

CITY OF ST. AUGUSTINE

Regular City Commission Meeting
Monday, September 13, 2021

The City Commission met in formal session Monday, September 13, 2021, at 5:00 P.M. in the Alcazar Room at City Hall. The meeting was called to order by Mayor Tracy Upchurch, and the following were present:

1. Roll Call: Tracy Upchurch, Mayor/City Commissioner
Nancy Sikes-Kline, Vice Mayor/City Commissioner
Roxanne Horvath, City Commissioner
John Valdes, City Commissioner
Barbara Blonder, City Commissioner

John Regan, City Manager
Isabelle Lopez, City Attorney
Darlene Galambos, City Clerk
Meredith Breidenstein, Assistant City Manager
David Birchim, Director, Planning and Building
Mark Simpson, Director, Financial Services
Reuben Franklin, Director, Public Works
Todd Grant, Director, Utilities
Melissa Wissel, Communications Director
Jennifer Michaux, Chief of Police
Carlos Aviles, Fire Chief
Elyse Anderson, Recording Secretary

INVOCATION AND PLEDGE OF ALLEGIANCE

Cynthia Garris, City of St. Augustine, delivered the invocation, and Commissioner Sikes-Kline led the Pledge of Allegiance.

2. ADMINISTRATIVE ITEMS

2.A. Modification and Approval of Regular Agenda

Isabelle Lopez, City Attorney, requested the addition of Item 11.A. 'Temporary Easement for the National Guard to work on their seawall'.

MOTION

Commissioner Sikes-Kline MOVED to approve the Agenda with the one addition requested by Ms. Lopez. The

motion was SECONDED by Commissioner Blonder and APPROVED BY UNANIMOUS VOICE VOTE.

3. Special Presentations, Recognitions and Proclamations

3.A. Presentation of the George Gardner Award by Melinda Rakoncay, President of The Neighborhood Council of St. Augustine.

John Regan, City Manager, introduced Ms. Rakoncay.

Ms. Rakoncay reviewed the Award which she presented to Reuben Franklin, Director, Public Works, and his wife, Amy Franklin.

Mr. Franklin expressed his gratitude for the Award and thanked his wife and City staff.

Mayor Upchurch congratulated Mr. Franklin on behalf of the Commission, and he thanked Ms. Rakoncay and Sally Gardner for the recognition.

3.B. Proclamation 2021-17: Proclaiming National Hispanic Heritage Month from September 15 to October 15.

Mayor Upchurch read the Proclamation which was accepted by Consuelo Lippi, a Sister Cities organization member.

Ms. Lippi thanked the Commission and City staff and was grateful to be affiliated with St. Augustine.

4. General Public Comments (3 minutes per individual)

The Commission heard from the following members of the public:

- Shawn Morrison
- Chris Fulmer
- Ronda Brennan
- Lauren Giber
- Doug Russo
- B.J. Kalaidi

5. Consent Agenda

John Regan, City Manager, read the Consent Agenda.

CONSENT AGENDA
SEPTEMBER 13, 2021

CA.1. Preview of upcoming Commission meetings.

CA.2. THE FOLLOWING ORDINANCES ARE TENTATIVELY SCHEDULED FOR SECOND READING ON SEPTEMBER 27, 2021:

- Ordinance 2021-22
- Ordinance 2021-25

CA.3. Reminder of Upcoming Meetings:

- September 23, 2021, 5:05pm, Second and Final Special Budget Meeting
- September 27, 2021, 3:00pm, Special Workshop Meeting
- September 27, 2021, 5:00pm, Regular City Commission Meeting
- October 11, 2021, 5:00pm, Regular City Commission Meeting

CA.4. APPROVAL OF MINUTES FROM PRIOR COMMISSION MEETINGS:

- July 12, 2021, Shade Meeting
- July 12, 2021, Regular City Commission Meeting
- August 9, 2021, City Commission Special Meeting
- August 9, 2021, City Commission Regular Meeting

CA.5. RELEASES OF LIEN FOR UNIT CONNECTION FEE MORTGAGE(S):

- 237 Palmetto Drive - George Brown

CA.6. PROPOSED PROCLAMATIONS, CERTIFICATES OF APPRECIATION / RECOGNITION. (COMMISSION APPROVAL REQUIRED). (TO BE READ AT A SUBSEQUENT MEETING).

- Certificate of Recognition 2021-04 CR: Issued to Opal Lee, the Grandmother of the Juneteenth movement, now a federal holiday. (*T. Upchurch, Mayor*)

CA.7. NOTIFICATION OF PROCLAMATIONS / CERTIFICATES OF RECOGNITION ISSUED:

- Proclamation 2021-18: Proclaims September 17 through September 23, 2021 as Constitution Week. (*T. Upchurch, Mayor*)

CA.8. Approval of the donation by the St. Augustine Police Department to the Palatka Police Department of X2 tasers and associated equipment. (*J. Michaux, Chief of Police*)

CA.9. Approval of the three-year agreement between the City of St. Augustine and St. Johns County providing additional funds to operate the Visitors Information Center. (*J. Piggott, Director General Services*)

CA.10. Approval of a license agreement with Shaun Burton allowing him to install and maintain a fence at 1650 Saint Marks Pond Boulevard, St. Augustine. (*T. Grant, Director Utilities*)

CA.11. Approval of agreement between the City and Old Town Trolleys to operate from the promenade by the VIC during this year's Nights of Lights. (*J. Piggott, Director General Services*)

CA.12. Confirmation of appointment to the St. Augustine Police Officers' Retirement Board. (*D. Galambos, City Clerk*)

CA.13. Approval of the after-mediation settlement in the matter between the City of St. Augustine v. Railroad Spike Properties. (*I. Lopez, City Attorney*)

End of Consent Agenda

5.A. Additions, deletions, or modifications to Consent Agenda

Mr. Regan requested to correct his letter in Item CA.13. to state the funds in the settlement would be from the Utility Fund.

5.B. Approval of Consent Agenda

MOTION

Commissioner Sikes-Kline MOVED to approve the Consent Agenda as corrected. The motion was SECONDED by Commissioner Horvath.

VOTE ON MOTION

AYES: Sikes-Kline, Horvath, Valdes, Blonder, Upchurch

NAYES: None

MOTION APPROVED UNANIMOUSLY

6. Appeals

(None)

7. General Public Presentations, Items of Great Public Importance, and Other Items Requiring Public Hearings

7.A. General Public Presentations

(None)

7.B. Items of Great Public Importance

7.B.1. Christina Parrish Stone, Executive Director, St. Johns Cultural Council: Presentation of out-of-market advertising campaigns. How is St. Augustine being marketed / represented by the Cultural Council to outside visitors / tourists?

Mr. Regan reminded the Commission of their request for presentations from the St. Johns Cultural Council (SJCC) and the Visitor Convention Bureau (VCB) regarding out-of-market advertising of the City. He introduced Christina Parrish Stone.

Ms. Stone reviewed the presentation which discussed how the SJCC supported and promoted arts, culture, and heritage in the City for community development.¹ She reviewed cultural tourism benefits and strategies, grant funding recommendations, historic preservation, the Tourist Development Council (TDC), collaborations with others to plan festivals, celebrations and concerts for the public, and the 200th anniversary. She concluded the goal was collaboration and coordination with the VCB and other marketing partners to extend the reach of St. Johns County marketing efforts, which included continued website operation, newsletters, and robust social media presence.

Commissioner Blonder thanked Ms. Stone for her presentation. She asked how the grant funding dollar amounts were

¹ Included with original Commission packet

prioritized, if the criteria could better reflect the City's culture, and how some events fit into the City's culture and history.

Ms. Stone provided the following response:

- Grant application process was challenging
- A grant panel scored the applications
- Grant funding was based on a formula that included the event or organization's budget, and score determined what percentage of funding eligibility
- Intended to make additional changes from now until next year's program, to assist with more reasonable funding support for large events
- Criteria asked panelists to score applications based on authenticity and how the event reflected City culture

Mayor Upchurch thanked Ms. Stone and noted his appreciation for the informative and helpful presentation.

7.B.2. Richard Goldman, President & Chief Executive Officer, St. Augustine, Ponte Vedra & The Beaches Visitors and Convention Bureau (VCB): Presentation of out-of-market advertising campaigns. How is St. Augustine being marketed / represented by the VCB to outside visitors / tourists?

Mr. Regan introduced Richard Goldman.

Mr. Goldman reviewed the presentation and noted the following:²

- VCB's mission was to bring visitors into the County to spend money
- 'Travel INTRANationally' concept targeted St. Augustine as a City for travel within the U.S. to experience cultural knowledge and enhancement
- Current marketing looked at behaviors from those desiring to consume cultural

events, enjoy outdoor activities, and learn while travelling

- Targeted the 'boomer' and millennial generations
- Effects of Hurricane Dorian and the pandemic shifted the messaging for what people wanted, which had to be reached through the digital world

Commissioner Sikes-Kline advised that Commissioner feedback on the presentations was welcomed under Item 14 'Items by Commissioners' and would be represented to the TDC.

Mayor Upchurch thanked Mr. Goldman for his presentation.

7.C. Other Items Requiring Public Hearing

(None)

8. Ordinances and Resolutions – Public Hearing Required.

8.A. Ordinances – Second Reading

8.A.1. Ordinance 2021-19: Rezoning the Sebastian Inland Harbor Planned Unit Development of 159 King Street (PID# 203350 0030, 203470 0000) to Residential General and Office.

Mayor Upchurch advised that all potential witnesses would be sworn in at one time.

The Commission provided ex parte communication.

David Birchim, Director, Planning and Building, reviewed Ordinance 2021-19 which was a public hearing. He stated the Commission was provided with a comparative analysis of zoning categories, a chronological history of the zoning of these properties, a full description of Residential General Office (RGO) zoning, and the existing Planned Unit Development

² Included with original Commission packet

(PUD) narrative and site plan.³ He summated the topic:

- RGO zoning was defined in the existing PUD as current allowable uses
- Proposed re-zoning would not change any permitted uses of the property
- RGO reduced the overall building height by 10 feet, resulted in more parking spaces, and reduced residential density for the SA Marina Holdings portion
- Re-zoning would eliminate any public architectural control over the properties, but not the Seavin, Inc. property to be presented in Ordinance 2021-20
- Property had RGO zoning from 1987 to 2004 when originally zoned PUD and had retained residential medium density mixed use since 1987
- Planning and Zoning Board (PZB) made a positive recommendation on August 10th to rezone the property from PUD to RGO

Darlene Galambos, City Clerk, swore in the team of Ellen Avery-Smith, Rogers Towers PA, and the members of the public present to comment on the item.

Ms. Avery-Smith indicated the Landscape Architect / Planner was present for questions, and she delivered a presentation which included the following:⁴

- Introduced the Abdulhussein family, property owners through SA Marina Holdings who was the applicant
- Future land use designation had been residential medium density mixed use for thirty years, and was listed in the Comprehensive Plan
- Request to rezone property from PUD to RGO was consistent with the land use category
- City Code 28-165 reference to 'intent' matched the residential medium density mixed use definition and applicant would

develop the site consistent with this definition and RGO zoning

- Permitted uses from the RGO and PUD zoning category had same components as far as density and intensity of use
- RGO zoning request was consistent with other City zoning; the property was RGO in the past and they wanted to return to RGO which was the compatible land use designation
- PZB unanimously recommended the approval of the re-zoning application

Mayor Upchurch asked Ms. Avery-Smith to elaborate on a statement within her submitted materials: "Florida Case law supports the owners right to rezone".

Ms. Avery-Smith advised an entire lineage of Florida case law existed which discussed an applicant's right to apply for rezoning a property. She continued that as long as the re-zoning request was consistent with the property's future land use designation, the local government authority must approve the re-zoning request, unless there was competent substantial evidence to say otherwise. She commented that Ms. Lopez explained at first reading there was a long history on the evolution of Florida zoning law over the past 30 years.

Mayor Upchurch inquired about the current PUD having public amenities such as a Riverwalk, amphitheater, and public access, which would be lost if property reverted to RGO zoning.

Ms. Avery-Smith stated it was not legally required to provide these; however, there would be access points where the public could walk along Sebastian Harbor Drive, visit restaurants, and enter the promenade.

Commissioner Horvath inquired about original PUD shared items, such as the parking garage with the winery, and questioned how this would be handled under an RGO.

³ Included in original Commission packet

⁴ Presentation attached to original minutes

Ms. Avery-Smith answered that the SA Marina property would most likely have a parking garage with the hotel; however, Seavin, Inc. was currently a stand-alone RGO application and would require their own parking in accordance with City Code. She stated there would be more parking since each applicant must provide Code compliant parking for their own project.

Public hearing was opened, and Commissioners heard comments from the following members of the public:

Sandra Parks, former City Commissioner, noted the following:

- Property acquisition intentions had completely changed and after 35 years the Commission and developer should reach an agreement
- Expressed concern regarding traffic increases and new developments near Sebastian Inlet Drive and Riberia Street
- Businesses that brought revenue should be encouraged
- Urged Commission to minimize traffic since Lincolnville was never designed to be a hospitality hub, and construction and proliferation of short-term rentals had increased traffic

Bruce Maguire, former County Commissioner, stated the following:

- Concurred with Ms. Parks' comments
- Number one issue was protecting everything south of King Street
- Expressed concern that PZB approved construction in the Conservation Overlay District without sufficient research and analysis
- Viewshed ordinance passed by the City intended to protect the waterway view and the PZB failed to protect this
- Developer never reviewed neighborhood concerns with the project
- Did not suggest approval or denial of application, but if RGO was approved, control would be lost with SA Marina

project which could be disastrous on the waterfront

- Suggested returning to PZB for more research of the viewshed and the Conservation Overlay Zone

Mattie Raiford Harms reviewed the following:

- In 2014 the St. Augustine Record published an article stating the developer wanted to know resident and business owner concerns, and that they intended to work with the City on a plan suitable for the area
- Citizens received 'foot dragging', extension requests, amendments, missed deadlines, a rezoning request, and City had bent backwards to accommodate the developer who had been provided more than a fair chance
- Property should remain a PUD, due process had been given, developers had come and gone over many years, zoning had been revised, and times were different from the property's 2014 purchase
- Requested a denial of the application and to maintain the PUD status as purchased

Jim Cameron claimed the following:

- He worked with the Daytona Chamber of Commerce and from this position, he knew the Abdulhussein property owners
- Owners took underdeveloped properties and turned them into quality properties
- They stayed involved with the community and had a superb track record
- Several hotels were referenced that the owners had acquired and converted to reputable and very nice establishments

Lauren Giber indicated the following:

- Citizens wanted developers to follow the rules of the PUD, which she read

- Disappointed City allowed the developer more time and gave away the second layer of the conservation zone
- Discussed urban renewal and Lincolnville, and stated politicians should be discussing job training and creation, and urban planning
- City was selling out the residents
- Used example of the newly constructed Homewood Suites on King Street which would be a traffic nightmare

Gail Wisler reviewed the following:

- Asked Commission to vote no on RGO zoning and maintain the PUD
- Development was back for discussion without any public benefit as the PUD intended, despite impaired waterways, guaranteed traffic increase, and flooding
- Developer was trying to avoid public oversight and opposition
- 2007 PUD had lost a viewshed of the San Sebastian River ('River') public greenspace; amphitheater, sculpture garden, Riverwalk, and public parking, and in exchange the City was getting a private resort
- King Street had more than an estimated 4,500 cars per day (prior to Homewood Suites and Marriott), with one access, which guaranteed more flooding and was against the Coastal Resilience Accountability Report recommendations
- A large wall blocked Conservation Overlay Zone 1 and scenic areas
- Development consistently encroached on Lincolnville, and residents were most negatively impacted
- New development would add stress to the wastewater treatment plant which was aging and compromised
- Many residents had moved from Lincolnville due to frustration; however, there were those who desired to stay in the historic area

Richard Spence, Lincolnville Neighborhood Association Board member, stated the following:

- Acknowledged Mr. Birchim, Mr. Regan and Ms. Lopez for their efforts to assist with questions
- Discussion was necessary on whether Florida State law directed approval of the rezoning
- Applicant bought property as legally zoned 2007 PUD and was obligated to build in that zoning category
- PUD had already commenced
- Existing PUD allowed for all uses in the RGO rezoning district, so allowable uses would not change; therefore, the applicant desired to change zoning because this removed oversight
- City should have control and oversight of the property since it was located at the City's entrance

Melinda Rakoncay acknowledged the following:⁵

- Project was anticipated as PUD since 2007 with public benefit intentions
- Granting the RGO request would eliminate the public benefit by losing the Riverwalk, amphitheater, sculpture garden, public/private parking agreement, and distinctive architecture
- Developer obligated to build from the 2007 PUD which had specific plans when property was purchased in 2014
- PUD would have been constructed without the real estate crash in 2009
- Developer requested an extension of time for the PUD after purchase
- City Code stated PUD zoning district terms and conditions shall be enforceable in the same manner as all other Code provisions
- City Code stated the PUD was binding to the applicants, property owners, and each of their successor titles to every commitment made
- Commission should have advised the developer at the January 25th meeting they must adhere to the PUD purchased

⁵ Photo provided attached to minutes

- Burden of justification was on applicant for not building 2007 PUD, or why the City could not be worked with to amend
- Commission could not justify why it should abandon a legally zoned PUD with public benefit
- Denial of application did not take away applicant's property rights, they could build the PUD, work with the City to amend, and sell for a tidy profit
- Applicant should work with the City to find a mutually beneficial creative solution
- Requested that the Commission uphold the property's legal PUD zoning

B.J. Kalaidi stated the following:

- Ordinance should not be passed as the public's interest would not be benefitted
- Developer could wait until April 23, 2022 when the PUD would expire and the RGO zoning could go forward
- Developer purchased the property in 2014 for \$5.475 million with PUD zoning
- City had failed to require a mobility fee for developer's impact to City roads and once the City took over King Street from FDOT, the impacts from the hotel, short-term rentals, and garage would be a burden on taxpayers, not the developer

Nyk Smith noted the following:

- Project had been ongoing for too long
- Return it to PZB for extensive research
- Questioned plans for flooding and traffic control with future increased flooding of SA Marina project impacts
- Extensions in meetings spoke volumes about what the people wanted
- Developer purchased a PUD which should remain a PUD

The public hearing was closed.

Ms. Avery-Smith provided a final summation:

- This task was not easy for the Commission, the community, or her clients, and she agreed the project had gone on way too long
- Property had a land use, Florida law allowed the owners to seek a rezoning consistent with that use, it was the owners' prerogative to request rezoning, and the RGO rezoning sought was the compatible land use to residential medium density mixed use
- The City's Land Development Code dealt with residents' concerns regarding traffic and flooding; therefore, a PUD was unnecessary
- Developer would comply with the Land Development Code and Water Management District requirements as protected by City and State law
- Her clients had personally met with Mr. Maguire regarding the project and others in the community
- Clients reached out to the Lincolnville Neighborhood Association over a year ago with no response
- Clients were not trying to harm Lincolnville, the property was located in downtown, and it contributed to the CRA
- Florida law and City Code handled the concerns expressed at the hearing

Jeremy Marquis, Marquis, Latimer & Halback, introduced his firm and advised that it looked for good quality clients, the Abdulhussein family had a proven track record in the City and other communities, and he used the example of the San Marco converted property which was now the Doubletree. He said the family was invested in the community, supported by a talented team that understood the Land Development Code, they sought a return to RGO, they were not seeking special parking, and he assured the Commission this was a great project with good intentions as an RGO.

Mayor Upchurch expressed concern that the Commission was asked to trust Mr. Marquis without any plans; therefore, this

was a 'trust me, trust us' statement. He acknowledged the excellent reputation of Mr. Marquis' firm and his clients but noted the Commission would not see the plans before construction.

Mr. Marquis understood the Mayor's concerns and reiterated his clients good reputation and quality projects, and noted it was to his client's advantage to build a great project which defined the property, brought visitors to the City, made his clients money, and brought City revenue. He concluded that working within the RGO confines they would make this a quality project.

Ms. Avery-Smith reminded the Commission the land use was residential medium density mixed use and RGO was the companion zoning. She thanked the Commission for their time.

Commissioner Sikes-Kline indicated she did not hear a justification to grant a rezoning and lose the public benefit that a PUD would offer the community.

Commissioner Valdes provided the following comments:

- His involvement with the 2004 project development had concerns with compromising architectural styles
- Anything constructed would negatively affect traffic without an option for another lane on King Street
- Property lacked accessibility except through the hotel
- Boardwalk would be built; however, it should not have public access since the public could not be controlled
- River pollution came from septic tanks, street runoff, marina waste, homeless camps, and all Lincolnville drains went to the River
- Revenue was needed from the project's ad valorem taxes to build more sewers in West Augustine and assist with homeless issues, and there was also

revenue from the CRA, fire access fees, utility fees, and building permits

- Hotel would have water retention which would assist the water system from flooding caused by a 19th century system, climate change, ocean rise, and more storms; therefore, problem was not the hotel, but burning fossil fuels
- Hotel guests would use the parking garage and access other transportation methods, and traffic would just be intense at hotel during checkout and check-in
- Commission should rethink the hotel versus impact from apartments, condos or short-term rentals
- Solution to traffic was to construct a bridge from Iberia Point to SR 207
- Project was an opportunity for the City to make a lot of money quickly within one year, versus a court battle for a few years that might be lost
- After 35 years, project should be built

Commissioner Valdes asked Mark Simpson, Director, Financial Services, to provide insight on the realized estimated tax revenue once the project was completed.

Mr. Simpson advised the Historic Area CRA would gain approximately \$850,000 per year based on the projected increase development value, which would be substantial over a 30-year period. He said the monies would reside within the Historic Area CRA and would be used for traffic and parking.

Commissioner Valdes continued:

- Income could assist with other projects needed in the Historic area
- It made more sense to proceed with construction rather than battle in court, and he trusted developers to construct a great building
- Developers required to stay within the building and zoning codes that provided building guidelines

- Commission should think long and hard before they 'kicked this down the road'

Commissioner Blonder provided the following comments:

- Recited Ms. Lopez' statement regarding City Code and the PUD voluntary process to provide project flexibility while enabling the PZB and Commission to integrate potential project benefits and innovative designs, which the previous PUD had
- PUD was for public benefit and the developer; however, with rezoning to RGO, City lost negotiation ability on topics such as mobility, public access, viewshed to River, public greenspace, and key component architectural review
- PUD was obtained in 2004, amended in 2007, and in 2016, the current developer filed for an extension deadline with no substantive changes, which indicated the applicant clearly made several significant efforts to retain the PUD
- Commission spent much time at the January 25th meeting and the applicant was asked to return with additional information and a more favorable proposal
- Commission had displayed a willingness to work with applicants for the mutual benefit of both the public and applicant; however, at the April 26th meeting the applicant applied for rezoning which was then remanded back to the PZB
- Disappointed with PZB's decision on the Conservation Overlay for this site which removed the Riverwalk and other amenities
- She was not suggesting taking property rights, it was a question of rezoning
- Message sent to citizens and other developers in the City was of the utmost importance

Commissioner Horvath provided the following comments:

- She was an architect on a team years ago attempting to secure plans that suited the property, and had also dealt with the project while on the PZB Board
- Hopeful for feedback after January 25th meeting so they could proceed, and saddened to lose any progress
- She lived south of King Street and drove through the intersection often and generating more traffic was worrisome
- An RGO would somewhat lessen traffic
- Frightened to lose project's architectural oversight, which meant no review, and this was worrisome to the community as no one wanted a Hard Rock style hotel
- Concerned developer could sell the property without a PUD and without an architectural review
- Commissioners were all willing to work with the developer on the PUD

Mayor Upchurch cited the following reasons for being torn on the decision:

- Wanted the area developed to add to community's fabric, and did not want the property left vacant
- Strongly supported the vision of a multi-family and mixed-use vibrant downtown community
- Developer should not be held accountable for past related issues or community problems, including traffic or water quality
- No other parcel this large existed inside the traditional City confines, and a PUD allowed it to be built correctly with public insight and City oversight
- Imperative to protect architecture since City was marketed as a cultural destination; however, architectural guidelines would be lost with RGO zoning, dependent upon the developer's good will, and City would have no input
- Granting an RGO requested that the City surrender too many things
- Willing and committed to work with developer and establish a mutually beneficial efficient system; however, he was unable to support the Ordinance

Ms. Lopez reminded the Commission the quasi-judicial hearing must meet the three-prong test:

- Procedural due process was afforded to the applicant
- Essential requirements of the law were observed
- Findings were provided that were supported by confident substantial evidence

Ms. Lopez advised the Commission must articulate case law requirements, and she reviewed the case law provision which stated throughout the quasi-judicial hearing process the burden allocation shifted. She said it went first to the applicant to show they met their burden of being compatible and meeting all requirements for the Comprehensive Plan and Land Development Code, then it went to the local government. She noted part of the findings must be it was not arbitrary, discriminatory, or reasonable for a rezoning denial, and that a denial accomplished a legitimate public purpose.

Ms. Lopez concluded there was a change in statutory law Chapter 166, adopted in 2016, which stated in addition to burden shifting, if a development permit was denied, that a citation, rule, statute, or other legal authority must be included as basis for the permit denial, and she asked the Commission to remember this while they decided.

Mayor Upchurch confirmed that the loss of architectural control, public access, and public greenspace were, in his opinion, competent substantial evidence, and he had stated them on the record already because this was a mere comparison of the existing PUD and RGO zoning.

MOTION

Commissioner Sikes-Kline MOVED to deny Ordinance 2021-19. The motion was SECONDED by Commissioner Blonder.

VOTE ON MOTION

AYES: Sikes-Kline, Blonder, Horvath, Upchurch

NAYES: Valdes

MOTION APPROVED 4/1

The Commission recessed from 7:36 P.M. to 7:50 P.M.

8.A.2. Ordinance 2021-20: Rezoning the Sebastian Inland Harbor Planned Unit Development of 157 King Street (PID# 203350 0000, 203350 0010) to Residential General and Office.

Mr. Birchim presented Ordinance 2021-20, companion Ordinance to 2021-19, and stated the decision on Ordinance 2021-19 presented a complication, since the property was imbedded in the Sebastian Harbor PUD which the Commission voted not to change. He stated the Seavin, Inc. property was in the Site Development Plan, the narrative, legal description, uses, shared parking, and access points, and concluded that it could be inferred by rezoning the Seavin, Inc. property to RGO, it would create a PUD amendment, and he had not dealt with this complication before.

Ms. Lopez requested the record reflect that those present to speak on Ordinance 2021-20 were sworn in under the companion hearing of the meeting and asked if someone had not yet been sworn in, to indicate this when they came to the podium to speak. She stated the applicant's attorney was not required to be sworn in since they were administering case law and not testifying; however, it was required of the client and team members.

Ms. Galambos swore in the applicant, Charles Cox, and the team members of the attorney.

Cynthia Montgomery, GrayRobinson, PA, represented Seavin, Inc., owners of the winery property, and presented their

application to the Commission.⁶ She reviewed the following:

- Property had architectural control, rezoning to RGO would not remove this, and it was in the King Street Overlay Zone
- Seavin, Inc. confirmed at the PZB meeting they would construct the Riverwalk for the public to access
- Architectural planning and civil engineering were involved with the project from the start, and architectural standards would be acknowledged
- Comprehensive Plan specifically placed property in Residential Medium Density Mixed Use where it was since 1987
- Historic zoning and adjacent parcels were within the land use designation and surrounding properties, such as to the south and immediately across River were zoned RGO
- RGO was consistent with the future land use category as in Comprehensive Plan
- Property was RGO from 1987 to 2004, and PUD incorporated RGO zoning
- RGO zoning was appropriate for the property for 34 years and was within the residential medium density mixed use
- Viewshed corridor was applicable, and a Riverwalk would exist in front of property
- Existing PUD included all uses in the RGO, which was more robust with height restrictions, setbacks, and parking requirements
- All requirements of the Land Development, Zoning, and Building Codes, including parking, would be met
- Intended to add a restaurant, marketplace, and room between the River and building front with an open undeveloped area
- Case law standard for re-zoning was determined upon whether the application was consistent with the future land use and Comprehensive Plan, and this property was consistent

⁶ Presentation attached to original minutes

- Case law showed that once requirements were met and shown, Florida law supported an applicant's right to rezone the property, and applicant showed additional appropriate parking, River access, and architectural guidelines

Ms. Montgomery requested Commission approval to rezone the Seavin, Inc. property to RGO.

The Commission provided ex parte communication.

Public hearing was opened, and Commissioners heard comments from the following members of the public:

B.J. Kalaidi suggested the Commission deny the rezoning request. She was unsure why the two properties were intertwined and hoped the Commission could clarify for the public why they could approve Seavin, Inc.'s request to rezone their property and not SA Marina Holdings' request.

Melinda Rakoncay provided the following comments:⁷

- The two properties fit together like a jigsaw puzzle; therefore, where would the applicant park cars for the winery, upstairs restaurant, 9,500 square feet of retail, and 150-seat restaurant in the European market if the Seavin, Inc. property was no longer part of the PUD
- Surface parking for the property was only 71 spaces, City Code would require a minimum of 280 spaces
- Under the PUD, Seavin, Inc. planned to park patrons in the garage, so without a PUD there was not enough parking
- If zoned separately, SA Holdings, Inc. would not have an access drive to the hotel or garage; therefore, both properties should remain a part of the PUD

⁷ Photo provided attached to original minutes

Gail Wisler thanked the Commission for their comments and suggested they deny the RGO rezoning request, keep the property a PUD, and allow oversight by City officials.

Public hearing was closed.

Mr. Birchim clarified that Ms. Rakoncaj's exhibit provided during the public hearing was not the current PUD Site Plan, but it was the PUD modification that had been considered and not acted upon. He displayed the correct Site Plan exhibit.⁸

Ms. Montgomery reminded the Commission the RGO category was consistent with the City's future land use criteria of the Comprehensive Plan, and that the application and request was consistent with the City's Land Development Code. She continued that the neighboring properties and historic use were zoned RGO, including being embedded in the PUD. She restated Florida case law permitted a property owner to request a property rezone despite the zoning of neighboring properties, Seavin, Inc. would meet all requirements under the Land Development Code and Building Code and would comply with parking requirements whether or not an adjacent parking garage existed. She concluded the concerns were addressed with respect to adjacent property, River access, and architectural review.

Commissioner Horvath was pleased to see vistas but stated with the property that would be left, a three-story parking garage was necessary to accommodate parking.

Ms. Montgomery replied there were a variety of options, this was not a particular plan, they could work with the architect to modify the building for less seating, and they would honor what PZB was told regarding the Overlay Zone. She noted the property owner was committed to the parking code, and if the adjacent property

did not have a parking garage they would 'tweak' things, but architectural review would be in place, and they would be held to PZB requirements.

Commissioner Valdes provided the following comments:

- Limited space existed for parking and Seavin, Inc. would need to build a garage, which required architectural overview, or find alternate parking
- Property that fronted King Street was subject to architectural review; however, unsure if architectural review would question the vista but plenty of constructed places in the City took away vistas
- Challenged someone to indicate what vista was being blocked by putting buildings on this parcel of land
- Questioned how the Commission could refuse RGO for this property since the applicant provided all the reasons the Commission declined the SA Marina Holdings' RGO request
- Inclined to approve the request because the applicant checked all boxes, but troubled the PUD was being separated, and unsure of the fallout for SA Marina's property and the change in the dynamics

Commissioner Sikes-Kline and Commissioner Blonder both questioned the reason for two separate ordinances.

Mr. Birchim answered that there were two separate owners.

Mayor Upchurch clarified there were not two separate PUDs, but two separate zoning requests, and the effort to pull the parcel from the PUD was legally unsuccessful. He agreed with Commissioner Valdes that similar concerns did not exist with this request and he stated the project was in large measure constructed with a building conversion, it was in an architectural zone, a smaller parcel, compatible with underlying

⁸ Attached to original Commission minutes

land use, and the City was guaranteed the boardwalk would be open to the public. He was inclined to support the Ordinance.

Commissioner Blonder asked Ms. Lopez to review the commencement and completion dates as they pertained to the PUD and winery.

Ms. Lopez read Section 28-289 of the City Code and stated the automatic reverter clause was not so simple and automatic. She summated that the PUD Code section stated failure to timely commence and complete development, as well as findings by the Commission after two PZB hearings which could extend a year forward each time, that the PUD had been abandoned for failure to have any activity. She concluded the active winery was the reason it was factually difficult to claim this circumstance existed in the PUD.

Commissioner Blonder stated there were two owners, one PUD, and two rezoning requests, but the PUD was encumbered by the commencement of the winery, and she asked Mr. Birchim the ramifications in terms of zoning for approval or denial of the request.

Mr. Birchim advised he did not believe many ramifications would occur for the Seavin, Inc. parcel; however, if the PUD was broken by rezoning only a portion, a PUD amendment was being forced onto the SA Marina Holdings property which was not rezoned. He concluded the previous PUD amendment would require redesign since it would no longer contain the Seavin, Inc. portion, which would place the City in an interesting bind with the SA Marina Holdings' parcels.

Commissioner Sikes-Kline noted it was unusual to review a PUD as one unit with two separate owners requesting rezoning, she questioned how the City got to this point, and she could not understand why there were two applications.

Mr. Birchim stated there were four different owners at one time, and the Abdulhussein family consolidated the parcels.

Ms. Lopez advised there was one PUD, multiple owners within the PUD, and each owner had the right to request rezoning their property.

MOTION

Mayor Upchurch MOVED to approve Ordinance 2021-20 on second reading read by title only and passed. The motion was SECONDED by Commissioner Sikes-Kline.

Ms. Lopez read the title as follows:

ORDINANCE NO. 2021 - 20

AN ORDINANCE OF THE CITY OF ST. AUGUSTINE, FLORIDA AMENDING THE ZONING FOR APPROXIMATELY 2.64 ACRES OF PROPERTY LOCATED ON THE SOUTH SIDE OF KING STREET AND WEST OF SEBASTIAN HARBOR DRIVE, AS MORE PARTICULARLY DESCRIBED HEREINAFTER, FROM ITS CURRENT CLASSIFICATION OF PLANNED UNIT DEVELOPMENT (PUD) TO THE CLASSIFICATION OF RESIDENTIAL GENERAL OFFICE (RGO); PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERANCE OF INVALID PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

Commissioner Blonder asked if the Commission approved the Ordinance, were they breaking the PUD.

Mr. Birchim responded that it would require an amendment since the PUD narrative language included the Seavin, Inc. property, legal description, and the narrative describing the location with both owners. He added the Site Development Plan included the Seavin, Inc. property; therefore, a PUD amendment was required to rectify, and the

consent of all parties involved in the PUD was required.

Ms. Lopez advised there was a way to administratively rezone property; however, it had substantial litigation entry points.

Mayor Upchurch suggested this was a case of first impression for City staff and himself, and the Commission was clear about both public policy objectives and their burden as a quasi-judicial body. He concluded the Commission did its very best to address an exceedingly complicated situation with questions not readily answerable.

VOTE ON MOTION

AYES: Upchurch, Sikes-Kline, Valdes, Horvath, Blonder

NAYES: None

MOTION APPROVED UNANIMOUSLY

Mayor Upchurch reminded the Commission and public of the policy to end meetings by 9:00 P.M. He had spoken with both the City Manager and City Attorney and recommended addressing the following three items, and postponing other agenda items until the September 27th meeting:

- Ordinance 2021-22 / First Reading
- Resolution 2021-39
- City Attorney walk-on item concerning National Guard Agreement

There was Commission consensus to the requested modification.

8.B. Ordinances – First Reading (only if required by law)

(None)

8.C. Resolutions – Public Hearing (only if required by law)

(None)

9. Ordinances and Resolutions - No Public Hearing Required

9.A. Ordinances – First Reading

9.A.1. Ordinance 2021-22: Modifies the definition of "salary" for firefighter pension purposes.

Ms. Lopez reviewed the Ordinance and stated the modified definition would include special incentive pay as part of the firefighters' pensionable benefit.

MOTION

Mayor Upchurch MOVED to approve Ordinance 2021-22 on first reading, passed to second reading and a public hearing. The motion was SECONDED by Commissioner Sikes-Kline.

Ms. Lopez read the title as follows:

ORDINANCE NO. 2021-22

AN ORDINANCE OF THE CITY COMMISSION OF ST. AUGUSTINE, FLORIDA, AMENDING SECTION 20-191 OF THE CODE OF THE CITY OF ST. AUGUSTINE MODIFYING THE DEFINITION OF SALARY FOR FIREFIGHTER PENSION PURPOSES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF THE CITY OF ST. AUGUSTINE; AND PROVIDING AN EFFECTIVE DATE.

VOTE ON MOTION

AYES: Upchurch, Sikes-Kline, Valdes, Horvath, Blonder

NAYES: None

MOTION APPROVED UNANIMOUSLY

9. ORDINANCES AND RESOLUTIONS - NO PUBLIC HEARING REQUIRED

9.A.2. Ordinance 2021-25: Amends the zoning of 36 Granada Street (CL-1) and 8 DeSoto Place (RG-1) to Planned Unit Development (PUD). (D. Birchim, Director Planning and Building)

Item administratively moved to the September 27th meeting.

9.B. Resolutions

9.B.1. Resolution 2021-38: Update to the Planning and Building Department schedule of fees creating a new fee schedule to take effect on October 1, 2021.

Item administratively moved to the September 27th meeting.

9.B.2. Resolution 2021-39: Authorizes the City Manager to execute the American Rescue Plan Act recovery fund agreement.

Mr. Simpson reviewed the Resolution and noted the Agreement authorized the expenditure of approximately \$7.1 million of ARP funds recently discussed at the Budget workshop. He said this was the first procedural step to receive the funds and more education would follow, with additional matters brought to the Commission.

MOTION

Commissioner Horvath MOVED to pass Resolution 2021-39. The motion was SECONDED by Mayor Upchurch and APPROVED BY UNANIMOUS VOICE VOTE.

VOTE ON MOTION

AYES: Horvath, Upchurch, Valdes, Blonder, Sikes-Kline

NAYES: None

MOTION APPROVED UNANIMOUSLY

10. Staff Reports and Presentations

10.A. Discussion regarding the future use of the Waterworks Building.

Item administratively moved to the September 27th meeting.

11. ITEMS BY CITY ATTORNEY

Item 11.A. administratively added.

Ms. Lopez reviewed the National Guard's request for a Temporary Work Area Easement for repairs to the water side of the seawall which would not affect the City's area.

MOTION

Mayor Upchurch MOVED to approve the National Guard's request for a Temporary Work Area Easement on the water side of their seawall for repairs. The motion was SECONDED by Commissioner Valdes and APPROVED BY UNANIMOUS VOICE VOTE.

VOTE ON MOTION

AYES: Upchurch, Valdes, Horvath, Blonder, Sikes-Kline

NAYES: None

MOTION APPROVED UNANIMOUSLY

Mayor Upchurch expressed his appreciation for Mr. Birchim, Ms. Lopez, and the Commissioners' patience, wisdom, and good spirits throughout the meeting.

12. ITEMS BY CITY CLERK

12.A. Request for two appointments to the Planning and Zoning Board. (D. Galambos, City Clerk)

Item administratively moved to the September 27th meeting.

13. ITEMS BY CITY MANAGER

13.A. Presentation of City Manager performance evaluation form to commissioners. (J. Regan, City Manager)

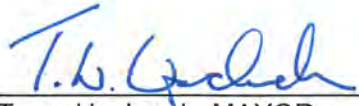
Item administratively moved to the September 27th meeting.

14. Items by Mayor and Commissioners

(None)

15. Adjournment

There being no further business, the meeting was adjourned at 8:38 P.M.⁹



Tracy Upchurch, MAYOR



Darlene Galambos, CITY CLERK



⁹ Recorded and transcribed by Elyse Anderson & Laura Morse