection Ordinance

Beverly and Bonnie:

Good morning! Could you please forward these suggestions to the Commissioners and members of the PZB? Thank you.

Commissioners and PZB Members:

At our February 12th meeting, SEPAC discussed the strength of the proposed ordinance to further protect the City's dunes. We feel that the ordinance should include the following:

A statement of statutory authority;

A statement of purpose and intent, including support of the Comprehensive Plan Policy for protecting our natural resources and coastal wildlife habitats;

A statement of the flood protection provided by the coastal dune system;

This statement should reference the threats of ocean/wave action flooding and how inland properties would be affected by storm surge, wave wash over and wave scouring, and the unique nature and risks to our floodplain geography

A statement of the geographical area being protected;

This statement should include the primary, secondary and tertiary dune system. Consideration should be given to the natural migration of the coastal dune system. Consider identifying this area by easterly boundary of ocean high water mark and the westerly boundary as the Coastal Construction Control Line.

Addition of definitions and critical technical terms to Article II of the LDRs, if necessary.

Thank you for this consideration.

Sandra Krempasky
on behalf SEPAC

City of St. Augustine Beach Building and Zoning Department

Agenda Item # 10

2200 A1A SOUTH ST. AUGUSTINE BEACH, FLORIDA 32080

WWW.STAUGBECH.COM

BLDG. & ZONING (904) 471-8758 FAX (904) 471-4470

Meeting Date 2-3-20

To: Max Royle
From: Brian Law
CC:
Date: 1-15-2020
Re: Proposed LDR changes regarding Dune protection

Mr. Royle

The Building and Zoning Department is proposing this ordinance regarding modification of coastal dunes in the City of St. Augustine Beach for review by you and the City Commission. This ordinance is a result of the newly adopted comprehensive plan sections below.

CC 1.2.9 The City shall not permit development that modifies undisturbed areas of the dune system.

CC 1.2.10 The City shall amend the Land Development Regulations to add protections to preserve the dunes within the city limits.

Sincerely

Brian Law

Brian Law CBO, CFM, MCP
Director of Building and Zoning

ORDINANCE NO. 20-04

AN ORDINANCE OF THE CITY OF ST. AUGUSTINE BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT CODES OF THE CITY AS CONTAINED WITHIN ARTICLE V. RELATING TO RESOURCE PROTECTION STANDARDS; ESTABLISHING SECTION 5.06.00 PROTECTION OF DUNE SYSTEM BY PREVENTING THE MODIFICATION OF UNDISTURBED AREAS OF THE DUNE SYSTEM.; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION, AND PROVIDING FOR AN EFFECTIVE DATE.

BE IT ENACTED BY THE CITY COMMISSION OF THE CITY OF ST. AUGUSTINE BEACH FLORIDA:

Section 1 Article V Section 5.06.00 Protection of Dune Systems of the Land Development Regulations for the City of St. Augustine Beach, Florida is hereby created, which shall read as follows:

Sec. 5.06.00 Protection of Dune Systems

Sec 5.06.01. Generally

- A. The City shall not permit nor recommend development that modifies areas of the coastal dune system immediately adjacent to the public beach in the City of St. Augustine Beach.
1. Exceptions:
- a. Beach re-nourishments
 - b. Planting of sea oats
 - c. Dune walkovers
 - d. Sand Fencing
 - e. Other exceptions approved by the Comprehensive Planning and Zoning Board

Section 2 SEVERABILITY. It is the intent of the City Commission of the City of St. Augustine Beach, and is hereby provided, that if any section, subsection, sentence, clause, phrase or provision of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionally shall not be construed as to render invalid or unconstitutional the remaining provisions of this Ordinance.

Section 3 CODIFICATION. This ordinance shall be incorporated into the Code of the City of St. Augustine Beach and a copy hereof shall be maintained in the office of the City Clerk.

Section 4 EFFECTIVE DATE. This ordinance shall take effect upon its being adopted.

PASSED by the City Commission of the City of St. Augustine Beach, Florida upon Third Reading this 6th day of April 2020

CITY COMMISSION OF THE CITY OF ST. AUGUSTINE BEACH

ATTEST: _____

BY: _____

City Manager, Max Royle

Margaret England, Mayor

First Reading: 2/3/2020 Second Reading: 3-2-2020 Third Reading: _____

City of St. Augustine Beach

Land Development Code

2. Ordinance 20-04, First Public Hearing and Second Reading: to Amend the Land Development Regulations by Establishing Section 5.06.00 for Dune Protection (Presenter: Brian Law, Building Official)

Mayor England introduced Item 2 and asked Building Official Law for a staff report.

Building Official Law advised that the Comprehensive Planning and Zoning Board was informed about this ordinance and made great suggestions. He included the dune walkovers because they were part of the long-range plans. The Comprehensive Planning and Zoning Board recommended sand fencing, which he said was a great suggestion. He advised that he added language that included other suggestions given by the Comprehensive Planning and Zoning Board because he explained he can't anticipate every scenario in the future of the City. He advised that it should be in the Comprehensive Planning and Zoning Board's court by regulating anything outside of the average.

Vice Mayor Kostka agreed.

Mayor England received a memo from SEPAC asking for a whereas to be added on the purpose, statutory authority, intent, and statement of the coastal dunes system.

Building Official Law advised that that language would be applicable to the Comprehensive Plan or adopting a resolution, but not in the Land Development Regulations because that only deals with codes.

City Attorney Wilson suggested it be added to the Comprehensive Plan.

Building Official Law advised that a statement from the City adopted by resolution would be the appropriate mechanism. He suggested reviewing the Comprehensive Plan and adding the language to that this month at the state level.

Mayor England commented that when someone challenges an ordinance or a purpose of the ordinance sometimes it makes the ordinance clearer of why it was adopted.

City Attorney Wilson advised that the code must stand on its own merit, and it would not be codified.

Mayor England advised that it will be part of the minutes and in the record.

Building Official Law advised that people can apply for a variance to the code and can appeal his decision if needed.

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

Craig Thomson, 6 D Street, St. Augustine Beach, FL, showed Exhibit 4 and explained the amount of erosion of the dunes during hurricanes; requested higher standards than the Department of Environmental Protection (DEP); and advised for the safety and welfare of the public regarding the dunes needs to have more specific reasons in Article 5 of the Land Development Regulations and maybe a planner could help in that language.

Ed Slavin, P.O. Box 3084, St. Augustine Beach, FL, agreed with Mr. Thomson and does not believe in DEP and believes that the City could have a stronger language in the ordinance. He asked to table this item and consult with the faculty of the University of Florida Law School.

Mayor England closed the Public Comments section and asked for any further Commission discussion. Being none, Mayor England asked City Attorney Wilson to read the title of the ordinance.

City Attorney Wilson read the title of Ordinance 20-04.

Mayor England asked for a motion.

Motion: to approve Ordinance 20-04. **Moved by** Mayor England, **Seconded by** Commissioner Samora. Motion passed unanimously.

Vice Mayor Kostka advised that she would like to have the language stronger and that the Commission makes this a priority for future meetings.

It was the consensus of the Commission to have this brought backup at the May Regular Commission meeting by the new City Attorney.