

MINUTES OF THE REGULAR MEETING OF THE APALACHICOLA CITY COMMISSION HELD TUESDAY, AUGUST 4, 2020, 6:00 PM AT THE APALACHICOLA COMMUNITY CENTER.

PRESENT: Mayor Kevin Begos
Commissioner Anita Grove
Commissioner Adrian Elliott
Commissioner Despina George
Travis Wade, City Manager
Deborah Guillotte, City Clerk
Leo Bebeau, Finance Director

VIA PHONE: Commissioner Brenda Ash
Kristy Branch-Banks, Attorney

CALL OF ORDER

Mayor Begos called the meeting to order and gave the invocation. Council Members led the pledge of allegiance.

APPROVE THE AGENDA

Commissioner Grove made a motion to amend and approve the Agenda, with two additions as follows: A Nature-Based Parking Project downtown and a FDLE Coronavirus Emergency Supplemental Funding Grant. Commissioner Elliott seconded and the motion carried 5-0.

MAYOR AND COMMISSIONERS REPORT AND COMMUNICATIONS

Mayor and Commissioners discussed the following: 1) Hurricane Michael Historical Grant to apply for repairs to old City Hall, HCA building and possibly the Holy Family Center; 2) 14th Street Tennis Courts – resurfacing estimated around \$15,000 to \$16,000; 3) Gouras & Associates, for possible CDBG-DR Grant Management, and also if City is interested in piggy backing off Port St. Joe or Franklin County - setting up a workshop in September for CDBG-DR for upcoming projects the City would like to consider; 4) Oyster Shell recycling program and possibility of the City allowing the use of the old shell pile site; 5) Tree Committee Application process not being followed correctly; 6) Campaign signs on City right-of-ways, and 7) City meetings being more accessible to the public and a third-party service.

Commissioner Elliott made a motion to apply for the Historical Grant for both the old City Hall building, the History Cultural Arts building and possibly the Holy Family Center, after research to see if applicable.

CITY MANAGER COMMUNICATIONS

City Manager Communications: 1) Budget Workshop & Hearing Dates: Tuesday, August 11, 6:00pm - Budget Workshop; Tuesday, September 15, 6:00pm - First Budget Hearing; Tuesday, September 29, 6:00pm - Final Budget Hearing for Adoption of Budget and Final Millage Rate; 2) Code Enforcement hire – The City hired TJ Lemieux, who transferred from the Water and Sewer Department – will be working three days in the office and two days at

the Water Plant until that position is filled; 3) FEMA projects and RFP – Dewberry will be putting Lafayette pier out for bid, Andris and Battery Park still being reviewed, and the City may possibly be developing a RFQ for Management of FEMA Grants; 4) Apalachicola Bay Oyster Harvest License – The City will be doing refunds if requested by residents who purchased them, due to the Apalachicola Bay being closed for five years.

ATTORNEY KRISTY BRANCH-BANKS COMMUNICATIONS

Attorney Banks discussed the following: 1) Scipio Boat Yard Lease; 2) Florida League of Cities will be having Finance and City Official seminars coming up in October; and 3) Creighton and Holley Brown – offer to purchase City property at the Apalachicola Airport area.

FINANCE DIRECTOR LEO BEBEAU

Mr. Bebeau gave update on City expenditures, stating that a revision will be available next week before the budget workshop.

PUBLIC COMMENT

Citizens discussed the following: tennis courts resurfacing appreciated, unpermitted tree removal and its debris on Avenue M and 7th Street, City’s public meetings by phone access, City’s asset management plan, Mayor Begos gave a brief update of the DEP Revolving Loan Amendment, which is different than the Asset Management Plan (which is updated probably quarterly); and missing sidewalk - section on US Hwy 98 between 16th and 17th Street (DOT r-o-w), Prado and 24th Avenue – culvert needing guard rails, and trees on City right-of-way needing to have limbs trimmed on 101 24th Avenue.

CONSENT AGENDA

Mayor Begos presented the Consent Agenda and asked if any items should be removed before consideration of a motion.

- Meeting Minutes Adoption – To Adopt the March 3, 2020 Regular Meeting, June 10, 2020 Special Meeting, July 7, 2020 Special Meeting, and July 28, 2020 Special Meeting Minutes.

Commissioner Elliott made a motion to adopt the Consent Agenda. Commissioners George seconded and the motion carried 5-0.

UNFINISHED BUSINESS

A. QUASI-JUDICIAL HEARING: MCLEMORE VARIANCE

Mayor Begos stated this hearing is a review on appeal of a decision of the Board of Adjustment. The BOA approved a variance for an encroachment into the alleyway setback on the McLemore property. The BOA grant of variance was appealed by Historic Apalachicola Foundation. The City Commission shall make a final decision on whether or not to uphold the variance granted.

David Minacci, of Manausa, Shaw & Minacci, P.A. introduced himself as the Attorney on behalf of the McLemores and gave an opening argument on why the McLemore variance should be granted and not overturned by the City Commission.

Robert Volpe introduced himself as the Attorney on behalf of the Historic Apalachicola Foundation and gave an opening argument on why the McLemore variance should be overturned and not be upheld by the City Commission.

The Mayor, Commission and City Attorney addressed comments from both Attorneys on the McLemore variance decision by the BOA, referencing the Land Development Code. The Commission asked for Attorney Banks’ recommendation based on current LDC and for her to define what the Commission is actually voting for at tonight’s meeting. Attorney Banks stated we are focusing on the decision by the BOA to grant the requested variance, and the Commission is making a decision as to whether the Commission upholds the decision of the BOA, or to quash (void their decision). Attorney Banks stated that the decision of the BOA stated no findings of evidence of a “hardship.” LDC requires the presence of a hardship before a variance may be granted. The Commission asked for Attorney Banks recommendation, and Attorney Banks stated she recommended overturning or quashing the BOA decision to grant a variance on the grounds of BOA’s failure to find any hardship.

Attorney Minacci and Attorney Volpe, gave closing arguments on the McLemore variance.

Mayor Begos stated that we could table this one more time and work on an encroachment policy, even though we would still have ongoing legal challenges. Commissioner Grove stated that the LDC Code needs to be updated.

Commissioner Elliott made a motion to uphold the Board of Adjustments ruling. Mayor Begos passed the gavel to Mayor Pro-Tem Ash and seconded, the motion failed 2-3. Commissioners George, Grove and Ash opposed.

Attorney Banks stated in accordance with the LDC, “the concurring vote of four (4) members of the City commission shall be necessary to reverse any order, requirement, decision or determination of the building inspector or to decide in favor of the applicant on any matter upon which it is required to pass under this code or to effect any variation in the application of this code.”

Commissioner Ash inquired what this means at this point for the McLemore request for a variance, with a 2-3 vote by the Commission. Attorney Banks explained that the LDC is silent on whether or not the same majority is required to overturn a decision of the BOA. Attorneys Minacci and Volpe were allowed to offer their interpretation on their definitions of the 2-3 vote as to overturning or upholding the BOA decision. Attorney Banks requested further research in reference to the Robert’s Rules of Orders, the LDC and legal interpretation of the plain language of the LCD as applies to interpreting the 2-3 vote.

Commissioner Ash suggested that the final conclusion (passage or definition) of the motion be tabled, until it can be further researched by Attorney Banks, and her recommendation be brought back to the next meeting.

Mayor Begos made a motion to have the Commission refer the procedural questions back to Attorney Banks or the City Attorneys on retainer with the City, to get a clear written clarification and recommendation to the City Commission, on the 2-3 voting definition clarification. Commissioner Elliott seconded and the motion carried 5-0.

Commissioner Grove made a motion to continue the matters of the McLemore Quasi-Judicial Hearing, until we have recommendation by Attorney Banks on the 2-3 voting, and that it be placed on next month’s agenda. Commissioner George seconded and the motion carried 5-0.

Mayor Pro-Tem Ash passed the gavel back to Mayor Begos.

UNFINISHED BUSINESS B. DEP REVOLVING LOAN AMENDMENT
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Mayor Begos reviewed a proposed agreement with DEP, stating that the City commits to repairing, maintaining and upgrading the Water and Sewer systems under the detailed Asset Management Plans developed by the Florida Rural Water Association. Discussion held in reference to the sale of City property, and that the City Manager and the Water and Sewer department heads would be managing the Asset Management Plan.

Commissioner Elliott made a motion to table the approval of the DEP Consent Order, until further details are available on the Asset Management Plan. Commissioner George seconded and the motion carried 5-0.

NEW BUSINESS A. APPLICATION FOR BATTERY PARK MARINA COMMITTEE – TOM GRAY

Commissioner George made a motion to appoint Tom Gray to the Battery Park Marina Committee. Commissioner Elliott seconded and the motion carried 5-0.

NEW BUSINESS
B. CONTRACT AWARD – WATER STREET PARKING/SIDEWALK GRANT

Commissioner Elliott made a motion to award the CDBG Contract bid for the Water Street Parking/Sidewalk grant for the South side of Avenue G and Water Street, for a brick paver parking area between Commerce and Water Street to North Florida Construction. Commissioner Grove seconded and the motion carried 5-0.

NEW BUSINESS
C. FDEP – FLORIDA RESILIENT COASTLINES PROGRAM

FDEP – Florida Resilient Coastlines Program for a Nature-Based parking project in Downtown Apalachicola, creating approximately fifty new parking spaces between Avenue G and H, on the City right-of-way.

Commissioner Grove made a motion to approve Cindy Clark to apply for the Florida Resilient Coastlines Program Grant. Commissioner Elliott seconded with discussion held. This item was tabled for further research.

NEW BUSINESS
D. FDLE - CORONAVIRUS EMERGENCY SUPPLEMENTAL FUNDING GRANT

Commissioner Grove made a motion to approve the purchase of a “Portable Changeable Message Sign” from American Signal Company, using grant funds to purchase the sign, with no matching funds required, for a purchase price of \$14,500.00. Commissioner George seconded and the motion carried 5-0.

ADJOURNMENT

With no further business, Commissioner Elliott made a motion to adjourn the meeting at 9:00 PM. Commissioner Grove seconded and the motion carried 5-0.

Kevin Begos, Mayor

Deborah Guillotte, City Clerk