

TERRILL L. HILL
MAYOR - COMMISSIONER

MARY LAWSON BROWN
VICE MAYOR - COMMISSIONER

RUFUS J. BOROM
COMMISSIONER

JUSTIN R. CAMPBELL
COMMISSIONER

JAMES NORWOOD, JR.
COMMISSIONER



CITY of *Palatka* FLORIDA

Regular meeting 2nd and 4th Thursdays each month at 6:00 p.m.

TERRY K. SUGGS
CITY MANAGER

BETSY JORDAN DRIGGERS
CITY CLERK

MATTHEW D. REYNOLDS
FINANCE DIRECTOR

JASON L. SHAW, SR.
CHIEF OF POLICE

MICHAEL LAMBERT
CHIEF FIRE DEPT

DONALD E. HOLMES
CITY ATTORNEY

MINUTES CITY OF PALATKA May 26, 2016

Proceedings of a Regular meeting of the City Commission of the City of Palatka, Florida, held on the 26th day of May, 2016.

PRESENT:

Mayor	Terrill L. Hill
Commissioner	Mary Lawson Brown
Commissioner	Rufus Borom
Commissioner	Justin Campbell
Commissioner	James Norwood, Jr.

Also Present: City Manager Terry Suggs; City Attorney Donald E. Holmes (arrived at 7:00 p.m.); City Clerk Betsy Jordan Driggers; Finance Director Matt Reynolds; Police Chief Jason Shaw; Fire Chief Mike Lambert; Assistant Fire Chief Mark Lynady, Planning Director Thad Crowe; Public Works Director Jonathan Griffith

CALL TO ORDER: Mayor Hill called the meeting to order at 6:00 p.m.

INVOCATION & PLEDGE OF ALLEGIANCE – The Reverend Tommy Rodgers, Pastor; Bethlehem Missionary Baptist Church

APPROVAL OF MINUTES – 5/12/16 Commissioner Campbell moved to adopt the minutes as read. Commissioner Norwood seconded the motion, which passed unopposed.

1. **PUBLIC RECOGNITION/PRESENTATIONS**

RETIREMENT – Mark Lynady, Fire Marshal/Assistant Fire Chief, was present for recognition of almost 34 Years of Service upon his retirement on May 31, 2016. Fire Chief Mike Lambert said he started in 1982; he is the Fire Marshal and became Assistant Fire Chief about a year ago. He has headed up fire prevention programs and employee training. Through his Golf Tournament he has raised over \$10,000 for community fire prevention. He started the Palatka Fire Explorer Program around 1983. He is very involved in the community.

Assistant Fire Chief Mark Lynady thanked his family, who was present, his co-workers, staff and members of the City Commission for the opportunity to work in this career, which has been fun and exciting. He appreciates the trust placed in him upon being named Assistant Chief and Fire Marshal. He is proud that they achieved an ISO rating of 2 through a lot of hard work and effort.

RECOGNITION – David Lazo, Crime Stopper's Police Officer of the Year – Chief Shaw and Captain Forsythe introduced Detective David Lazo, recently named Crime Stoppers Officer of the Year as a result of his leadership on a year-long drug investigation, which resulted in four drug houses being torn down and many arrests. Officers like Det. Lazo are great for the Department as well as the City. Detective Lazo thanked Chief Shaw for his leadership and training.

RECOGNITION – Palatka Fire Explorers CPR/EMR Program Certification – Chief Mike Lambert introduced the Explorers present for recognition. He noted they are looking for new members. Captain Grimes said they meet on Monday nights from 5 – 7 pm at the Kay Larkin Station. He said members completed 45 hours of training in EMR and a 4-hr CPR class. They are EMR/CPR/AED certified. Members can stay in the program from age 14 to 21. One Adult Leader, Lyndsey Lambert, also completed the program and was presented with her certification card. Members present received their certification cards.

RECOGNITION – Palatka High School Track Team Members – Coach Steve Gonzales, Coach Wilkerson and PHS Administrators joined Mayor Hill in recognizing members of the PHS Track Team for their accomplishments in statewide track and field events, noting they have developed into champions. Coach Wilkerson listed their accomplishments, including the first #1 placement of 100 meters won by both male and female athletes on the same team. The ladies were district runner up with 11 girls, while competing against a team with 20 girls. The young men are District Champs 2nd year in a row. The Girls placed 3rd in regionals out of 38 schools and finished #8 overall. The Boys finished 3rd in the State. Four girls are now state champions in the 4x100 Relay. Boys include state champion in discus and runner-up in shot put. Students were called to the front and presented with certificates of merit and city pins.

STUDENT OF THE MONTH – May, 2016 – Vice Mayor Brown joined Mayor Hill in presenting certificates to the following students in recognition of academic excellence, leadership, citizenship and attendance at their respective schools:

Samaria Williams	Browning Pearce Elementary School
Daunte Wilkerson	C. L. Overturf, Jr. 6th Grade Center
Makenzie Clemons	Children's Reading Center Charter School
Landon Pierce	E. H. Miller School
Carson Tibbs	James A. Long Elementary School (March)
Jesenia Feggins	Jenkins Middle School
Natalie Burney	Kelley Smith Elementary School
Jasmyn Butler	Mellon Elementary School
Paris Mack	Moseley Elementary School
Lauren Hudson	Palatka High School
Austin Wallace	Peniel Baptist Academy
Ravin Constantineau	Putnam Academy of Arts and Sciences

2. **PUBLIC COMMENTS –** Mayor Hill provided rules for speaker comment during public comment as well as agenda items.

Mike Petrucci, 905 Tierra Woods Drive, Palatka, said as to Consent Agenda item 3(b), selection of Ayres Associates, he believes this firm held an unfair advantage as they have done previous studies. In the past this firm has recommended a company called BCR, who have developed a Clean B Proprietary system. He was told by Commissioner Brown they are no longer dealing with BCR, but when this company was selected, they knew "Clean B" was a proprietary system, which is not good for the City. If this firm is selected he advises the City not to choose a proprietary system. Someone should explain to the public what a Brownfield assessment is. He saw nothing online explaining what a Brownfield system is.

Mr. Petrucci said, as to Item #6, he is a member of the Planning Board; he stands by the Planning Board's decision.

Kenny White, 2196 Claymore Road, Jacksonville, said he is here to ask the City to sponsor his Brotherhood Tour and Revival on the Riverfront. He has hosted other events in Atlantic Beach and Lake City. He distributed literature concerning sponsorships for his program (filed).

Elizabeth Van Rensburg, 310 N. 3rd Street, provided an overview of the last 10 years of their residency and involvement in Palatka. They have been here for 10 years and their property values have fallen. When they came here no one told them that their dream for their property wasn't feasible. She does not want anyone to tell her that her dreams for Palatka aren't feasible.

3. **CONSENT AGENDA**

- a. **Adopt Resolution No. 2016-12-36** authorizing execution of a renewal agreement for Supplemental Police Services between the Palatka Housing Authority and Palatka Police Dept. eff. 6/1/16
- b. **Adopt Resolution No. 2016-12-37** accepting the ranking of Professional Environmental, Engineering & Planning Consulting Services Firms for the City of Palatka USEPA Brownfield Assessment Grant Project and authorizing the execution of a contract with Ayres and Associates, Inc.
- c. **Adopt Resolution No. 2016-12-38** declaring as surplus the 2005 Sterling rear-loader Sanitation Collection Unit #84 and accepting a bid from Nextran Truck Center of Jacksonville in the amount of \$413,822.86 for the purchase of two (2) 2016 Mack Refuse Collection Trucks with EZ Pack G300C25 Rear Loader Body, one with rear roll bar, per results of ITB 2016-06

Commissioner Brown moved to pass and adopt all items on the Consent Agenda as presented. Commissioner Borom seconded the motion, which passed unopposed.

4. **WORKSHOP – Evaluation & Appraisal Report (EAR) for the City of Palatka Adopted Comprehensive Plan –** Thad Crowe, Planning Director facilitated the Workshop via presentation of a PowerPoint presentation of the draft EAR. This is the required update of the Comp Plan, which is done every seven years. The Com Plan includes elements such as future land use, housing, infrastructure and public facilities. The Comp Plan update is required per state growth management laws. The City has conducted an extensive series of workshops that were done in 2011 and has now updated the results of these workshops. This has to be submitted to DEO in July, so Staff will bring this back for a transmittal resolution.

Mr. Crowe said the process identified five major issues: historic preservation, economic development, transportation, trails & parks and annexations/municipal boundaries. Staff added community development and sustainability and sea level rise as two new issues. He spoke to those major issues.

Historic Preservation: Recommendations include creation of a new historic preservation element, maintenance of Certified Local Government status, and performing new historic surveys of the Northside, Palatka Heights and Westview Cemetery. Surveys were last done in 1982 and are out of date. Recommended policies include brick street restoration, new or retrofitted period street lighting, sidewalk construction & reconstruction, traffic calming, wayfinding, gateway and educational signage, parks improvements, move power lines underground, and street tree planting. The City has an extensive inventory of brick streets. The City can leverage private historic rehabilitation with City TIF or other funds. Policies also recommend the need to preserve, renovate and promote historic properties. Other recommended policies promote funding for downtown & historic district improvements, coordination of a walking tour, promotion of Art in Public Places, installation interpretive kiosk signs and protection of the historic downtown through design standards.

Economic Development: Policies recommend inclusion of downtown revitalization marketing, Riverfront Master Plan Implementation, arts/cultural strategies, maintaining Tree City USA certification, improving Industrial Park access, infrastructure, and sign improvements, identification of future CRAs, and Airport and infrastructure improvements, particularly water and sewer repair and improvement. Public-private partnerships are important as well as squaring up urban service boundaries. Development of rail, trail & water transportation is significant. Mobility and transportation are important; transportation concurrency was abolished by the State, and replaced with a mobility plan. Policies encourage alternative modes of travel, i.e. pedestrian, bicyclists and transit riders. Train, boat and plane travelers should be accommodated. "Complete Streets," including connected bikeways and pedestrian systems will enable people to get around. Policies recommend traffic calming to control speeding, intersections and other areas with higher risk for accidents. Policies recommend assisting Ride Solutions in promoting new bus stops, routes, benches/shelters, transit systems and pursuing a manned Amtrak station to promote tourism and economic development. The Shands Bridge should be raised and the City should actively work toward that goal. There is an active effort by FDOT to create an active Tampa to Jacksonville corridor; alternatives include US Hwy 17 and SR 19, which should be supported.

As to annexation and boundaries, Policies recommend working proactively to diminish and eventually eliminate enclaves. The City should pursue an agreement with Putnam County to define the logical extension of city services and eliminate duplication of services, fees and taxes.

Adopted sustainability strategies include Wastewater Treatment Plant upgrades, infrastructure upgrades, affordable/clean housing and development of a business incubator.

Sea Level Rise: The City will be affected by this in the long term. Policies recommend identification of areas in the City that are vulnerable to sea level/river rise and develop a timeframe for putting a plan in place to address the impacts. Policies recommend utilization of public funds to acquire new land and develop a greenway plan for connected public lands for storm water control. The best shoreline protection strategy is creation of marshes and vegetation to slow down the rise of the water. Policies anticipate changes in vegetation brought on by sea water intrusion. The City needs to plan for shoreline stabilization and flood control, to develop incentives and regulations for future development, require that notice be provided to property owners, and revise flood codes within flood zones.

Mr. Crowe said the remainder of his presentation is included in the agenda package (filed). He invited comments over the next month, and will bring forth a document that hopefully reflects everyone's vision.

John Nelson, PHA, 400 N. 15th Street, said he is not here to talk about subsidized housing or support the housing request for the 100 block, but he would ask that the Commission consider adding housing to the list of major issues to address. There is a great need for adequate housing in the City. Mayor Hill noted Housing is #3 on the City's priority list.

Commissioner Brown said she met with 13 other states in Norfolk VA and one of the topics they discussed was Sea Level Rise. They do need to look at this; it has become a major issue and is being considered in community planning all over the US.

5. **REQUEST** for Contract Amendment #2 to allow ground floor residential in the 100 Block Development – Riverfront Square Development Group, LLC; Joseph C. Diamond, Gen. Manager – Kevin Sharbaugh, Esquire, P.O, Box 92, Interlachen, Counsel for RDG, LLC, asked which of the two items they would like to hear first. Mayor Hill noted it was stated in the Planning Board meeting that the two items were independent of each other.

Tom Townsend, 605 N. 3rd Street, spokesperson for RDG, who introduced the issue and presented a brief history of the project. He noted the withdrawn CDP proposal proposed housing for 22 upstairs units in the 100 Block. RDG came in as the developer in 2014 and has invested in the building. The contract the City entered into with RDG is a partnership of investment. He spoke of the construction of the balconies, which was done prior to the building permit being issued. They want to create a partnership with the City to put residential occupancy into the 100 block. The market won't support high end condos as originally proposed. This is best for merchants and filling vacant commercial buildings. In the 3 months since the original contract was amended this developer has made a tremendous amount of progress.

Mr. Sharbaugh asked the Commission to modify the amendment to allow residential or commercial uses in 117 N. 2nd Street (corner of N. 2nd and Reid Street) as presented in the Agenda Package. The developer would like to construct four residential units on the first floor of the building. Residential dwellings are planned for the upper floors. As to existing contract language, under Paragraph 23.2, this speaks to amendments to the contract being executed by both seller and buyer. They are asking to look at Paragraph 27.1, which speaks to development use restrictions. This says that buyer and seller agree that development of the property is of critical concern to both buyer and seller because of the impact to surrounding downtown properties and that buyer and seller agree that buyer's use and development shall be in accord and consistent with the drawings and exhibits in Exhibit C. Exhibit C shows an overhead view of the first floor of the buildings. The notation in the left hand corner states "1st Floor Use – Commercial/Retail/Restaurant." That is all that restricts the entire first floor use. The contract states the seller can consider requests to modify the uses. The zoning allows for residential use per the Downtown Riverfront District. The developer is asking for the flexibility for whatever use works best for that building. If the market dictates a commercial use, that will be the use. If it dictates residential, that will be the use.

Mr. Townsend said facts matter more than opinions. There are now questions as to whether the original proposal is financially viable. He spoke about the emphasis the comp plan places on downtown residential uses. They want to complete and fill the building while creating a vibrant commercial district. Since 2008 only 35 housing permits have been issued. The economic climate dictates that residential space is more viable than commercial space. The market will dictate the use. Allowing housing on the first floor will create a more successful project.

Mayor Hill asked if this request complies with the zoning overlay. Mr. Sharbaugh said it does and described the Downtown District zoning, noting it is required that all first floor uses on St. Johns Avenue are commercial. Everything else is "periphery" which can be residential. The only thing preventing the developer from using the space on the first floor as residential is the language in Exhibit C to the original contract (filed).

Thad Crowe, Planning Director, said the overlay consists of the core and the periphery. The Moragne building is directly affected by this; this building does comply with the overlay. The other buildings have less stringent requirements, but the Winegar building is held to corridor requirements as it is on Reid Street and does need to meet overlay standards. Mr. Holmes asked if he is considering these as four separate buildings. Mr. Crowe said the building on Reid Street is subject to "major thoroughfare" standards. No blank walls are allowed; they are required to break up the buildings with 50% being windows. In the periphery there are no restrictions on first floor residential, but the Commission has the ability to go above and beyond that.

PUBLIC COMMENT: Mayor Hill opened the floor to the public comment.

Marc Spalding, 3400 Crill Avenue, Palatka, said he has been in the real estate business for 34 years. His father's offices were located in the 100 block. He supported the hotel as it was to

contain a small convention center. This did not come to fruition. The reason the condos did not work was due to the cost. It was never feasible at the price point proposed originally. The concept he is now asking for is also not reasonable. The historic preservation is important; there was no residential use downstairs in downtown. The applicant's request does not fit any of the City's plans. They don't want to repeat history of creating poor uses on River properties.

Ben Bates, 3400 Crill Avenue, said he agrees that facts matter. They are all interested in the development of the riverfront, which is the key to development of Palatka. When the City purchased the property from him at the corner of 1st & Reid, he was told that the City needed the property for redevelopment. Promises were made. If he knew where they would be today, he would still own that property. He has been in business here over 41 years and has worked hard to make the town the best it can be. These housing units are 20 x 30 foot spaces, give or take, some 650 square feet, which are proposed for rent at \$2,250 per unit. If the condos wouldn't go at \$300,000, this doesn't make sense. As to parking, there are 35 units with the building. All the parking will be taken up by the residential use. The only permits that have been pulled by the developer are a demolition permit and another permit for a part of the project. There is no permit for the rest of the work. The developer has spent \$1.8 million on a project on which he has no building permit. This is about parking and compatibility. He encourages them to enforce the contract and move forward.

Dan Martinez, 320 Round Lake Road, Palatka, concurred with Mr. Bates and Mr. Spalding's remarks, saying the Commission is being asked to buy into a "pig in a poke." The ensuing regret will last a long time.

Vito Russo, 415 Emmett Street, said many in the community take the view that an entrepreneur has come here to take a risk on developing this property. The City should not put up any roadblocks that would minimize his opportunity to succeed. Minor changes should not be used to mitigate his chances of success. He asked the Commission to be flexible.

Terry Turner, 455 East End Road, San Mateo, said the history of the developer is very pertinent. If the developer had first proposed a high density apartment building the Commission would not have awarded him the development contract. He received purchase incentives. Now he believes he deserves more consideration than given in the original deal. He hopes they move the project forward as originally contracted. This developer was awarded this project based upon his proposal. Now that he realizes it won't work, he wants to construct a low quality apartment building. He supports no change to the contract.

Tony Bushell, 2 Luwanna Circle, St. Augustine FL, said he has a vested interest, he owns the property at 200 St. Johns Avenue (Bingo Palace) and the property across the street. He has been there for 10 years and is pleased to see that something is happening. He compared this property to St. Augustine riverfront property. High end condos have worked out well there. If this project stops, redevelopment stops. He supports the contract change.

Chip Laibl, PO Box 420, Bostwick, said the City has an "image" challenge. He believes this project will help Putnam County's image. He believes it will help the area to fill the building with students. He suggested a student bass fishing team or a bicycle team. This will help the trails system. He encourages the Commission to move forward and grant the contract amendment.

Allegra Kitchens, 1027 S. 12th Street, asked the Commission to support this contract amendment, which is supported by the EAR & Comp Plan, which encourages residential in downtown Palatka. CDP wanted to do 22 apartments there. This development company has invested millions into this property. The City has nothing to lose.

Thad Crowe, Planning Director, was asked if this request is compatible with the zoning overlay on St. Johns Avenue. Mr. Crowe said strictly speaking the first floor residential is. As to parking he was asked if the 19 2-br apartments, with a total of 38 bedrooms, anticipates two people per bedroom. Mr. Crowe said zoning doesn't limit bedroom occupants; technically there is no limitation on that. If the request is granted, the Downtown Riverfront zoning district has parking requirements. The first 3 units are exempt, so there will be 2 spaces required for each 2-br apartment, or 32 parking spaces. They have 35 parking spaces with the building they own outright. As to the number of parcels, Mayor Hill asked why this isn't one parcel as opposed to four parcels. Mr. Crowe said entitlements apply to buildings; parking refers to units. It was treated as four separate parcels at first, and now is treated as one parcel. They consider it four separate parcels. If they treat it as one parcel, RDG would only be entitled to only two residential units. Project vesting leans toward the property owner, so they treat it as four buildings. They did not create a roadblock, but gave them the benefit of the doubt.

As to the question of whether there is a comprehensive plan for the entire project, Mr. Crowe said one does not exist. He has seen projects go forward as phased projects; others operate from a long-range master plan. He has not had a chance to review a comprehensive plan for this project. Mr. Holmes asked if it would not be accurate to state the applicant would have to come before the Planning Board or anyone else if they were to operate within the zoning that is already in place. Mr. Crowe said that is correct. Mr. Holmes clarified that this would apply to any applicant; as long as they were operating within the scope of the zoning there would be no opportunity to review specific plans.

As to the amount of rent, Mr. Townsend said the rent would be \$2,200 per unit. The projected market is students, which is viable. At the recent open house that was held, people other than students asked as to whether they could occupy a unit. Mr. Holmes asked if they have to have \$2,200 per month for the project to be feasible. Mr. Townsend said \$2,200 would enable them to meet all of their expenses. They intend to market them at \$2,200 per month.

Mr. Sharbaugh said the smallest project unit proposed is 685 sf and largest is 800 sf. Zoning does allow for this request to be granted. As to parking, Sec. 94-262 of the Code, states the required number of off-street parking spaces is 2 spaces per residential unit. This is allowed. For uses in downtown business and riverfront district, residential uses require 1 space per dwelling unit; therefore, 19 units will require 19 spaces, minus 3 spaces, for a total of 16 required spaces. This development owns 35 spaces. There are four building permits involved, which makes it four buildings. The property appraiser incorrectly took action to combine them into one building. It is now six separate parcels -- four buildings and two separate parcels.

Mayor Hill said as to paragraph 27.1 of the contract, it is expressly written that the Commission has sole discretion as to the decision of permitted uses. That is absolute. Permitted "development/use restrictions" are initially based upon the depiction shown as "Exhibit C." Mr. Sharbaugh said the contract carries no other language limiting use of the buildings. Mayor Hill said another clause speaks to feasibility, which provides ample time for the buyer to address feasibility and marketing. There was a marketing analysis and feasibility presented when this initially was approved as condos. Mr. Sharbaugh agreed. Mr. Crowe clarified the parking requirements in the actual downtown riverfront zoning segment requires two spaces per unit. When there is a conflict, the stricter provision prevails, so he stands by his initial assessment.

Commissioner Brown asked if there are adequate windows planned for the Reid Street side. Mr. Holmes said that had to do with Mr. Crowe's reference on the most northernmost building; they are not at the point where they have had to address that. Mr. Townsend said plans have been submitted. Commissioner Brown said she has concerns on parking. The City has purchased parking for commercial uses to attract business. Discussion ensued regarding the parking

required for the project, as to whether or not Code requires one or two spaces per dwelling unit. Mayor Hill asked if they anticipate 76 occupants in these units overall. Mr. Townsend said they can't say but would welcome 76 occupants. This equals 2 people per bedroom.

Commissioner Campbell said college students don't want to pay that price for a room so far removed from campus. None of them are against development of the property. They are told something different each time this development comes before the Commission. The City has been accommodating. The original agreement specified residential units above with commercial/retail use below. They did not think they would see Mr. Diamond again within just a few months with a different proposal. Mayor Hill asked at what point is the City entitled to the benefit of their bargain? They signed a contract amendment two months ago. They had an opportunity to create an emergent market. He can't say what the market will bear especially considering the unknown variables. The market doesn't bear what the current plan has in place and they knew this going in. They now want to circumvent and do something different. Contracts are legally binding. The thing he finds most offensive is the accusation that the City has been a barrier when the Planning Director has given every benefit of interpretation to and worked with the developer. The Commission wants to see this project come to fruition. They do not want to act out of desperation. The issue isn't whether they are going to have people downtown; at one time they had 100 occupied apartments, which they just took down. They want development. At some point they need to stop asking for modifications. The City has a lot of "skin in this game." The City sold them the buildings for \$150,000 based upon their development proposal and then they threw out the Line of Credit requirement.

Discussion ensued as to the reason for asking for this change when the developer said two months ago that he was not going to ask for further changes. Mayor Hill noted the market has improved over the past 3 years, not declined. Discussion ensued regarding marketability and sustainability of the proposed project in 2013 versus 2016. Mayor Hill said the City has made concessions and worked with their attempts to make this work. Bottom floor residential is not compatible with other downtown buildings. He looks forward to seeing commercial on the bottom floor of this building. As to the question as to whether or not the project will die with the initial contract in place, Mr. Townsend said no, it will not.

Commissioner Norwood asked when the Planning Director will receive a detailed site plan.

Corky Diamond, 124 St. Johns Avenue, said they have submitted full plans and site plans and have four building permits. Mr. Crowe was asked if he has detailed site plans, to which he answered RDG submitted a conceptual site plan with the conditional use application. He would not call it a detailed site plan. Mr. Diamond said the plans contain all the details; it has been accepted and permitted. Mr. Crowe said there appears to be some confusion between construction drawings and zoning drawings. He submitted what was required for the application.

Commissioner Brown said they have always said they wanted to see commercial/retail development downstairs. Other prior developers were "run off" or couldn't finance their projects. They want Palatka to grow. They want to see this project finished and flourishing. Commissioner Borom said the developer has made a significant investment and deserves the benefit of the doubt. They want to have a parking problem. They need to take a non-traditional approach. Commissioner Campbell said they have not taken a traditional approach to anything on this matter and moved to deny the contract amendment to construct first floor residential in the 100 Block development. The motion was seconded by Commissioner Norwood. A roll-call vote was taken, which yielded the following results: Commissioners Borom and Brown, no; Commissioners Campbell, Norwood and Mayor Hill, Yes. The motion was declared passed on a margin of three in favor, two opposed.

6. **REQUEST TO APPEAL** Planning Board Case No. 16-16 – Denial of Conditional Use – Riverfront Development Group, LLC, Applicant for Conditional Use Permit to allow fifteen (15) upper floor residential units and four (4) first floor residential units within four downtown buildings located on the 100 Block of N. 2nd Street – Michael Woodward, Legal Counsel, Riverfront Square, LLC. - Mayor Hill said this is a quasi-judicial process to hear an appeal of a Planning Board decision, and opened the Public Hearing.

Don Holmes, City Attorney, provided groundwork and guidelines for the appeal process. He asked the Commission to disclose any ex parte communications from those for or against that should be disclosed. Mayor Hill said he has had communication with those both for and against the project. Commissioner Brown said she was contacted by Mr. Townsend but declined his request to meet with her pending this appeal.

Mr. Holmes said this is an appeal of the Planning Board's denial of a conditional use. Sec. 94-3.7 of the Code reads that action taken by the planning board to approve or deny a conditional use shall be deemed final unless a request is filed within 30 days for the City Commission to hear an appeal. The Commission sits as a legislative body and as a quasi-judicial body. They are now sitting as an appellate body, which means they cannot receive new evidence, and can only consider the record below, which in this case is the record of the Planning Board's proceedings. In order to overturn their decision, they will have to find fault with their proceedings based upon what they considered.

Mr. Holmes said conditional uses are bound by the zoning statute. He read the definition of a conditional use into the record, it being 'a use that would not be appropriate generally or without restrictions within a zoning district, but if controlled as to number, area, location or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, comfort, convenience appearance prosperity or general welfare.' He said it is a use that is generally not permissible but if restricted as to certain criteria, might be. The applicant was asking for permission for multi-residential use of more than two units per building. The Planning Board should make a written finding that the use would not affect the interest of the public, health, safety, etc. for approval. Section 94-3 (4) (a) through (k) contain specific matters for the Planning Board's consideration and should have been addressed appropriately. Those include off-street parking and loading (c), and general compatibility (i). That is what the Planning Board was charged with. If the Planning Board denies a conditional use they have to fully state the reason for the denial in the record. In this case, the Planning Board voted 7 -1 to deny the request based upon parking (c) and compatibility (i). That is the record below. That is the decision this Commission must review.

Kevin Sharbaugh, Counsel, Riverfront Development Group, Appellant, questioned Mr. Holmes' advice as to having more leeway in the quasi-judicial hearing, and raised for the record the case Taxi USA of Palm Beach, LLC v. Cit of Boca Raton, FL heard before the 4th District Court of Appeals, Case No 4D14-2397, and cited this case for the proposition that the standard of review is not as restricted as Mr. Holmes states. Mr. Holmes said it would have been helpful if he had been provided this prior to the meeting. Mr. Sharbaugh read a passage concerning a "hybrid appeal" where the council is not held to a strict appellate record, contending there is flexibility not strictly based upon the lower "court's" review. The elected officials can review this. The Planning Board was appointed by the City Commission to review and make recommendations to the Commission. The Commission is the authority. They don't have to find there was an error on the Planning Board's part. Mr. Holmes said it appears the ordinance the City of Palm Beach was working with is called a "hybrid" appeal where it wasn't specified in the Code that the board was sitting in an appellate capacity. He requested a recess to review this case.

RECESS – Mayor Hill recessed the meeting at 8:44 p.m. by consensus of the Commission.

RECONVENE - Mayor Hill reconvened the regular 5/26/16 meeting at 9:00 pm and continued with the Orders of the Day.

Mr. Holmes stated he stood by the advice he offered earlier; the Commission should confine itself to the record below. The case cited was not on point. The person was appealing to the circuit court complaining that the appellate body erred by taking new evidence. The appellate court argued that the code they were operating under allowed them to take new evidence. The Palm Beach code stated the appellant was allowed to present other evidence. This is not the normal standard of review. He does not find that case to be on point. It is dealing with a different code provision. Mr. Sharbaugh stood by his objection.

Tom Townsend, Spokesperson for Riverfront Development Group, LLC, said Mr. Sharbaugh would take them through the transcript of the Planning Board meeting, which shows they are talking about opinions instead of facts. He understands the Commission has the right to deny their requests. The Planning Board needs to operate under the criteria. They will show they did not via a lengthy and thorough PowerPoint, which touches on relevant and irrelevant issues. Opinions matter, but criteria and rules should be followed. Staff recommended one thing and the Planning Board recommended something else.

Mr. Sharbaugh narrated the appeal of the Planning Board's Decision concerning Case #16-16. Their request tonight is for the Commission to "reverse the denial, supporting the applicant and allow for 15 upper floor units and four 1st floor units along with other staff conditions" noting the 1st floor units require a Development Contract amendment.

Mr. Sharbaugh noted the Staff Recommendation was incorrectly indicated on the summary sheet. Staff's recommendation was to allow for 16 upper floor units, total units not to exceed 18 units." That is the outcome they are asking for. He is still asking for Staff's recommendation to be allowed, for 15 but up to 18 upper floor units. The finding can be reversed, overturned, or upheld. Mayor Hill said he is appealing the original request. If there is a modification, that can be done by the Commission. Mr. Sharbaugh said all the images he used are out of the staff report and he quoted directly from the PowerPoint, minutes or verbatim transcript of the meeting.

Mr. Sharbaugh continued, noting the floor plan(s) showing 12 2nd floor units as proposed was shown. Zoning designations were noted by Mr. Sharbaugh. The property is located in Downtown Riverfront zoning district, so designated in Sec. 94-161. Staff notes this allows for multi-family housing. Any reference to student housing is not relevant to the Code. This is a proposal for multi-family housing, specifically 2BR-2 bath apartments with full kitchens. The purpose to provide a pedestrian oriented, retail/entertainment area that has historically been downtown waterfront. Permitted principal uses include residential uses. Conditional uses include 3 or more residential dwellings located above the first floor or a commercial unit. A five-story building fronting on St. Johns Ave. is required to have one floor of commercial and two dwelling units per floor, or more than two dwelling units by conditional use permit.

Mr. Sharbaugh said this is a mixed use project that includes ground floor commercial. By right, eight residential units are allowed on upper floors. The total units proposed by conditional use were 19; this includes three on the third floor, 12 on the 2nd floor, and four on first floor. Conditional Use Criteria for Planning Staff review was shown. The Staff analysis (page 6 of staff report - filed) was shown, which states that 20 residential units per acre are allowed in downtown zoning as a maximum density in entire DB and DR aggregate. You don't have to own an acre to have 20 units. The Comp Plan anticipates a maximum of residential units. This project seeks to

create 19 dwelling units. It is supported by policies supporting infill and mixed use downtown. It does not conflict with the Goals, Objectives and Policies. It meets Criteria #1.

Mr. Sharbaugh said, as to Ingress and Egress/Off-street Parking, (b) and (c), the analysis by staff said Code requires 32 parking spaces. The parking lot provides 35 spaces. By Code, parking is sufficient. Additional staff commentary said while staff does not recommend it, the Planning Board has the ability to limit residents to address parking concerns. Staff found it met the criteria. The Staff report refers to Code Sec. 94.262 requiring two spaces per dwelling unit. Staff has used criteria for paragraph (a) which does not apply to DR Zoning; for uses in DB and DR, off-street parking requirements requires one space per dwelling unit. Sec 94-161(i) also carries that requirement. For this development, the number of parking spaces required is 16 total. The Project has 35 parking spaces, almost twice as many as required by zoning. Mr. Sharbaugh said during the break, the Planning Director stated to him that he misread that requirement. They have a lot of parking for the project.

Mr. Sharbaugh stated this proposal also complies with #'s 4, 5, 6, and 7, as well as #8, as listed in Staff's report.

Mr. Sharbaugh said, as to general compatibility to adjacent properties (i), noting from the Staff Report, Mr. Sharbaugh said Staff has stated it cannot provide any data that rental apartments or student housing would present compatibility issues. Staff believes it is important to increase mixed use nature of downtown uses. Staff's principal concern is the appearance of the properties, given their high visibility. The final area of concern was first floor residential, which Staff objected to. Staff upheld the prohibition against residential on first floor, which is not supported by zoning. Staff stated criteria #9 meets the conditions. Criteria #10 and 11 are not applicable. Staff reviewed this criteria and this was their recommendation. On the whole the recommendation states that the application meets the conditional use criteria. Staff recommended approval of 16 upper floor units, not to exceed 18 total upper floor units. The conditions for approval were listed. Riverfront Development Group (RDG) has no problem with these conditions, but they do not agree that 1st floor residential is prohibited.

Mr. Sharbaugh noted that after the presentation by Staff, Mr. Woodward, counsel for RDG, spoke on behalf of the developer, and spoke to the 33% commercial vacancy rate downtown.

Mr. Sharbaugh said during the Planning Board meeting, members of the Planning Board started asking questions. Mr. Harwell's statements were highlighted as to the quality of persons dictating the quality of downtown. He is an architect and looks at architectural concerns. He made very detailed architectural inquiries before Mr. Holmes steered the conversation back to the matter at hand. He agrees with Mr. Holmes' statement that the focus really be on the factors that are in the conditional use criteria and that are specified there as they relate to the request to increase the multifamily units. He attempted to bring the focus of the board to relevant criteria on multiple occasions. Inquiries were made as to size of the units. The record shows Mr. Killebrew asked several questions concerning street access by residents and people who shouldn't be there. They discussed the installation of security cameras. Mr. Harwell again asked questions concerning architectural concerns. The questions raised by the Planning Board did not address relevant conditional use criteria. At that point, the Planning Board meeting was opened to public comment. Six people stood up to speak. They all spoke to the item #5.

Mr. Sharbaugh broke out the speakers between those who lived in and outside of the City of Palatka and continued with his recap on speakers as follows:

Speaker Bates stated he was disappointed in the motel development, questioned the validity of the amount of rent, wants the developer to stick with the initial proposal, but agrees it won't work.

He then spoke about compatibility and density and lack of multi-family housing. He raised parking issues. Mr. Holmes then questioned Mr. Bates as to what he does for a living and for how long, and if he is familiar with the rental market in Putnam County. He asked how this proposal compares to the Palatka Market. This action steps beyond his legal role as counsel to the Planning Board when he questioned Mr. Bates like he was a witness. He tried to establish Mr. Bates as an authority, which was not relevant. This tainted the decision making process. This is not part of the criteria. At the conclusion of Mr. Bates' remarks, Mr. Woodward was not allowed to ask Mr. Bates questions, and was told to wait.

Mr. Sharbaugh provided the following synopsis of the rest of the speakers:

- Speaker Turner said he doesn't think the comp plan supports the density, and supported Mr. Bates' remarks. He stated he initially supported demolition and raised the parking concerns.
- Speaker Martinez said he was in full agreement with speakers Bates and Turner, and stated his concerns about it being occupied by transient residents with no concern for the City of Palatka.
- Speaker Beck said he was the largest taxpayer in Palatka, supported Speaker Bates' comments and stated he supported demolition of the buildings in the beginning.
- Speaker McClain said he was disappointed with the motel and asked the Planning Board to deny the request, stating this development is not "better than nothing."

Mr. Sharbaugh noted Mr. Woodward was then allowed to respond. In his response he noted that it seems that some are still fighting for demolition of the buildings, and noted that discussion was outside of the scope of the criteria.

- An additional speaker, Mr. Spalding, also noted his father at one time had a business in the building, and said the building needs to remain commercial.

Mr. Sharbaugh said The Planning Board's discussion was not limited to the criteria. Mr. Holmes gave them instructions regarding denying or approving the permit. He told them they can't reject the request because they are not high end condos. If they move to deny it must be based upon issues of compatibility, parking, and/or not consistent with the public interest. Chairman Sheffield also stated the motion should be stated based upon the criteria for granting or denying conditional use. Mr. DeLoach then moved to deny the request based upon overcrowding, saying overcrowding was not the original intent of the development. Chairman Sheffield then asked Mr. Crowe to help to form an appropriate motion for denial. Mr. Crowe said they could make an argument in this case that there are too many of these units in one area, which overwhelms that particular block. Mr. Homes said the parking would be ancillary to that.

Mr. Sharbaugh said at this point they were just looking for a reason that would pass muster for a decision that was not predicated upon criteria. Chairman Sheffield then tried to clarify the motion. Draft minutes of the meeting state that "Mr. DeLoach moved to deny the request, based upon the conditional use definition pertaining to the number and frequency of uses, in this case that being a too-high concentration of units in one small area which overwhelms this block, noting that the project would overcrowd an already overcrowded area and off-street parking supply would be negatively impacted." This was a challenge to whoever was putting these minutes together.

Mr. Sharbaugh stated the applicant met the parking requirements. The denial was based upon negative impact to parking. Seven board members voted in favor of denying the permit. The

term "frequency" is not a part of any relevant criteria. Density is fully addressed by the Comp Plan and Sec. 94-161, which is the zoning. The project is well within those requirements. The request was for 19 units including four first floor units. Based upon the Commission's action to deny the contract amendment for four first-floor units, he has amended this request to override the Planning Board and grant conditional use permit for 15 upper floor units, with a maximum allowed of 18. It is their contention that the developer has met all of the criteria.

Thad Crowe, Planning Director, was asked by Mr. Sharbaugh to re-address the parking requirements for DR zoning. Mr. Crowe said Code requires one parking space per unit.

Mr. Holmes advised the Commission to limit this to the standard of review, which is whether or not from the record the Planning Board erred in its decision. Appellate review doesn't mean considering whether they would have done the same thing, but with the record that was established, whether the Board could or did rely upon factors in evidence; whether or not the record supports what they did. Re-weighing the evidence is not the standard of appellate review. Mr. Sharbaugh said the Planning Board does not make a final recommendation; it is only final if an aggrieved party does not seek review of the standards. Mr. Holmes said the Planning Board's decision is not a recommendation. It is specifically stated in the Code that it is final unless it is appealed. If they were to look at this as a recommendation, they are totally changing the context of the ordinance. It is not a ratification of a decision.

Commissioner Norwood noted in the Item Summary that Staff states the Commission can support, reverse or amend the denial. They can allow 16 first floor units along with other conditions, or reverse the Planning Board and allow the request, or they can uphold the denial. He asked, should the Commission find that the decision was not made based upon criteria set forth, if the case can be sent back to the Planning Board. Mr. Holmes said they can send this back to the Planning Board for reconsideration. He is not confident that the Commission can reverse the Planning Board and then make its own decision. This is not consistent with an appeal. If they reverse the denial and do something in the middle, he cannot condone that. They need to concern themselves with the appellate process. If they find it was flawed, they can uphold it, overturn it, or send it back to the Planning Board. Staff makes recommendations, not decisions.

Mr. Sharbaugh read from the Code concerning modifying or reversing Planning Board decisions. He said the ordinance specifically says the Commission can approve, reverse or modify. Mr. Holmes said the ordinance says if the Commission modifies it and someone feels they have been aggrieved by the modification, that person can appeal the modification to circuit court. Discussion ensued as to clarification on that point. Mr. Sharbaugh said to resolve the issue they can grant the request directly as it was presented, since they are still contractually restricted from building on the first floor.

Commissioner Norwood moved, based upon the evidence and criteria that was used for the motion, to reverse the decision of the Planning Board and remand Case #16-16 back to the Planning Board for re-hearing,. The motion died for lack of a second. After further Commission discussion, Mayor Hill said the Commission needs to make this decision; they need a clear record of the motion based upon evidence presented. Commissioner Borom moved to reverse the Planning Board's denial of RDG's application for conditional use, PB Case #16-16, and to support Staff's recommendation to allow no more than 16 upper floor units and no first floor units, with other staff conditions as noted in Staff's Summary. Commissioner Brown seconded the motion. There being no further discussion, a roll-call vote was taken, which yielded the following results: Commissioners Borom, Brown and Campbell, Yes; Commissioner Norwood and Mayor Hill, No. The motion was declared passed upon a margin of three in favor, opposed by Commissioner Norwood and Mayor Hill.

7. CITY MANAGER & ADMINISTRATIVE REPORTS

AIRPORT - John Youell, Airport Manager, said they are preparing to move forward with the Airport Obstruction (Trees) Removal Project. They are holding a pre-bid meeting on June 8 with award of the bid anticipated by the end of June. There are trees on the east side of the Airport located on five different parcels of privately owned property to be removed. They will be notifying those property owners that the trees are violating air space requirements.

Terry Suggs, City Manager, said they have written to ATS regarding the Red Light Camera Program per the Commission's request made at the 5/12/16 meeting.

Mr. Suggs said for the record, the \$400,000 the City is spending for the Brownfield Program are grant dollars.

8. COMMISSIONER COMMENTS

Commissioner Norwood said the cleanup went very well. He thanked the Mayor for heading up the initiative. Commissioner Brown concurred.

Commissioner Brown said Two years ago she brought back information on how to recruit new business. She'd like to have the City Attorney speak with Mr. Diamond and ask him to look at this project, which could create more business for downtown. As to the Brownfield Project, should anyone want to see what Brownfield Projects do, look at the Gas Authority's clean-up project. They remove old contaminants and things that will make people sick.

Commissioner Campbell said he has proposed the structure for the summer internship program and they are vetting the details now.

Mayor Hill said during the May 21st County-wide cleanup project they picked up over 9,200 lbs of trash with almost 600 volunteers participating. It was a big success.

9. **ADJOURN** – There being no further business to conduct, the meeting was adjourned at 10:00 p.m. by Mayor Hill.

ANY PERSON WISHING TO APPEAL ANY DECISION MADE BY THE CITY COMMISSION WITH RESPECT TO ANY MATTER CONSIDERED AT SUCH MEETING WILL NEED A RECORD OF THE PROCEEDINGS, AND FOR SUCH PURPOSE MAY NEED TO INSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED. FS 286.105