



## MINUTES

REGULAR CITY COMMISSION MEETING  
MONDAY, SEPTEMBER 14, 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 6:25 p.m.

II. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was done previously at the Budget meeting.

III. ROLL CALL

Roll call was done at the Budget meeting.

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

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

IV. APPROVAL OF MINUTES OF THE SPECIAL COMMISSION MEETING JULY 27, 2020 AND REGULAR COMMISSION MEETING OF AUGUST 3, 2020.

Mayor England asked if there were any changes to the minutes. Being none, Mayor England asked for a motion.

**Motion:** to approve the Special Commission meeting of July 27, 2020 and Regular Commission meeting August 3, 2020 minutes as printed. **Moved by** Commissioner Rumrell, **Seconded by** Mayor England.

Roll Call was as followed:

Mayor England	Yes
Vice Mayor Kostka	Yes
Commissioner George	Yes
Commissioner Rumrell	Yes
Commissioner Samora	Yes

Motion passed unanimously.

Mayor England moved on to Item V.

V. ADDITIONS OR DELETIONS OF THE AGENDA

Mayor England asked if there were any additions or deletions of the agenda. Being none, Mayor England moved to Item VI.

City Manager advised that Item 3 reappointments of Hester Longstreet and Dennis King, not Chris Pranis as stated on the agenda. Item 1 the appeal is by Sonia Kulyk, not Sandra Kulyk.

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. Being none, Mayor England moved to Presentations, Item VII. Being none, Mayor England moved on to Item VII.

VII. PRESENTATIONS

- A. Interview of Mr. Scott Andrew Babbitt for Position of Alternate on the Comprehensive Planning and Zoning Board.

Mayor England introduced Item VII and asked Mr. Scott Babbitt to come to the podium.

Mr. Babbitt, 70 Atlantic Oaks Circle, St. Augustine Beach, FL, advised he runs his own realty business and he asked Commissioner Samora how he could be more involved with the City and Commissioner Samora that there were some seats opened on the Comprehensive Planning and Zoning Board.

Mayor England advised that it is a good place to start as a member of the Comprehensive Planning and Zoning Board because that is where most of the Commission members came from.

Commissioner George asked if Mr. Babbitt understood that if he had any conflict of interests when he is selling properties that he would have to recusing himself. She also advised that he needs to familiarize himself with the City Charter, Codes of Ordinances, etc. She suggested to ask the City Attorney or City Manager for more information.

Commissioner Rumrell advised John Brooks gave a great review of Mr. Babbitt, so he is very satisfied with this candidate.

Commissioner Samora thanked Mr. Babbitt for wanting to do community service.

Vice Mayor Kostka advised that she applauded his interest in the community and the working of the City.

Mayor England advised Mr. Babbitt to read up on the Sunshine Laws, Quasi-judicial hearings, and public record laws, which are extremely important. She advised that fairness is important.

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

**Motion:** to approve Scott Andrew Babbitt as Alternate of the Comprehensive Planning and Zoning Board. **Moved by** Mayor England, **Seconded by** Vice Mayor Kostka.

Roll Call was as followed:

Commissioner George	Yes
Commissioner Rumrell	Yes
Commissioner Samora	Yes
Mayor England	Yes
Vice Mayor Kostka	Yes

**Motion passes unanimously.**

Mayor England moved on to Item VIII.

#### VIII. PUBLIC COMMENTS

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

Nicolas Binder, 232 Big Magnolia Court, St. Augustine Beach, FL, encouraged the City to start looking for a new Police Chief; voters do not want to lose the Police Department; and asked to please consider the staffing for the Police Chief position in-house.

Ken Champagne, 17 Sandpiper Drive, St. Augustine Beach, FL, said he email all five Commissioners regarding the lack of body cameras. He met with Police Chief and encouraged the use of body camera for Police Officers. He wanted police protections, protection for the public and for individuals that the police may encounter. He did not want lawsuits that the residents must pay for. He asked for police officers to have psychology training as a requirement.

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

#### IX. COMMISSIONER COMMENTS

Commissioner Rumrell congratulated Police Chief Hardwick on winning his primary election. He advised that Finance Director Douylliez did a great job on the budget as well as the other staff involved.

Commissioner George had no comments.

Commissioner Samora had no comments.

Mayor England commented that she did meetings electronically met for a couple of meeting with the North Florida Transportation Planning Organization. She would put their agenda in the Commissioner's mailboxes. She asked for an update on the electronic charging stations.

Public Works Director Tredik advised that the stations should go in within the next few weeks.

Mayor England moved on to Item 1.

#### X. PUBLIC HEARINGS

1. Appeal of Comprehensive Planning and Zoning Board's Decision to Grant Post-Permit Modifications to Oceans Thirteen, 12 13<sup>th</sup> Street, Ms. Sandra Kulyk, Appellant: (Presenter: Brian Law, Building Official)

Mayor England introduced Item 1 and asked Building Official Law for a staff report.

City Attorney Taylor announced that this a quasi-judicial hearing and a separate meeting.

Mayor England advised that she would asked for City Attorney Taylor to set the rules of the quasi-judicial proceedings once Building Official Law's report is finished.

Building Official Law advised in November 2017 the Comprehensive Planning and Zoning Board approved a mixed-use building along the Boulevard. The building is two units downstairs and two residential units upstairs. According to your packet, the Commission can see the history of the building and what was approved by the Comprehensive Planning and Zoning Board, which was a proposed permit change. He explained that he was out on his walk and said there was a large deck being constructed. He informed the applicant / contractor, Tom Marsh, that they were not in compliance with their mixed-use development order and to stop construction on the deck. Mr. Marsh was in the audience. He explained the procedure he did and scheduled a meeting with Mr. Marsh. He explained at that time there was a change in the new handicapped parking converting four parking spaces on the south side of the property. The information that was made available was from the Public Works Director and St. Johns County Fire Department. Fire Department had no objection. The Public Works Director asked for landscaping, which the Comprehensive Planning and Zoning Board also asked for the applicant to go in front of the SEPAC Board if they can convene. The applicant for the appeal was filed and were advised that they could not appeal the building only the decision of the Comprehensive Planning and Zoning Board and demonstrate where they errored and at that point he turned it over to City Attorney Taylor. He advised that any technical questions of the building, he could address.

Mayor England asked City Attorney Taylor to give the Commission direction on the nature of the appeal and how to proceed with what can be considered at this hearing. She asked City Attorney Taylor to interrupt if something is not allowed in the record.

City Attorney Taylor announced that this is a quasi-judicial proceeding. He explained that in this meeting the Commission acts as judges. He informed Mayor England to gavel when the proceedings start and asked each Commissioner to give any ex parte communications that were done regarding the property and whether any Commissioner has done a visit to the property. He advised that it is proper for the Commission to communicate and visit the area, but it needs to be disclosed. After that, the City Clerk will swear in any witnesses, then staff will give their presentations, then the applicant will have time to speak, then there will be public comments and a rebuttal from the other side and then Mayor England will close the hearing and there will be a vote on whether to approve the Comprehensive Planning and Zoning Board's opinion, reverse the opinion, to modify the decision, or to send it back to the Comprehensive Planning and Zoning Board and give them some direction. He said that the standard as judges that the Commission is whether or not the Comprehensive Planning and Zoning Board relied on competence of substantial evidence. He explained that the Commission is not allowed to reweigh any evidence and can only look at evidence that the Comprehensive Planning and Zoning Board members used. No new evidence is allowed. He explained that the Commission needs to decide whether the Comprehensive Planning and Zoning Board used reasonable construction of the evidence that supports their opinion. He explained that the Commission is only here to decide whether or not they made a mistake.

Mayor England opened the hearing with her gavel and asked each Commissioner if they visited the site or talked with the appellant.

Commissioner Samora advised that he has driven by the site to familiarize himself with it but has not had any conversations with the appellant. He explained that he read the appellant's emails, which he felt that there was no new information in them.

Vice Mayor Kostka advised she drove past the property to familiarize herself with the property and read the appellant's emails.

Commissioner George advised that all context has been through emails, which are part of the City's server.

Commissioner Rumrell explained that he is familiar with the site and has spoken to Sonia Kulyk only because the other party has not reached out to him.

Mayor England advised that has driven by the property and via assured the appellant that she would read all the material and all the minutes, which she has done.

City Attorney Taylor advised that next the City Clerk needs to add anything she received to the record and swear in the witnesses.

City Clerk Raddatz asked anyone who wanted to speak regarding this issue, please stand and raise their right hand. She then swore in the witnesses.

City Attorney Taylor asked staff if they had any more information.

Building Official Law advised that he could answer any other technical questions, but could not speak much about the decision of the Comprehensive Planning and Zoning Board because he was not present, but the Chair of the Comprehensive Planning and Zoning Board is present and would like to address the Commission.

Mayor England advised if it was appropriate to have the Chair of the Comprehensive Planning and Zoning Board to speak.

City Attorney Taylor advised yes; he is part of staff.

Mayor England asked after staff gives testimony would she call on the appellant and then after the appellant call for a rebuttal from staff.

City Attorney Taylor advised yes.

City Clerk Raddatz swore in Kevin Kincaid, Chair of the Comprehensive Planning and Zoning Board.

Kevin Kincaid, 6 11<sup>th</sup> Street, St. Augustine Beach, FL, advised that he was on the Board in November of 2017. There was considerable discussion regarding the property and opposition to it, but it was carefully evaluation and given the go ahead based on recommendations of the plan in 2017. This came back to the Board in July 2020 because of the construction that was being done outside of the permit according to Building Official Law. Building Official Law put a stop work order on the property. The Board received a post permit modification plan to make changes to the building and the structure. He explained that at that time the Board could approve the request, deny the request, or approve the requests with recommendations or conditions. The Board looked at the benefits to the citizens of St. Augustine Beach with the modifications that were being asked for. The modifications were mainly to do with the handicap accessibility, which the original design did not have. It required a ramp to go back further and shoulder underneath that raised it up to the building. He advised that the original plan was not going to work. If the Board denied the request would not work and tearing the building down was not an option. To build the building as it was originally drafted seem punitive and did not help anyone. The Board made a number of modifications, such as changing the deck, include additional buffers, incorporate a new design to have more parking

spaces to improve the runoff, include more landscaping, made more aesthetically pleasing on the Boulevard. The Board didn't find any value in denying the request and there was support to approve the plans as submitted. There was some consternation during the hearing about punitive measures and felt that the Board was not in a position to administer punishment.

Building Official Law advised that the applicant did pay a double permit fee and penalties with the approval of the Board.

Mr. Kincaid advised that there was no mechanism to charge penalties and believed that the Board's decision was well thought out. The approval made it possible for the building to move forward and complete the building that better serves the citizens and handicap population in the City.

Mayor England asked the appellant to come to the podium.

Allen Richman, 103 13<sup>th</sup> Street, St. Augustine Beach, FL, received a letter from City Manager Max Royle, which was imposing. He advised they tried to hire an attorney, but none of the attorneys would take the case. He explained that the contractor moved the one handicap parking spot from 13<sup>th</sup> Street to four parking spots and covered one thousand feet of permeable ground with a pad that is too small for four cars. He explained that he was glad they reduced the height of the building by one story, all two feet of it, but on the other end, he put seven feet of fill on the bottom. He advised that he did not think anyone has measured the building from the street, certainly not the Building Department. The original building permit says "shall" on the permit and all the plans had to be adhere to strictly and advised if the contractor did not, the permit shall be revoked. He advised that the Board did not have the lead way to make their decision. He then asked Sonia Kulyk finish the presentation.

Sonia Kulyk, 114 13<sup>th</sup> Street, St. Augustine Beach, FL, she advised that Mr. Richman and her put a lot of effort in this appeal. She explained that the parking was the second part of the request for post permit modification, which was a reconfiguration of the parking spaces. The Board discussed substantially the parking and the appeal on July 21, 2020 Board meeting. She clarified that the appeal that Mr. Richman and she filed was against the Board, not the builder. She advised that they are private citizens, just as the Board are and are not here to confront them in anyway. Her issue is the way the Board handled and granted the request for post permit modifications. The stated interest that we have in this specific case is on our appeal application. As residents of St. Augustine Beach, they are concerned of the continuous blatant disregard of following the codes. The post permit modifications in front of the Board on July 21, 2020 was a result of self-inflicted complications and hardships. The answer to the next item on the application was the specific error alleged to be made in this case was a three-page letter that the Commission saw. We have been instructed to only hear what was discussed at the July 21, 2020 Board meeting. She added that herself, Mr. Richman, and several of the neighbors have been following this project since it first appeared on the Board's docket in 2017. She advised that they have spoken to the Board, the Commission, and directly to Building Official Law and sent numerous emails regarding this building in various stages of construction. The feeling is that this mixed-use structure with the parking requirement would not fit on this site. The western boundary is 93 feet along the Boulevard and front to back it measures on 48.8 feet at which point there is another exiting structure in place. She advised that the lot is essentially smaller than a standard beach lot. The builders requested to use the City's right-of-way for four parking spots to satisfy the mixed-use requirement of 12 parking spots plus one handicap space. The original permit granted on November 2017 stated that

all the necessary parking has to be within the parking boundaries, with the exception of one handicap parking spot that would be permitted on 13<sup>th</sup> Street. The drawings that were submitted and approved on November 2017 showed that clearly. The Board was given three sets of drawings to review for the July meeting. The plans that were approved on November 2017, new plans that were drawn on February 4, 2019, and the most recent of June 2020. On the February 2019 drawings it showed four parking spots on 13<sup>th</sup> Street and at this point the builder had not submitted the plans for approval, as Building Official Law stated at the Board meeting minutes of April 2019. She advised that the drawings were submitted on April 8, 2019. She explained that Building Official Law stated at the April 2019 Board meeting that the Board approved the project on November 2017. The contractor was currently addressing issues based on comments from the Building Department, but the building must match the original design and plans submitted to the Board and comply with the mixed-use ordinances. She questioned the Commission what the parking configuration on the building plans under review between April 2019 and August 2019 was, before they even broke ground for the building.

Mayor England advised that the Commission can only hear about this case.

Ms. Kulyk advised that she just wanted to know how the parking all of a sudden got to 13<sup>th</sup> Street when it was not supposed to be on 13<sup>th</sup> Street given the chain of events. The plans were made to in 2017 regarding parking and evaluation and that would have been the time the builder should have been required to appear in front of the Comprehensive Planning and Zoning Board for approval. The documents in the packet seem likely that building proceeded to be constructed with four parking spaces on 13<sup>th</sup> Street and not until this past July, with the building almost fully built, that the builder came before the Comprehensive Planning and Zoning Board and requested this modification. The four Board members present at the July meeting were there in 2017. Two Board members spoke up immediately about the parking and remembered specifically that there was only one handicap parking space was permitted on 13<sup>th</sup> Street with all the others needing to be on 14<sup>th</sup> Lane as permitted. The builder had many reasons that the parking spaces needed to be on 13<sup>th</sup> Street including what was stated on the post modification request "reconfiguration of parking is needed to accommodate the staircases not shown accurately on the original site plan." The reality however the builder plan since 2019 to use the City's right-of-way to make the required parking. The second request was to make a 1100 square feet deck, which the builder had already constructed without a permit. This ran along the front of the building along A1A Beach Boulevard. She explained that Building Official Law noticed the very large deck and put a stop work order on the project and told the builder that he needed to appear before the Comprehensive Planning and Zoning Board to request a post modification permit. She advised that the builder did something illegal per Mr. Law. This was a direct violation of Chapter 1 of the Florida Building Code and also in violation of the 2017 permit, which stated that a violation of the conditions above with reference to the approved plans shall void the approval granted herein. During the Board meeting there was no mention of the code violation or reference to fines or penalties or even a reprimand for the infractions. So from a private citizens point of view, I will restate what was said in the appeal that the message to developers is saying submit your plans, make any modifications that the builders want and hopefully no one will notice, but if someone does just apply for a post modification permit and pay a \$300 fee and the builder will be good to go. A similar case came in front of the Commission in 2017, which involved Mayor Rich O'Brien and he was found guilty of code violations and paid \$25,000 in addition

to making modifications to the building. She hoped this would serve as presence in guiding the Commission's decision.

City Attorney Taylor advised that the builder now could do a rebuttal.

Tom Marsh advised that he did not think he would have to speak so he did not get sworn in.

City Clerk Raddatz sworn in Tom Marsh.

Tom Marsh, Palmetto Builders, 22 Soto Street, St. Augustine, FL, explained that he worked with Building Official Law and Public Works Director Tredik on deck that they had built, which would replace a concrete ADA access to the front of the building. He advised that this would be disallowed access to the front of the building. The owner asked if the builder could substitute the concrete for wood, which they started to do and found that the concrete section on the original plan did not allow ADA to get around the structural columns in the building. It was at that point that Building Official Law confronted him about the deck and the builder explained the reason for it. He worked with Public Works Director Tredik and discussed how to address existing issues and then implemented their requests, which was approved by the Commission for the necessary permits to make it happen. He advised that he feels that the appearance of it is good and feel that they tried to do their best in following the directions given to them. He said if the Commission needed anything, he is here to answer them.

Mayor England asked Mr. Marsh if he understood now that any changes to the site needs to be approved prior to construction.

Mr. Marsh advised yes.

Commissioner George asked if the parking is on the north side of the lot.

Mr. Marsh advised that the proposed parking would be at the rear of duplex will come out on 14<sup>th</sup> Lane.

Mayor England clarified by saying the parking that is on the north side of lot on 14<sup>th</sup> Lane and asked if that all within the property line. She advised that that was on the plan that she has.

Commissioner George advised yes, that was her question. She explained that it appears that the parking is in the lot boundaries and it spills over to the right-of-way.

Mr. Marsh advised yes. The parking on the north side is contained within and behind the right-of-way property line so it is within the property boundaries on 14<sup>th</sup> Lane on the north side.

Commissioner George thanked Mr. Marsh.

Commissioner Rumrell had no questions.

Mayor England advised that the plan that was presented on the July 21<sup>st</sup> meeting was the latest and most accurate plan.

Mr. Marsh advised yes.

City Attorney Taylor advised that the next step would be to see if any Commissioners have questions for the appellant.

Mayor England asked if any Commissioners have any questions for the appellant.

Commissioner Rumrell advised he had no questions.

Commissioner George asked the appellant what the issue is with the decision of the Comprehensive Planning and Zoning Board made limited to the after-the-fact permit.

Mayor England asked Ms. Kulyk to the podium and specify what the error was and what the appellant is basing the appeal on based on the July 21<sup>st</sup> hearing.

Ms. Kulyk advised during the meeting the builders made light of the fact that they were co-opting for parking spots that belonged to the City and they made it sound like there were already two parking spots there and they were just swapping them out for another two parking spots. They played down the fact that they were told in no uncertain terms when they first applied for their permit that there was no parking permitted except for one handicap parking space on 13<sup>th</sup> Street. She advised that the deck proceeded without any ramifications. She said if she built something in her yard and someone drives by and sees she does not have a permit; she is guessing she would be fined. She advised that there are fines and reprimands for those who break the law. She advised according to Building Official Law it was a direct violation of the building code Chapter 1, so there should have been some discussion or an acknowledgement at the Comprehensive Planning and Zoning Board that what they did was wrong and should be corrected and should not be condoned. She said that they let the builder make the modifications and did not treat it like an infraction at all and said it does not look right. Those are the two issues the appellants had a problem with.

Commissioner George asked which four parking spots was the appellant objecting to.

Ms. Kulyk advised that those four parking spots are in the right-of-way and not on the property. She said that 10% of the four parking spots are on the property and the rest are on the right-of-way on 13<sup>th</sup> Street.

Commissioner George asked the four parking spots on 13<sup>th</sup> Street is referring to the four parking spots on the original plan that would have been on the left corner of the property.

Ms. Kulyk explained that the duplex down the street was grandfathered in on their parking on 13<sup>th</sup> Street. She was afraid that the new construction parking spots that the builder co-opted from the City was originally just a slab that would fit one handicap parking spot and now the builder made it into four parking spots as they reconfigured the property for whatever reason and could not put all the property on 14<sup>th</sup> Lane as was agreed to. She advised that those four parking spots are on the City's right-of-way.

Commissioner George said okay. She asked if there was a section in the code that the Comprehensive Planning and Zoning Board failed to consider? She asked on the second issue that was raised, was the proceeding without verifications.

Ms. Kulyk said she was referring to the original application that was approved with three conditions in 2017 and the third condition was that the building had to be built exactly according to the specs that were approved, which included the plans, materials, and everything else or else the permit would be voided.

Commissioner George advised that Ms. Kulyk was referring to paragraph three of the Final Order that says "a violation of the conditions listed above shall void the approval granted

herein. She asked if that is what Ms. Kulyk is saying that the Comprehensive Planning and Zoning Board did not consider that paragraph.

Ms. Kulyk advised that and in addition to the Board not in anyway penalized the builder for building something without a permit, all though Building Official Law did say that the builder did pay some fees and would like to know when that was billed to them.

Commissioner George asked if there was any section of the code that addresses the after-the-fact permit for a review process that was overlooked.

Ms. Kulyk advised sorry Commission, but I am not an attorney so I am not that familiar with the codes that Commissioner George is referring to, so perhaps there is someone else that could answer that question. I am a private citizen that researched the minutes and documents and is not familiar with the Florida Building Code.

Commissioner George asked Building Official Law to answer but wanted to know if there was anything else to consider from the appellant.

Ms. Kulyk advised that there is an extensive building fee listing, but it did not come up on the Comprehensive Planning and Zoning Board meeting. She explained that she goes to a lot of the meetings and usually if someone does something they are not supposed to do, they are called on it and fined.

Commissioner George advised that was all the questions at this time.

Mayor England asked Commissioner Rumrell for any questions.

Commissioner Rumrell advised after reading a little more into the minutes, it is said during the meeting that the approval at the Comprehensive Planning and Zoning Board meeting that Chairperson Ms. West that her concern was that the parking spaces to be buffered and that the parking spaces declared non-compliance and the problem with this was setting a precedence moving forward for mixed-use developments along the Boulevard, which would delete the parking provisions out the window because they are not being adhered to. He advised that it is on page 6 of the minutes in the packet that the Commission has.

Mayor England advised that the Commissioners need to focus on the July meeting and what the Comprehensive Planning and Zoning Board approved and what they have authority to approve.

City Attorney Taylor advised that before deliberations, the Mayor should call for public comments.

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

City Clerk Raddatz swore in Mr. Michael Longstreet.

Michael Longstreet, 11 13<sup>th</sup> Street, St. Augustine Beach, FL, advised that he lives one house from the property in question and explained that there was a problem from the beginning of construction when they built parking on the City's right-of-way and increase the fill on the property and built a deck without asking for a permit. He advised that the permit should be voided as the Final Order says for 2017.

Hester Longstreet, 11 13<sup>th</sup> Street, St. Augustine Beach, FL, advised that there was a violation from the conditions of the Final Order in 2017 and the permit should be voided. She advised that this was not the first-time builders had to come back and change things. She explained that the top of the roof had to be changed because it was over 35 feet, changing the stairs to the back of the building, the aesthetics of the building, and there were three stop work orders. There must be a minimum of a monetary price to be paid by builders who deceive. She explained that she is speaking as a resident and not as a member of the Comprehensive Planning and Zoning Board. She explained that Ms. West as Chair signed the Final Order and as the Comprehensive Planning and Zoning Board, the members were hesitant to allow this. She explained that the Board wanted to allow the owners to build on the property within guidelines. She hopes the Commission does the right thing and make the builder be held accountable for what he did.

Mayor England closed the Public Comments section. She advised that at the July 21<sup>st</sup> Board meeting, the members made the Final Order to say it would be void; however, that does not mean it would be permanently voided. There is an opportunity for the builder to come back in and appeal and ask for approval. She advised that the Comprehensive Planning and Zoning Board did have authority to approve the permit and access fines or not. She explained that the deck the builder did, the Board approved it, which is within their authority. She asked if it met the building codes.

Building Official Law advised that it does meet the code, but he wanted to point out that the Comprehensive Planning and Zoning Board has the authority to issue a fine, that falls on the Code Enforcement Board and the Building Official. He advised that the builders were fined.

Mayor England advised that the Comprehensive Planning and Zoning Board approved the deck and it is within code.

Building Official Law advised yes, it is within the modification to dog-ear the corners to allow wheelchairs to get around structural columns.

Mayor England advised that bring the Commission the parking that was moved. She explained that the original plans were to have parking on 14<sup>th</sup> Lane all within the property line and the new plan had four parking spaces that was moved to 13<sup>th</sup> Street that is within the right-of-way.

Building Official Law advised that was addressed by himself at the Comprehensive Planning and Zoning Board meeting. He explained there was an existing path that they were going to repurpose the handicap parking spots, so that would be at least 17 feet wide. The Board approved four parking spots on the southern side of the property, part of their property and part on the right-of-way.

Mayor England advised that that is the piece she is zeroing in on. The approval for the four parking spots that was moved from the original plan to 13<sup>th</sup> Street and is now in the City's right-of-way. She asked City Attorney Taylor if he would like to direct the Commission.

City Attorney Taylor advised that the original 2017 plans had approved parking spaces that were in the right-of-way.

Mayor England advised for the duplex it was in the 2017 plan.

City Attorney Taylor advised it was on the plan for two handicap spots and maybe they put it into one handicap parking space, but the plan he saw it was two.

Building Official Law advised that a handicap parking spot in Florida has to be at least 17 feet wide, which is 12 feet required and five foot access and that's why people see double handicap parking spots together because the owner can save five feet. He commented that in this case 17 feet wide is almost two parking spots.

Mayor England advised that the Comprehensive Planning and Zoning Board was relying on that would have been their one handicap parking spot.

Building Official Law advised that one is required. The one handicap spot was originally proposed in 2017; however, that would be the worse spot to put a handicap parking space.

Mayor England advised for right now, this was what was approved, and they moved four parking spots to 13<sup>th</sup> Street, which relied on partially the right-of-way. She advised that she would like the other Commissioners to weigh in. Her question is, did the Comprehensive Planning and Zoning Board error in moving the four parking spots for the new building and relying on the City's right-of-way or do they need something further for that.

Commissioner George asked City Attorney Taylor what the standard of review would be for the Comprehensive Planning and Zoning Board to even approve a post permit change or to rewrite the Final Order.

City Attorney Taylor explained that the Board could default back to 2017, so they are renegotiating all the terms and all the terms would be on the table when they are having their meeting, but they are still subject to having to go back to the 2017 if they want to bring their application back into compliance for 2017 Final Order.

Commissioner George asked what criteria would the Board have to consider, such as the Comprehensive Plan or is it just open-ended.

City Attorney Taylor advised that it is open-ended in that they would have the same available options as the first appearance, with the exception that the applicant does not agree, the Board could go back to what was previously approved. The Board should take everything into consideration when they reevaluated it, but the Board knows that at the end of the day if the applicant wants to revoke their application on what was previously approve, that would be an option.

Commissioner George asked what is the City's standard of review in terms of whether or not the Comprehensive Planning and Zoning Board can consider the appropriate factors and is the Commission's review open-ended just like theirs.

City Attorney Taylor advised that the Commission's review is whether or not the Comprehensive Planning and Zoning Board use competent evidence and whether or not they were reasonable in the construction of that evidence, so it is a reasonable standard.

Commissioner George advised that to relay upon the right-of-way parking as reasonable.

City Attorney Taylor explained that he would temper that with that there is already grandfathered in right-of-way parking that was approved in 2017 and was approved from the minutes for over 20 years of the existing duplex. The existing duplex is also in the right-of-

way. He said that all those things were approved going into the 2020 Board meeting and just expanded upon it by moving two of the parking spots from the north side to the south side.

Mayor England asked if the Board had the authority at the July 21<sup>st</sup> meeting to expand a non-conforming use? This was for the new building, but not the existing building. She explained that normally if the Board changes to our code with regard to parking and putting it in the right-of-way, does that require a variance.

City Attorney Taylor advised that he did not think it would require a variance because it was already pre-approved, and it was grandfathered in with this property. The Board had the power to do it. He explained that if the Commission decides that they should go for a variance, which would have been an extra step for the owner, it is within the Board's power structure to do it. He said that that is something the Commission could consider, but the Board does have the power to approve variances. He advised that the Board was relying on the grandfathering in clause and the 2017 hearing.

Vice Mayor Kostka asked about the difference in plans regarding the parking.

City Attorney Taylor advised that the owner has one handicap parking spot which is the size of two regular parking spots. In the 2020 meeting the Board allowed them to expand the existing slab to allow for two more parking spaces.

Vice Mayor Kostka advised that on the original plan in 2017, those parking spaces are not on this plan.

Building Official Law advised that the plan in 2017 is marked as an existing handicap space and explained that it would be expanded to allow two more parking spaces.

City Attorney Taylor advised that it does have an addition 20 feet of parking spaces.

Commissioner Samora as it relates to parking, the Board went through it thoroughly and the parking spots in the right-of-way was grandfathered in and approved in 2017 and he feels they were on solid ground when the Board reapproved it although the Board went from one handicap parking spot to four regular parking spots. He said it was in the Board's power to do and the Board thoroughly reviewed that. He did not see an issue there.

Mayor England advised that she feels the parking was the main issue and whether the Board had authority to change the one handicap space to four regular parking spaces.

Commissioner Samora said that the Board had the power to do it the first time.

Mayor England did not recall whether the builder came to the Board with the four parking spaces in the right-of-way on 13<sup>th</sup> Street. She advised that she did not believe that the Building Department or the Board could approve it that way without a variance if that was the initial plan. She explained that if the builder is relying on parking using the right-of-way there must be an election.

Commissioner Samora advised that what Mayor England was saying is that they errored in 2017.

Mayor England advised that in 2017 the regular parking was within the parking line, except for the one handicap spot which was existing on 13<sup>th</sup> Street.

Commissioner Samora advised that was correct. He said that the Board could of error in expanding the existing handicap parking spot. He asked if the problem would be that the Board expanded the existing parking or that it was in the right-of-way.

Mayor England advised that their using the right-of-way on 13<sup>th</sup> Street to comply with the City's parking ordinance on how many parking spaces they need, and she thinks that they needed a variance in order to approve it. Normally, the City would not want to use the right-of-way to comply with the City's parking ordinance.

Commissioner Samora advised that the right-of-way issue was addressed in 2017 in looking at the grandfathering in the duplex parking.

Mayor England agreed.

Commissioner Samora advised that the grandfathering in was a done deal and was considered in 2017 with the handicap parking spot in the right-of-way. He advised that the Board either errored twice or did not error.

Mayor England explained that expanding the handicap spot was already their and already in the right-of-way; however the Board expanded it out and replaced it with four regular parking spaces and asked Commissioner Samora if he feels that that was in the preview of the Board.

Commissioner Samora advised that he felt it was, but he advised Mayor England has more experience on what the Board's powers are.

Commissioner George asked whether it should have come before the Commission to use the City's right-of-way.

City Attorney Taylor advised that Building Official Law provided Section 6.03.05 of the codes, sub (b) says that the Board has the authority to modify the requirement in the public's interest, environmental interest, conversation, and aesthetics. He advised that that gives the Board authority to place parking in the right-of-way.

Commissioner George asked if that section related to off-street parking and asked if it is right-of-way or off-street parking and loading in that section and is that section even relevant.

City Attorney Taylor advised that it says off-street parking and loading areas and then he read the section again for Mayor England.

Mayor England asked if that was on point.

City Attorney Taylor believed that it was partially on point.

Commissioner George advised that she believed that there was an ordinance regarding the use of right-of-way and there was a review process that the Commission had to approve.

Commissioner Rumrell recapped Mayor England's concerns about the expansion of the parking slab and needing a variance to accomplish it. He advised Commissioner George's comments on Section 6.03.05 pertains to this issue. He asked if the owner needed a variance, would that not come for the Board and would the Board have the final authority in approval or would it go to the Commission. He explained that he does not want others to have parking as part of the right-of-way or City property.

Mayor England advised that granting the variance is within the preview of the Board.

Commissioner Rumrell asked if the owner should have gone through the variance process.

Mayor England advised that the approval for the change in the development plan and a variance to increase the number of parking spots for the new building in the right-of-way. She advised that what she felt should have been done.

Vice Mayor Kostka agreed because it was a 19-foot difference. The original parking space was 17 feet. The new parking space is 36 feet, which is 19 feet of additional parking that was added.

Commissioner Rumrell advised that was his feeling as well and is trying to find the mechanism that is needed to approve it and whether the Board can approve it.

Commissioner George advised that there are different standards of review and having parking on the right-of-way requires specific criteria to be considered, such as public safety, access to the road, and visual triangle standards for corners. She explained that the expansion of the four parking spaces encroaches on the east which brings it further in the vision triangle and is not sure if that was considered by the Board.

Commissioner Rumrell agreed and asked if the parking is in the public right-of-way, does that become public spaces.

Commissioner George commented right, which is another can of worms.

Mayor England advised that the Commission has concerns over how the Board meeting was held.

City Attorney Taylor advised that it is allowable to have parking in driveways in the right-of-way. He suggested to have Public Works Director Tredik to look to see if the vision triangle is correct for the property and get some direction from staff if it is an appropriate place to put a driveway or if it causes any other problems in the codes.

Mayor England asked if the Commission wants, moving forward, to approve a parking spot that is using the City's right-of-way for their parking without a variance.

City Attorney Taylor advised that that would be up to the Commission but reminded the Commission that they are looking at a development plan that already grandfathered in a parking spot in the right-of-way. He explained that there might be some differences that the Board might want to set regarding a property that was allowed to use the right-of-way that was grandfathered in and new properties not being allowed to use the right-of-way.

Commissioner Rumrell asked City Attorney Taylor whether the handicap spot that was grandfathered in can become three more parking spots or an additional 19 feet is allowed. He asked if there is a different mechanism to do that and based on what he is hearing it should be because now it is one parcel instead of two. He explained that the four spots going east at the time of 2017 it would have encroached on the other parcel where the duplex sits.

Mayor England advised it was all one parcel before 2017.

City Attorney Taylor advised that it has been one parcel in 2017 and now.

Mayor England asked if any Commissioner wants to approve this or reject it and send it back to the Comprehensive Planning and Zoning Board.

Commissioner Samora wanted to make sure he understood the appellant's concern, so he restated the issue. The concerns from the other Commissioners is an existing handicap spot and existing parking area that fell into the right-of-way has been expanded. He asked what would be the path forward to properly approve it. Is it within the authority of the Comprehensive Planning and Zoning Board or is it the Commission and does it need a variance? He advised that he does not have clear direction on it.

City Attorney Taylor advised that the Comprehensive Planning and Zoning Board has authority to approve a variance.

Commissioner Samora advised that there is a different threshold to meet with a variance, so I can see where that would have to go back.

City Attorney Taylor advised if the Commission wants it to go back to the Board, that is fine.

Commissioner Samora asked for a code that says that a parking area can be expanded in the right-of-way and where it should go. Does it need to go for a variance, to the Commission, etc.

City Attorney Taylor advised that he was unable to find a code for expanding parking. He advised that several areas in the City have commercial parking in the right-of-way and many properties fall under that and have that. It was approved for this site in 2017 and if the Commission feels it was an abuse of power. He said that the vision triangle should be researched unless someone could answer it today.

Public Works Director Tredik advised that he did look at the property and vehicles exiting out on 13<sup>th</sup> Street going east does have a clear line of sight to the north. He advised that there is a palm tree that is boarder line and can determine if that is an issue in the future. A parked car would not block the vision triangle.

Mayor England commented that is good and helpful.

City Attorney Taylor explained that he would not want to go back to the Board if they are not looking at anything different and the Board would need direction on what to review. There is not any section of the code that commercial parking cannot use the right-of-way.

Commissioner George asked if it would be appropriate to approve the appeal to review the City's code.

City Attorney Taylor advised that would be correct.

Commissioner George advised in Section 6.03.02 dictates the number of parking spaces required for off-street parking. There is an allowance under subparagraph (f) dictates certain conditions that must be met in order for the Board to reduce the number of spaces off street. It all speaks to Mayor England's initial analysis that technically the owner should have applied for a variance. She advised what is the point of the codes if the City does not follow them and there is a concern that without proper analysis that a guaranteed private use of City right-of-way parking is an issue. The bottom line is that the review process was not followed, even if it was a technicality. The result is that the development plan gets kicked back, but it might be approved. The Commission and the Board need to enforce the codes and that is what the members are here for.

City Attorney Taylor advised that there is a consensus to send this back to the Comprehensive Planning and Zoning Board and guide them to look at codes for servicing parking areas and decide whether all those have been followed and if a variance is required, then the Board will instruct the owner to do that.

Mayor England agreed and wants more evidence in the record to differentiate because of the precedential value of this. She said why expand the non-conforming use and do they need a variance. She then made a motion.

**Motion:** to reverse the opinion on appeal and send it back to the Comprehensive Planning and Zoning Board to determine what is necessary procedurally to approve the four parking spaces and why the City could expand the non-conforming use to meet a variance. **Moved by** Mayor England, **Seconded by** Commissioner George.

Commissioner Samora asked what the options are to send it back as a reversal.

Mayor England advised that it is an appeal and the Commission would reverse the Comprehensive Planning and Zoning Board's decision and send it back to them to develop more information on those four parking spots.

Commissioner Samora asked what other options are there.

City Attorney Taylor advised confirm the decision, reverse the decision, modify the decision or send it back to the Comprehensive Planning and Zoning Board with direction.

Commissioner Samora asked why to reverse the entire approval verses modifying the approval to have them look at a certain aspect.

Mayor England advised that the Comprehensive Planning and Zoning Board has the authority on the other aspects of the decision. So, if the Commission wants to change the motion to send it back to the Board for determining the criteria for those four parking spaces.

City Attorney Taylor advised that the Board has the option to look at any other aspect when it goes back to them. The Board needs to look at the parking issue and they can send back to the Commission a new package or decide to do a variance and send that back to the Commission is the variance is appealed. He explained that the Commission does not have to modify it unless the Commission wants to decide today.

Commissioner Samora advised no, thank you.

Mayor England asked for a roll call vote.

Roll Call was as followed:

Commissioner Samora	Yes
Mayor England	Yes
Vice Mayor Kostka	Yes
Commissioner George	Yes
Commissioner Rumrell	Yes

**Motion passes unanimously.**

Mayor closed the quasi-judicial public hearing on the appeal of the Comprehensive Planning and Zoning Board decision.

Mayor England moved to Item 2.

2. Ordinance 20-12, First Public Hearing and Second Reading: to Amend Section 6.02.03 of the Land Development Code for Provisions to Permit the Access of Private Property from Dead-End Streets (Presenter: Brian Law, Building Official)

Mayor England introduced Item 2 and said Building Official Law for his staff report.

Building Official Law advised this is for vehicle traffic through dead-end streets. He explained that this ordinance has not been changed in the last three months.

Mayor England asked for Commission discussion.

Discussion ensued regarding the fee amount being too high; how the fee was decided; fee too low people would not completing the project; have consistency in fencing; allowing Public Works Department to install and uninstall barricades; and several streets in the City this would apply to.

Mayor England opened the Public Comments section. Being none, Mayor England asked City Attorney Douglas to read the title of the ordinance.

City Attorney Douglas read the title of the ordinance.

**Motion:** to approve the ordinance with a fee change to \$150. **Moved by** Mayor England, **Seconded by** Commissioner George.

Roll Call was as followed:

Mayor England	Yes
Vice Mayor Kostka	Yes
Commissioner George	Yes
Commissioner Rumrell	Yes
Commissioner Samora	Yes

**Motion passes unanimously.**

Mayor England moved to Item 3.

## XI. CONSENT

3. Comprehensive Planning and Zoning Board: Re-Appointment of Two Regular Members: Ms. Hester Longstreet and Mr. Dennis King

Mayor England asked if any Commissioner had any questions about the Consent Agenda. Being none, Mayor England asked for a motion.

**Motion:** to reappoint. **Moved by** Mayor England, **Seconded by** Vice Mayor Kostka.

Roll Call was as followed:

Mayor England	Yes
Vice Mayor Kostka	Yes
Commissioner George	Yes
Commissioner Rumrell	Yes
Commissioner Samora	Yes

**Motion passes unanimously.**

Mayor England moved on to Item 4.

**XII. OLD BUSINESS**

4. Ocean Walk Subdivision Drainage Improvements: Update on Status (Presenter: Bill Tredik, Public Works Director)

Mayor England introduced Item 4 and asked Public Works Director Tredik for a staff report.

Public Works Director Tredik showed a PowerPoint presentation (Exhibit 2). He advised that there are no rain problems since the ditch was cleaned. He explained that he would be putting in a Type C Inlet being done in the next two weeks to the east of the existing Type H drainage structure and will essentially be a pump out inlet. He commented that this should help the water not to flow back into Lee Drive. He is expecting to get the drainage pump in about a week and either the Public Works employees or a contractor will get it into the ground. He explained that he is in the beginning stage for a long-term solution and will continue to work on it. He introduced Gary Sneddon with CMT to explain the Mickler Ditch project and what led to the Mickler Ditch flooding.

Gary Sneddon, CMT Engineering, Jax, FL, give the technologic background on the pipes. He showed a PowerPoint presentation (Exhibit 3). He explained that the technical information can be found on the internet.

Mayor England advised that the public wants to know what can be done now that would prevent their homes from flooding.

Public Works Director Tredik advised that they will continue to pursue improvements to pump down the problem. He advised that he keeps an eye on the rainfall forecasts to know when to start pumping. He explained how Public Works Department pumps Mizell pond out with a lot of rainfall.

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

Tasha Stanton, 44 Lee Drive, St. Augustine Beach, FL, glad to see this is getting the attention that it is deserves. She asks why the flood pattern changed and what triggers the pumps.

Public Works Director Tredik advised that he would go out when the certain amount of rain falls.

Rob Vignato, 39 Lee Drive, St. Augustine Beach, FL, showed a PowerPoint presentation (Exhibit 4). He asked to stop the waste of taxpayers dollars and the taxpayers see what is going on and who is responsible.

Karen Kempler, 30 Lee Drive, St. Augustine Beach, FL, advised that she has three houses that flood during Hurricane Matthew and no flooding during Hurricane Irma. She hopes to include money to fix the problem long term. She advised that after the pipe was put in drainage on the north and south has a problem with drainage. She appreciated the short-term solutions but wants something done long-term. She advised that money needs to be put in the budget to keep the drainage is maintained and asked to have businesses to keep them clean.

Rafael Saler, 27 Lee Drive, St. Augustine Beach, FL, thank you for the presentation and the numbers are correct from the engineer but the ditch takes water on the underwater percolation of Ocean Walk. The water does not get into the pipe and since the pipe was put in it has flooded.

Clint Stoevers, 43 Lee Drive, St. Augustine Beach, FL, advised that the issue is they cannot get the water in the pipe and the drains on top are not working properly. He asked why they could not widen the ditch a little bit. The pipe on Lee Drive is not the first pipe under the road which are 24 inches and 18 inches, which are too small.

Mayor England closed the Public Comments section and then thanked the residents for their information and the contractor. She advised that there is more work that needs to be done and the staff and engineer will be looking at the points the residents have brought up.

Public Works Director advised that he would be working on the issue and explained the piping under Lee Street, which he said was fine at this time. He explained that he could not do any pumping on the south end because there is no where to put the pump.

Mayor England asked if any Commissioners had any comments.

Commissioner Rumrell advised that there is a lot of work to do, but he had no other comments.

Commissioner George had no comments.

Commissioner Samora thanked Public Works Director Tredik and everyone that has been working on this.

Vice Mayor is looking forward to continual updates.

She then moved to Item 5.

5. Opening of 2<sup>nd</sup> Street West of 2<sup>nd</sup> Avenue: Review of Options and Costs, and Request to Approve a Special Assessment (Presenter: Bill Tredik, Public Works Director)

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

City Manager Royle advised that the first point is how to get the money to open the road. He explained in the past the homeowners would pay their portion of the road costs, which they never agreed to. He explained that some property owners do not want their property developed. He suggested to assess the property owners as it has been done in the past on 3<sup>rd</sup> Street, 8<sup>th</sup> Street and C Street in 1978 and explained that the value of the properties will go up with development even though the property owners may not want to develop it. The second point was that two property owners came to see him, Mr. Craddock and Mr. Toledo who own lots shown of the overhead (Exhibit 5). They would like to deed these lots to a Public Conservatory Group or to the City so they would never be developed. They only want them as greenspace and not a park. They want the trees and vegetation undisturbed and asked if they would deviate the road to the south because there are trees close to the right-of-way that might be affected by the road being too close. He suggested to Mr. Craddock and Mr. Toledo instead of donated this land to the public to allow the City to use impact fees to pay their share of the costs to put the road in, but all the others who wanted to develop the land would be assessed a cost. He explained that that was what was done on 3<sup>rd</sup> Street and it worked out well. He advised that Public Works Director Tredik and he thought that the access

point should go from 2<sup>nd</sup> Street east to 2<sup>nd</sup> Avenue, which is the most direct route and most cost effective. To help the residents with safety a sidewalk would be put in, which would be paid by impact fees. He also would like to widen the road because it is so narrow, and the City could use impact fees for that project. He advised that the City would pave the existing road, which would come from City monies. He requested to create a special assessment and then move forward with the project and consider the three lots that the owners would like to donate. He explained that the Commission could also go from 3<sup>rd</sup> Street, but both the Public Works Director and he do not want to go on 1<sup>st</sup> Street due to the busy traffic.

Public Works Director agreed with City Manager Royle and advised that 1<sup>st</sup> Street would have problems.

Mayor England asked James Whitehouse to come to the podium to speak on behalf of the 56% of the homeowners who want the street opened.

Attorney James Whitehouse, St. Johns Law Group, 104 Sea Grove Main Street, St. Augustine Beach, FL, advised that he is here on behalf of the lot owners and has their authorizations for him to speak for them (Exhibit 5). He advised that the City staff has done a great job in presenting this item to the Commission, which also included his proposal. He advised that the lot owners that he represents would agree with that proposal and is here to answer any questions.

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

Mark Craddock, 116 2<sup>nd</sup> Street, St. Augustine Beach, FL, explained that he is the owner of two of the lots on 2<sup>nd</sup> Street. He advised that he does not believe that the assessments should be put on all the lots and that procedurally the owners must agree by 65% consensus. The rules have been a longstanding policy and has been a policy for a long time. He advised that Public Works Director Tredik confirmed this before he purchased his two properties. He said it was a matter of fairness and the City should not move the goal posts on owners for developments. He explained that there are other ways for the owners to development who want to develop. He advised that the ones who want to develop pay there costs now, while waiting for those who do not want to develop their properties now until they sell the properties or apply for a building permit. He advised that would be a fair solution since the 65% has not been met. He has been working on the conservation of properties to protect three of the lots from development indefinitely. If they are forced to pay assessments for the lots, it would force them to develop or sell the lots which would not be in the public's interest. If the City does select the 2<sup>nd</sup> Street route, he does appreciate the widening of the road and install sidewalk on 2<sup>nd</sup> Street, but requests that the City invest in underground utilities when 2<sup>nd</sup> Street is done.

Mayor England closed the Public Comments section and asked what the Commission needs to do to move forward with this.

City Attorney Taylor advised that the Commission needs to give their consensus to staff on how to move forward.

Mayor England advised that the City has a right to open a street at anytime because the lots are platted. She explained that the percentages are not binding and can be changed by the Commission. She commented that the time has come to act and to move forward. The proposal from the City has been well thought out.

Commissioner Rumrell explained that he likes the idea of those who are going to use it pay now, but his question is if the City pays a percentage and the owners who use it would pay their percentage or assessment at the time they develop it or sell it. He said there is a problem because there is a street just north of Dunes Cracker that is another through street. He advised that the City split the fees with the street north of Dunes Cracker and to assess the difference. He advised that the impact fees are for paving and opening roads and so the City should use it.

Commissioner George asked why the Commission should deviate from the 65% approval from the property owners who want to proceed. There is a policy in place and the owners are not at that point yet. She asked why staff is changing policy and pushing the opening of 2<sup>nd</sup> Street. She understood that it is not binding and is a policy of the Commission, but there is no difference in these properties then when it came up earlier. She advised that she does not agree in spending all of the impact fees on two projects because the money could be used for new parking and should not be taking out that money for a private benefit for certain lot owners. That would be a disserve to the other residences and do no agree with changing the policy.

Mayor England asked City Attorney Taylor what the law is on the rights of the property owners and the 65% verses the 56% that we have.

City Attorney Taylor advised that the 65% is a policy that has been established by the City, but it is not codified.

Mayor England commented that she was not sure if the 65% was used in previous properties in 1978 and others.

City Attorney Taylor advised that the 65% is used in several municipalities in the State of Florida, so it is a common percentage. The state has given the municipalities discretion. He explained that he does not want property owners to sue the City and the longer the City does not move forward the better that they may have a lawsuit. It would not be tomorrow and if the Commission wants to wait until there is a better consensus, that would be okay.

Commissioner George advised that the City is deciding by the 65%. She advised if the City forms with precedent, the City would be more protected. She said that she does not see a potential threat in this case.

Vice Mayor Kostka asked if the three lots included in the 65% or not.

City Clerk Raddatz asked to extend the meeting.

**Motion:** to extend the meeting until 10 p.m. **Moved by** Mayor England, **Seconded by** Vice Mayor Kostka. **Motion passes unanimously.**

Commissioner George advised that the three lots would not be given to conservancy unless the road goes through. He purchased the lots with the expectation of the 65% rule and asked that this not move forward until the 65% consensus is received. She explained that the property owners are shy by three lots.

Discussion ensued regarding nine property owners have given authorization, not eight.

Vice Mayor Kostka said that the Commission should stay with 65%.

Commissioner Samora advised that if the policy were codified or in a written policy, he would agree with Vice Mayor Kostka and Commissioner George. He explained that most of the property owners are for the open and should be taken into consideration. He said if the Charter Review Committee said that it needs to be 65%, then that would be different, and they would have codified it somehow. He agreed with the proposal but does not believe that we should use all the impact fees for these projects because there are other things the money can be used for. He agrees with the route that has been proposed by staff and believes that the City should improve 2<sup>nd</sup> Street to come straight in, but does not know if a sidewalk makes more sense; however, widening it does make sense. He does like the component to give flexibility to those who do not want to develop now.

Mayor England asked City Manager Royle if in the past the 65% was used every time.

City Manager Royle advised that 8<sup>th</sup> Street was 65%, but 3<sup>rd</sup> Street and was not 65%.

Mayor England asked when the special assessment is done is not it in their tax bill?

City Manager Royle advised that they would have to pay in advance of the street being opened. They would pay up front or they could give them a three-year payment plan with interest. He commented that he did not agree with Mr. Craddock's suggestion because the owners could take years to pay for their share and in the meantime the City must pay for the opening of the street. He suggested that they pay up front or pay over time.

Mayor England asked what happens if the homeowners do not pay.

City Manager Royle advised that the City could put a lien on the property, which they would have to pay, or the new owner would have to pay. He explained that the City Attorney would have to guide him on the special assessment. He commented that the City may have an obligation to build the road for property owners who want to build.

Mayor England advised that the City has the authority to open 2<sup>nd</sup> Street and there is a good proposal by the staff which is greater than half of the residents. She requested staff put together a plan to open 2<sup>nd</sup> Street and work with the owners of the three lots for the Florida Trust conservatorship and that the City assess the remaining property owners for the costs of opening up the street and the assessment be over five years and that the City use part of the impact fees for the City's cost of opening 2<sup>nd</sup> Street, plus to put in sidewalks and widening the street equal to the western part of 2<sup>nd</sup> Street. She advised that she stated that to see what objections the Commission has.

Discussion ensued regarding Attorney Whitehouse's clients are nine property owners.

Attorney Whitehouse advised that 65% is used with STU's and MTU's for an improvement, such as a sea wall, not for an access road to lots without any access. He explained that he submitted the authorizations of nine properties including Ms. Garrison's lot.

Commissioner George asked is Ms. Garrison for the improvement.

Attorney Whitehouse advised that he represents her as an attorney.

Mayor England asked with nine lots requesting the street to be opened. She explained that the lot owners paying for their share and the City paying one-third, the lots being donated to the Florida Trust would not pay the assessment. She suggested the City moves forward with handling this because of the good proposal.

Commissioner George advised that the lot owners are not denied access. If the lot owners want to open it up themselves and pay for it, they could. She advised that they are asking for more than they are legally entitled to do. She commented that she is not in favor of granting any special treatment or additional funding that has not been provided in the past to other developers.

Commissioner Samora advised that this started because a developer came to us to have the Commission decide which way they wanted to access the properties. He commented that the Commission needs to decide how to pay for it and split the costs. He advised that this needs to move forward. He agreed to move forward and allow staff to work on it and bring it back.

Vice Mayor Kostka agree that the costs share does not need to be done at this time, but she agrees with the direction of the street to be opened.

Mayor England asked Commissioner Rumrell if he agreed with the direction of the street to open the road and then the Commission work through the fees of the assessment.

Commissioner Rumrell agreed that staff can look into the direction of the opening of the street.

Mayor England asked Commissioner George if she agreed with opening 2<sup>nd</sup> Street and to work through the financials on how to pay for it.

Commissioner George advised she is not taking a position on the directionality at this point. She does not agree with the City taking the reins on this by acting as a developer unless the City has 65% of the residents that agree. She advised that if the Commission wants to manage the nine homeowners then she would not take a position on either direction, but advocates the ownership of the three lots with the conservation easement and make the layout of the road to preserve the trees in the right-of-way and to forgive their assessment which becomes a cost to the City because the taxpayers would have to pay for that cost share. Staff would have to find out where the money would come from.

Mayor England advised that since Commissioner George is in the minority, then direction to staff is to move forward with the plan to open 2<sup>nd</sup> Street directly and to accept the three lots and work on a plan for the financials.

Discussion ensued regarding that the meeting will continue to the meeting on September 22, 2020.

The Commission agreed to continue the meeting until September 22<sup>nd</sup>.

6. New Year's Fireworks Show: Update Report and Request for Commission to Decide Whether to Hold It (Presenter: Melinda Conlon, Communications and Events Coordinator)

This item is scheduled for September 22, 2020.

7. Use of City Property Adjacent to Mizell Road Retention Pond: Review of Agreement to Allow Honeybee Hives and Consideration of Agreement with Ark Wildlife Rehabilitation for Injured Bird Recovery Facility (Presenter: Max Royle, City Manager)

This item is scheduled for September 22, 2020.

XIII. NEW BUSINESS

8. Tourist Development Council: Approval of a Letter to Re-Appoint Commissioner Undine George as the City Representative (Presenter: Max Royle, City Manager)

This item is scheduled for September 22, 2020.

9. Civil Rights Monument Adjacent to Former City Hall: Consideration of How to Highlight It (Presenter: Commissioner Undine George)

This item is scheduled for September 22, 2020.

XIV. STAFF COMMENTS

This item is scheduled for September 22, 2020.

XV. ADJOURNMENT

**Motion:** to adjourn. **Moved by** Mayor England, **Seconded by** Commissioner Samora.

Roll Call was as followed:

Commissioner Samora Yes

Commissioner George Yes

Mayor England Yes

Vice Mayor Kostka Yes

Commissioner Rumrell Yes

Motion passed unanimously.

The meeting was adjourned at 9:57p.m.

  
Margaret England, Mayor

ATTEST:



Beverly Raddatz, City Clerk