



**MINUTES  
CITY OF ST. AUGUSTINE BEACH  
PLANNING AND ZONING BOARD  
REGULAR MONTHLY MEETING  
TUESDAY, MAY 17, 2016, 7:00 P.M.**

City Hall  
2200 A1A South  
St. Augustine Beach, FL 32080

**I. CALL TO ORDER**

Chairperson Jane West called the meeting to order at 7:00 p.m.

**II. PLEDGE OF ALLEGIANCE**

**III. ROLL CALL**

**BOARD MEMBERS PRESENT:** Chairperson Jane West, Vice-Chairperson David Bradfield, Steve Mitherz, Roberta Odom, Elise Sloan, Zachary Thomas, Jeffrey Holleran, Senior Alternate Hester Longstreet.

**BOARD MEMBERS ABSENT:** None.

**STAFF PRESENT:** Building Official Gary Larson, City Attorney James Wilson, City Manager Max Royle, Officer Ed Martinez, Recording Secretary Bonnie Miller.

**IV. APPROVAL OF MINUTES OF APRIL 19, 2016 REGULAR MEETING**

**Motion:** to approve the minutes of the April 19, 2016 regular monthly meeting. **Moved** by David Bradfield, **seconded** by Elise Sloan, **passed 7-0** by unanimous voice-vote.

**V. PUBLIC COMMENT**

Craig Thomson, 6-A D Street, St. Augustine Beach, Florida, 32080, said about a year and a half ago, he and a group of citizens were concerned about the revisions enacted by Ordinance No. 13-14, which reduced the setback requirements and allowed overhangs. There is no provision yet for the setbacks to be returned to what they were, and this affects, most specifically, about 1500 lots in the City that are 50-foot-by-100-foot, comprising about one-third of all the lots in the City. They're encouraging, and asking, for the Board's help to push forward on this issue, as yes, the City has a tree ordinance, and their goal is to preserve trees. Trees are also threatened significantly by the new setbacks, so the setbacks and tree ordinance are interrelated. The Comprehensive Plan designates the ocean tree hammock and natural waterways as the City's two most valuable natural resources, so he asked the Board to review these issues before the upcoming workshop next week with the City Commission and the land use consultant, to try to make decisions to amend the City's land development code to preserve the existing tree canopy and quality of life for residents.

**VI. NEW BUSINESS**

- A. Conditional Use File No. CU 2016-06, for renewal of a conditional use permit for a home occupation for massage therapy on the premises of an existing single-family residence in a low density residential land use district on Lot 15, Minorca Subdivision, at 130 13<sup>th</sup> Street, Marybeth M. Dyckes, Applicant

Mr. Larson said the applicant first applied for a home occupation for massage therapy at her residence on 13<sup>th</sup> Street in 2010. This was originally approved for a year, and then renewed in 2011 for five years. To date, there have been no complaints or any issues with the home occupation, as she has run her operation exactly as she was requested to do so by the City when the conditional use permit for her home occupation was first approved. Based on this and also on the fact that there have been no complaints or issues, staff recommends renewing the conditional use for a home occupation for massage therapy for 10 years, or perhaps even allowing it to be renewed for as long as the applicant owns and lives in her home and operates her business from it.

Mr. Mitherz said he went by the applicant's property twice, and saw the orange notice sign wasn't posted up front but toward the back on the side of the garage door. He asked if this was okay.

Mr. Larson said yes, based on the fact that individuals in the applicant's neighborhood know the business she operates from her home and also that there have been no complaints, opposition, or calls to his office enquiring about it.

Marybeth Dyckes, 130 13<sup>th</sup> Street, St. Augustine Beach, Florida, 32080, applicant, said she's run her massage therapy business successfully at her home for the past six years, and has never had an issue about it with any of the neighbors. She has the utmost respect for Mr. Larson and his staff, as any time she has a question about anything, from trimming a tree to fixing a fence, all she has to do is call or come by. She knows the staff well enough to know that if there's ever a problem with her home business, they'll let her know, so she can immediately deal with it. While she has no problem applying every five years or so to renew the conditional use permit for her home occupation, she'd love to be granted lifetime approval as long as there are no issues or complaints.

Ms. Odom asked, for clarification, if Ms. Dyckes is still the only massage therapist working at her home, and if massages are done by appointment only.

Ms. Dyckes said that's correct, she has no other employees, and no walk-in clients. Massages are done by appointment only.

Ms. Sloan asked, so the Board covers all their bases, if the applicant has changed the outside appearance of the house in any way, or added signs or extra parking spaces or anything like that.

Ms. Dyckes said no.

Mr. Bradfield said as long as the applicant is operating the business as she's been doing, he doesn't see any problem with renewing the conditional use permit, although he thinks the Board probably needs to put some time frame on it, as opposed to granting it for an infinite amount of time.

Mr. Mitherz asked, as one of the conditions for a home occupation is that no more than 20 percent

of the floor area of the residence shall be used, if the room used in the applicant's house for the home occupation complies with this requirement. He also thinks there should be some sort of time limit on the conditional use permit for renewal of the home occupation.

Ms. Dyckes said she uses the Florida room in her home for her massage therapy business, and yes, this room is less than 20 percent of the overall floor area of the residence.

Mr. Holleran said he also went by Ms. Dyckes' property, which looks fantastic, and said he thinks she's an asset to the community. However, conditional use permits typically have time restraints.

Ms. West asked for public comment. There was none.

**Motion:** to approve Conditional Use File No. CU 2016-06, for renewal of a conditional use permit for a home occupation for massage therapy at 130 13<sup>th</sup> Street, for a period of 10 (ten) years. **Moved** by Mr. Bradfield, **seconded** by Ms. West, **passed 7-0** by the Board by unanimous voice-vote.

- B. Vacating Alley File No. V 2016-02, to vacate the 15-foot-wide alley in Block 58, Coquina Gables Subdivision, located north of F Street, south of E Street, east of 5<sup>th</sup> Avenue, and west of 4<sup>th</sup> Avenue, adjacent to and/or abutting Lots 1-14, Block 58., Coquina Gables Subdivision, Michael LeGrand, Applicant.

Mr. Larson said the applicant has met the minimum requirement of having the written consent of 70 percent of the adjacent property owners in agreement to vacate this alleyway. He believes there is only one adjacent property owner who did not sign, and this person is one of the individuals directly affected by what is in the alleyway. As he pointed out in his staff memo, there are cable television lines, telephone lines, and power lines running through this alleyway, so a 10-foot-wide easement access has to be maintained to allow AT&T, Comcast and Florida Power & Light (FPL) vehicles to get to the utility poles that feed three or four of the houses abutting the alley. From 406 F Street going west, there are no problems, as there is no need for access to get into the alleyway, as houses west of this address are fed from power lines on F Street and E Street. Staff recommendation is to maintain a 10-foot-wide easement adjacent to Lots 1, 3, and 5 on F Street, and Lots 2, 4, and 6 on E Street, to allow access for utility vehicles, and vacate the remaining part of the alley in Block 58 west of these lots. This means the owners of Lots 1-6 in Block 58 will each have the use of 7.5 feet from the centerline of the alleyway, but five feet of this 7.5 feet will be retained as an access easement for the utility companies, so the property owners of these six lots will only be able to build out to, or fence in, an additional 2.5 feet to what they have now.

Mr. Mitherz asked if the owners of these six lots are aware that if a 10-foot easement is maintained in the alleyway behind their lots, they will, in fact, only gain an additional 2.5 feet.

Mr. Larson said he doesn't know, but a copy of his staff memo was sent to the applicant. The owner of 407 E Street has submitted written consent to allow the utility companies access from her lot to the utility pole located in the alley behind her, but unless the access is a dedicated easement from a public property owned by the City, the utility companies will not accept it.

Mr. Bradfield asked if there is a survey that identifies the items Mr. Larson is referring to in this

alleyway. In order to make the modifications necessary to allow for utility access as described, he thinks an accurate, revised survey showing the utility easement in the alley would be needed.

Mr. Larson said the plat map submitted with the application shows the lots adjacent to the alley, and if the alley is vacated, each of the property owners of Lots 1-6 would have to provide the City with a revised survey showing the dedicated easement for utility access. The City would not provide this, the burden of providing revised surveys showing the dedicated utility access easement is on the individual owners of the lots adjacent to, and abutting, the dedicated easement in alley.

Mr. Bradfield asked what happens if the City says yes to the vacation of the alleyway, but the adjacent property owners do not provide revised surveys showing the dedicated utility easement.

Mr. Wilson said generally speaking, if an alley or a public right-of-way is vacated, this means there is no longer any public use for it. Many times, however, these alleys have utility facilities in them that still need to be accessed, so this becomes an ownership and maintenance issue if the City doesn't want to maintain the alley but wants to vacate it and allow the adjacent property owners to have an ownership interest in it, so they maintain it. However, when you have public utility facilities that still need to be accessed, the City could vacate the alley, but leave the entire alley right-of-way as a utility easement, while the ownership vests with the adjacent property owners. The owners of Lots 1-6 would have ownership of the right-of-way to the centerline of the alley, but they wouldn't be able to construct anything in it that would obstruct utility vehicles from coming in to service their facilities. Instead of going through the process and expense of getting revised surveys done, the entire alley could be maintained as a utility easement, but ownership could go to the adjacent lot owners, so they could maintain it as they want, as long as they don't obstruct the use of the alley for easement purposes. He thinks it'd be a far simpler deal to vacate the entire alley, maintain it as a utility easement, and prohibit anything being constructed in it that would inhibit access, because a 10-foot-wide easement is pretty narrow for utility vehicles to get in and out, operate and extend equipment, and put down the anchors needed to hold it in place.

Mr. Holleran asked if the City has approved easements like this prior to this, and if so, if there have been any issues in doing so.

Mr. Larson said this is the first application submitted to vacate an alley with utility lines in it.

Mr. Bradfield asked if the six property owners who currently have utility lines that run through the alley and therefore have to maintain access for utility service vehicles and equipment would have to have their individual lots resurveyed to show that there is a utility easement in the alley.

Mr. Wilson said no, what would happen is that if the City agrees to vacate the alley, the alley would no longer exist as a public right-of-way, it would simply be a utility easement, so while the adjacent property owners won't be able to build anything that would obstruct the utility providers from accessing this easement, they would still own the alley right-of-way. The adjacent property owners would not have to have their lots resurveyed unless they sold them, as the utility easement would exist as a matter of law if the City agrees to vacate the entire alley, even if the nature of the utility services change. For example, if at some point the power lines are changed from overhead to underground, the City still can't legally give up, or vacate or abandon, a utility easement.

Ms. Odom asked if the City decides to make this alley a utility easement, does language have to be included to state that the adjacent property owners can't put up fences in the alleyway?

Mr. Wilson said no, if the City agrees to vacate the alley, an ordinance will be adopted that will essentially say the City is vacating its ownership of it, reserving, however, utility easements throughout the property. This is all that is required.

Mr. Mitherz asked if there are currently fences in the alley that property owners have put up, and if there are, will it be an issue, if the City vacates the alley, to get them to take the fences down?

Mr. Wilson said no, this would have no effect on already existing fences that have been permitted.

Michael LeGrand, 405 E Street, St. Augustine Beach, Florida, 32080, applicant, displayed some photos of the alley he's requesting be vacated, and said as the photos show, the alley currently isn't being maintained by the City or FPL, as there are trees, bushes, bamboo, and fences currently in it, so no one is getting a truck through there. An FPL guy was actually out there today looking at the power pole and lines running through the alley, and he said FPL would never bring a truck back there anyway, as if they needed access to the power pole, which is actually located behind Lot 8, and services his house, which is on Lot 6, and the houses on Lots 5, 7 and 8, they would use bucket ladders or other equipment to service the pole. Cheryl Luedke, who owns Lot 8, has given her written consent to allow FPL to access the power pole located in the alley behind her lot.

Mr. Bradfield asked why the one property owner who didn't sign to vacate the alley wouldn't sign.

Mr. LeGrand said he and his neighbors tried to vacate this alley for years. Previously, 100 percent of the adjoining property owners had to sign, and this one person was always the hold-out that prevented the alley from being vacated. Thankfully, the ordinance was changed to require a minimum of 70 percent of the written consent of adjacent property owners, which enabled them to move forward with submitting the application. He doesn't want to speak for the property owner who wouldn't sign, and this person is not here to say why he's against the alley being vacated.

Mr. Holleran asked what Mr. LeGrand is seeking to gain by requesting that the alley be vacated.

Mr. LeGrand said he'd like to have the 7.5 feet of the alley to gain this space in his backyard and put a fence up, as he has three kids, a dog, a deck and two giant live oaks, so there's not a whole lot of room. An extra 7.5 feet may not seem like a whole lot, but in their little yard, it could make a big difference, whereas 2.5 feet of extra space, not so much. As for vacating the entire alley as a utility easement, and not being able to fence in or build in the additional space, this doesn't really appeal to him. He'd have to pay property taxes on it, and not be able to put a fence or shed up.

Mr. Wilson said in a clean abandonment where there are no existing utilities in place, the City could easily vacate the alley and the ownership of the alley right-of-way would be transferred to the adjacent property owners, who could then do what they wanted with the additional square footage. The problem in a situation like this is that there are existing utility facilities in the alley, and despite the fact that there are things like bamboo and trees growing in the alleyway, with a utility easement, if the utility providers wanted to go onto the easement and cut things down, they

could do so, as they have the right under statute to do that. If the bamboo is growing up into the power lines and this was reported to FPL, FPL would come and clear the bamboo out. The City can give up its interest in the alley right-of-way, but it can't cut off utility access, unless the utility companies themselves abandon their utility facilities and don't need access to get to them anymore.

Ms. West said this really puts the Board between a rock and a hard place, because they want to give the applicant what he wants, but legally can't, and if the City vacates the alley in the way it can do so, it's actually something the applicant doesn't want. The City can't give the applicant authorization to put up a fence in an easement owned by FPL. She asked for public comment.

Suzanne Galantowicz, 409 E Street, St. Augustine Beach, Florida, 32080, said she's here to support vacating the alley to the extent that it can be done. She's one of the 12 out of 13 property owners who are all for it, and Mr. Howell, the City's Public Works Director, has no issue with completely vacating the alley. Mr. Larson seems to be recommending retaining vehicular access that doesn't exist in the alley, as in fact, to create this access, all of the foliage in the alley, including an oak tree that's about six feet in diameter, would have to be clear-cut. As she doesn't think this is the intention, there's never going to be vehicular access in the alley, unless the utility companies suddenly decide to come through and take down a tremendously giant oak tree. The neighbors obviously understand and know access is needed, as there is a power pole in the alleyway, but the FPL man who was out there today said all FPL needs is ladder access, and they specifically asked if this could be through a gate on someone's property, and he said absolutely, as in fact, this would be far easier than navigating through the alley. Mr. Larson's recommendation to leave a 10-foot easement on the six lots on the eastern side of the alley, leaving the adjacent property owners with only a 2.5-foot increase, confuses her also, as the power pole, as you can see from the photos displayed by Mr. LeGrand, is not in the middle of the alley, but on the northern edge of the alley, and the pole is actually on Lot 8, and Lot 8 is in the section where Mr. Larson is recommending the entire alley be vacated. To summarize, FPL verified today they only need ladder access, and they have the name and phone number of the FPL employee who said this. The owner of Lot 8, where the pole is located, has provided written consent saying she is more than happy to allow access to the pole from her property whenever needed, and Mr. Howell supports vacating the alley, so the 12 out of 13 adjacent property owners in favor of this hope the City will also support it.

Kathy Bice, 403 E Street, St. Augustine Beach, Florida, 32080, said she and her husband, Marvin Krohn, live next to the applicant, Mr. LeGrand, and certainly they are in favor of vacating the alley to its full extent. FPL doesn't need to get a truck through the alley, and it's been a long, long time since a truck could get through the alley anyway, with all the overgrown trees and vegetation growing in it. Vacating the alley to the fullest extent would be the most beneficial thing for the 12 adjacent property owners in favor of this, but to vacate it and only allow some of the adjacent property owners, of which she is one, the use of only 2.5 feet, seems ridiculous.

Ms. West said her only cautionary note here is that she thinks they are being asked to do something they are legally prohibited from doing, as they can't legally mess with FPL's easement. Something she's certainly willing to entertain tonight is vacating the alley as the applicant has requested, conditioned on FPL's abandonment of the easement, which kind of puts the burden back on the adjacent property owners to talk to FPL and ask them to basically follow through on what's been said verbally that they don't have any intention of using their easement through the alleyway.

Mr. Wilson said this might overly complicate it, and he doesn't think they really need to do this. If the City totally abandons its ownership of the public right-of-way of the alley, reserving a utility easement for the existing utilities, the City is out of it, and what this does for every adjacent property owner is add 7.5 feet to the back of each lot. While they can't build solid objects within the easement area, legally, the square footage of the size of their lots have increased, and they can use this extra space for setback purposes to increase the size of their homes and give them an additional envelope of building space they do not have now. If the City abandons the alley in the way he's suggested, the City would have no more interest in the alley property, but the utility providers would, as the City can't extinguish the utility providers' rights by vacating the alley. Then, if the people with an interest in this utility easement adjacent to their property want to talk to the utility providers, it would be between them and the utilities to work out a way to modify it.

**Motion:** to recommend the City Commission approve the vacation of the alley as requested by the applicant in Vacating Alley File No. V 2006-02, maintaining all utility easements in existence. **Moved by Mr. Holleran, seconded by Ms. Odom, passed 7-0 by unanimous voice-vote.**

C. Review of Proposed Ordinances for New Sign Regulations, to amend Article II, Definitions, Section 2.00.00, and Article VIII, Signs, Section 8.00.00 of the City of St. Augustine Beach Land Development Regulations

Susan Erdelyi, 1200 Riverplace Boulevard, Suite 800, Jacksonville, Florida, 32207, said she's an attorney with the Jacksonville law firm of Marks Gray, and has been working on revising the City's sign code. She'd like to applaud this, as St. Augustine Beach is one of the first cities in Florida to make this change. This is a required change, as in June 2015, the Supreme Court heard the case of *Reed vs. Town of Gilbert, Arizona*, which had the effect of turning sign code law on its side. It used to be that sign codes like the City's were defined by having different categories of signs, for example, political signs, which means the sign code is what courts are now calling "content-based," but as the City is a government municipality, the government does not regulate free speech rights, per the first amendment. Having experienced in her career many sign code lawsuits, she can say that sign codes are some of the most difficult codes to write, because signs are a unique combination of structures, some of which can be very large, involving language and speech, and the public has to be allowed to have non-commercial speech as they choose. Instead of having sign codes defined by different categories of signs, the new sign code regulates signs by size, location, and whether they are commercial or non-commercial speech. Non-commercial speech is of course the highest level of protection under the law, and what she's found as a litigator is that parties that are wanting certain things from cities or are up to mischief will attack sign codes to be able to have their way on another issue. Her law firm has also revised Jacksonville Beach's sign code, and the purpose of revising the City's sign code is to show the courts they want to protect the aesthetic beauty of this community, because protecting the aesthetics is actually good business. In drafting the new sign code, she took the old sign code and tried to follow the same format, and basically, the general concept is that commercial speech is allowed under certain terms, and non-commercial speech is allowed on all signs. A substitution clause has also been put in the revised sign code, which says if someone has a commercial sign, and they'd like to substitute a non-commercial message, they may do so. This protects the City, because it shows the City does not show more deference to commercial speech than it does to non-commercial speech, but allows personal speech over commercial speech. She's asking for the Board's recommendation to the

City Commission to pass the revised sign ordinances, subject to correction of a couple of edits, scrivener's errors and/or typos that have been found as they've reviewed it.

Mr. Holleran asked what the major red flags were in the City's existing sign ordinance that were brought to Ms. Erdelyi's attention in revising it.

Ms. Erdelyi said her largest concern is litigation, and the red flags she's seeing are categorization of signs, such as allowing and defining political signs. Signs in the revised ordinance are based on size, location, and commercial or non-commercial speech.

**Motion:** to recommend the City Commission approve passage of the revised sign ordinances submitted by Ms. Erdelyi, contingent upon correction of scrivener's errors and/or typos. **Moved** by Ms. Sloan, **seconded** by Mr. Bradfield, **passed 7-0** by unanimous voice-vote.

D.     Scheduling Date for Final Workshop Meeting for Review of Comprehensive Plan and Land Development Regulations

Per general oral consensus, the Board agreed on Wednesday, June 29, 2016, at 1:00 p.m. at City Hall as the date and time of the final joint workshop meeting with the City Commission and the City's land planner, Ms. Lindsay Haga.

VII.    OLD BUSINESS

There was no old business.

VIII.   BOARD COMMENT

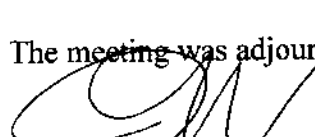
Ms. Odom asked if the Board will be getting any proposed revisions or modifications to Ocean Ridge, the new subdivision being developed by Jay McGarvey, for the Board's next meeting.

Mr. Larson said no, he doesn't believe so, as nothing has been turned in to date. He can't say definitively when this will be back before the Board.

Ms. West said Karen Zander, who recently resigned from the Board, served the Board and the City really well, and she'll certainly miss her meticulous insight. She welcomed Mr. Holleran, the Board's former senior alternate, to the Board as a regular member.

X.     ADJOURNMENT

The meeting was adjourned at 8:35 p.m.

  
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Jane West, Chairperson

  
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Bonnie Miller, Recording Secretary

(THIS MEETING HAS BEEN RECORDED IN ITS ENTIRETY THE RECORDING WILL BE KEPT ON FILE FOR THE REQUIRED RETENTION PERIOD. COMPLETE VIDEO CAN BE FOUND AT WWW.STAUGBCH.COM OR BY CONTACTING THE OFFICE OF THE CITY MANAGER AT 904-471-2122 )