

**CITY OF ST. AUGUSTINE
MEMORANDUM**

TO: Mayor and Commissioners

DATE: July 17, 2018

RE: White's Wharf, LLC

Santa Maria Development Agreement – Update

The purpose of this memorandum is to inform you on the key issues previously under negotiation for the referenced project with White's Wharf, LLC (owner). The architectural design has been approved by our Historic Architectural Review Board (HARB) but the project has not passed any zoning exemptions, dock approval or variances by the Planning and Zoning Board (PZB). The owner's goal is double the Santa Maria capacity from the previous operation. Instead of applying to the PZB, the owners have proposed to enter into a development agreement that would be approved by the City Commission. Such an agreement would represent a global agreement on all matters and would bypass the PZB.

This started as a vested rights determination to memorialize their existing seating capacity and 7 other details in front of the City Commission on May 22, 2017. At the City commission meeting, they surprised us with a statement that they own the submerged lands to the center of the channel. Our City Attorney advised the City Commission not to approve this position. The City Commission consensus was that they required more information, more time for review, and guidance from the City Attorney. I have attached the memo provided by the City Attorney at the May 22, 2017 meeting for reference.

Subsequent to the meeting, we met with the owners on several occasions in which they changed their approach to a development agreement to settle all matters. A development agreement, whatever the details on vesting, that acknowledges the City's ownership of the submerged lands would be of paramount value to the City.

At the core of the proposed agreement, is a desire by the owners to increase the size and intensity of the restaurant/bar operations to almost double of the previous size in restaurant seating, include a wedding venue, and open air terraces with live music and transient docks (east of the Santa Maria footprint). I say this is an expansion because the owners cannot prove to staff's satisfaction a vested right for 307 existing seats which is in their current plan. We have evidence for payment of 144 seats and a fire occupancy rating for 198 seats.

A seating expansion would normally be submitted to the PZB for a series of zoning variances, parking use by exception for offsite parking, allowing a nonconforming sign, allowing a wedding venue in open land zoning category among other details. We cannot come to a compromise on approval of docks at this time. We pursued the development agreement in the hopes of resolving the submerged land ownership dispute, providing stiffer regulation of music on the terraces and proposed solutions for all the items.

We looked at a series of operational changes at the City Marina in an attempt to accommodate their request for docks, but all options cause downside consequences to our marina operations in navigability of the larger commercial vessels, and/or revenue impacts that are significant to the marina budget. At any time since the purchase, the owners could have filed for recognition of their vested rights and apply to the PZB as described above. We have consistently said no to docks, even back to the 1990's. In good faith, however, we continued to evaluate all new ideas proposed by the owners hoping to accommodate docks.

To break our impasse on docks, I suggested that the dock issue be put on hold and include a recognition that the City owns the submerged lands east of the Santa Maria and an acknowledgement by the City that the owners own the upland at the seawall. This would memorialize their riparian rights needed to apply for a dock permit through the PZB process in the future. The owners did not accept this offer.

Our goal is to put to bed the dispute of submerged land ownership (we have done exhaustive research to establish our contention of ownership east of the Santa Maria, litigated and won with the Whetstones on a similar claim). The owners believe they own the submerged land and expressed a willingness to litigate. A lawsuit will cost several hundred thousands of dollars and only delay construction. This is not in the public interest.

The only value that I see in a development agreement is to end the land ownership dispute and avoid cost of litigation. Also, we can put stricter music controls on the open air terraces. Otherwise, I see no public benefit in bypassing our normal zoning process to intensify the Santa Maria operation without the City getting value in return.

On Monday July 16th at approximately 1:30 pm the owners filed a proposed Development Agreement and asked that it be considered by the City Commission, which is their right. The agreement reflects their position of submerged land ownership. I am planning to schedule this discussion for the August 13th, 2018 City Commission meeting.

Sincerely,
John P. Regan, P.E.
City Manager