



## MINUTES

### REGULAR CITY COMMISSION MEETING MONDAY, JUNE 5, 2023, AT 6:00 P.M.

CITY OF ST. AUGUSTINE BEACH, 2200 A1A South, St. Augustine Beach, FL 32080

---

I. CALL TO ORDER

Mayor Samora called the meeting to order at 6:00 p.m.

II. PLEDGE OF ALLEGIANCE

The Commission recited the Pledge of Allegiance.

III. ROLL CALL

Present: Mayor Donald Samora, and Commissioners Undine C. George, Beth Sweeny, and Virginia Morgan.

City Clerk Fitzgerald advised that Vice Mayor Rumrell would be a little late.

Also present were City Manager Max Royle, City Attorney Charlie Douglas, Police Chief Daniel Carswell, City Clerk Dariana Fitzgerald, Finance Director Patty Douylliez, Building Official Brian Law, Public Works Director Ken Gatchell, and Engineering Director Jason Sparks.

IV. APPROVAL OF MINUTES OF THE REGULAR COMMISSION MEETING ON MAY 1, 2023

**Motion:** To approve the minutes of regular Commission meeting on May 1, 2023. **Moved by** Commissioner Sweeny, **Seconded by** Commissioner Morgan. Motion passed unanimously.

V. ADDITIONS OR DELETIONS OF THE AGENDA

VI. CHANGES TO THE ORDER OF TOPICS ON THE AGENDA

City Manager Royle suggested to combine X.1 & XII.6, which are both related to waste disposal for vacation rentals. He advised that the Vice Mayor would like to discuss XI.4 with XII.8. Mayor Samora advised that XII.6 would be moved up with X.1.

Mayor Samora moved on to Item VII.

VII. PRESENTATIONS

- A. Request by St. Johns County Clerk of the Circuit Court and Comptroller, Mr. Brandon Patty, to Update the Commission and Public About the Functions of His Office

Mr. Brandon Patty described the function of his office and said that it provides checks and balances to the County government such as independently partnering with judiciary, works with County partners, is the custodian of official records, and, as Comptroller, helps pay the County's bills, do payroll, and manage investments. He advised that the Comptroller also supports payments the City runs through them, which last year totaled \$21,000 and covered a variety of

fees, such as parking citations. He said that they also try to provide opportunities to support the residents by helping them understand County government, revenues, costs, etc., which is all derived from the Annual Comprehensive Financial Report through which they put forth a document called the Popular Annual Report. He said that it is important for the residents to have this information so that they understand how the government is working for them and the services that they provide.

Mr. Patty moved on to the second thing that he would like to discuss, which is a growing trend in white-collar property fraud crime across the country. He stated that in south Florida scammers provide fraudulent deeds and transactions to take someone's property and then sell it. He said that the Comptroller's Office provides a free property fraud notification service, which would alert you to anything that gets recorded in your name. He advised that they are promoting it heavily and that he would be happy to spread the word in the City and that residents could call his office. He said that there are a variety of other initiatives coming up such as expanding their services throughout the County and to potentially have an office at the beach. He said that they also have a monthly newsletter that residents can sign up for.

Mayor Samora asked where people would go to sign up for the newsletter. Mr. Patty advised to go to [stjohnsclerk.com](http://stjohnsclerk.com), which has links for the property fraud notification service and the newsletter, and he would be happy to share it with the City to help get the information out.

Commissioner Morgan asked if there were any particular services that he was planning to include when they expand office hours. Mr. Patty advised that their hope is that there would be a whole suite of services available because their annex offices in Julington Creek and Ponte Vedra only do passports. He said that they want to make it easy to interact with the government and get the resources that they need.

City Clerk Fitzgerald informed the Commission that as soon as the alert system was available, the City opted in to it.

B. Proclamation for the City to Acknowledge Pride History and the 53<sup>rd</sup> Anniversary of the Stonewall Inn Resistance

Sara Bloomberg, Founder of House of Prism, advised that every year they like to ask the City to vote to make June "Gay Pride" month to affirm the lives of the community who are marginalized and suffer mental health issues because society does not support them; they are fighting more than ever in Florida and deserve the right to love whomever they choose; thanked the City for considering the proclamation.

Mayor Samora thanked Ms. Bloomberg for attending and said that it is an honor to acknowledge this. Ms. Bloomberg said that this could save people's lives. Commissioner George said that the Commission is here to support the community and to support everyone.

**Motion:** To approve the proclamation acknowledging Pride history and the 53<sup>rd</sup> anniversary of the Stonewall Inn Resistance. **Moved by** Commissioner George, **Seconded by** Mayor Samora. Motion passed unanimously.

C. Stormwater Management: Presentation by Mr. Craig Thomson, Member of the Sustainability and Environmental Planning Advisory Committee

Mr. Thomson showed a handout [Exhibit A] and advised that SEPAC decided at its last meeting to request this presentation to be able to give face-to-face recommendations for the new stormwater ordinance that was passed. He said that SEPAC is very concerned and has had stormwater management and the right-of-way ordinance on its agenda for years and wanted to make sure to communicate with the Commission. He said that there was a PowerPoint presentation in 2019 on the stormwater system, the issues it had, and the recommendations. In

2020, Dr. Kaczmarzsky did a ten-page report on green infrastructure and how it could assist with stormwater management. There is climate change, sea level rise, and hurricanes, which test its capacity and that the design of the current system is only capable of resisting a category 1 or 2 storm surge, which is an issue. He said that some of the recommendations that SEPAC made at that time in 2019 were sustainable, cost efficient solutions. He advised that a definition of green infrastructure was part of Dr. Kaczmarzsky's report and could be incorporated into the new ordinance.

Mr. Thomson said that the City needs green infrastructure for sustainability reasons going forward, which was acknowledged to a degree in the Vision Plan with the recommendations from SEPAC to reduce stormwater runoff and downstream water pollution. Part of SEPAC's recommendation was that the City certify and publicize the future stormwater utility fee. He advised that it is not clear in the ordinance how the money would be spent, and that SEPAC wants to make sure that there is recognition that green and grey infrastructure would be part of what is needed. He said that SEPAC's four recommendations are: 1) to include the design, engineering, and construction cost for adding green infrastructure projects that would help provide flood mitigation; 2) that the future stormwater utility fee would recognize and incentivize the need to reduce runoff and conserve rainwater; 3) that the City Departments would promote best practices and policies to reduce excessive runoff and conserve rainwater in residential and commercial properties in the City, which may require some Land Development Regulation efforts; 4) to publicize and hold community workshop meetings to inform the public of the intended uses of the stormwater utility fee to include green infrastructure and that the Planning and Zoning Board, SEPAC, Public Works, and the Commission should be included.

Mayor Samora thanked Mr. Thomson for the work that SEPAC does. He said that the City wants to get the stormwater utility fee right and that this is the time for SEPAC to come to the Commission with recommendations should it move forward.

Commissioner George asked the City Manager to keep the email that highlighted those four recommendations to be a part of the agenda the next time that the stormwater utility fee is discussed. Mr. Thomson said that there is supposed to be discussion about the Vision Plan and possibly a workshop meeting sometime this summer and he suggested to get all the Boards together and have it as an item on that workshop because it is a major part of the Vision Plan.

Mayor Samora moved on to Item VIII and opened Public Comment. He advised that this is an opportunity to address the Commission on non-agenda items and that they would have three minutes to speak.

#### VIII. PUBLIC COMMENTS

Kathleen Collins, 109 1<sup>st</sup> Street, Unit C, St. Augustine Beach, FL, has a neighbor that is a nuisance; has eighty-five pages of local police department responses for drugs, noise ordinance problems, and several months ago a young woman overdosed there; asked the City for help to shut him down; vehicles in the neighborhood have been vandalized by him; everyone tells her to call the Sheriff and document it; the kids are out of school now and she is requesting additional help because of the danger that is imposed by this individual.

Mayor Samora suggested that she should reach out to Chief Carswell and the City Manager or that he could leave her information for them to contact her because the Commission does not want type of behavior in our City.

**Vice Mayor Dylan Rumrell arrived at 6:24 p.m.**

Dee Fix, 4 Ocean Trace Road, St. Augustine Beach, FL, has been involved with the Commission since the special meeting on November 21<sup>st</sup>; it was discussed in December and January that there

would be a need for special meetings in February or March, and nothing happened, then it was changed to April, and now the person leading this would be leaving the City; would like to have some special meeting excluding the Sabor de Sal section, which does not drain into the same pond; has heard that the Supreme Court made a ruling, which would erode some of the EPA's power and asked if it would take St. Johns River Water Management out of the concerns because it has been a hold up in the past; asked the City to contact the owner of the pond at 8 Ocean Trace Road and would like to allow any interested condo owners to attend the special meetings because they have opinions about dredging bioswales and some of them are qualified engineers; they want to find a solution to the problem.

Jim LeClare, 115 Whispering Oaks Circle, St. Augustine Beach, FL, recapped that the elevated walkway has been working pretty well since 2014; the boardwalk has two small ten-foot sections that are grade level and he proposed some silt fencing; there were cars being unloaded at end of Madrid Street and people are starting to go behind Whispering Oaks to go into town; when the construction starts on Madrid Street, it will make their life a lot harder and for those in Whispering Oaks too and people are starting to cut through where kids are playing.

Nick Binder, 232 Big Magnolia Court, St. Augustine Beach, FL, suggested that the presentation by Mr. Patty could be summarized in the Beach Journal; it is time for another quarterly update on the American Rescue Plan Act (ARPA); is there any effect from the debt bill that was just passed on any committed or remaining ARPA funds; there is still a non-functioning street light at the corner of Madrid Street and State Road A1A and that the City Manager has sent many memos to FPL and the latest is that the new fixture needs to be ordered but that nothing has happened over the past five months; the traffic light at Marsh Creek and State Road A1A is a huge expense and he encouraged the City to talk with the County because it is an accident waiting to happen and a traffic analysis would cost about \$12,000 to \$15,000, which the County could afford to do for that location; thanked the City for putting in the "No Parking" signs on Madrid Street; asked the City to consider a rubberized surface for Splash Park; the Sea Colony walkway had a wonderful analysis on Page 60 in this month's report but it is still an issue of dead vegetation, which is spreading to other areas and that Florida Fish and Wildlife has been contacted for endangered species; high waters have eaten the dunes, which could be a safety issue and he asked if Sea Colony got permits for the extended walkway and if it is ADA compliant, etc.

Jason Kern, General Manager of Embassy Suites, 300 A1A Beach Boulevard, St. Augustine Beach, FL, there was a water main break on Pope Road on May 19<sup>th</sup> and that they had a two hundred person Chamber event going on without water; he thanked the City and said that the Vice Mayor was at that meeting and stepped out to take his call right away and was instrumental at getting it back up as quickly as possible.

Mayor Samora closed Public Comment and advised that there were a couple of things he would like to follow up on. He said that the Atlantic Beach and Tennis Club residents are probably feeling a little uneasy since Mr. Tredik is gone and he asked if there was a plan for a meeting. City Manager Royle advised that he and the Engineering Director would reach out to their association. Mayor Samora asked the Public Works Director if he was able to look into some sort of fencing for the snakes on the boardwalk. Director Gatchell advised that he briefly looked into it and that it would have to be locked down at the bottom, but then the snakes could drop onto the boardwalk and not be able to get out. Mayor Samora asked the Building Official about the permits for the Sea Colony extended walkway that Mr. Binder asked about. Building Official Law advised that he does not typically permit dune or beach walkovers because the Department of Environmental Protection (DEP) regulates them to be built to come apart in a storm so they would not cause extensive damage to the dunes, whereas the Building Code intends for everything to stay. He said that anything being built that encroaches a dune would not be a City matter and would need DEP

permitting. Commissioner George asked if the City got a copy of the permit. Building Official Law advised that we do not do anything with it. Commissioner George said that people had asked to see it because they were curious about the specific chemical that was used. Mayor Samora advised that those were two separate matters. Building Official Law advised that the City has the report from the individual who contracted with the government to do it and that he believed that the chemical used was "Round Up" and that the Water Management District was involved and would be monitoring it and that Code Enforcement would be inspecting it in thirty-days. Mayor Samora said that anyone could contact the City to obtain that information.

Mayor Samora asked if the DEP would have permitted the Sea Colony walkway. Building Official Law said possibly; that traditionally anything seaward of the coastal construction line they would either give their blessing or a permit was not needed. Building Official Law asked if it was the main Sea Colony boardwalk. Mayor Samora said it is a boardwalk that sticks out farther than the rest, which is what Mr. Binder's concern was. Building Official Law advised that the City did not permit it, nor do they permit the boardwalks that the City is currently building, and that the County does not permit theirs either because of accessibility issues and the fact that poles are designed to come apart in a storm.

Mayor Samora suggested for Mr. Binder to check with the management group for Sea Colony or the DEP.

Mayor Samora moved on to Item IX.

#### IX. COMMISSIONER COMMENTS

Commissioner Sweeny apologized for missing the last meeting and thanked the Commission for excusing her. She asked the City Manager if the City's Public Information Officer, Ms. Conlon, could also put the IQ Fiber information on the City's social media channels to help get the word out. She advised that it did not go over very well in the Sea Grove subdivision and that more upfront communication could have solved some of these problems.

Commissioner Morgan said that she was going over the agenda book and remembered the Vision Plan talking about being a "Smart City" and that she wondered what it meant. She said that she went to the last Northeast Florida League of Cities meeting and there was a great speaker who was a big proponent of these initiatives for Smart Cities and that it would be great to have him come speak to the City because it was helpful to hear the logistics of how they make a city a "Smart City".

Vice Mayor Rumrell apologized for being late. He said City Manager John Reagan recently retired from the City of St. Augustine and that raised concerns for him because the City does not have a plan in place for when the City Manager retires. He would like to have support from the Commission to put in place a ninety-day succession plan for if the City Manager were to retire or something were to happen that would allow us to move forward. He said that he would also like to have support to have a one-year contract with the City Manager starting October 1, 2023, with a ninety-day review prior to an extension because other city managers and administrators have contracts. He believed that it was time to have something in place for the City to protect itself. Mayor Samora asked the City Manager to add it to an upcoming agenda. Vice Mayor Rumrell advised that the City Attorney could probably help write the contract that would be beneficial to the City Manager and the City. Commissioner George advised that it would probably require a super majority vote. Mayor Samora advised that those are things that would need to be flushed out and to put it on next month's agenda if there is room.

Commissioner George provided an update regarding a traffic signal at Marsh Creek subdivision/Madrid Street at State Road A1A, and she said that she finally has been scheduled to

attend Marsh Creek's HOA board meeting to discuss it on July 25<sup>th</sup>. She advised that she previously reached out to the County to see if they would have a mechanism for contributions on the expenses but that she hit roadblocks from all government sources. Opening that discussion in a more formal capacity with the interested parties would help us find out if there is any interest. She said that in the event that we would have to do this alone, that there are a number of private and governmental agencies, but that all expectations are that the State is not going to help. She said that she would keep twisting the arms of our County Commissioners now that we have it on the books.

Commissioner George asked if the City had a master events calendar that showed all the permitted events in the City, such as non-profit events, private events, City events, etc. City Manager Royle advised that he did not believe so. Commissioner George said that it would be a great idea for the City's Event Coordinator to share her calendar so that people could have the knowledge ahead of time when planning their day at the beach. She said that it would be an easy thing to add and would help the community.

Commissioner George said that we would be discussing 2<sup>nd</sup> Street improvements, but that she has been getting a lot of requests for more details for a timeline of completion and to address it later in the meeting.

Commissioner George said that the City of St. Augustine has now installed a permanent glass recycling drop-off location at the skate park on the north side of the island on Anastasia Boulevard and that City residents wanting to recycle their glass could now take it to that drop-off location. She asked the City Manager to reach out to the City of St. Augustine to see if it is feasible for the City to have a permanent drop-off location such as in the City Hall parking lot, Mizell Road, or any other location that staff deemed to be a good location. City Manager Royle advised that he had already been in touch with them and that they are currently weighing the pros and cons and waiting to see how it goes and then we could decide whether to have our own glass recycling.

Commissioner George advised that she was contacted by a citizen with concerns about our ditch maintenance because the 11<sup>th</sup> Street ditch and other ditches, in a high rain event, were dry due to a lack of maintenance. She said that she discussed it with the City Manager but had not heard anything back since that initial conversation. She said that it is her understanding that we do not have immediate access to the equipment but that the County owns them and uses them at various locations and that she would like a status update and that we reach out to the County to borrow or lease the equipment. She said that we are in the middle of updating our Stormwater Master Drainage Plan, but it is not going to work if our ditches do not work. She said until we get the new Plan updated and projects in the works, we need to maintain what we have and do everything possible to prevent additional flooding. City Manager Royle advised that the Public Works Director looked at the County's equipment and it was not workable as a surplus sale and that he wrote a letter to Hunter Conrad today to ask if the County would give it to us. He advised that it would have to go on a County consent agenda, or they may want us to buy it and then they would need to make a proposal. Commissioner George asked if the City Manager would forward her a copy of the letter so that she could follow up with some of the County Commissioners to try to encourage a reasonable solution.

Commissioner George suggested that we should make a notation in the Comptroller's services that tells citizens that they can get their deeds for free from the Clerk of Court. She advised that every time you buy, sell, or pay off a mortgage, you get a letter in the mail from a third-party requesting money for a copy of your deed and it is a scam.

Mayor Samora said that the Chamber legislative breakfast was held at Embassy Suites and that he spoke with the City of St. Augustine's Mayor, Nancy Sikes-Kline, as well as Cyndi Stevenson,

and that it was a busy legislative session with almost two times more than the normal number of bills passed this session. He said that the County received a lot of appropriations with the focus on managing growth, roads, drainage, etc. He said that the City did not get anything appropriated from the State, but he did not think that we could have handled anything else this year. He said that Cyndi Stevenson promised to bring more home for us during the next session. He advised that the Tourist Development Council (TDC) has not had a meeting for a couple of months and that they would meet again June 19<sup>th</sup>.

Mayor Samora moved on to Item X.1.

## X. PUBLIC HEARINGS

1. Ordinance 23-02, Final Reading, to Change Language in Chapter 10 of the City Code Concerning Solid Waste Collection for Vacation Rentals (Presenter: Patricia Douylliez, Finance Director)

Finance Director Douylliez advised that she is taking over from where Mr. Tredik left off and therefore, she may not be able to answer some questions without doing research first. She advised that the ordinance was tabled last month because we were considering either a non-ad valorem or an annual billing for transient rental locations and that agenda item XII.6 is the proposal for billing transient rentals annually through a non-ad valorem. The ordinance itself just clarifies that you are billed through a non-ad valorem and not billed directly. She said that regular businesses would continue to be billed monthly. She said it does not have to be in there if the Commission chooses not to go with a non-ad valorem for solid waste for transient rentals.

Finance Director Douylliez advised that last month we discussed trying to come up with an equitable way to bill the solid waste for transient rentals and after reviewing it farther, she realized that the 32-gallon cans are the trigger. We have 64-gallon and 96-gallon carts, and that 32-gallons is divisible into both, which is an easy, manageable way for her to send it to the Tax Collector and that the non-ad valorem would be based on 32-gallons with a minimum of \$190. We will set a range and then each individual customer would be analyzed and if they have a 64-gallon cart once a week, they would be billed for two (32-gallons cans) in the certification roll, which would be \$380 per year with one annual billing in their tax notice vs. getting a monthly bill from the City. She advised that the only difference in the pricing is adding in the two percent increase, which the Tax Collector takes from the City to do the billing for us. It would keep the rate flat and would keep each individual exactly where they are with the exception of that two percent increase. She said that in her analysis of the 167 transient rental customers that are currently billed monthly, that 51.5 percent (or eighty-six accounts) with one 64-gallon cart, collected one time a week, which is the minimum service that they could have, that the vast majority would also get that same price. She advised that 34.7 percent (or fifty-eight accounts) have multiple carts or multiple days of service and they too will be billed exactly what they currently are with the exception of the two percent increase to cover the cost that the City would pay the Tax Collector.

Finance Director Douylliez advised that the City would need to legally notice every transient rental owner and if this is approved tonight, an individual letter would be sent to each owner noticing them of exactly what the range is for the services, it would indicate that they would be billed as a non-ad valorem, and tell them exactly what their charge would be. She advised that we would need to get the notifications out right away so that we could schedule a Public Hearing and set the rates so that we can certify the tax roll in September.

Finance Director Douylliez advised that we like to set the range high because every change that we make would require us to re-notice customers unless we set a range and that her proposed range is \$190 to \$570 for the cart services, which covers everyone. She said that currently one 64-

gallon cart billed monthly totals \$371.80 annually vs. an annual non-ad valorem charge for two 32-gallon carts at \$190 each for a total of \$380, which is a minimal increase. This change would take a lot of the excess work off of Public Works to count cans and there would not be overages any longer. She said that we would monitor the transient rental locations and do a semi-annual audit to see if they need to increase their services. The drivers are on the same routes every week and they would recognize if someone was having excess or overflow issues. She said that then a supervisor would go out to document it and reach out to them and that any changes could be made mid-year to bill them for the difference that they were not billed for in the taxes.

Commissioner George asked if additional cans and bags would be collected. Finance Director Douylliez advised that they would be collected, and it would be monitored, and if the drivers see that it is a consistent thing that they would notify their supervisor and we would document it with photos and contact that customer.

Commissioner George asked if the transient rental customers would still have to purchase the carts from the City. Finance Director Douylliez said yes because it is the only way for us to manage what size carts they have in order to bill them. Commissioner George asked if the City would be billing for one additional bag once a year. Finance Director Douylliez advised no.

Commissioner George asked if the whole procedure would need to be articulated in the final ordinance. City Attorney Douglas said that he was not sure if the number 32 in the ordinance made it to the third reading or if there is the flexibility to put it in. He said that he believed that in the third reading that the Commission could adopt the language that is recommended by staff. He said that depending on how the motion and the second goes, and if the Finance Director could help articulate how she would like that language to read, then the motion and the second could include that. City Clerk Fitzgerald advised that the 32-gallon standard and non-ad valorem rates would be part of a separate resolution presented in the future, not included as part of this ordinance. City Attorney Douglas advised that as long as the ordinance is broad enough to give you that flexibility that you need for the 32-gallon calculation, then the third reading could pass as is tonight.

Finance Director Douylliez advised that we would set the rates and the resolution as we go forward, and we would have the Public Hearing after all the commercial locations are notified.

Commissioner George said that using the 32-gallon as the standard for a unit-based billing makes a lot of sense. Mayor Samora agreed and said that we would get away from monthly billing and can counting, it is annual billing, and it is revenue neutral.

Commissioner Morgan said that she liked all the streamlining, and she is glad to see the amounts are lower. She said that the memo in the agenda books referenced 167 transient rentals but the totals in the bullet points underneath do not add up to 167. Finance Director Douylliez advised that the difference is the people that have only the 96-gallon carts.

City Clerk Fitzgerald advised that since this was tabled last month that a motion is needed to pull it from the table first.

Mayor Samora opened Public Comment. Being none, he closed Public Comment.

Mayor Samora asked if there would be any benefit to setting the range to start lower than \$190. Finance Director Douylliez advised that it could be set lower at \$100 to \$570 but that the first year would start at the \$190 level.

**Motion:** To take Ordinance 23-02 from the table. **Moved by** Vice Mayor Rumrell, **Seconded by** Commissioner George. Motion passed unanimously.

Mayor Samora asked the City Attorney to read the preamble. City Attorney Douglas read the preamble.

Mayor Samora asked if everyone was comfortable with the way the ordinance reads or if anyone had any changes.

Commissioner George advised that she had two changes. She said that in the agenda books on Page 10, Paragraph 10, there is a typo on the second line after "*office of the City Manager*", which has a period and should be a comma or no punctuation at all. And then on Page 11, Paragraph (q) does not have a period or closed parentheses at the end of the paragraph.

**Motion:** To approve Ordinance 23-02 with correction of noted typographical errors. **Moved by** Commissioner George, **Seconded by** Commissioner Morgan. Motion passed unanimously.

Mayor Samora moved on to discuss Item XII.6 to set the range for the non-ad valorem. He said that the last suggestion from the Finance Director was that the range could be \$100-\$570. Commissioner Sweeny had concerns that setting it lower may cause confusion. Finance Director Douylliez said that she did not believe so but that they would field those questions as they come in. She said that she believed that the range would be set next. City Clerk Fitzgerald agreed. She said that a Public Hearing is the next step, which would need to be noticed and the detailed range would be included in that letter. She said that the last time we changed a non-ad valorem it was a two-page letter with very detailed information laid out for each one.

Commissioner Sweeny asked if the \$570 was based on a 96-gallon cart. Finance Director Douylliez said yes.

Commissioner George said that we could notice it at \$190-\$570 but at the adoption of it we would have the option to create a lower floor or higher ceiling. Finance Director Douylliez said that she believed that would be an option. Commissioner George suggested for communication purposes that sticking with the numbers based on current reality would be better and then create room when we adopt it.

Mayor Samora said that he was confused as to what would go out in the notice and asked if each property owner gets noticed with their actual assessment or just a notice with the range. Finance Director Douylliez said both because it is a combination. Mayor Samora asked if the range would be based on a 32-gallon unit. Finance Director Douylliez said yes and that she selected \$570 as the high number because  $\$190 \times 3 = \$570$  but that the range would be based on 32-gallons of waste, which is what we would be charging them the multiples of in the taxes. She advised that the notice would be a very detailed letter with the specifics from the State about how we have to address the ranges and what their proposed cost would be. City Clerk Fitzgerald advised that it is just like any other Public Notice but with a little more detail letting them know what will be discussed and if they are interested, they could attend the meeting and the Commission could make changes to what was noticed at that time.

Commissioner George advised that given all that detail that she would like to express her support for the Mayor's optimism.

Commissioner Sweeny advised that she did not want to put out false expectations with a \$100 rate and then having to justify the \$190 rate.

City Attorney Douglas advised that for notice purposes and to prevent any complaints down the line, he suggested to choose the lower number at this meeting so that the notice would include that number. He encouraged the Commission to go with \$150 now instead of waiting.

Mayor Samora asked if a motion would be needed. City Attorney Douglas advised that staff needed the language for the notice to go out, which would currently state \$190-\$570. City Clerk

Fitzgerald advised that a consensus is all that is needed for choosing the rate since no formal action is being taken.

It was the consensus of the Commission to use the rate of \$150-\$570 for 32-gallons.

Mayor Samora asked if the Commission needed to set the date for the Public Hearing at this time. City Clerk Fitzgerald advised that it would be discussed at the July meeting.

Mayor Samora moved on to Item X.2

2. Ordinance 23-03, Final Reading, Pertaining to Changes to the Land Development Regulations, Section 6.01.03 (Building Setback Requirements), 6.03.05 (Design Standards for Off-Street Parking and Loading Areas) and 12.02.06 (Concept Review) (Presenter: Jennifer Thompson, City Planner)

City Planner Thompson advised that several changes were discussed at last month's meeting and that all but one were approved as written. The unapproved item was regarding compact parking and how many spaces we would allow per parking lot. She said that we discussed the possibility of writing out a table, which proved to be a little difficult because no matter how the table was written it would be unfair, so she decided to stick with the percentage. She said that she believed that Commissioner Morgan had the idea to stick with the five percent, but that we would round up, which would allow any parking lot with twenty or less spaces to have at least one compact parking space.

Mayor Samora recapped the other changes as being building setback requirements, standards for off street parking, and concept review.

Commissioner Sweeny asked if the setback requirements have already been adopted. Planner Thompson said that the setback requirements that were discussed were basically to clean up the language regarding decks. She said that the Florida Building Code does not exempt decks, but the City's Land Development Regulations did exempt decks that were under thirty inches in Section 6.01.03. We cleaned that up so that decks that are twelve inches and less would not require a building permit. Commissioner Sweeny asked if decks were considered an impervious surface. Planner Thompson advised that it would depend on the type of deck. She said that a wood deck with slats that do not meet each other would not be impervious but a sealed deck that water cannot flow through would be impervious. Commissioner Sweeny said that given the presentation by SEPAC earlier, and if we are no longer going to require permits, then who would be monitoring them. Planner Thompson said that the Code previously exempted all decks that were thirty inches or less so the City would actually be reviewing more decks.

Mayor Samora opened Public Comment. Being none, he closed Public Comment and asked the City Attorney to read the preamble.

City Attorney Douglas read the preamble.

**Motion:** To approve Ordinance 23-03. **Moved by** Vice Mayor Rumrell, **Seconded by** Commissioner George. Motion passed unanimously.

Mayor Samora moved on to Item X.3

3. Appeal of Decision by the Comprehensive Planning and Zoning Board to Grant a Variance to Reduce Rear and Side Setbacks for New Swimming Pool and Related Improvements at 1020 Saltwater Circle, Sea Grove Subdivision. Appellant Mr. Michael McGrath, 1024 Saltwater Circle (Presenter: Jennifer Thompson, City Planner)

Mayor Samora advised that this is a Quasi-Judicial proceeding, and he asked the City Attorney to provide a review of the process. City Attorney Douglas directed the Commission's attention to

Section 12.06.04, Appellate Hearing, of the City's Code. He read the Land Development Regulations Section 12.06.04.

Mayor Samora advised that the Commission is not reweighing the evidence, we are simply affirming, reversing, or modifying the decision that was made by the Planning and Zoning Board. He advised that the process for tonight will be as follows: Planner Thompson will introduce the case for the Commission; Mr. McGrath will present his appeal; Mr. & Mrs. Payne, who were granted the variance, would be able to provide a response; the Planning Board Chair, Mr. Kincaid, would discuss the Board's reason for the variance; we will then take Public Comment; and render our decision.

City Planner Thompson advised that this variance was heard on March 21<sup>st</sup> by the Planning and Zoning Board for the application to reduce the minimum ten-foot rear and side setback requirements per the Sea Grove Planned Unit Development (PUD) Ordinance to five-foot each. This was for a proposed pool, pool deck, screen enclosure, and a waterfall feature at 1020 Saltwater Circle. She advised that the reason that the variance had to be applied for is because the Sea Grove subdivision has more restrictive setbacks than the City does when it comes to swimming pools, screen enclosures, and pool decks. She advised that the Planning and Zoning Board approved the variance and later an appeal was filed by their neighbor, Mr. McGrath, of 1024 Saltwater Circle.

Commissioner George asked if Sea Grove had more restrictive setbacks than the beach or if it was the other way around. Planner Thompson advised that Sea Grove's PUD is more restrictive with their pool setbacks and less restrictive with their building setbacks. She said that in the City of St. Augustine Beach a pool can be set back five feet from the rear and side property line, five feet to the water line or the screen enclosure, and pool decks can be two feet to your property line.

Mayor Samora asked the City Attorney if it would be appropriate to read the motion for when the variance was approved. City Attorney Douglas advised yes. Planner Thompson read the motion as written and provided in the agenda books on Page 36.

Mayor Samora invited Mr. McGrath to the podium to present his appeal.

Marcus Thompson, Trinity Law & Title, 62 Hypolita Street, Suite 2, St. Augustine, FL, stated that he is representing Michael McGrath who resides at 1024 Saltwater Circle, which is the property adjacent to the property where the variance was granted. He advised that their two main contentions that they have on appeal are primarily that the Planning and Zoning Board heard in finding that there was a hardship and in this case any hardship imposed by the pool and the improvements in the pool plan were self-created by the applicants. Those applicants in their own application admitted that a smaller pool could be designed to fit on the property.

Mr. Thompson advised that he included a relevant case from the Fifth District Court of Appeal for the Town of Indialantic v. Nance for the Commission's consideration tonight, which is a good case to look at because it annunciates some of the black-letter law on the considerations that a Commission should make when granting a variance. He advised that the primary consideration is whether there is a hardship, which is their main argument tonight. He said that the Town of Indialantic's case explains that a prerequisite to granting a hardship variance is the presence of an exceptional and unique hardship that is unique to that parcel of land and not shared by any other property owners in the area. In this case, the property is in a PUD and the lot in question is very similar to many of the lots in Sea Grove. The applicant did not present any evidence on the record at the original hearing as to whether that lot was unique in any way and therefore, we would argue that there is no hardship. In other words, a hardship may not be found unless no reasonable use of the property can be made and in this case the applicants stated in number one of the Consideration portion of their application that they could not have a swimming pool more than

five foot wide. So, they are stating that they cannot have a swimming pool or design a swimming pool to fit their lot size hence, they do not really need a variance.

Mr. Thompson advised that Mr. McGrath's property is extremely close to where the pool is being built. The properties are angled in a unique way and Mr. McGrath's master bedroom is in that back corner adjacent to where the pool and water features would go, which is the main concern.

Mr. Thompson advised that the next step in the analysis is that once a hardship is proposed, and in this case he would argue that there is no hardship, would be to look and see whether a reasonable mind could accept the conclusion and look at the factors in Section 10.02.03 of the Code of Ordinances related to the hardship itself, which we have already gone over. He said that other factors involve the precedential effect of the variance and whether it would create precedent. He said that in this case, all the lot owners in Sea Grove have very similar lots and everyone is facing the same situation and there is no particular unique hardship to this lot. In granting this variance, it really gives a homeowner in Sea Grove no guarantee that someone cannot get a variance to build a pool next to their property without proper parameters being set.

Mr. Thompson said that when you look at the considerations that the Board made at the prior hearing there really was almost no discussion of the hardship itself and it was found at the very end of the hearing without much discussion of the uniqueness of the hardship or whether the hardship was self-created. This Ordinance and the Code that limits the setback had been in effect much before the Paynes moved into the property, so they had notice of the limitations of the property before they moved in there, which is also a consideration in Section 10.02.03. In short, our main contention is that there is no hardship and that the Board erred in finding that there was a hardship.

Commissioner George said that Mr. Thompson stated that there was no evidence and she asked if the lot line survey would constitute evidence of the unique features and contours of the lot. Mr. Thompson advised that there was no evidence presented as to how this lot differs from any other lot in Sea Grove. He said that it is unique in that one corner, but it is not unique in its size. He said that many of the lots in Sea Grove are not the size to fit this type of pool design.

Commissioner Sweeny said that it states in their application that part of the uniqueness of the lot and the reasonable hardship is that they have a much greater setback in the front of the house, which reduced the back yard size. The requirements are only twenty-foot setbacks, and they have forty-foot setbacks and she asked if that would not constitute a hardship. Mr. Thompson said that they believe that the hardship is self-created because the Paynes had notice of the way that the property was located and where the setback lines were prior to moving in and that proper due diligence should have been done to see if a pool was even feasible.

Commissioner Sweeny said that as she read through the minutes from the Planning and Zoning Board meeting and all the backup materials that it looked like the applicant did agree to set the actual water of the pool line to have a ten-foot setback and that it is the decking that breaches. Mr. Thompson advised that it is also the uncertainty of the improvements because the ordinance is written rather broad in scope, and it does not set any limitations as to what can be within that setback. Commissioner Sweeny advised that it did in the motion that the Planning and Zoning Board made that there was agreement. She said that she believed that according to the plans the pool was just short by a couple of inches and that the decking was in an effort to provide more of a buffer for noise and visual and that is really why the variance was needed. Mayor Samora said for clarification that the variance was to five feet for proposed new construction of said improvements with exception of the pool itself, which shall maintain a ten-foot setback from all side yard to the water line so, according to the variance, the pool still has to meet the ten-foot setback. Mr. Thompson advised that it is mainly the waterfall that they are concerned about.

Commissioner Sweeny advised that that was not her understanding from reading the minutes at all. Mr. Thompson said that if you look at the five-foot reduction on that side, that is the side of Mr. McGrath's property, and the waterfall is going to be right there, which is their main concern.

Vice Mayor Rumrell said that during the minutes it said that they would not be running the waterfall at certain times. Mr. Thompson said he believed so. Vice Mayor Rumrell asked if both houses were there when Mr. McGrath purchased his house and if the current house with the pool was already built. Someone from the audience said yes.

Commissioner Morgan said that as she read through the Planning and Zoning Board minutes that it mentioned in several places, including comments by Mr. Thompson, that other variances with similar situations had previously been granted in Sea Grove. Mr. Thompson advised that he was not aware of the specifics of the other variances that have been granted and whether they were with respect to pools.

Commissioner Morgan read Mr. Thompson's comments from Page 29 in the agenda books of the Planning and Zoning Board minutes stating, "*the prior precedent is one factor...*", she said that she realizes that it is only one of several factors, but it seemed that in his own comments that he was acknowledging. Mr. Thompson said that it is one factor for sure. Commissioner Morgan asked if she was correct in that he was acknowledging that there was a precedence set by previous variances. Mr. Thompson advised that he could not comment because he did not know the specifics as to those variances. Commissioner Morgan said that Mr. Thompson had several times said that there was not enough of a description here of the uniqueness of the hardship. She said that all real property is unique because of its location. Mr. Thompson advised that he was talking in general and in the case of the Town of Indialantic v. Nance it is looking at the surrounding properties and whether it is unique to the properties in the area and that he did not think that there was much difference between the size of this lot and the parameters that are set. He said that most lots in Sea Grove would need a variance to build a pool in the back and that each of those lot owners are faced with the same issue so there is nothing unique about that and that is the point of the zoning ordinance is in and of itself. He said that when you build in that area, you cannot fit a pool in there, and you have to fit within those zoning restrictions.

Commissioner Sweeny said that she would like to follow up and make sure that she understands Mr. McGrath's objection correctly because as we have determined from the way it is laid out right now, they do not need a variance to put in a pool and that she thought that the pool was the issue, but Mr. Thompson is saying that decking and the waterfall are the issue. Mr. Thompson said that the primary issue is the water feature. Commissioner Sweeny said that she was under the understanding that the waterfall was a good thing for your side that was trying to put a level of privacy there to separate the two properties. Mr. Thompson said that it is mainly the noise from the waterfall and that he knows that it was mentioned in the record that they would only run the waterfall at a certain period of time. Commissioner Sweeny said that she thought it was in reference to the pool cleaning equipment but that she may have misread.

Mayor Samora said that the motion from the Planning and Zoning Board mentions that the hardship was for the contours of the property line and that he thought Mr. Thompson said that there is something unique about that corner of the property and if there was anything unique about the contours of the lot line in the location of the pool. Mr. Thompson said not particularly, and he asked if he was talking about the angle of the property. Commissioner Sweeny said that the lot looks like it narrows at one part where it goes to a seven-foot set back, which is a uniqueness of the property line.

Commissioner George advised that if you look at page four of the appeal application and the map of parcels, which is part of the record, it evidences to her that it is maybe only one of two lots, the

other being the neighboring property, which is on a concave slice so that the back is narrower than the front and the rear is also angled differently in a unique contour from the other parcels. She said that she is having a hard time with the conclusion of the allegation that there was no evidence of a unique feature or contours at all, and she asked Mr. Thompson to reply. Mr. Thompson said that he would agree that it is angled slightly and that he could not argue with that but that he does not think that it is a hardship that renders no economic use of the property because he believed that could build a smaller pool and design it within the parameters with a pool deck and everything.

Commissioner George said that the standard in the Town of Indialantic case states that, "*the hardship must be such that it renders it virtually impossible to use the land for the purpose.*" She said that here the purpose would be construction of a pool and that that is a different standard than rendering it economically unusable. Mr. Thompson asked to repeat the question. Commissioner George said that to her the relevance of the Town of Indialantic opinion seems to indicate that the standard of hardship would be that it renders it virtually impossible to use the land for the purpose and in that case, it was "*for which it was zoned*" and here the application is for a pool and the question would be whether it is virtually impossible to use the land otherwise for a pool. She asked if it was reasonable to have a five-foot wide pool in his opinion. Mr. Thompson said that he believed it was and said that it could be a lap pool. He said that if you can build a pool on the property, then you can build a pool. He advised that when he looks at that analysis, a hardship may not be found unless no reasonable use can be made of the property, in this case for a pool, and if a pool can be built on the property, then that is a jury question whether it is a reasonable use.

Commissioner George said that it is more of a question of whether there is anything in the record that would support that because to her it seemed that the builder and the application said that it could not otherwise support a pool. Mr. Thompson said "*more than five-feet wide*" is what it says.

Vice Mayor Rumrell said that he is still confused because they have gone to the ten-foot setback for the pool with the current configuration of the pool, but the planter and waterfall are still the argument. Mr. Thompson said yes, the planter and waterfall are related improvements to the pool. Vice Mayor Rumrell said for the record that the size of the pool currently is okay, and the planter and the waterfall are the issue. Mr. Thompson said correct.

Commissioner Morgan advised that when she looks at the case that Mr. Thompson provided that the takeaway for her is that this is an appeal and not a jury decision and we are just sitting in a Quasi-Judicial appellate capacity. She read that, "*absent and abusive discretion or a clearly erroneous decision, the agency's decision should not be set aside.*" She asked what the abusive discretion of clearly erroneous decision is. Mr. Thompson said that his argument is that there is no hardship in this case because when they admit in their own application could fit a pool, whether it is a five-foot wide vs. a ten-foot-wide pool, that he believed that a design could be made to fit a pool within the lot without having to apply for a variance, and since that is possible, there is no hardship in this case, which is his argument.

Commissioner George asked for clarification of Page 14 in the agenda books, Question 4 of the variance application states, "*otherwise there is no room for a pool.*" Mr. Thompson referenced Page 13 in the agenda books, Question 1 of the application, which states, "*if variance is not granted there isn't enough space between the house and the rear lot line to have a swimming pool more than 5' wide.*" Commissioner George said that on Page 10 in the agenda books, Question 9 of the application states again that there's no room for a pool. Mr. Thompson said that it conflicts with Page 13 of the agenda books, Question 1 of the variance application, which states that they could fit one if it is five foot wide.

Michael McGrath, 1024 Saltwater Circle, St. Augustine Beach, FL, said that the project that they are proposing is requesting not one, not two, but three variations, on three different sides, and three setback variations. He said that in practical terms that he did not think that the project was appropriate for that location given the close proximity of our two houses being only thirteen feet apart at his master bedroom to the corner of their house, and right there is where this project is starting. He said that the main problem is the pool being right outside of his master bedroom. He said that the project is an outdoor entertainment center with a cabana, a shower, an outdoor kitchen, and a lot of ancillary things besides the pool. Given the proximity of our two houses, it is not appropriate in practical terms to him. He said that as far as all the legalese goes, that he would leave that to Mr. Thompson. He said that the backside is conservation land, and it is right up against the St. Johns Water Management District marsh river right behind the houses, which restricts structures. He advised that his house is so close to the project area that it would definitely have an impact on his quality of life out back and the peace and quiet on his back porch and in his master bedroom. He said that he has owned the property since 2009 and has lived there permanently for about eight years and this would definitely change the environment and the peace and quiet. He said that he speaks with a little bit of experience because in the past both the Paynes and the previous residents have had rental pools and bouncy houses for a weekend for their parties, etc., which are no issue for a weekend or two or three days. He said that with pre-teen children in the house and a lot of children in the neighborhood, it would change the back of the house drastically as he had previously experienced with the rental pools and bouncy houses. That is fine for three or four days, but 24/7 would be a different story and those are his practical reasons.

Mayor Samora thanked him for his perspective as the homeowner.

Mayor Samora advised that he would like to give Mr. and Mrs. Payne an opportunity to address the Commission.

Carmen Pollitz, 2550 N. State Street, Bunnell, FL, is representing Mr. & Mrs. Payne and one thing that she would like to point out right away is the reference in the way the two houses sit and she showed an aerial view of the two houses.

Mayor Samora asked if this was presented at the Hearing or if this is new information. Ms. Pollitz said that it was new. Mayor Samora advised that it is not within the Commission's purview to weigh new information and that we need to stay within the scope of what was discussed at the Planning and Zoning Board meeting. Ms. Pollitz agreed and said that she was not aware.

Ms. Pollitz said that it was stated several times that the Paynes did not do their due diligence. If you want to purchase a home in Sea Grove, you ask certain questions. If you inquire about a swimming pool, they will tell you that the setbacks are five foot because that is what the HOA says, and they do not reference the ordinance that is on file with the City and that is what it has to go by, which is ten-foot setbacks. She said that they did their due diligence, and the pool is totally in compliance and if you take out five foot on that side where they cannot put any deck, then it would just be open space. She advised that the waterfall feature is solid natural stone, it is able to have plants in it, and is just sheer falls and it was all designed in an attempt as a blocker and it would totally block anything, no sound will go through that wall.

Commissioner Morgan said that she understands that it is designed to perhaps have that element make it more private, but this design does require the homeowner to request several variances. She said that there was mention of some previous granting of variances and she asked if that was discussed in the previous meeting because she does not want them to give the Commission anything that was not discussed. Ms. Pollitz advised that the original application contained several addresses and several of them she has done. Commissioner Morgan asked if they had similar

issues like this property. Ms. Pollitz said yes, and that the Paynes property is probably a little bit worse than the others. Commissioner Morgan asked her to clarify. Ms. Pollitz said because the Paynes property has a real lack of space in the back because of the house sitting back forty feet and then you have the atypical lot line where the house goes one way, and the lot line goes the other. Vice Mayor Rumrell asked if it was more of a hardship. Ms. Pollitz said yes and that they are not party people. She said that Mrs. Payne works from home, she would be there when the kids are home from school, and they just want a place to hang out with their family. She said that it is not have a cabana, it is a merely a roof, a barbecue area, and a table, etc.

Commissioner George asked if there was anything else in the record that she would like to point out to the Commission that evidences their hardship or the decision-making process of the Board. Ms. Pollitz said that basically sound travels and now she could build the edge of the pool right to the ten-foot setback and have nothing. She said that sound would travel like crazy back there, but if they have the waterfall wall then sound would not bounce around. She said that if they get what they want in keeping that side setback, then most likely that will end up happening.

Commissioner Morgan asked if there have been any revisions to the plan that was submitted because she sees that this was submitted about six months ago, you had the Hearing in March, and you are here now. Ms. Pollitz said only bringing the pool inside the ten foot setback.

Commissioner Sweeny asked how much noise the waterfall makes. Ms. Pollitz said that it would not make a lot of noise. She advised that the base of it is about five-foot wide, the front part is about thirty-six-inches with the waterfall in it, the top of it would have plants in it, and that the back would go higher and be two-foot thick with no waterfall in it.

Commissioner Morgan said that she was looking at the notes and that the variance that was approved was for both rear and side yard setbacks. Ms. Pollitz said yes. Commissioner Morgan asked if the rear was the pool deck going back from the house and the one side is planter/waterfall feature, which has been objected to by Mr. McGrath, and the other side is the cabana structure. Ms. Pollitz said yes, and she said that there are no windows in Mr. McGrath's house at that end and that the windows in the bedroom are at the rear of his house.

Mayor Samora asked Chair Kincaid to provide reasons for the Board's approval of the variance.

Kevin Kincaid, Comprehensive Planning and Zoning Board Chair, said that not having any impact on the outcome, that he would like to say that the considerable consideration that was given to this project and the variance request was done under the careful guidance of the Building Director and the City Attorney. He advised that when the Board considered the variance request that they spent a lot of time dealing with it and that the hardship that they were able to find was the contour of the lot and the placement of the house on the lot. He said for them to have reasonable use of their property and to conduct the construction that they wanted, that several minimal variances requests would have to be considered and approved. He advised that the Board took it in several parts as well. He said that the variance for the back is against a conservation area and there were no complaints or problems with that. He said for the one on the side that the Board did understand, listened to Mr. McGrath, and that they were looking for a compromise because we were trying to let the homeowners have reasonable use of their property, to enjoy life at St. Augustine Beach, and to respect the wishes of Mr. McGrath for privacy to enjoy his house. He said that there did not seem to be a compromise available, and you have heard Mr. McGrath's attorney tell the Commission that the problem was with the waterfall and the pool decking. He said that he did not want to speak for the entire Board, but it was a 6-0 decision, and that we did not hear about the waterfall and pool decking being the problem, we heard more of what Mr. McGrath said about this project being inappropriate and we do not want a pool at all. He said that looking at the problem, the Board chose to find their own compromise. He advised that the pool

could be built without a variance, but it would be a different or smaller size pool, but the Board did not think that it was completely reasonable to ask them to do that, but we did ask them in the variance to move the pool so that the waterline is completely on the part of the property where a variance is not needed. He said that the waterfall/planter feature is basically as a sound barrier and additionally we required a six-foot solid fence and for the variance to be approved, all of this has to be done and we also looked to see that Sea Grove had approved it as well. He said that the Board has approved a number of these in the past to allow people to use their property. He advised that for the Board right now, it would have been more precedent to deny it given the fact that the Board found a hardship with the contours of the lot being difficult to work with. We thought that we came up with a reasonable compromise, even though he did not think that everyone was interested in a compromise, and so they found what they decided as a Board, what they could live with and impose restrictions in the variance, which allows them to build their pool, enjoy their property, and it gives Mr. McGrath a level of privacy that the waterfall, the planter, and the six-foot fence would allow him. He advised that to do the pool without a variance, you have to get rid of the features, which the Board considered to be a sound barrier. He advised that that was the process we came up with, a lot of discussion went into it, and it was a 6-0 vote in the end.

Mayor Samora thanked Mr. Kincaid for his thorough explanation, and for his service on the Board.

Mayor Samora opened Public Comment. Being none, he closed Public Comment.

Mayor Samora said at this point the Commission needs to decide to affirm, reverse, or modify the Planning Boards decision.

Commissioner George pointed out that in our ordinance, Section 12.06.04, it states that, *"the Commission's review is limited to the record and applicable law, we have authority to review questions of law, we must define whether in its opinion if an error was made"*, and that the case law that was provided to us also states that, *"our standard here is to ensure that the authorities decision is based on evidence that a reasonable mind would accept to support the conclusion that the Planning and Zoning Board made."* She said and to that effect, *"absent and abuse of discretion or clearly erroneous decision, the agency's decision should not be sent aside"*, which is the citation from the Town of Indialantic v. Nance.

Mayor Samora asked the City Attorney if there was anything that the Commission needed to be specific about regarding the motion. City Attorney Douglas advised that he would echo Commissioner George's recitation of the case law from the Fifth District Court of Appeal and also congruence with your own Code that states that you must decide *"only whether a reasonable construction of the evidence supports the decision under review."* He said that the content of a motion would either be to affirm, reverse, or modify the decision appealed as it deems just and equitable.

Vice Mayor Rumrell advised that he would like to make a motion to affirm the decision by the Comprehensive Planning and Zoning Board based on City Code, which there was no erroneous decision or misguided misuse and also through the case law that there was absent abuse or discretion clearly erroneous decision agency decision not be set aside.

Commissioner George suggested to amend that motion and to add that it is based upon a finding that the decision of the Planning and Zoning Board reflected a reasonable construction of the evidence in support of the decision that they made.

**Motion:** To affirm the decision by the Comprehensive Planning and Zoning Board based on City Code, which there was no erroneous decision or misguided misuse and also through also through the case law that there was absent abuse or discretion clearly erroneous decision agency decision not be set aside and that it is based upon a finding that the decision of the Planning and Zoning

Board reflected a reasonable construction of the evidence in support of the decision that they made. **Moved by** Vice Mayor Rumrell, **Seconded by** Commissioner George.

Mayor Samora asked for a roll call vote.

Commissioner Sweeny: Yes

Commissioner George: Yes

Mayor Samora: Yes

Vice Mayor Rumrell: Yes

Commissioner Morgan: Yes

Motion passed unanimously.

Mayor Samora advised that the decision of the Planning and Zoning Board has been affirmed by a unanimous vote, the variance is good, and that the appeal is denied. He thanked everyone for their time. Commissioner George said that appeals are always difficult. Mayor Samora said that they are neighbors and hopefully would be good neighbors, but we have our ordinances, laws, and processes, and he commended the Planning and Zoning Board for a thorough job. Commissioner Sweeny said that reading through their minutes that they thoroughly discussed it.

Mayor Samora advised that the Consent agenda item was moved and would be discussed with Item XII.8 and he moved on to Item XII.5.

#### XI. CONSENT

(Note: Consent items can be approved by one motion and vote unless a Commissioner wants to remove an item for discussion and a separate vote)

4. Budget Resolution 23-10, to Amend the Fiscal Year 2023 General Fund Budget for Ocean Hammock Park Expenses

**This Item was discussed with Item XII.8.**

#### XII. OLD BUSINESS

5. Ordinance 23-04, Second Reading, to Change Section 8.00.10 of the Land Development Regulations Concerning Business Signs (Presenter: Jennifer Thompson, City Planner)

City Planner Thompson advised that this topic has been discussed at several Commission meetings, however, this is going to be the official second reading. She said that at last month's Planning and Zoning Board meeting, the changes to the sign Code were proposed and the Board did not have any suggestions or changes and it was approved as written. She advised that these are changes to the Code for non-conforming signs and the last time this was discussed there were a few small changes that were made but basically everything is the same.

Mayor Samora advised that the Commission has seen this before and hopefully everyone has reviewed the changes and that it looked like all the suggestions were incorporated.

Mayor Samora opened Public Comment. Being none, he closed Public Comment.

Mayor Samora said that this was a good compromise to allow the signs that were there to be grandfathered in and that this moves us in the right direction. He asked the City Attorney to read the preamble. City Attorney Douglas read the preamble.

**Motion:** To approve Ordinance 23-04. **Moved by** Commissioner Sweeny, **Seconded by** Vice Mayor Rumrell. Motion passed unanimously.

Mayor Samora moved on to Item XII.7

6. Vacation Rentals: Discussion of Rates for Non-Ad Valorem Assessment or Annual Billing (Presenter: Patricia Douylliez, Finance Director)

**This Item was previously discussed with Item X.1.**

7. Installation of Electric Power on 2<sup>nd</sup> Street West of 2<sup>nd</sup> Avenue: Budget Resolution 23-09 to Appropriate Money (Presenter: Jason Sparks, Engineering Director)

Engineering Director Sparks said that the extension of 2<sup>nd</sup> Street west of 2<sup>nd</sup> Avenue has requested to have underground power installed and that Florida Power and Light (FPL) was approached some time ago and that they provided a ballpark estimate and a preliminary design. He advised that the estimate included the City providing surveying services and that he approached a surveying firm about providing the surveying services and also to accompany the FPL installation ballpark estimate, which he added a twenty-percent contingency if we still want to move forward with that approach. He said that the next step would be for him to obtain quotes from FPL approved contractors and to get approval tonight to move forward with transferring funds into the budget. He said in addition to that, there would be a contractor change order due to some items encountered in April and May regarding the groundwater table, construction of the roadway base, widening of the roadway and the cross slope of the roadway in the existing portion because construction is always difficult in an existing area. He advised that they encountered some things that were not in the design, which he anticipated to be around \$25,000 and that the change order, the increased amount for surveying, and underground electric would be around \$46,000 for a total of \$72,000 being requested tonight to be transferred into the FY 23 budget.

Director Sparks said that that they are working through the change orders right now, the requests have been submitted, but that he did not want to approve them before we got through this tonight. He said that once the change orders are approved, that there would be a revised schedule and that he would venture to say that the work would be complete by the end of this fiscal year.

Commissioner George asked if the sidewalk goes in at the end. Director Sparks advised that the sidewalk is being poured. He said that they met with the contractor last week and they were out pouring the sidewalk Wednesday through Friday. The inspector recently inspected it, but he has not received an update. Commissioner George said that they poured the south side and that she assumed that they would pour the north side as well to keep it moving along even though the utilities, the roads, etc. are still being worked out. Director Sparks said that they are doing what can be done while we are waiting for the change orders to be processed. Commissioner George asked if all the debris would be removed. Director Sparks said yes but that he did not have a date, but that he could find out when it would be removed. Commissioner George said that she takes that route a lot walking and biking and occasionally walks through it to see the progress and she gets asked by neighbors if she has any more details about the project. Director Sparks advised that he would make it a point to discuss it at his progress meeting this Wednesday.

Mayor Samora said that we are approaching the end of this project and he asked if this would be the last budget resolution. Director Sparks said that is his anticipation unless something comes up with the undergrounding of the electric and that he does not expect any from the current contractor.

Commissioner Morgan said that Director Sparks' frustration is felt by the Commission as well because everything is so expensive and there are so many change orders. She asked if we could not have foreseen these and budgeted better, or should we be looking at that right now before we approve this.

Commissioner Sweeny said that she appreciated that Director Sparks including a twenty percent contingency to try to foresee additional expenses. She asked for more information about the change order such as the staff asked for a summary of services for the nearly \$32,000 additional for Crawford, Murphy and Tilly (CMT). Director Sparks advised that it was his understanding that when the third alley was added as a change order earlier this year, that there was additional surveying, resources, and energy spent on the underground piping that was installed in the inlets along third alley that consumed a majority of the amendment that CMT had executed with the City. He said that he was still waiting for a summary of that information but that a certain level of information was provided to him today that did not meet his expectations.

Vice Mayor Rumrell asked if there is a way to negotiate some of that down because over the past four years that he has been on the Commission, he believed that we either were not properly bidding things out or that CMT is known for excessive change orders. He advised that he has sat through many County meetings and has rarely seen any change orders and that he feels that we are kind of stuck. He cautioned moving forward but said that he appreciated the twenty percent contingency. Director Sparks said that he believed that he would have structured it differently but that the summary of information would be his intent to understand exactly what it was spent on and to see if there is some relief from the engineering side.

Commissioner Sweeny asked how much in total we are over with this project. Finance Director Douylliez advised that she did not have that information but that she could start adding the numbers. Director Sparks advised that they recently starting performing some investigation of the invoices to date, which are around \$650,000 but that he did not know how much of that was over budget. Commissioner Sweeny advised that we had caps on what we could assess the homeowners and we are now at \$650,000 that the City is spending. Finance Director Douylliez advised that that is the overall expense for the entire project. She said that we had set the rate as high as we could go for the assessments, and we are now over and above the maximum that we were assessing the residents for their portion. She advised that the \$650,000 is just the total cost and that she would have to go back and see what the City's portion was and how much more the residents would be charged with. She said unfortunately, since we have maxed it out, that would be another decision of the Commission.

Mayor Samora asked the Finance Director to include that number in her report. Finance Director Douylliez agreed.

Vice Mayor Rumrell asked how that would change for future roads because the assessment is collected in arrears and the City is putting the money up front and are we kind of stuck now for future roads. Commissioner George said that there are no roads left. Vice Mayor Rumrell said that they wanted to do the road down by 4<sup>th</sup> Street. Finance Director Douylliez advised that at this point the City does not have the funding to do any roads because we are spending all of it on 2<sup>nd</sup> Street and we have a six-year timeline to recover two thirds of the fees from the residents. She said that she believed that this would be the third year that those charges would go through on their tax bill. Commissioner George said that we do have the option to consider a new assessment. Finance Director Douylliez said yes and that we would have to go through the same process since it is a non-ad valorem, and we would need to notify the Tax Collector by December. She said that if we finish this project at the end of the fiscal year, that we would have plenty of time because we would still have three years to go, and there would be time to notify the Tax Collector that we are going to extend it and notice the residents.

Commissioner Sweeny asked if part of the charges were for the connection cost from the home to the underground utilities. Director Sparks said no.

Commissioner Morgan asked what the ballpark does not include such as the restoration of the property. Director Sparks said that the acquisition and recording of the easements has been done by staff. He said this was if FPL was going to do the installation and that he is going to call three FPL approved contractors to get quotes, which would include clearing, trenching, backfilling, and that the installation of individual services to the homes from the transformer is what is typically paid for by the homeowner.

Mayor Samora asked if there is a trigger in the special assessment where the homeowner has to pay their individual connection in full. Finance Director Douylliez said that she did not believe so it is just billed directly to them and assessed over six years. She advised that there has been at least one person that had contacted her asking how the assessment works and that she provided them the information for the length of time, the rates, and what the maximum would be, and that they have never followed up beyond that but that she is not in the loop with the Property Appraiser sales.

Commissioner George asked if some of the funds were designated for CMT or were otherwise exhausted on third alley because she believed that that project was a part of the Stormwater Management Master Drainage System. Director Sparks advised that through his research that he would have to say that it was a change order for this project earlier this year. Commissioner George said that it would be worth understanding whether it is truly a part of opening 2<sup>nd</sup> Street or if it is simply completing a phase of our stormwater plan for budget and expense allocation purposes that were clear about what was the primary necessity or motivation on that. Commissioner Sweeny said that she recalled that it was part of the discussion about vacating that alley and we agreed to push the gas on that project. Commissioner George said maybe, but there were always preexisting structural issues for the homes on 4<sup>th</sup> Street that back up to it. Commissioner Sweeny said that she was saying this in support of what Commissioner George is saying. Commissioner George said that all of this stuff is part of the mix. Commissioner Sweeny said that she believed that it was a separate project. Director Sparks said that some of the expenses that could have been used for FPL were used for Third alley.

Mayor Samora asked where the \$72,000 would come from. Finance Director Douylliez advised that it would come from impact fees and that we initially had budgeted to do Oceanside Circle but that the bids came in substantially higher than what we had allocated and had within impact fees and that we are just moving it to 2<sup>nd</sup> Street.

Commissioner George pointed out that the homes advertised for sale are upwards of over one million dollars. She said that the City has not developed roads in the fashion that we have developed this one and that she thinks we should be aggressive about considering an additional assessment for those lot owners. Commissioner Morgan said that not all of the lots are for sale at that price or for sale at all. She said that the others would be extremely displeased if we do not consider that they intend to live there and share in that burden. Commissioner George said that that issue is one of structuring the terms for contributing the assessment, which is a policy decision that we could have further discussion on, and we had those discussions in depth when we first implemented the one assessment. She said that it was policy that led us to implement it the first time and if there are overages, then she would assume the same policy would apply.

Mayor Samora said that it took a long time for this road to get opened but we are getting it done and the fastest way to get our money back is to get these houses built and on the tax roll. He said that we made an obligation to do the undergrounding and we have to complete the project.

Mayor Samora opened Public Comment. Being none, he closed Public Comment.

**Motion:** To approve Budget Resolution 23-09. **Moved by** Commissioner George, **Seconded by** Commissioner Sweeny. Motion passed unanimously.

8. Ocean Hammock Park: Rejection of Bid for Projects in Phase 3.1 of the Management Plan and Discussion Whether to Request the Florida Communities Trust to Allow Deletion of Projects from the Management Plan (Presenter: Max Royle, City Manager)

**Item XI.4 was discussed as part of this Item.**

Mayor Samora asked to discuss Item XI.4, the budget resolution, first.

Engineering Director Sparks advised that Ocean Hammock Park Phase II included a precast concrete restroom building and a crane was required to set the building. He said that the original quote that we had was open ended about the charges for the crane being assessed at the prevailing rate at the time the crane was provided. He advised that the contract and quote were earlier in the year, and we now have some additional costs associated with the crane that was needed to move the building from the Boulevard and again to set it on the pad. There were also some requests for change orders from the contractor not necessarily associated with the building such as backflow preventers, permitting fees, wastewater service, and piping modifications, etc. that were not included in the original contract that we entered into with Thomas May Construction Company. He said that he would also like to request additional funding for security cameras to be installed by staff. We are asking the Commission to consider this request for Budget Resolution 23-10 for a total of \$55,000.

Mayor Samora said that the prevailing rates for cranes have gone up quite a bit from \$10,000 to around \$40,000. Director Sparks advised that the \$10,000 fee included in the quote was for a Goldhofer, which is a flat trailer with motorized wheels on it.

Commissioner George asked if he thought that it was still keeping us ahead as opposed to building the restroom. Director Sparks advised that he believed that it would have been a wash. Mayor Samora said that cost escalations have been mind-blowing this year and that the cost to build one could have gone up three-fold as well. Director Sparks said that he did not believe that we should put time and energy into looking back at how the company did business with us because in the end we would probably be right back where we are now.

Mayor Samora asked what the timeline is for reopening the Park. Director Sparks advised before the end of this fiscal year, but that he is striving for it to reopen in June or July.

Commissioner Morgan asked if there was anything on the change orders requests that could be shaved down. Director Sparks advised that some of the items were already incurred earlier this year, but we really needed an As-Built Survey, that the pipe that was shown on the plans was different than what needed, and that the bump outs for wheelchairs are needed to meet code. Mayor Samora said that the contractor is absorbing a little bit as well. Director Sparks said yes.

Vice Mayor Rumrell advised that this is a policy issue because he believed that the contract was open-ended and the crane company kind of had us trapped. He said that he did not believe that legal or anyone else looked at it and that he has a problem with it policy wise. He said that moving forward, any contracts should be shared with the City Attorney to find these things because in the end they charged us what they wanted to and there was nothing that we could do about it. He said that he does not want to be put in this situation again where we are using ARPA or taxpayer's funds, etc. for an open-ended contract that does not benefit the City at all. Maybe this should be an agenda item that we should tackle.

Mayor Samora agreed and said that maybe we need to tighten up our contracts because he has heard a couple of times in a row where people have found ways to get more money because the contract was not airtight.

Commissioner George said that another point is that it is based on the "then current" market rate. She asked if Director Sparks called to find out what the market rate was from third-party providers

to argue whether their rate was reasonable. Director Sparks said that he hoped that they did. Commissioner George questioned whether we should be doing it as well. Director Sparks agreed and said that he certainly would have done it had it been him entering into that contract and that he would do that going forward. Commissioner George asked if the standard was based upon "their" current market rate or the "going" market rate because their rate may be different from the market rate and if we could substantiate a market rate that is more favorable then it might be worth arguing that. Director Sparks said that he did have them include the quote directly from the crane company but because he was not on the front end of this project, he was not able to do anything. Commissioner George asked if the crane company was third-party. Director Sparks said yes, they are a local company.

Vice Mayor Rumrell said that he met with Engineering Director Sparks, Public Works Director Gatchell, City Manager Royle, and Project Manager Adams and that he believed that the problem was that the building was delivered and could not sit along the side of the road, so the crane company had the upper hand, so we had no choice but to do it.

Finance Director Douylliez advised that we were on a deadline with the grant to get this done so we were more or less held hostage to that as well and there was no time to shop around at that point. She said that part of the contract states that they have to provide us with a copy of the invoice from the crane company so that we can vet what the charges are. She said in order for us to submit for reimbursement, we had to have As-Built plans, document the invoices, and to show that we paid all of the invoices. She said that she submitted for reimbursement and is waiting for them to review it and reimburse us for some of the cost.

Mayor Samora opened Public Comment. Being none, he closed Public Comment.

**Motion:** To approve Budget Resolution 23-10. **Moved by** Vice Mayor Rumrell, **Seconded by** Commissioner George. Motion passed unanimously.

Mayor Samora asked Director Sparks to try to hold people more accountable and watch the contracts stringently moving forward.

Commissioner Sweeny echoed the Vice Mayor's request and would like to see the discussion of the City's contracts on the agenda as soon as possible.

Mayor Samora moved on to Item XII.8, the rejection of the bid for Phase 3.1.

City Manager Royle advised that the City received a bid for Phase 3.1, which includes a walkway from the restrooms to the center of the property, an observation deck, and the related expenses.

City Manager Royle and Engineering Director Sparks presented a PowerPoint titled *Ocean Hammock Park Update*, which detailed the background information from when it all started in 2005. City Manager Royle said that he found it incredible that it took so long to get that property. He explained that each of the grants that allowed the City to purchase the 11.5 acres and then the remaining 4.5 acres, we had to create a Management Plan, which consisted of conditions that the City agreed to in order to make us competitive to get the grants. We agreed to put in restrooms, a playscape, nature trails, signs, kayak storage, etc. He said that back in the mid-2000s, he went to Tallahassee for both of the grants, and the emphasis then was not just about conserving the property but using it for some kind of recreational purpose and you will see as we progress through this, that we are looking at changing that focus.

Engineering Director Sparks advised that they went through the Park Management Plan requirements from the 2009 and 2018 grants, and he described the chart he created for the PowerPoint presentation, which is also shown on Page 9 of the agenda books. He moved on to the next slide and advised that each Management Plan has a section called "Combined Site

Development and Improvement Requirements”, which is more detailed about each item that is required, and it is shown on Page 10 of the agenda books.

City Manager Royle moved on to show the Current Phase 2 portion of the PowerPoint presentation, which consists of the parking lot and a nature trail. Director Sparks pointed out some of the features such as the restrooms, a wastewater pump station, and a connector, which is part of a conservation easement amendment that he has been working with St. Johns River Water Management on.

The City Manager and Engineering Director moved on to the Phase 3.1 portion of their presentation, which is the proposed concrete nature trail, an observation platform, and plantings, which is the bid rejection that this agenda item is regarding. Director Sparks pointed out that the blue dash area shown on the slide is the concrete nature trail leading to the future Phase 3.2, the observation deck, the planting, etc., which was just put out to bid. City Manager Royle advised that we only received one bid that came in at \$826,210, we have \$150,000 in the budget so clearly the City does not have the money to do it.

City Manager Royle advised that this leads to what Vice Mayor Rumrell has spoken to him about which is whether we should continue on with the Phase 3 of the Park Development Plan. He said that Phase 3.2 is proposed to include a picnic pavilion, playscape, education area, nature trails, and an accessible connection to the beach walkway. He said that we would have to get specs developed and go out to bid. He said that he did not know where we would get the money and that we do not have any grants for Phase 3.2. He said that we only have \$150,000 and it is clearly beyond our means to do Phase 3.1.

Commissioner George asked if there was anything budgeted for Phase 3.2. City Manager Royle said no and that the key question is whether we continue on with Phase 3 or do we ask the State to allow the City to modify the Management Plan and delete some or all of Phase 3. He advised that Pages 3 and 4 in the agenda books is an email from William McMahon of the Florida Communities Trust (FCT) on the subject of whether some projects could be removed from the Park Management Plan, and that he basically said that they would consider it but that they prefer that it not be removed.

City Manager Royle said that if the Commission’s decision is to ask the State to allow the City to remove Phase 3, that we would certainly point out to the State the bid price for Phase 3.1 and that it is impossible for the City to afford, and also point out that the emphasis of the use of the land and the park has changed from recreation to more conservation. Director Sparks said that it would go from active recreation to a passive conservation area without any new construction.

Mayor Samora asked what the process is for revising the Park Management Plan. City Manager Royle said that he did not know but that he thought this would be modifying it. Mayor Samora clarified his question and asked what the process is for requesting a revision to the Plan without jeopardizing the grant funds. City Manager Royle advised that the only way to know that is to talk to the FCT people.

Commissioner George said that in the email from Mr. McMahon it looked like they are requesting a justification letter and clarity of which facilities the City would want to remove and why. City Manager Royle said yes and that is why we are here now asking the Commission to decide and direct staff as to what you would want to delete if anything.

Commissioner Morgan said that the email stated that the FCT always prefers that facilities be swapped rather than removed and that we need a Plan A asking them to do nothing, and a Plan B asking to swap or do limited things that are within the budget. City Manager Royle said that the term “swap” is a broad term that could mean all kinds of things.

Mayor Samora said that the Commission needs to give clear direction and that first we need to have a consensus for Phase 3.

Vice Mayor Rumrell advised that he talked to the Engineering Director and the City Manager about it. He said that moving the boardwalk was a contention, the height of the walkway was a contention for snakes, and from talking to residents, his understanding is that they prefer nothing more be done and to have it be a more passive park. He said that the majority of them may never go into the park, but they enjoy the boardwalk. He advised that he thinks that the City can do it based on multiple things. He said that the temperament of the community is that they do not want a park and that the restrooms have justified the last Phase and that they were needed because there are no restrooms at that end of the beach. He said that we have police that need radios, we have flooding issues, and he said that he would never vote for any more money for that park because we have other needs that are much more important, which would work better for the community, which is what they all said when they came to us. He said that we would probably owe as much as it would cost to build it out. Mayor Samora asked what is outstanding on the debt. Finance Director Douylliez said that she did not know off the top of head. Vice Mayor Rumrell said that this bid was \$826,210 and that Phase 3.2 would probably be another million dollars and we do not have matching grants to justify it and that he thought that it was time to bring it to the Commission and that he is looking for support to write the letter and to use the money for other projects that are more useful to our direct community.

Commissioner Sweeny said that she agreed with most of the Vice Mayor's comments and would support asking to eliminate Phase 3. She said that her only caveat is that it looked like bike racks were going to be part of Phase 3 and that she would like those to stay in. She said that if they say no, then they say no, but that we will never know unless we ask.

Commissioner George asked where the \$150,000 that was budgeted came from. Finance Director Douylliez advised that it was either City paid directly or from impact fees for park development. She said that there were two grants and that we have submitted for reimbursement of \$106,000 for Phase 2. She said that the second grant for \$60,000 was going towards Phase 3 that came in at a bid of \$826,210 and that the \$60,000 would not have significantly aided us in building that phase and so we would reject that and tell them that we are not going to use it. Commissioner George said that we could first submit the letter with justification for total elimination and if it turns out that there is going to be some sort of penalty, then we could submit another letter with justification for a modified request. She suggested to ask them for what we want first and then see if we need to come up with a Plan B based on their response. She said that unless the nature trail has to be hardscaped, that we could question whether it could possibly be something like crushed oyster shells or other lower cost materials, which might be an avenue for finding a swap.

Finance Director Douylliez advised that we have to take into consideration that the \$60,000 grant expires on September 30, 2023, and that we would have to use it, spend it, and submit for reimbursement by the end of this fiscal year, which makes it tight. Commissioner George asked if that grant was from the same entity and if so, could it also be part of what we ask for in the event that they reject our request that we ask that they grant us an extension while we work things out.

Commissioner Sweeny asked if the water fountains were already going in. Director Sparks said that there is one water fountain in Phase 2 near the restrooms.

Mayor Samora agreed with everything that has been said and that the sentiment in the community that we have all heard is to stop at Phase 2 if we can. He agreed with Commissioner George and that we should ask for everything that we want, which is to stop at Phase 2 and eliminate Phase 3 and then based on their response, we would have to figure out where we go next.

Vice Mayor Rumrell suggested too that several things should be included when writing the letter such as that wildlife has been a concern of the residents, that the park's structures would be a new concern if a hurricane hits, and that the dynamics of the community have changed from an active park to a conservation passive park. Commissioner Sweeny said to include as much evidence of justification as possible.

Mayor Samora opened Public Comment.

Jim LeClare, 115 Whispering Oaks, St. Augustine Beach, FL, said that there has been a lot of compromise and that he did not agree with everyone in the past but that he agreed now; spoke to William in Tallahassee and pointed out that you cannot put all of this stuff in and still protect the wildlife and preserve the natural communities; they know that St. Augustine has changed over the past twenty years, that this is what we have left, and that they would be willing to compromise; when William saw the survey that the City paid to have done, he jumped at it because of all of the tortoise nests; this is the last place in the south part of the City for wildlife to go; we are going to be a better community and he appreciated what the Commission has done.

Commissioner George said that those a good points to add to the justification.

Nick Binder, 232 Big Magnolia Court, St. Augustine Beach, FL, thanked the Commission for the actions that they would hopefully be taking tonight; suggested not trying to do the request in one or two pages, and to have a summary sheet with all the attachments and to show all the costs from day one; show the grants, show what the City has spent so that they can see that it was not fifty-fifty; if you have to put any of the things in from Phase 3, to do it by the restrooms and if you lose a few parking spaces that no one would mind.

Bobby Crum, 301 Spanish Oak Court, St. Augustine Beach, FL, thanked the Commission for their leadership and for capturing the will of the people; he believed that the residents are relieved that the boardwalk is staying where it is; in his discussions with the Sea Colony residents and other residents that everyone seemed to agree that the park was being overdeveloped; the legacy that the Commission can leave for future generations is conservation; spaces that are not developed are what people will appreciate; asking to conserve it is that right thing to do.

Mayor Samora closed Public Comment.

Mayor Samora advised that we have given direction to staff, and he asked if a motion was needed to reject the bid.

**Motion:** To reject Bid 23-03. **Moved by** Vice Mayor Rumrell, **Seconded by** Commissioner Sweeny. Motion passed unanimously.

Commissioner George asked if a motion was needed for the instruction to removed Phase 3. City Clerk Fitzgerald advised that it could simply be a consensus.

Mayor Samora moved on to Item XII.9.

9. Vision Plan: Consideration of Holding Workshop in June (Presenter: Max Royle, City Manager)

Mayor Samora asked the Commission if they would want the workshop in June. Commissioner Sweeny said that she agreed with Commissioner Morgan and suggested that if we could get that gentleman here to talk about Smart Cities, to schedule the meeting around his availability. Commissioner Morgan said that is a great idea and that she did not know if we could squeeze in a workshop in June and that we potentially already have more than one meeting in July, but that she would like to have it sometime in the next few months.

Mayor Samora asked staff to contact that gentleman and to also coordinate the workshop with SEPAC and Planning and Zoning. He asked if the Commission wanted to try to have it in July. Vice

Mayor Rumrell suggested August. Commissioner George suggested that giving as much notice as possible would be more effective to coordinate so many people together.

City Manager Royle suggested to have it after the budget is passed in October. Mayor Samora agreed.

Mayor Samora moved on to Item XIII.10.

### XIII. NEW BUSINESS

10. Former Police Garage Adjacent to Pier Park: Discussion Whether to Renew Lease with the Civic Association (Presenter: Max Royle, City Manager)

City Manager Royle advised that the lease with the Civic Association expires in August and we did not have it on the agenda last month because we were missing several Commissioners and he wanted the full Commission to be here to consider it. He said that he and the Police Chief discussed that the Police Department has storage needs but that the Chief does not need the facility at this point. He said that the recommendation is to renew the lease for whatever length of time the Commission thinks is appropriate.

City Manager Royle referenced a letter that he received today from Ms. Susan Brady, 121 14<sup>th</sup> Street, supporting the Civic Association's use of the building and the extension of the lease [Exhibit B]. He said that a woman with the Art Studio Group, who was here earlier, spoke very highly of the Civic Association. He said that they also use part of the space and are going through some modifications and that they need space now for storage.

Mayor Samora asked the Chief when he anticipated needing more space for storage. Chief Carswell advised that he is beginning talks now with the County about possibly funding another beach patrol officer and we are also finishing up a grant for more beach patrol vehicles. He said that in one or two years we would like to make that the beach patrol office. Mayor Samora asked if he would be comfortable with a two- or three-year lease. Chief Carswell said that a two-year lease would be fine.

Mayor Samora advised that his email has been flooded with support and that each entity makes good use of the building, they do good things for the community, and that he does not see any reason not to extend the lease until such time that the Chief needed it.

Commissioner Sweeny said that she had also received many emails of support, that she has attended some of their events, and that they do a fantastic job serving the community. She said that her only request would be to have the building's mural repainted because it is fading and that we have many local artists that would do a fantastic job and possibly do it free of charge. She said that she supports renewing the lease.

Mayor Samora asked if there was anything in the lease that we would want to modify. City Manager Royle advised that the lease is in the agenda books but that he has not seen anything that needed to be modified.

Commissioner George said that there are other organizations that might want to use it or have used it and she asked if subletting would have to be stated in the lease to allow for it or would a sublease be brought forward for approval. City Attorney Douglas said that number 5 in the lease could have a comma added at the end stating, "*without prior written permission from the City.*"

Bill Jones, Civic Association President, St. Augustine Beach, FL, thanked the Commission for their interest in renewing the lease. He advised that they are the lead on the lease because they are located in the City and that the Civic Association helped fund the Art Studio Group's startup. He said that a sublease is somewhat inaccurate because the Art Studio Group, the Friends of Scenic

A1A, and the Bocci Ball group do not pay any rent, the Civic Association pays everything, but we happily allow them to share the space.

Commissioner George asked if that needed to be addressed for what is allowable. City Attorney Douglas said that he would feel better if it were addressed. Commissioner George agreed. City Attorney Douglas brought up number 4 of the lease regarding insurance and asked the City Manager if he was comfortable with the intervals with which he is receiving the declaration page and the certificates of insurance. City Manager Royle said yes that they are current and up to date. Commissioner Sweeny asked if those other entities were named on the insurance policy. Mr. Jones said yes and when the Civic Association signed the initial contract in conjunction with the City and there was a waiver as far as any kind of liability.

Mayor Samora asked the City Attorney for his recommendations for any modifications. Commissioner George suggested to delegate that to legal to work out. City Attorney Douglas asked for a week to come up with additional language. Vice Mayor Rumrell asked if they could renew the lease now based on the language. City Attorney Douglas advised that you could have the renewal in place now and retroactively ratify it with the additional language that we put in. Commissioner Morgan said for clarification that paragraph 5 of the lease would add language regarding "written permission to sublet" and that paragraph 4 would have language added to make sure that the insurance policy covers any other users. City Attorney Douglas said yes. Commissioner George said that it could be a general approval of a three-year lease with a lease draft to be finalized by legal and staff.

Vice Mayor Rumrell asked the Chief if he would be okay with a three-year lease, and if he needed the building sooner, we could adjust it at that time. Chief Carswell said yes. Mayor Samora asked about the termination terms of the lease. City Attorney Douglas advised that it is a thirty-day notice.

Commissioner George asked Mr. Jones if he preferred a definite two-year lease or a three-year with the possibility of an early termination. Mr. Jones said a three-year and that he and the Chief had a great Zoom meeting and they talked about his needs. He said that they have a benefactor who is willing to buy a storage building and put it either at the Police Department or at Mizell Road to store non-law enforcement items that are taking up a lot of space. He said that sixteen years ago the Civic Association renovated the garage, which was not being used. He said that it is now usable, but it is not habitable because there is no plumbing and there is only enough room for a golf cart and a jet ski. He said that what really needs to happen is that the fire station needs to go and that the Chief needs a building that he could use that has enough room for two or three four-wheel drive vehicles and a small office there. He said that there is no reason why we could not squeeze a thousand square feet in for the non-profits so that we could continue to serve the community. Mayor Samora said that the County does plan to move the fire station in the future and at that point there would be major redevelopment, but he asked to keep with this discussion.

Mayor Samora opened Public Comment.

Annette Jones, 231 Pescado Drive, St. Augustine, FL, Chairperson, Renovation Oversight Committee of the St. Augustine Beach Art Studio Group, which has only been in existence for two months; trying to prepare for the renovations that are happening at that historical building; is pleased with the decisions that the Commission has already made; they have over one hundred members and many others who participate in outreach projects; they want to be supportive of the changes that are happening to the building and hope that their space is only shut-down for a short period of time; they would like to be kept up-to-date with changes and timelines; they believe that they are losing about one-third of their space and any further loss would affect them significantly; they are

fortunate to have Michael Dixon who is a great photographer and a certified historic preservation architect and she would like him to address the Commission with their concerns.

Michael Dixon, 32 Grant Street, St. Augustine, FL, member of the St. Augustine Beach Art Studio and was asked to come talk to the Commission about some facts; donated and helped install the art hanging system in September of 2021 and knows the space very well and has concerns with how the Art Studio will be compromised; as stake holders why were they not involved in the conversations regarding how the Art Studio space would be affected; after seeing the proposed plan of the changes presented to the Commission on March 6<sup>th</sup>, that he developed overlay plans, which Ms. Jones just handed out [Exhibit C]; the Studio would lose 27.2 percent of their floor area and the hanging rails would be reduced by 19.5 lineal feet; there are over one hundred artists including himself; they hang over ninety art pieces on the walls and the space for the Artist of the Month would be gone according to the concept plan; also compromised would be the lighting design, the work area for art classes, and the storage for chairs, etc.; the Cultural Council tells us that we would have to provide a new design and pay for the cost; we need to have a redesign of the lighting layout, the hanging system, and some plumbing; is concerned that the preliminary drawing has a little place for an electric box that has a column there; is concerned to have a handicapped toilet without a handicapped ramp; we have not seen the drawing but we have been told that it was sent to us; also told that there were several meeting that they were not aware of.

Paul Slava, 1575 A1A South, St. Augustine, FL, thanked the City and said that they are in support of the Civic Association that has been a great partner since their inception; they have been included in all their other things such as the 21st season of Music by the Sea, which has been branded for the past couple of years as Music and Art by the Sea; they have included them in grants for the First Friday events, which they cultivate through AGOSA and it bridges downtown and the beaches; we bring attention to the beach galleries because they are important; they give us a stipend through grants so we are actually able to pay some of our musicians and entertainment; partners with the City for annual events such as Art and Bark in the Park and that they could not have done it without Ms. Conlon; they are no cost to the City and almost pays for itself; he reiterated how important the storage is to them and that they are losing space; thanked the Commission because it sounded like the decision has already been made to renew the lease; maybe things will be dealt with later about the Cultural Arts corridor and having more things such as a performance arts venue when the fire station vacates; renewal of the lease is the most important thing right now.

Danielle Anderson, 2175 Mizell Road, St. Augustine, FL, thanked the Chief for agreeing to the lease; Friends of A1A were proud to bring the National Scenic Byway conference here, which is the first time that it had ever been done for Florida at the national level; is happy to be able to promote this community and the byway; thanked the Commission for supporting what they do.

Mayor Samora closed Public Comment.

**Motion:** To approve renewal of the lease for a three-year term with the Civic Association in a draft that is agreeable to the City Attorney so that it can specifically allow shared occupancy with the other non-profit occupants. **Moved by** Commissioner George, **Seconded by** Vice Mayor Rumrell. Motion passed unanimously.

Mayor Samora moved on to Item XIII.11

11. Financial Planning: Review of Long-Range Financial Plan (Presenter: Patricia Douylliez, Finance Director)

Finance Director Douylliez advised that the Long-Range plan is a little difficult to predict in this economy. She said that the graphs in front of you and the data provided are based on historical information but unfortunately it is a little muddy because we had Cares Act and ARPA funding so

over the past few years our revenues have looked very heavy. She advised that going forward, she has tried to level it out as much as possible. We will have grants and we have several years' worth of appropriations in grants that are already in the works and that she has trended them out to the best of her ability and that there has been some tweaking of the information going into the budget. She said that Director Sparks has looked at some of the capital plans and has projected them out slightly differently than what was given for this information.

Finance Director Douylliez has projected a modest five percent increase in expenses going forward but some things are more difficult to project like construction costs. She said that our ongoing maintenance of drainage issues and what was indicated in the presentation by CMT is that we could be spending upwards of \$400,000 a year, so she and the City Manager determined that we would roll those out slowly with \$100,000 in 2023, \$200,000 in 2024, and so on, ramping it up to the \$400,000. She said that one of her recommendations is that we continue to look at a stormwater utility fee to add additional revenue for these major projects that are unfortunately looming in our future based on the preliminary stormwater detail that CMT presented. She said that the Engineering Director would be looking at that further to try to nail it down a little better.

Director Sparks advised that he would take a closer look at the numbers and that is the best that he could do right now with the information we have. He said that maintenance is the key and that the best thing for us to do is to invest our money into the maintenance of the existing infrastructure, which very well may impact appropriations or grants that we need to build new infrastructure.

Finance Director Douylliez advised that unfortunately the City's needs are growing slightly faster than our revenues, which will always be a challenge and we just have to find a way to balance that and look for other revenue streams.

Commissioner Sweeny asked what she used for projecting property tax revenue, which looked like about a nine percent increase. Finance Director Douylliez advised that she based it on past history and some additional growth that is coming but it is slowing down, so it is more of the property values increasing. Commissioner Sweeny said that last year it was huge and then we saw a drop and she asked if the Property Appraiser had given any indication of what to expect this year. Finance Director Douylliez said that this is prepared well in advance of her first notification, which would be no later than July 1<sup>st</sup>. Vice Mayor Rumrell said that from a realtor's side he can help answer that question. He advised that the 32080 zip code encompasses the City, but it also goes all the way south and that it is looking at a three to five percent increase in home value this year, which is a substantial drop from last year.

Finance Director Douylliez advised that this is just a projection and that she will start fine tuning it more when we get into the budget and more data comes out. She said that it is very hard to trend what our interest is from our investments and our banking, but she sees it significantly increasing this year.

Mayor Samora asked if there was anything alarming on the horizon for the next five years. Finance Director Douylliez said no but that she does have concerns for the infrastructure needs of the City and whether or not we will be able to continue to receive appropriations in grants to assist with it because the bids and quotes are coming in significantly higher than the grants. She said that there is a definite need to get through the projects that we currently have and work on better modeling and estimates so that when we go for the grants, we would have a better feel for the numbers. She advised that she would rather receive too much and give it back than not have enough, which is the case we have right now. She said that ARPA is dwindling but we have a non-ending use of it until the funds run out. She said that we took the ARPA funds as a revenue loss, and we no longer have the 2024 and 2026 deadlines so we could use the funds as needed. If there

are ARPA funds in the budget for current projects, those may be able to be pushed out a little farther. She explained that when there are budget resolutions that take from that, then it is taking from another project.

Commissioner Morgan asked about the Projected Revenues and why the Intergovernmental Revenues go off a cliff. Finance Director Douylliez advised that it was easier to set up the ARPA funds as a separate entity to be able to track all our expenses and it gets transferred back and forth between the sharing of the expenses for ARPA funds for all the projects, which means that there are a lot of intergovernmental transfers. She advised that we also had the weir, which was a \$2.9 million dollar project. She said that all that should slow down as we stop having the funds for ARPA.

Commissioner Sweeny asked for more information regarding the Capital Asset worksheets such as where the information comes from. Finance Director Douylliez advised that it is an Excel spreadsheet, which has been modified going forward. It was an easy way for the Department Heads to share their information about what each of them believe their needs would be going forward and whether it would be City funds, grant funds, retirement of trucks, purchasing of new trucks, etc., which aids her for putting it into the actual budget. Commissioner Sweeny asked if the spreadsheet labeled FY 24 was for this upcoming fiscal year. Finance Director Douylliez said yes and that we are currently budgeting for it and all of it has been significantly modified since then. She said that we are just beginning to figure out what projects would be carried over and budgeted again for FY 24, which you will see more of as we propose the budget and that we will have a better feel for what it looks like in September. She advised that she is loading it into ClearGov right now, which will also trend it out.

Mayor Samora said looking at FY 27 that there are certain things that we know because we are going to have vehicles that need to be replaced, etc. and to keep a list of those so it does not sneak up on us.

Mayor Samora moved on to Item XIII.12.

12. Commission Meetings in July: Consideration of Holding Regular Meeting on Monday, July 10, 2023, Because of July 4<sup>th</sup> Holiday on Tuesday After the First Monday on July 3<sup>rd</sup>; and Scheduling Meeting on Monday, July 31, 2023, to Set the Tentative Property Tax Millage for Fiscal Year 2024 (Presenter: Max Royle, City Manager)

City Manager Royle advised that the July Commission meeting would normally be held on Monday, July 3<sup>rd</sup>, which is the day before the July 4<sup>th</sup> holiday and that some people may be out of town, and he asked if the meeting should be held on a different date.

It was the consensus of the Commission to hold its July meeting on July 10, 2023, at 6:00 p.m.

City Manager Royle advised that a second meeting is needed in July to review the budget and set the tentative millage rate and he suggested July 31<sup>st</sup>, which is a Monday. He said that typically the last Monday in July is when you set the tentative millage rate and the Property Appraiser puts it on the notice that gets sent to all the property owners in the City in August. He said that your first Public Hearing on the budget is usually the second Monday in September due to the Labor Day holiday.

It was the consensus of the Commission to schedule the budget meeting for July 31, 2023, at 5:30 p.m.

Finance Director Douylliez said that since she has been the Finance Director, we have tried to have individual meetings with each Commissioner prior to the budget meeting so that questions could be addressed ahead of time and that each Department Head would also attend to help answer

questions. She advised that they are targeting the week before the July 31<sup>st</sup> meeting and would be sending out requests very soon to schedule those meetings.

Mayor Samora moved on to Item XIII.13.

13. Florida League of Cities' Annual Conference: Designation of Commissioner to be City's Voting Delegate (Presenter: Max Royle, City Manager)

Discussion ensued regarding each Commissioners availability and desire to attend; that August 10<sup>th</sup> is when St. Johns County schools reopen; that Vice Mayor Rumrell is available; that there can be more than one attendee but only one voting delegate.

It was the consensus of the Commission that Vice Mayor Rumrell would be the Voting Delegate.

City Clerk Fitzgerald advised that registration is now open and that she would need to get the Vice Mayor registered as soon as possible because hotel blocks do sell out. Vice Mayor Rumrell said that he would get with her tomorrow.

Mayor Samora asked if a motion was needed to extend the meeting. City Clerk Fitzgerald said no.

Mayor Samora moved on to Item XIII.14.

14. City Attorney Services: Request for Approval of Addendum to Contract with the Douglas Law Firm (Presenter: Charles Douglas, City Attorney)

City Attorney Douglas advised that this request is based on two factors. The first is that over the last six to eight months the level of engagement has increased to almost a daily basis. He said that Attorney Blocker is the primary point of contact and that he is very attentive. If they are having a meeting and anyone from the City calls, he steps out and prioritizes any issue with the City from all the different departments and they are happy to do that. He said that they value the relationship with the City and want to continue to be a part of the City for the long-term and that he appreciated the Commission's consideration of this. He said that they understand that it is hard with the budget and that they are sensitive to that.

City Attorney Douglas said that the second factor is that inflation is real, whether it is the price of eggs, crane services, construction costs, etc., and the cost of legal services has also increased. This is a modest increase from \$6,000 to \$8,500 base price and they would keep in place the hourly rate of \$175 for litigation. He said for comparison their hourly rate for litigation for a regular client is \$375 an hour.

Commissioner George advised that she has never seen any billing records from the firm, so she does not have a way to gauge how much time they have been putting in or how much extra the City is paying for the services that are billed at the \$175 rate. She said that she is all about justification and documentation so that it is substantiated as opposed to just picking numbers and that she would be more comfortable if she could be provided with that information. City Attorney Douglas advised that the firm does provide that information on a monthly basis, and he asked if the Commission would like to receive that information as a carbon copy (cc) of the invoices that are sent to the Finance Department. Mayor Samoa advised to have staff submit the information to the Commission.

Commissioner George asked the City Attorney if the firm submits a summary of the time spent on other items that do not fall under the \$175 an hour rate. City Attorney Douglas advised that there is a flat retainer for handling phone calls, etc., and that the \$175 rate is detailed out. Commissioner George advised that it would be helpful if the Commission had records that showed an increase of work for the retainer fee increase, such as all the work we have been doing with the non-ad valorem and the new legislation, which may have taken a lot of extra time and so she does not know if those types of things caused the increase but, if that is the case, then those are done. She

questioned whether it was more about inflation, or the time spent, and that it would be helpful to see the time records. City Attorney Douglas advised that it is probably about fifty-fifty and that just last week, City Attorney Blocker said that he took eight phone calls on the same day about eight separate City matters and that they are always happy to take those calls and have done so even on the weekends. He said that the level of engagement has increased, and they are asking for the level of compensation to also increase.

Mayor Samora said that his level of engagement has been greater than with any other City Attorney, that he has been very happy with the counsel that has been provided, that he has heard the same from staff, and that this is the first request for an increase since signing the contract. Vice Mayor Rumrell said that he believed that initially they did not know the scope of things and wanted to review after a year, but that they did not come back for that discussion. City Attorney Douglas advised that it was a little bit of a risk for them because a different law firm was initially chosen over them. After negotiations, the other law firm wanted to charge so much that the City asked our firm to come back for a second interview and so they took that risk, charged less, and we are in it together.

Commissioner Sweeny asked what the terms are for the current contract, if it was ongoing, if we are still operating under that same contract, and when would the increase take effect. City Attorney Douglas advised that it is at the pleasure of the Commission and that if you are not happy with them, to let them know. Commissioner Sweeny said that she is just trying to gauge when this increase would take effect such as after the current contract term or if it would go into effect immediately. City Attorney Douglas advised that they would request that it be effective immediately, but that it is up to the Commission.

Commissioner Morgan advised that she and the City Attorney spoke on the phone previously and that he said that the level of engagement had increased but that she was not on the Commission at that time. She said that if it increased suddenly, then her concern would be whether some of these things may be situational, such as the Ocean Hammock Park boardwalk or other things that were happening, but they do not last forever. She commended City Attorney Blocker and appreciated his level of responsiveness. She said that she only contacted him once with one question, so it does not really affect her but that she had concerns about this sudden huge uptick and the reason behind it. She asked who the person is that is reaching out all the time and breaking apart the litigation charges vs. the retainer fee. She said that it is her understanding that part of the reason this all came about is because a bill was submitted for something that should be covered by the retainer fee. She has no problem with a very detailed bill for litigation that includes everything that anyone at the firm does, but when things are covered under the retainer fee, we would have no idea. She requested copies of the invoices and has reviewed them, but we have nothing to show that level of engagement. She said that she understands that City Attorney Blocker is dropping what he is doing to take City calls and that a lot of what we do is urgent, but to every client their matter is urgent. She said that if she were to raise her fees by the percentage rate that they are raising them, that she would not have any more clients. She is not saying that the rate is completely out of the range for what is normal, but that she did her homework to see what other cities are being charged, and that the higher fees were for significantly larger cities. We are a relatively small city and to make such a large jump at one time is something that she is not comfortable with but if it is the will of the Commission to make some modifications that she would like it to begin when the fiscal year begins because we do not have money in the budget for an increase right now. Most of this meeting we have been talking about other things that we are already dealing with that we cannot back out of right now and have to pay for to get through it so that we are not wasting the resources that we have already put into it. She suggested that the Commission consider an amount somewhere in between what is being requested and that we

make a contract for a certain period of time such as reviewing this contract every three years, which is approximately how long ago this current contract was signed.

Commissioner Morgan advised that she has experience dealing with other boards, both personally and professionally, and that she is not completely opposed to an increase, but she is opposed to the amount of increase being requested. She said that she does not think that it is out of the range of the reasonable amounts from other cities, but that she does not see that level of engagement for herself. She advised that if we sign an amendment, that we should designate someone from the City to be the contact person. She realizes that City Attorney Blocker is the main contact for the firm, but that we have also seen Mr. Douglas and Mr. McCrea, and she would like to have the roster of the attorneys that would be attending to the City's needs. She said that she thinks that it is a good idea to have more than one person but that we would want to know who that person would be so that there is not a situation where a meeting is being covered by someone who is not familiar with the City's needs.

City Attorney Douglas replied that City Attorney Blocker is the main point of contact, Mr. Taylor and Ms. Campbell are no longer with the firm, and that the reason that he has been in attendance recently is because City Attorney Blocker was away on military assignment, but he is back now and should be at the next City meeting and that he was happy to cover for him. He said that occasionally the City Manager or the Finance Director may call him. He said that the other point that was made regarding an invoice issue questioning the time that was on it, should demonstrate that they are willing to have the open-ended conversations and be clear and transparent, as we should be, because these are taxpayer's dollars. You, as Commissioners, need to be good stewards, and we respect that, and we want to be good stewards of the time that we charge. He advised that he had no objection to placing a time limit on the contract term and that any consideration of a rate increase, whether it is halfway, or the full amount requested, would be very appreciated.

Vice Mayor Rumrell asked the City Manager if he remembered what the initial bid was with the other law firm in 2020. City Manager Royle said that he did not remember. Vice Mayor Rumrell said that he believed it was around \$8,500. He said that he was okay with a three-year contract, and he asked if they anticipated any other raises over the next three years. City Attorney Douglas said no. He said that one of the other questions was whether this was a situational request, and we did not bring this to the Commission six months ago because we wanted to be certain that this was a continuing trend and not a temporary spike, which is why we waited until now for the request.

Mayor Samora advised that it would be difficult to adjust this, being so close to the new fiscal year, because we have to go through the budgeting process. He said to start it at the beginning of the new fiscal year would be helpful and to make it part of the budgeting process if there is going to be an increase. Another way to look at it is, if we are going to put a term on the contract, and there is an escalator in there, then we could plan for it. He said that we just went three years without an increase, so we have had the benefit of that as well, so it kind of comes out in the wash most of the time.

Commissioner Sweeny agreed with having the increase start with the new fiscal year if possible and having a term contract up to three years, but that she did not feel strongly either way about including an escalator in it. She said she did not know if an escalator would be easier than phasing in an increase rather than a large increase every three years.

Commissioner George advised that another benefit of having a fixed term is that it would generate a thought process of whether it is time to go out to bid again and to see what the market is doing, etc. but it has not been requested, so maybe not offer it. She said that it is important to her to be

able to gauge and provide the accountability that we are obligated to do as fiduciaries and that we should have some time records that show the time that is being spent, even for the retainer work. She said that one month it may be fifteen hours and another month it is fifty hours and that way both sides could gauge how affordable it is. Mayor Samora agreed that that was a fair request.

Commissioner Sweeny commended City Attorney Blocker because she has a high level of faith in him and appreciated his expertise dealing with city government but more specifically with the Commission and that she thinks that he is worth it. She said that she has seen a higher level of service since he took over and that he has also attended staff meetings and meeting with directors, which is one piece of evidence towards a higher level of engagement and, for the record, she appreciated his efforts.

Vice Mayor Rumrell agreed and said that City Attorney Blocker has been very responsive, and he has been able to figure things out. He said that he is okay with an increase and a three-year contract as long as they are good with starting it with the new fiscal year and no escalation until the third year and then bidding it out.

Mayor Samora opened Public Comment. Being none, he closed Public Comment.

**Motion:** to work on a three-year contract with the Douglas Law Firm in the amount of \$8,500 a month with a \$175 an hour reduced fee for litigation with no escalation. **Moved by** Vice Mayor Rumrell, **Seconded by** Commissioner Sweeny.

Commissioner Morgan said that some of the suggestions that she asked about were not discussed such as who would be included as attorneys on the amendment. Mayor Samora said that City Attorney Douglas replied that City Attorney Blocker would be the main contact and he asked if she wanted a list of everyone at the firm. Commissioner Morgan no, that she wanted to see if we were all in agreement before voting on whether to identify who would be the attorneys. Vice Mayor Rumrell said that he would revise his motion.

**Amended Motion:** to work on a three-year contract with the Douglas Law Firm in the amount of \$8,500 a month with a \$175 an hour reduced fee for litigation with no escalation and that the Commission would receive billables for the retainer and that Jeramiah Blocker would be the lead attorney, with Charlie Douglas as second, or another person capable if Mr. Douglas or Mr. Blocker... **Moved by** Vice Mayor Rumrell.

City Attorney Douglas advised that John Steinmetz often provides services to the City. Commissioner Sweeny said that it would be appropriate to put that in the contract. Commissioner George said that it would come back to us next month for a final time and she asked if Commissioner Morgan had anything else to add. Commissioner Morgan said no but that she just wanted to make sure because if we were going to have a motion, that she would want to include all the things that were necessary.

Commissioner George asked if his firm would be agreeable to something in the middle. City Attorney Douglas said yes, whatever is the will of the Commission. Commissioner George said that she has always been impressed with the level and quality of service and has never had any complaints and is grateful for their legal expertise but bearing in mind the finances and she asked Commissioner Morgan for her thoughts. Commissioner Morgan said that she would be much more agreeable to something in the middle because it is such a large jump at one time and that no one seems in favor of the escalation. She suggested to split the increase down the middle.

**Motion withdrawn.**

Commissioner George asked the Vice Mayor if would like to amend his motion. Vice Mayor Rumrell said no, not unless they are amenable up to \$2,500 additional and up to \$8,500 maximum.

Mayor Samora said that the middle would be \$7,250. Vice Mayor Rumrell said that City Attorney Douglas may come back and say that he needs the additional \$2,500, which may make us have to go out to bid and then he may say that he would do \$7,250 or \$8,000, which would give him a window of up to \$2,500 additional. Commissioner George asked the City Attorney if that would be a situation where he would have to seek approval and come back or could he be the decision maker today. Vice Mayor Rumrell said that if we bid it out that it would probably come back way higher than \$8,500. Commissioner George said that she does not want to go through the bid process, even though some may argue that it is better, but now is not necessarily the right time to do that because it would cause delays and uncertainty and that she would rather go into the new fiscal year knowing where we are going to be. City Attorney Douglas advised that they did try to take into consideration that if the City were to hire an in-house attorney that it would probably be at least \$10,000 a month in salary plus benefits, and we tried to come under that with the \$8,500. Commissioner Morgan said that we do not have the need for a full-time attorney, we need someone to provide assistance, but it is not forty-hours a week. She said that someone would have to divide their duties and act as in-house counsel and have another position because it is not enough to necessitate a full-time attorney. City Attorney Douglas agreed and said that that is why they did not go to the \$10,000 rate.

Mayor Samora said that \$7,250 is too low for what some are comfortable with and \$8,500 is a little too high and he asked if that needed to be sorted out tonight. City Attorney Douglas said that understands that the Commission would like to line it up with the fiscal year, which gives us more time and flexibility to come up with something that we are all in unity with. Commissioner Sweeny said that if the contract is already coming back to us, then he could do what he needs to do on his end, work with the City Manager, and come up with a figure that he is comfortable with to bring back to us with the contract. She advised that she is okay with \$8,500 but that she hears the concerns of other Commissioners.

Commissioner George advised that if she had those time records, that she would be much more comfortable because then she could be held accountable. She said that she does not have a problem conceptually with the increase and that it makes sense when looking at the comparisons. She said that by her calculations at \$325 an hour with twenty-six hours that she could see that it could be well founded but it is simply that process. She said that we have a purchasing policy in place for a reason and that she understands that this is outside of that, but it is just us doing our due diligence. She said that she is not opposed to the \$8,500, if it is a dealbreaker, and that she would take it on good faith that there has been some evidence provided here by testimony that it is well founded. She said that if they have any flexibility on their end and would willing to meet us somewhere in the middle that it would be appreciated because we are a City and we are desperate, the checkbook is always thin, and anything you could do to help us out would be great.

Commissioner Sweeny advised that earlier in the meeting we talked about discussing the policy and contract issues and as part of that discussion, she would anticipate potentially having an attorney review of contracts. She asked if that would fall under the retainer fee. City Attorney Douglas said yes.

Mayor Samora asked if the firm could provide any retroactive timesheets from the hours worked for the retainer. City Attorney Douglas advised that it had not been requested up to this point and it was not something that they had kept records of. Mayor Samora said that it has come up as a request from at least two of the Commissioners and he asked him to try to provide the best information possible because it would help with the decision. He said that if comes in at \$8,500, then the time estimates would help justify that, and he has no problem with that amount. He said that it would be a good faith effort to try to come back with some sort of timekeeping. He advised

that the Commission is in agreement with making a three-year contract with no escalation, and to increase as needed with the budget cycle.

Commissioner George advised that every time the City does not go out to bid, there are always whispers about it being favoritism or something else because there are attorneys on the Commission who are colleagues. She said with Mr. Blocker being a former elected official, that we have all worked well with him and have outside ties and relationships. She said that she is just trying to protect everyone as well as do her due diligence on behalf of the people.

Mayor Samora said that the Commission has given good direction. City Manager Royle asked when this needed to be back on the agenda. Mayor Samora advised next month.

Mayor Samora moved on to Item XIV.

#### XIV. STAFF COMMENTS

City Manager Royle said that he would like to thank Engineering Director Sparks for his help since he has arrived. He also said that Mr. Gatchell has stepped into the Public Works Director's position and that things are being taken care of and that he appreciated it.

Engineering Director Sparks advised that they have a lot going on and that he appreciated the support.

Public Works Director Gatchell said that he appreciated Director Sparks being here and that he has a lot on his plate right now. He advised that Public Works is running okay right now.

Building Official Law advised that the Publix Plaza/Regency Center has submitted their concept review for redevelopment of the area leaving portions of the other building and if you receive any questions, to please defer those to his staff. He advised that the Commission would see the final development order at some point. He said that last week Embassy Suites was granted a Department of Environmental Protection (DEP) permit for new coastal armoring inside the existing seawall that is failing and at some point, they would be permitting through us. Mayor Samora said that the Publix Plaza is on the agenda for the next Planning and Zoning Board meeting so word will spread quickly. Building Official Law advised that the meeting room is almost completed and that we are waiting for a replacement door, the table to be delivered, and the interactive monitor, and then it would be ready for staff to use.

Commissioner George said that she also gets questioned about Zaharias and she asked if there was any update. Building Official Law advised that they have not received anything else about Zaharias other than the dispensary letter several years ago. He said that when we finalize the sign ordinance, that the Zaharias' sign would have to be modified because it has been out of business for over two years and that he would likely have to remove the insert and install a blank at the owner's cost.

Police Chief Carswell advised that they are doing "Donuts with a Cop" event again tomorrow at Island Donuts at 8:00 a.m. and he invited everyone to join in.

Mayor Samora reminded everyone that SEPAC would have its meeting this coming Thursday and that the Planning and Zoning Board meeting is Tuesday, June 20<sup>th</sup>. He said that upcoming holidays are Father's Day on June 18<sup>th</sup> and Juneteenth on June 19<sup>th</sup>.

Mayor Samora moved on to Item XV.

#### XV. ADJOURNMENT

Mayor Samora asked for a motion to adjourn.

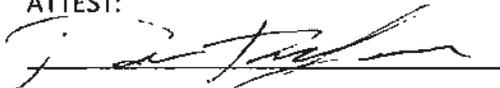
**Motion:** to adjourn. **Moved by** Commissioner Rumrell, **Seconded by** Commissioner Sweeny.  
Motion passed unanimously.

Mayor Samora adjourned the meeting at 10:17



Donald Samora, Mayor

ATTEST:



Dariana Fitzgerald, City Clerk

COPIES  
C. THOMPSON

ORDINANCE NO. 2023-01

AN ORDINANCE OF THE CITY OF ST. AUGUSTINE BEACH, FLORIDA, PROVIDING FOR THE CODIFICATION OF THE CITY COMMISSION'S RESOLUTIONS AND ORDINANCES RELATIVE TO STORMWATER SERVICES, AS WELL AS THE CITY'S POLICY ON THE IMPOSITION OF ASSESSMENTS FOR THE COST OF PROVIDING STORMWATER SERVICES, AND PROVIDING FOR CONFLICT AND SEVERABILITY; PROVIDING FOR SCRIVENER'S ERROR; AND PROVIDING FOR AN EFFECTIVE DATE.

*SAY ORD 2023-01 SHALL INCLUDE GREEN INFRASTRUCTURE TO BE FUNDED IN A LIKE MANNER TO GRAY INFRASTRUCTURE*

WHEREAS, the City of St. Augustine Beach, Florida maintains a system of stormwater and surface water management facilities, including inlets, conduits, manholes, channels, ditches, drainage easement, retention and detentions basins, infiltration facilities, treatment ponds, pump stations and other components, as well as natural waterways; and

WHEREAS, these elements of the City Stormwater and surface water management system that provide for the collection, storage, treatment and conveyance of stormwater are of benefit and provide services to all developed property within the City; and

WHEREAS, new and dedicated funding for the stormwater management program of the City is needed to maintain compliance with state and federal requirements and the levy of stormwater assessments is the most equitable method of providing this funding.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF ST. AUGUSTINE BEACH, FLORIDA THAT:

Section 1 - Adoption of "Whereas" Clauses.

The foregoing "Whereas" clauses are hereby adopted and incorporated herein as forming the legislative findings, purpose, and intent of this Ordinance.

Exhibit A-1  
Date 6-05-2023

# Stormwater Drainage Issues



City officials have noted:  
***“that at times of high tide and a surge, the intercoastal waterway backs up through the storm water system throughout the city adding to flooding issues.”***

Exhibit A-2  
Date 6-05-2023

### 3. Can Our Stormwater Drainage System Become More Sustainable?

Sustainable & cost-efficient solutions are needed to control storm water runoff at its source

The city should encourage residential on-site rainfall conservation

- to reduce the risk of neighborhood flooding ,

- to decrease run-off/pollutants from reaching our local waterways, &

- to protect the islands fragile ground water system which supports our natural tree canopy.

- ▶ Reestablish city wide street ROW swales to increase the natural retention of stormwater in our 1,100 acre flood basin.

Exhibit A-3

Date 6-05-2023

1-22-23

## News from the City of St. Augustine Beach

### Sustainability & Environmental Planning Advisory Committee (SEPAC)

The mission of SEPAC is to make the city's natural resources sustainable and to improve them.

Can our city reduce the growing impacts from flooding, save money, and improve our environment at the same time using green infrastructure?

#### What is "Green Infrastructure"?

According to the US Environmental Protection Agency (USEPA), **green infrastructure** refers to natural systems including **forests**, wetlands, **bioswales**, marsh grass, oyster reefs, dunes and their sea oats that provide benefits for human well-being, such as flood protection and climate regulation. **Gray infrastructure** refers to structures such as dams, stormwater drain pipes, pumps, seawalls, roads, and retention ponds.

Today, one of the top infrastructure issues for coastal cities like ours is stormwater management. Our city, like other coastal cities, is experiencing an increasing rate of sea-level rise, increasing rainfall and storms due to climate change, and **increasing flooding events**.

DEF  
According to the USEPA, **green infrastructure** is a cost-effective, resilient approach to managing wet weather impacts (*i.e.*, flooding) that provides many other community benefits. It uses vegetation, permeable pavement, stormwater harvest (such as dry pond detention areas), or landscaping to store, infiltrate, or evapotranspire stormwater and reduce flows to sewer systems and other practices to restore some of the natural processes required to manage water and create healthier urban environments. (<https://www.epa.gov/green-infrastructure/what-green-infrastructure>)

The City of St. Augustine Beach owns around 50 small plots of land called "parkettes", some of which may be utilized and altered for **green stormwater management strategies** to help reduce flooding rather than turning them into parking lots. These would also increase other natural ecological functions, for example, by installing **rain gardens** and **dry detention ponds** in them it could add natural habitat and beauty. According to Florida Dept. of Environmental Protection (FDEP), **dry detention basins** can provide flood control by temporarily detaining runoff during storm events. These dry "ponds" control peak flows of runoff and help improve water quality. Between rain events, a dry pond looks like a large, grassy low area. When it rains, the pond fills with water. They hold water for 48-72 hours to allow sediment and pollutants to settle out. After the rain event, the water can then be released into our wet retention pond when it can accommodate it.

([https://floridadep.gov/sites/default/files/Post\\_Construction\\_Storm\\_Water\\_Management\\_in\\_New\\_Development\\_0\\_0.pdf](https://floridadep.gov/sites/default/files/Post_Construction_Storm_Water_Management_in_New_Development_0_0.pdf))

**What is the difference between a retention pond and a detention pond?**

Exhibit A-4  
Date 6-05-2023

4. ... - ... , ... ?

- 2011  
- 2012  
- 2013

SEPAC

JUNE 2023

Our recommendations/requests are as follows:

- > 1 Verify and publicize that the future of stormwater management utility fee will include the design, engineering and construction cost for adding green infrastructure projects to provide flood mitigation in our city.
- > 2 Verify and publicize that the future stormwater management utility fee will recognize and incentivize the need to reduce runoff and conserve rainwater.
- > 3 Verify that the building department and public works department will promote best practices and policies to reduce excessive runoff and conserve rainwater in both residential and commercial property within the city.
- 7 4 Publicize and hold community workshop meeting to inform the general public regarding the adoption of the stormwater utility fee and its intended usage in the city, including green infrastructure. Workshop should include members of planning and zoning board, and SEPAC and City staff.

Please review the following documents for additional information regarding the Sustainability and environmental planning aspects of adding green infrastructure to our cities stormwater management system.

1) 2019 SEPAC , Sea Level Rise and Stormwater Management , PowerPoint presentation, prepared by Prof. Sandy Bond.

Exhibit A-5  
Date 6-05-2023

CONCEPT  
PARK 7 PLAZA

plazas: nine are used for parking, eight are currently landscaped park areas, and 35 are currently undeveloped.

The following guidelines may assist in deciding the future uses of the plazas:

1. Restrict the use of the plazas for improved parking to commercial plaza areas along A1A Beach Boulevard.
2. Create a plan to develop the unimproved plazas with examples of native plants or as rain gardens to educate the public about sustainable gardens.
3. Use some of the plazas for displays of public art.

Illustration 3

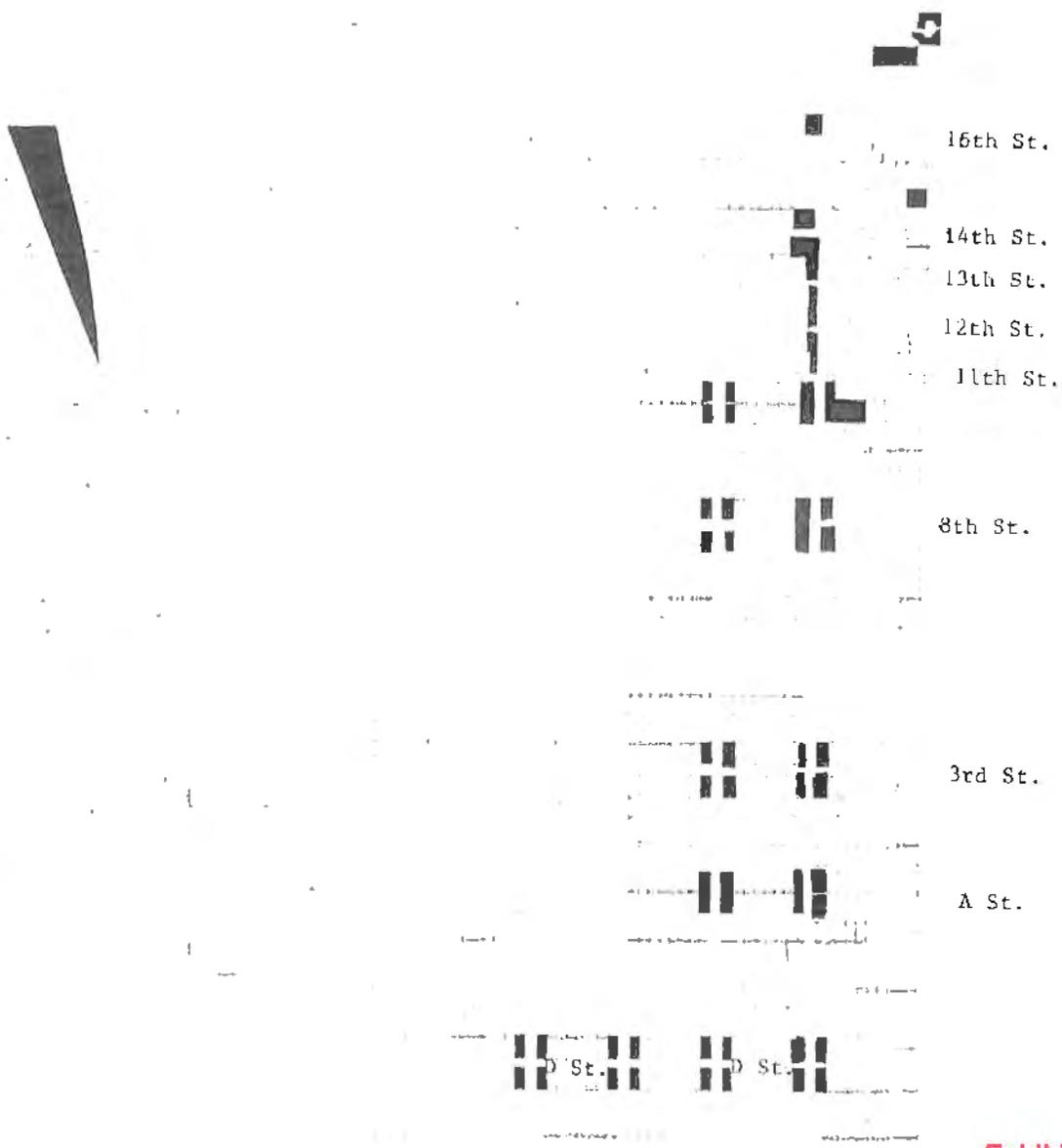


Exhibit A-6  
Date 6-05-2023

**Susan Brady 121 14th St, St Augustine Beach, FL 32080, (904) 377-2864**

June 5, 2023

Dear City Commissioners,

First let me thank you for hearing my concerns. As a long time resident and taxpayer of St Augustine Beach, I am in support of the garage space renewal for the St Augustine Beach Civic Association. The space they would lose would make it more difficult for the organization and their volunteers to continue with the many events they organize or assist with.

I support the Arts in every way I can, and as we all know, the Civic Association volunteers do a magnificent job hosting the Music by the Sea, among other events. To take the space from them would be a disservice to not only those who freely give of their time and energy to SAB, but also to the citizens and visitors to this great city. As many would agree, there is nothing better than gathering family and friends to listen to music with the sight, the sound, and the smell of the ocean in the background.

Along with The Music by the Sea events, we know there is so much more the Civic Association does to make SAB the gem that it is!! Please listen to your constituents and support our volunteers at The St Augustine Beach Civic Association by renewing the lease.

Respectfully,



Susan Brady

121 14th St

St Augustine Beach, FL 32080

(904) 377-2864

April 20, 2023

## ST. AUGUSTINE BEACH ART STUDIO & GALLERY

Michael A. Dixon, FAIA/architect  
[madixon1166@gmail.com](mailto:madixon1166@gmail.com) / 847.502.3136

### SPACE COMPROMISES & RECONSTRUCTION ISSUES

based on proposed new floor plan

- **PLUMBING**

Status of work sink and cabinets/countertop. The cost to modify the existing cabinets or purchase new should be considered.

- **AIR CONDITIONING AND HEATING**

Vent locations and controls, will they affect art displays?

- **ELECTRICAL**

Lighting: redesign of track lighting to relate to new floor plan and art displays. It is possible that some new lighting may need to be purchased to fit new wall dimensions.

Outlet locations are critical to the use of fans and art class needs.

Security camera locations will be affected and require some relocation.

- **STORAGE**

Ladders, tools, office supplies, chairs, tables, hanging supplies

- **NEW WALL, FLOOR AND BASE FINISHES** (responsibility?)

- **HANGING SYSTEM**

Existing hanging rail is 64'-7" lineal feet

Proposed hanging rail will be 45'-1" lineal feet

Net loss of hanging system is 19'-6" (**loss of 30.2%**)

Note: while some rails may be able to be reused, due to the lineal dimensions of the new walls about 12 feet of rail will need to be purchased at a possible \$100 cost. Possible installation costs would be a separate issue.

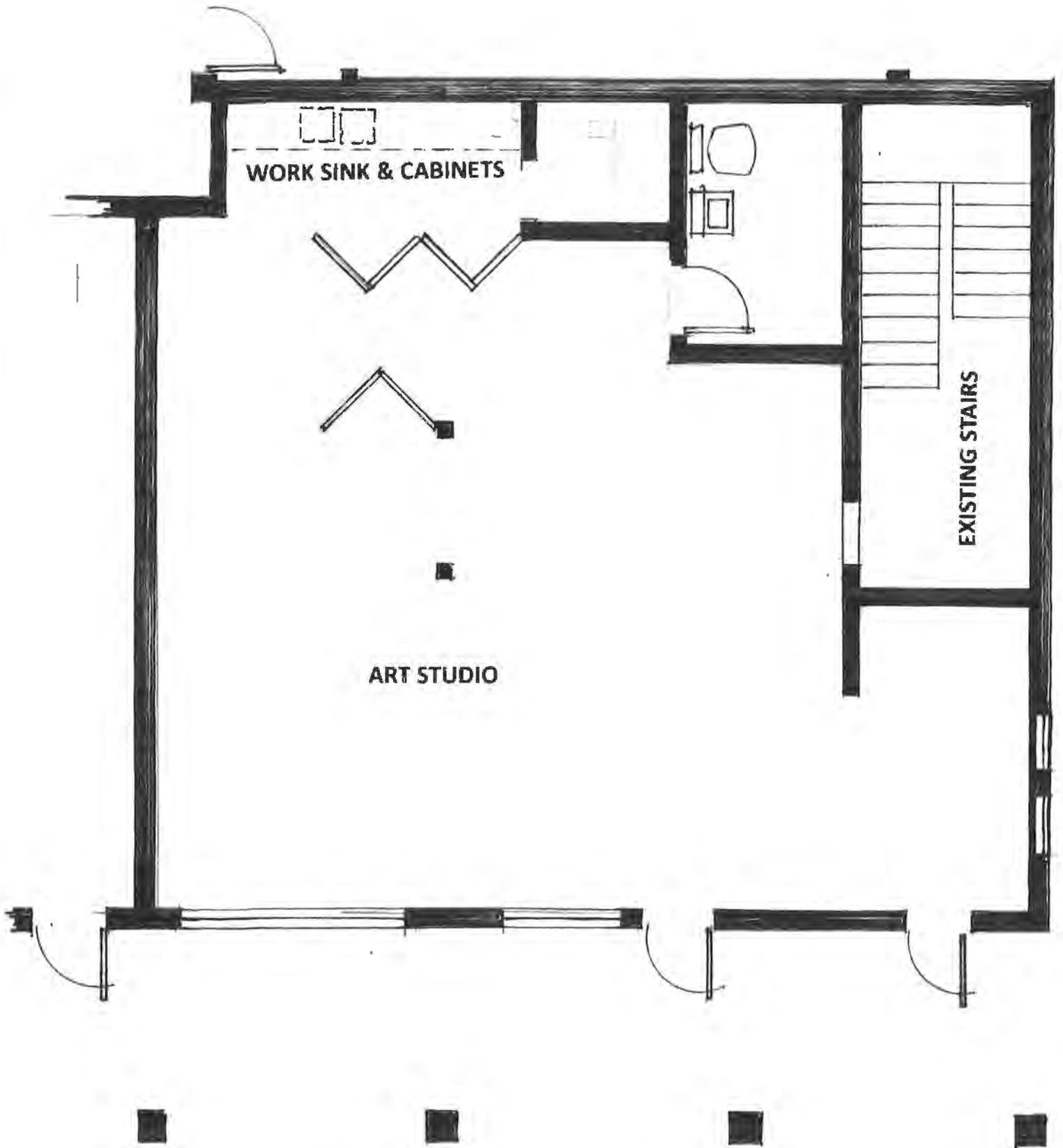
- **FLOOR AREA REDUCTION AFFECTING DISPLAYS**

Original area before proposed changes is 946 square feet

Lost area due to proposed changes is 257 square feet

Net area after changes is 689 square feet (**loss of 27.2%**)

Exhibit C-1  
Date 6-05-2023



**St. Augustine Beach  
Art Studio & Gallery**

Scale: 3/16"=1'-0"

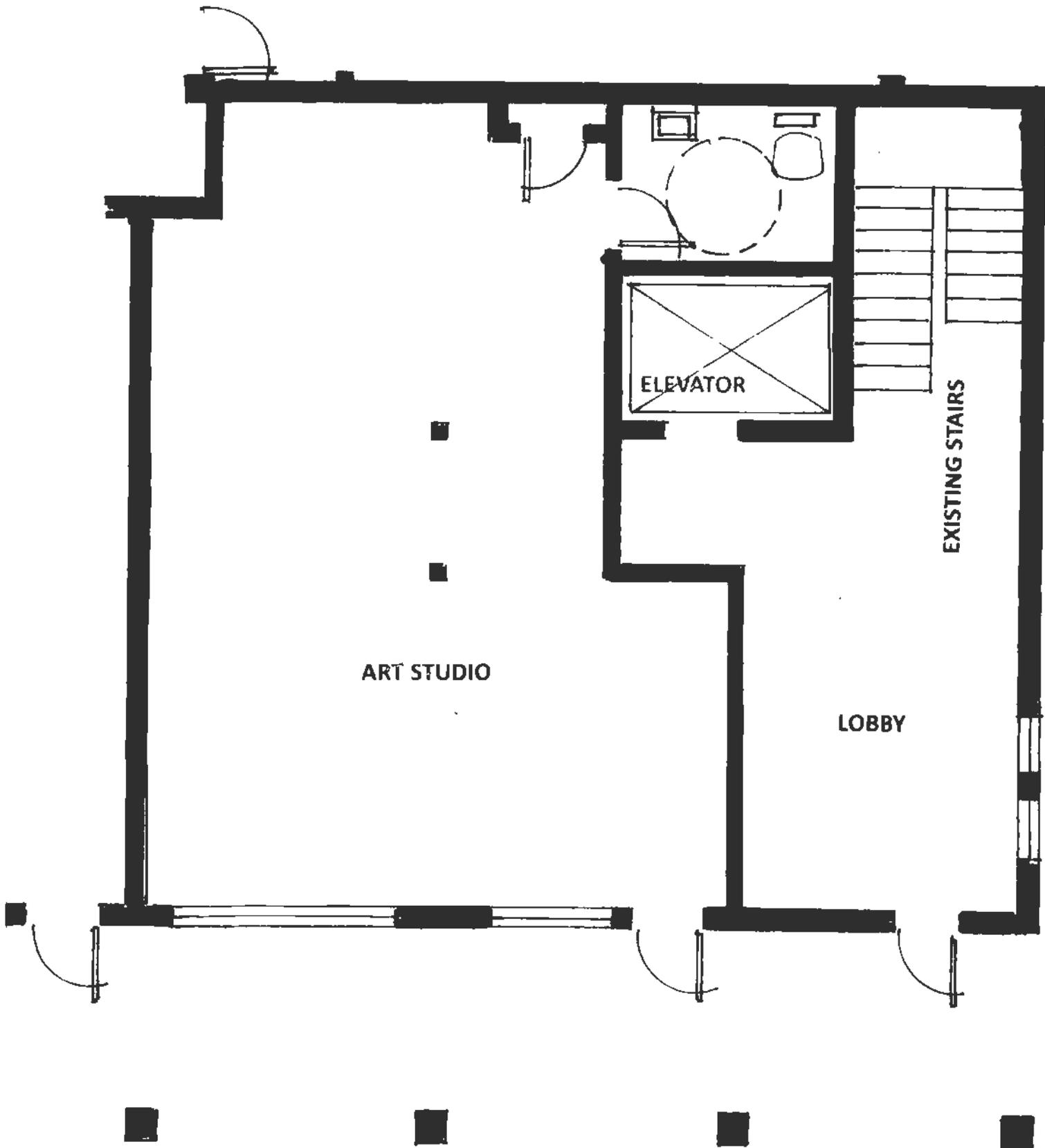
April 20, 2023

Michael A. Dixon, FAIA/architect

**EXISTING FLOOR PLAN**

Exhibit C-2

Date 6-05-2023



**St. Augustine Beach  
Art Studio & Gallery**

Scale: 3/16" = 1'-0"

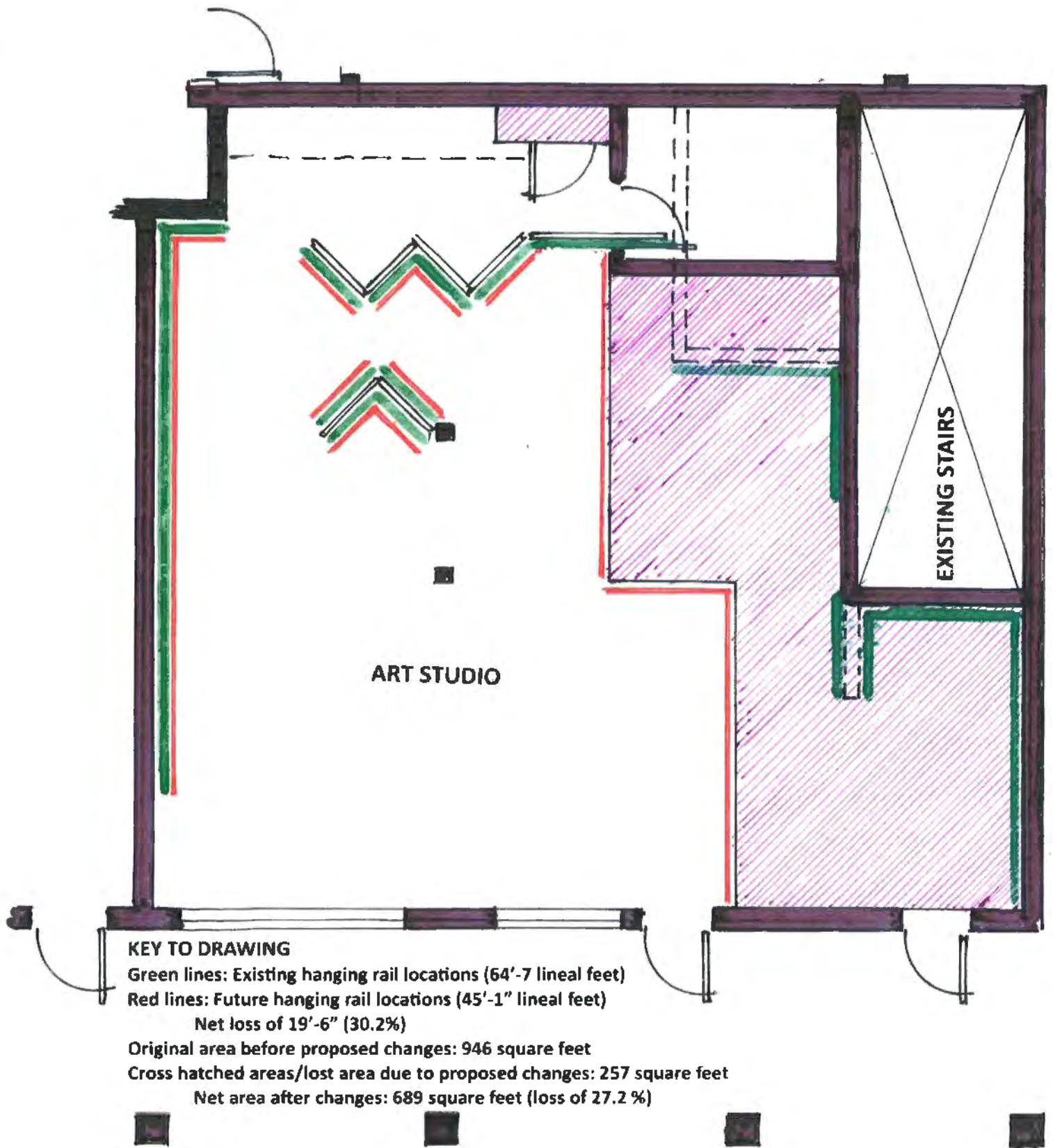
April 20, 2023

Michael A. Dixon, FAIA/architect

**PROPOSED FLOOR PLAN**

Exhibit C-3

Date 6-05-2023



**St. Augustine Beach  
Art Studio & Gallery**

Scale: 3/16"=1'-0"

April 20, 2023

Michael A. Dixon, FAIA/architect

**OVERLAY TO SHOW SPACE  
& HANGING COMPROMISES**

Exhibit C-4

Date 6-05-2023