

**MINUTES
REGULAR MEETING
DESTIN CITY COUNCIL
MAY 16, 2016
CITY HALL ANNEX COUNCIL CHAMBERS
6:00 PM**

The Council of the City of Destin met in regular session with the following members and staff present:

Destin City Council

Mayor Scott Fischer	Councilmember Jim Foreman
Councilmember Chatham Morgan	Councilmember Tuffy Dixon
Councilmember Parker Destin	Councilmember Prebble Ramswell
Councilmember Cyron Marler	Councilmember Rodney Braden

Destin City Staff

City Manager Greg Kisela	City Clerk Rey Bailey
Public Information Manager Doug Rainer	City Planner Hank Woollard
Planning Manager Ashley Grana	IT Manager Webb Warren
Comm. Dev. Dept. Interim Dir. Steven Schmidt	City Engineer David Campbell
Finance Director Bragg Farmer	HR Manager Karen Jankowski
Parks/Recreation Director Lance Johnson	Library Director Jurate Burns
Land Use Attorney Scott Shirley	City Attorney Jerry Miller

CALL TO ORDER, INVOCATION AND PLEDGE OF ALLEGIANCE

Mayor Scott Fischer called the meeting to order at 6:00 PM. Reverend James Calderazzo delivered the invocation; which was followed by the Pledge of Allegiance.

SPECIAL PRESENTATIONS

1. Proclamation – Lyme Disease Awareness Month – Mrs. Leslie Schmidt

The Mayor read the proclamation designating May 2016 as Lyme Disease Awareness Month in the City of Destin, and then presented it to Mrs. Leslie Schmidt and family.

APPROVAL OF MINUTES

2. Approval of minutes of the April 18, 2016 regular city council meeting

Motion by Councilmember Ramswell, seconded by Councilmember Marler, to approve minutes of the April 18, 2016 regular city council meeting passed 7-0 (Council members Morgan, Destin, Marler, Foreman, Dixon, Ramswell and Braden voted “yes”).

PUBLIC HEARINGS

3. First reading of Ordinance 16-05-PC, which amends Comprehensive Plan: 2020 by amending the Future Land Use Map (FLUM) designation of the east 150’ of 802 Cross Street, from Bay Estates (BE) to Low Density Residential (LDR)

The Mayor announced this ordinance was presented on first reading on April 4, 2016 meeting, at which time Council voted to continue it to this date. He also noted since the ordinance title has previously been read by the City Attorney, he will now re-open the public hearing. He read the pending motion into the record:

Councilmember Ramswell moved to deny the application based on discussion and minutes of the July 20, 2015 City Council meeting when a similar case was presented and discussed and the City Council decided not to move forward with the application. Councilmember Braden provided a second to the motion.

Mr. Mike Mead, the attorney representing the applicant, came forward to speak on the subject. He noted the application was to re-classify one half of one lot, and change future land use designation of this parcel from Base Estates to Low Density Residential (LDR). He asked Council to deny the pending motion and approve the request from the applicant; adding the request meets all the City's requirements, and that it has recommendation for approval from City staff, the Local Planning Agency, and many of the neighboring property owners. He also urged Council to search for a compelling reason to deny the application and not allow something that happened in the past to influence their decision. He added there were no pending applications and no precedent has been set that is binding upon this Council.

Mr. Mark Siner, owner of Choctaw Engineering and agent for the applicant, spoke next. He stated the application has not changed from what was previously presented. It is a solid application and it meets all the requirements of the City. He continued their original intent was to rezone the entire piece of property and subdivide it into 3 lots; but, during the pre-application meeting, City staff informed them there may be some concern about rezoning the entire piece of property. It is important to the residents all along Cross Street to maintain the integrity of their neighborhood in terms of development pattern. When they filed the application, they elected to only rezone half of the property – the half adjacent to the existing LDR – and keep the front half that faces Cross Street at Bay Estates future land use category. He urged for Council's approval of the request.

Mr. Josh Reiker, the property owner and applicant, informed Council he has 38 letters of support for this project from the neighborhood, with home values ranging from \$250,000 to \$2 million. They want this project to improve and bring value to their neighborhood. He also stated there is no reason to be concern that approving this request will set precedent and would prompt everyone to sub-divide their property. Out of the 540 Bay Estates properties in the City, there are only 3 that adjoin LDR and could qualify in size and road frontage to come before this Council to request subdivision or rezoning to LDR. One of these three properties is located in the wetlands and another one is located at the very end of Indian Trail. He added that approval of his request could result in \$1.2 million tax base for the City of Destin. He urged Council to consider this application on its own merit.

Mr. Mike Raim, a Destin resident, spoke in support of the application stating it is exactly what the City of Destin needs. He continued that an old rattle shack had been on that property for years with rats and vagrants. Now they have an opportunity to replace that with 3 nice homes and bring the tax base up for the City. He added he lives in the Bay Estates and he does not know of anyone in the neighborhood who is not in favor of this project.

Mr. Patric Paullus, a Destin resident, stated that the subject property has been empty for quite some time. The previous owner turned the property into a used boat or used car lot. He lives directly across the street from this lot and he would like to see some homes built there and bring value to the neighborhood and higher tax base for the City.

Having no further comments from the public, the Mayor closed the public hearing and turned the matter over for discussion and consideration by the Council.

Councilmember Morgan asked the Land Use Attorney to explain why this request does not constitute spot zoning.

According to the Land Use Attorney, this action would be considered an allowable transition from one land district to another. Typically a spot zoning would involve use of completely different nature, such as an Industrial use being allowed in a residential zoning area and created against the will of the neighborhood.

Councilmember Morgan stated that he could see the logic behind this application; however, he is concern about the following comments in the staff report:

“Staff Findings: There are no known adverse impacts. However, staff has observed there is currently a very strong market demand for vacant single family lots. Realtors, developers, home builders, and private individuals are regularly making inquiries regarding the ability to split existing residential lots or otherwise subdivide parcels. This particular action may set a precedent and be followed by similar applications for Future Land Use Map amendments. The result would be the incremental encroachment of higher density projects into lower density neighborhoods.”

He wants to make sure his decision tonight does not set precedent and compel him to approve future requests where he does not see any logical compatibility.

The Land Use Attorney opined that the use of the word “precedent” is not appropriate under these circumstances because every single one of these legislative proposals involves different and unique facts and circumstances. He continued they could have more applications but they could exercise discretion based on the facts being presented and not duty bound to grant the applications.

Councilmember Destin stated he always wanted to be cognizant of what subdividing lots on a long term basis means to the infrastructure problems in the City and how the neighbors feel about it. It does not appear in this case that the neighbors oppose it, and in fact most of them expressed support of it. He too would like to see improvement of this lot, and that he finds no reason to disapprove this application.

The Mayor asked if Councilmember Ramswell would like to proceed with her current motion on the floor to deny the application.

Councilmember Ramswell stated that the current motion stands. She noted that a similar request was brought before the Council on July 20, 2015; and that in the minutes of the meeting, Mr. Ashley Grana of the City noted he did not believe they would be able to rezone just that one particular lot and would recommend the rezoning of the entire “L” shape area. She also noted that in December 2015, a property owner came before this Council asking to extend the allowable uses

and change the zoning for his car lot. This lot was literally adjacent to County properties that were already zoned to allow car lots; but, the City denied the application. This is the third similar situation with the first two not going forward on advice of staff.

Councilmember Ramswell also noted that the density for Bay Estates is 2.9 and for LDR is 5.81; adding there is a significant change in density, and the difference between the two is more than the current density for Bay Estates. She further stated the opinions of neighbors are very important; however, looking at the affidavit of support that was previously distributed, at least 8 or 9 supporters of this application are from the same family and another one from a business partner. She added it is not a very good cross section of neighbors.

Councilmember Braden stated he has received several emails and phone calls from neighbors, not only in this area but also in Indian Trail; which is part of Bay Estates. There were some concerns if they approve this request the other three lot owners in the same street will file similar applications with the City. He also believes they will be setting up a bad precedent by approving this request.

Councilmember Foreman does not believe the action they take on this one lot will affect the entire City; adding that the Local Planning Agency unanimously voted to recommend approval of this request. He also stated even though several individuals from the neighborhood who signed the petition to approve this requests came from the same family does not matter because they all count. He believes this is a good use of the property and they should allow it.

Councilmember Destin wants to know the reason they have Bay Estates Future Land Use Designation as Low Density Residential.

The Land Use Attorney stated the Bay Estates was set at that density based on a calculation of the actual density of the area; and that it was primarily to protect the large waterfront properties. But, it does include as in this area some of the areas that are slightly interior to the waterfront. He continued the Low Density Residential designation being set at 5 units per acre is still considered a low residential density even though it sounds like a lot by comparison to Bay Estates at 2 units per acre, which is almost a rural (very low) density.

Councilmember Braden wants to know what would keep the other lot owners (804, 808, and 812) in that neighborhood from going forward with a similar request if this one is approved.

City planner Hank Woollard explained the minimum lot width allowable in Bay Estates is 80 feet of frontage, and so the interior lots (804, 808, and 812) do not have the road frontage to be split anymore.

The Planning Director Ashley Grana added that the minimum right-of-way width for a Planned Unit Development (PUD) is 40 feet, and for a non-PUD subdivision is 48 feet; adding they would need to assemble 3 or 4 100-foot lots together to make any type of subdivision down in that area.

Councilmember Braden wants it guaranteed in writing that lots 804, 808 and 812 will not be able to be sub-divided.

Councilmember Morgan expressed concern that approving this request could threaten the integrity of Bay Estates zoning.

According to the Land Use Attorney, these lots stand on their own merits. This is a very minor change for a land area immediately adjacent to existing LDR with lot sizes very similar to other lots on that same street. The Council will not be setting any kind of legal and binding precedent by approving this request.

Councilmember Ramswell stated that she is still bothered by the fact an individual came forward wanting to do the same thing last year and was denied that opportunity. She also believes if they approve this request, some other property owners would want to do the same thing with their lots.

The City Manager explained there is nothing to stop others for petitioning as it is their right to do so; however, the request they are considering is different as the owner is taking the two lots directly adjacent to LDR and converting them to LDR and keeping the integrity of Bay Estates on Cross Street.

Councilmember Marler inquired as to the owner's other options if Council were to disapprove this request.

According to the Land Use Attorney, this is a pure legislative decision and exercise of legislative discretion on the part of the Council. There are no remedies attached as a result of a denial.

Having no further comments from the Council members, the Mayor called for a vote on the current motion on the floor to deny the application. Motion failed 2-5 (Council members Ramswell and Braden voted "yes"; Council members Morgan, Destin, Marler, Foreman and Dixon voted "no").

Councilmember Foreman offered a motion to approve the proposed small scale Future Land Use Map amendment provided for in proposed Ordinance 16-05-PC on first reading and direct staff to schedule it for adoption on 2nd reading. Councilmember Marler provided a second to the motion, which passes 5-2 (Council members Morgan, Destin, Marler, Foreman and Dixon votes "yes"; Council members Ramswell and Braden voted "no").

PUBLIC OPPORTUNITY TO SPEAK ON COUNCIL PROPOSITIONS

Mrs. Retha Shreve, a Destin resident, reported that while the Emerald Grande was having bonfires on Parcel B, many citizens sent emails to the Council expressing concern about this practice and questioning the laws banning bonfires anywhere on Okaloosa County beaches, including private property. Through public record requests to the City of Destin, it was discovered that Councilmember Cyron Marler had forwarded all the emails sent to Council to Mr. Jackson Mitchell, the beach manager of the Emerald Grande, who then forwarded them to Mr. Bruce Craul, the general manager of the Emerald Grande. Mr. Craul subsequently sent an e-mail to the City Manager Greg Kisela asking his advice on how they should handle this situation. Mrs. Shreve informed Council they do not approve of Mr. Marler's action.

At this time, the Mayor asked Mrs. Shreve to address her comments to him as Mayor and not directly to Mr. Marler, or to speak in generalities.

Mrs. Shreve continued that a Council member has been forwarding e-mails to other individuals for free while other citizens have to pay to obtain them from the City. Also by doing so, he is revealing the names and email addresses of the originators of these emails. She also stated there are currently three lawsuits filed against the owner of Parcel B by neighboring Destin Pointe; and so it would appear to be unethical to forward any emails pertaining to that property to the parties involved since the owner of Parcel B is directly involved with Emerald Grande. She also stated in previous Council meetings, this particular Council member claimed he is just an employee of Emerald Grande; but, an employee would not arbitrarily forward emails to his employers advising them not only of things that are being said but the names and contact information of those people sending the emails. They believe this is not only a conflict of interest but it would also be an ethics violation on the part of this particular Council member. Florida Statute 112.311 states that public officials are to be independent and impartial, and that a public office is not to be used for private gain. This section also explains in greater detail the conflict of interest relating to this issue. She also stated that citizens put their trust on the City Council, but some of the members have violated their trust.

Mrs. Shreve asks that Mr. Marler steps down from his position as Council member; adding if he chooses not to step down voluntarily, there are people ready to start researching avenues to have him removed from Council. She added that the citizens of Destin desire their elected officials to be trustworthy, but many have lost their faith and confidence on Mr. Marler as they feel he is not working in the best interest of the City of Destin or its citizens.

The Mayor stated that he too had forwarded City information to other people as he does not believe there are any restrictions as to whom they could forward this information. He added it is Council's prerogative to forward any emails to anyone including their employers.

According to the City Clerk, all emails received in the City are public records. Anyone, including members of Council, can forward these emails to others. When a person files for a public records request for any documents to the City of Destin, the City charges a fee for the amount of time it took to gather and copy all these materials.

The City Attorney recommends that the Council member who was referenced in this conversation not to make any comments on the subject. He also stated when a person applies to the City for a public records request, that request and its complete content is public record.

Next, the Mayor asked Council to allow agenda item #17A to be moved up and discussed at this time.

Motion by Councilmember Ramswell, seconded by Councilmember Morgan, to set aside the order of the day and move agenda item #17A up for discussion passed 7-0 (Council members Morgan, Destin, Marler, Foreman, Dixon, Ramswell and Braden voted "yes").

Next item discussed was agenda item #17A

CONSENT AGENDA*

4. Reimbursement to Mayor Scott Fischer for expenses incurred at the Florida League of Cities Mayors Conference in Orlando, Florida on May 5-6, 2016

Motion by Councilmember Dixon, seconded by Councilmember Foreman, to approve Consent Agenda item #4, as printed above, passed 7-0 (Council members Morgan, Destin, Marler, Foreman, Dixon, Ramswell and Braden voted "yes").

RESOLUTIONS

COMMITTEE REPORTS

SCHEDULED PRESENTATIONS FROM THE PUBLIC**

PROJECT REPORTS AND COMMENTS FROM MAYOR AND COUNCIL

5. Councilmember Braden

Councilmember Braden inquired on the status of the Heritage Park situation.

The Mayor stated he has prepared the final discussion paper and obtained some engineering drawings, and that he believes they are very close to coming to an agreement on this issue.

The Land Use Attorney noted they are scheduled to meet with the Florida Community Trust (FCT) staff within the next few weeks; and that depending on their reaction to it, they would go ahead and complete the package and submit it to the FCT Board of Trustees at their August 18th meeting.

The Mayor added even if they get an agreement, they cannot start physical construction until they receive the grant money, which should happen in the September/October time frame. However, they would be able to continue finalizing the engineering drawings and be shovel-ready in anticipation of the grant money.

Councilmember Braden asked for some clarification on the email the City Manager sent to Council regarding the Gulf Power franchise renewal.

The City Manager noted he received an email requesting the City not to renew the franchise until they could incorporate the undergrounding of the electrics into that thought process. He continued it was part of the strategy from the meetings between the Howard Group and Gulf Power Company regarding undergrounding the electrics.

Councilmember Braden asked who enforces the rules relating to registered sex offenders.

Capt. Ted Pecot from the Sheriff's Office stated they perform regular address verifications on registered sex offenders. Anytime they get a report that one had moved into an area that they should not be in, it would prompt another check.

6. Councilmember Ramswell

Councilmember Ramswell noted she has requested to postpone discussion on agenda item #6A – Destin High School because she wanted to devote more attention to it. She is also pulling

agenda item #6B – Beach Bonfires because this issue has already been resolved. She stated they received an e-mail from Mr. Bruce Craul stating they have decided not to go forward with it.

Councilmember Ramswell asked staff to check into façade grant programs, and one in particular the Streetscape Grant Program, which essentially a program that provides 50% of the cost for improvements made to the exterior of place of business or homes; which the City can utilize to help improve the building facades especially along Hwy 98.

Councilmember Ramswell asked staff to look into a minor re-plat application of certain parcels on Shirah Court Subdivision in Shirah Street and report back. She stated that a property owner received a letter in the mail announcing the conversion of two different lots into five. Each lot will have three 9 bedroom homes. The citizen wanted to know how this is possible, and whether or not it is reviewable by the Council.

Mr. Woollard stated he does not have all the details on this minor re-plat application; however, they would not be allowed to do anything unless the Land Development Code permits it.

a. Destin High School

Item pulled.

b. Beach bonfires: regulations and public concerns

Item pulled.

c. “Baby Grande” at HarborWalk Village

Councilmember Ramswell asked the City Attorney to repeat the guidance he gave her related to the “Baby Grande” development at HarborWalk Village.

The City Attorney noted he had given each Council member privately an instruction to be cautious regarding vested property rights; and that in particular there are due process and constitutional issues that relate to these subjects. There is an issue that relates to the vested right of a project in the City and when a development order is entered there is a short period of appeal to the Board of Adjustment regarding administrative terminations. There was no such appeal and no window left open regarding it. The Council should conduct themselves very cautiously because they expose the City and themselves individually to liability when dealing with issues regarding which the City Council does not have jurisdiction. In the past, the Council did not have administrative review on project approval for anything less than a Tier 3.

Councilmember Ramswell stated she does not have anything to present. She felt it was important to bring it forward due to the public outcry. The Council received a lot of emails and phone calls on this subject from people who are very upset and she thought it was important to address it. It was her understanding this project has gone through the permitting process and all requirements had been met; but, she would like staff to explain the criteria involved in this process.

The Land Use Attorney explained this project was permitted as a Tier 2 development amendment to a previously issued development order in 2009. Shortly before the application was

made for this particular amendment, an earlier application was made for a Tier 3, which was denied by the City Council. The project was re-designed, downsized and resubmitted as a Tier 2 development, which is a staff approved evaluation. There was a highly detailed technical review conducted on the project and it was determined the project met all City development standards and a development order was issued. The 30-day right to appeal expired many years ago. Ordinarily, a development order is good for one year, subject to a one-year extension. In this circumstance, since the development order was issued there had been a series of extensions that were granted that were provided for in both the City's Land Development Code and as part of State laws that was extended in laws of Florida. Both mechanisms were fully taken advantage of by the holder of the development order, and the development order was extended beyond its earlier lifespan. It now expires in December 18, 2016. It is a decided issue in which significant rights have attached. If the City were to do anything inconsistent with the exercise of those rights, the City could have a major liability.

Councilmember Braden asked if there was anything in the Comprehensive Plan against an applicant adding several phases to a project.

According to the Land Use Attorney, there had been some debate about whether or not an applicant is entitled to do phasing; and that they are working on this issue at the staff level. The Land Development Code currently states that once a building construction permit is issued, the development order does not expire unless work stops for a period of one year. He continued when a portion of a project, for instance with the condominium tower, is constructed under the development order, and the market would not support the construction of the facility, it is conceivable the development order would expire before the condominium tower is built; and in which case they would have to re-permit the project. He added they intend to apply the code as written and stay within the language in the development order.

Councilmember Braden noted some concern from the public about parking for the new development.

The Land Use Attorney stated the project plan has parking built into the plan for the project, and that any aspect of that project that is built would have to have the parking that is associated with that part of the project built at the time that section of the project is built. He added everything that is built will have the parking that is required for that particular use.

The City Manager added if they reduced required parking as part of the project to satisfy the Emerald Grande, they would need to address that issue and explain how they would mitigate the parking reduction or it would put them in a non-compliant status.

Councilmember Dixon asked whether or not the requests for amendments act as a "place holder" for development.

The Land Use Attorney stated he does not believe it was a "place holder" when it was originally applied for; and that he believes there was every expectation on the part of the property owner that the market would improve in a reasonable period of time for the project to be financed.

7. Councilmember Dixon

Councilmember Dixon suggests the City develop some type of a program that keeps track of contracts, agreements and leases that gives some type of a warning when they are about to expire. This would prevent them from being in a situation they find themselves with the Gulf Power franchise.

Councilmember Dixon stated some citizens, mostly elderly citizens, want to know if the City is doing anything, such as spraying for mosquitoes, to combat the Zika virus. He wants to make sure they identify all the areas in the City, such as ditches, that are prone to have mosquitoes.

The City Manager stated he had seen the schedule recently from the County where they were accelerating doing mosquito spraying; and that he would provide a copy of that schedule to Council.

The Public Information Manager noted the schedule is actually accessible on line, and that the County has been running these routes pretty regularly.

8. Councilmember Foreman

- a. Nomination of Mr. Richard C. Hoey to the Destin Harbor & Waterways Board

Motion by Councilmember Foreman, seconded by Councilmember Morgan, to appoint Mr. Richard C. Hoey to the Destin Harbor & Waterways Board passed 7-0 (Council members Morgan, Destin, Marler, Foreman, Dixon, Ramswell and Braden voted "yes").

9. Councilmember Marler

Councilmember Marler stated he had the opportunity to be the Master of Ceremony for Founder's Day, which was a success. He thanked all those who participated.

Councilmember Marler asked for an update on Norriego Point dredging.

The City Manager stated the City Engineer has filed for the permit for emergency dredging a week ago. They are currently seeking for bids and that they anticipate bringing the results of those bids to Council at the next City Council meeting.

Councilmember Ramswell asked if the reason they did not plan for this dredge was because they thought they might be able to start the work on Norriego Point.

According to the City Engineer, they completed phase 1 reestablishing the t-groin on Norriego Point two years ago. The hydraulic conditions have changed causing the area to shoal a lot more than they have expected. They have sent the maintenance exemption to FDEP and they are providing the information and trying to get prices from dredge contractors. They want the dredging to get done fairly quickly and so part of the criteria will be timeliness.

Councilmember Ramswell asked if funding for the dredging come out of the City's emergency funds since it is for an emergency, and when was the anticipated dredging that would have occurred in conjunction with the beginning of stabilization of Norriego Point.

The City Manager stated any of the dredging associated with Norriego Point will be in the fall or winter of 2016; and that they will be using the City's reserves or other appropriations to pay for the dredging.

10. Councilmember Destin

Councilmember Destin asked if the City have ever explored or discussed advertising revenue on the outfield walls of the Morgan Sports Center Complex.

According to the Public Information Manager, this issue has been discussed; but, he would need to find out from the Recreation and Parks Director the reason they have not done it.

The City Manager added there may be some sign code provisions they have to look at as it relates to advertising.

11. Councilmember Morgan

Councilmember Morgan stated he was very surprised to learn about the "Baby Grande" development at the Harbor Walk Village because of the infrastructure problems they are currently experiencing on the base of the bridge. He urges staff to make sure everything is done right with regards to this project.

12. Mayor Fischer

a. Approval of Interim City Manager contract

Mayor Fischer stated that a contract for Interim City Manager position has been negotiated with Ms. Carisse LeJeune and it meets all the City Council requirements. Ms. LeJeune will be arriving tomorrow, May 17th. He asked for Council's approval of the contract.

Motion by Councilmember Dixon, seconded by Councilmember Ramswell, to accept the contract between the City of Destin and Ms. Carisse M. LeJeune for the Interim City Manager position passed 7-0 (Council members Morgan, Destin, Marler, Foreman, Dixon, Ramswell and Braden voted "yes").

b. Okaloosa Walton TPO appointment of representatives

The Mayor noted the Okaloosa-Walton TPO Board allows two primary and two alternate representatives to the Board. So far the City has only appointed one primary and one alternate representative. He asked Council to appoint one more person in each category.

Councilmember Ramswell moved to change Councilmember Foreman's appointment from an alternate to a primary representative to the Okaloosa-Walton TPO; seconded by Councilmember Marler. Motion passed 7-0 (Council members Morgan, Destin, Marler, Foreman, Dixon, Ramswell and Braden voted "yes").

Motion by Councilmember Ramswell, seconded by Councilmember Dixon, to appoint Council members Morgan as an alternate representatives to the Okaloosa-Walton TPO

passed 7-0 (Council members Morgan, Destin, Marler, Foreman, Dixon, Ramswell and Braden voted “yes”).

Motion by Councilmember Morgan, seconded by Councilmember Ramswell, to appoint Council members Dixon as an alternate representatives to the Okaloosa-Walton TPO passed 7-0 (Council members Morgan, Destin, Marler, Foreman, Dixon, Ramswell and Braden voted “yes”).

STAFF REPORTS AND RECOMMENDATIONS

13. City Attorney comments
14. City Land Use Attorney comments
15. Multimodal Transportation District Regulations Audit, and Harbor District Parking Study

The City Manager noted there are two reports that were commissioned last year by the Renaissance Planning Group (RPG). The Multimodal Transportation District Regulations Audit which addresses the overall transportation needs in the City. The Harbor District Parking Study which provides comprehensive parking analysis in the Harbor District.

Councilmember Ramswell noted there was a reference to the comprehensive plan in the reports. She asked if it was the version that the City recently submitted.

The City Manager replied it was Comprehensive Plan: 2010.

Councilmember Ramswell asked how much of a difference it would make if they factor in the changes to some of the elements in the comprehensive plan.

Mr. Woollard explained there had not been that much change in the transportation element of the comprehensive plan (Chapter 8) from Comprehensive Plan: 2010 to Comprehensive Plan 2020. He continued that the implementation of the multi-modal is more in the City’s Land Development Code, which will be coming up within the new few months.

Councilmember Dixon noted these reports contained a lot of information. They received the reports just a few days ago and he does not feel he is prepared enough to discuss these reports tonight.

Councilmember Destin asked if the City of Destin is still the only municipality in Florida to adopt the Multimodal Transportation District (MMTD).

Mr. Tim Whaler of Renaissance Planning Group noted there are a few other communities, such as Kissimmee, who have adopted the MMTD. They have made a choice to continue with the transportation concurrency under that policy.

Councilmember Destin stated the MMTD gave the City maximum parking allowances for parcels that wanted to be developed. He asked why they chose the maximum rather than minimum parking allowance.

Mr. Whaler stated that the intent of the maximum parking and the intent of the MMTD as a whole are to move to alternative modes to automobiles as they progress; in which case they would need less parking. It also adds the urban form factors that create a pedestrian-friendly community consistent with reduced parking.

Councilmember Destin does not believe denying people parking spaces will be a motivating factor for them to walk, ride a bicycle, or use other non-auto means of transportation. He continued the Emerald Grande and other parcels will be looked at for a maximum rather than a minimum amount of parking, which does not make much sense. He added this is something they need to study thoroughly because it is an integral part of what they are trying to accomplish.

Councilmember Braden asked if MMTD was put into effect when the Emerald Grande was approved; adding he seemed to have read in the development order Emerald Grande was provide a 30 percent reduction in parking.

The City Manager noted MMTD was put into effect when Comprehensive Plan: 2010 was adopted in 2005. The Emerald Grande was approved in 2002 under Comprehensive Plan: 2000.

Mr. Woollard stated the maximum reduction available under the MMTD is 20 percent and there is quite a bit the developer has to do to qualify for the reduction.

Councilmember Destin asked why they are giving reductions in parking when it is such a premium. He does not believe there is direct connection between reducing parking spaces and convincing people not to drive their vehicles.

Councilmember Braden noted they do not have the right-of-way on Hwy 98 to put in a 10-foot wide sidewalk to meet the MMTD criteria and they have a shortage in parking; and so to give a 30 percent reduction in parking does not seem logical.

The City Manager noted the policy direction given by the City Council in 2004/2005 was for the City to move away from the traditional parking concurrency to the MMTD system. He added if the present Council wants to change that policy, their comprehensive plan workshop on June 9th would be the appropriate time to discuss the pros and cons to it because it will be a pretty dramatic shift.

Councilmember Foreman stated that he agrees with Councilmember Destin's logic regarding this matter; however, he does not believe they have maximized the parking in the City to the degree possible. He added this issue requires a thorough evaluation by this Council.

Councilmember Dixon stated he has a lot of concern about the MMTD plan such as having 10-foot sidewalks on areas where they are not necessarily needed but are required by the MMTD plan. He continued there are a lot of things they can change and still provide plenty of spaces for people to walk and ride their bicycles.

Councilmember Morgan noted there are certain areas in town where MMTD actually works, such as Holiday Isle where bike racks are actually being utilized; adding pedestrians on Holiday Isle are not in much danger as pedestrians on Hwy 98. He continued they have plans but not the money

to improve Hwy 98 for pedestrians; otherwise, the parking credits they give would make more sense.

Councilmember Marler believes the MMTD took into account the parking garages they promised to build on the north side of Hwy 98 during the Harbor CRA process; adding the plan was to get people to park on the north side of the highway and walk over to the south side. He does not want to abolish the plan to build the parking garages.

Councilmember Destin stated he is not completely against the MMTD. He just does not feel the reduction in parking for the south harbor owners is logical. He also stated they already have a parking shortage in 2003; and that it seemed MMTD is just an easy way of approving more developments.

Mr. Claude Perry, a Destin resident and business owner, noted that the previous Council promised the harbor property owners that participated in constructing the boardwalk 3 parking garages in return for the easements. The parking garages will be built to support the additional traffic that was coming to the harbor. The 3 parking garages will be equally distributed from the Marler Bridge to Benning Drive. He also stated the parking garages were supposed to encourage other modes of transportation besides automobile. He further stated that many people are begging for a place to dock their boats to come to the Harbor Walk and leave their cars at home; which is one aspect of the MMTD. However, there are no docks available. He added if this Council does not intend to follow through with the plan to build the parking garages, then it would be logical to get rid of MMTD because it will not be successful without the parking garages.

Councilmember Destin noted he is not recommending getting rid of MMTD; but, he does not support the reduction in parking. He believes the only way they could convince people to move towards MMTD is through greenspace, slowing down traffic and widening the sidewalk.

16. Request approval of RFP 16-09-HR for City Manager Search and Recruitment Process

The HR Manager stated this is a draft RFP for solicitation for a new City Manager. It was reviewed and approved by the City's Bid Committee and it is before this Council for approval. If Council decides to move forward with the RFP process, staff will advertise it and request proposals by June 9th. After which they would assemble proposals and prepare a recommendation for Mayor and Council's review on June 20th.

Councilmember Foreman stated that if Ms. LeJeune does a good job and they make a decision later on to include her in the process, it may be too late because the firm they hire would have made their selections for a suitable City Manager. He suggests they make a decision now to include Ms. LeJeune in the selection process.

The Mayor noted it has already been expressed during the contract negotiations with Ms. LeJeune that she will be considered for the permanent City Manager position.

According to the HR Manager, even after the recruitment firm has made their selections, Council could still add Ms. LeJeune to the short list of candidates if they so choose.

Councilmember Marler wants to make sure they take their time in hiring a permanent City Manager so they can get the right person for the job; adding he wants to make sure they avoid the situation they are in now.

Motion by Councilmember Dixon, seconded by Councilmember Morgan, to approve the RFP for professional search firm services passed 7-0 (Council members Morgan, Destin, Marler, Foreman, Dixon, Ramswell and Braden voted "yes").

17. City Manager comments

a. Gulf Power franchise renewal options

The City Manager noted he was previously authorized by Council to enter into a contract with a legal firm that is going to assist the City with franchise renewal negotiations with Gulf Power. He also noted that the franchise agreement that is due to expire on May 19th includes a provision that gives the City the option to purchase the Gulf Power utility system by May 19th. He continued franchise attorney, Mr. Robert Wright of Gardner, Bist, Bowden, Bush, Dee, LaVia & Wright, P.A., is present tonight to discuss the different options the City has and assist them in making a decision.

Mr. Wright walked up to the podium, greeted the Council, and then discussed his experience and qualifications. He provided the following information:

- He has been working in energy issues in Florida for more than 35 years
- Worked for Bob Graham's State Energy Office in 1980 as an economist
- Worked for Florida's Public Service Commission for 7 years beginning in 1982
- He joined a small law firm in 1988 as an authorized lay practitioner and rate consultant, as well as a utility consultant
- He became an attorney in 1992 working on many issues, including representing customers in rate cases and trying to keep rates down
- He represents a number of municipalities in connection with underground power lines and franchise negotiations
- His clients include 3 municipal electric utility systems, renewal energy producers and independent power producers
- He represents the Howard Group and participates in meetings with Gulf Power Company regarding their general interest in undergrounding utilities as means to improve the quality of life in the community
- Ms. Leigh Moore of Howard Group recommended him to the City Manager Greg Kisela to work with the City on franchise matters
- He has extensive experience in franchise negotiations; two with Florida Power, which is now Duke Energy

Mr. Wright also pointed out there is a valuable provision in the existing franchise that provides the City of Destin the option to purchase the distribution facilities of Gulf Power Company located in the City limits; adding once the franchise agreement expires on May 19th, the right to purchase the system could also expire. He recommends giving Gulf Power a notice to exercise the option to purchase in order to preserve it and not lose a valuable option; adding there is nothing to preclude the City from continuing to negotiate toward a new franchise.

The Mayor inquired as to the ramifications involved in taking these actions; adding he would not want Destin to be without electricity for any period of time.

Mr. Wright stated that Gulf Power will not turn the power off. They would continue to collect and remit a franchise fee while under negotiations. He then cited a legal case between the City of Winter Park vs. Florida Power Corporation where the Supreme Court ruled that while the City of Winter Park is in the process of buying the facilities and while they are in the transferring phase, Florida Power has to continue to collect and remit franchise fees. In a similar case involving the Town of Bellaire vs. Florida Corporation, the Supreme Court ruled that while the Town of Bellaire is negotiating a renewal of the franchise, Florida Corporation shall continue to collect and remit the franchise fee.

Councilmember Marler noted it would cost the City millions of dollars to purchase and run the electrical facility if they decide to entertain that option; or they could contract with another firm, such as Chelco, to run the electrical facility for the City. He added this may not be affordable for a small city like Destin.

Mr. Wright remarked the City of Winter Park purchased their system and they are not a very big city. They entered into a contract with an independent company to run the facility, including the billing system. They have lower rates than Duke Energy Florida and they are able to set aside enough money and are well on their way to undergrounding all the utilities in their town; adding they are on track to complete the project in about 8 years. He added he would like Council to make an informed decision on this issue and not lose their option to purchase the system.

The Mayor wants to know what the next step would be once they preserve their right to purchase; how would they pursue franchise renewal discussions with Gulf Power; and how much time is involved in this entire process.

Mr. Wright stated that he intends to set up a meeting immediately with Gulf Power and the City Manager; or whomever the City wants to appoint to try to work through this process.

Councilmember Foreman recommends pursuing a franchise extension so they could have more time to negotiate.

Mr. Wright stated that both sides would have to agree to an extension; and that it is something he could add to the discussion when they meet with Gulf Power.

Councilmember Dixon wants to make sure they do not commit themselves with conducting expensive studies or spending a lot of money evaluating this option if they exercise their option to purchase the system.

Mr. Wright stated these are separate decisions; and that he is not suggesting they sign any contracts tonight.

According to Councilmember Destin, the City only collects around \$13 million in revenue and barely has enough money to resurface more than one road project every year. He asked how much leverage they are really going to have by preserving their right to purchase when Gulf Power can just look at their financial documents and know they cannot afford to purchase the system. He

also stated it could conceivably cost them around \$100 million to purchase the system and be in debt for the next 100 years.

Councilmember Ramswell noted she is quite upset at being placed in a position where they have to make a quick decision on something of this magnitude having only been notified a week ago that the franchise is expiring. They do not really have enough information to make a sound judgment, and that she hopes Gulf Power will grant them an extension. She asks how much time is typically involved in securing whatever means necessary if they were to explore the possibility of purchasing the utilities.

According to Mr. Wright, if they end up pursuing a purchasing option it could take more than a couple of years to complete the process. He continued there is a statutory provision that requires arbitration; adding that the good thing about going to arbitration is they do not trigger eminent domain and they do not have an obligation to pay the cost.

At this time the Mayor asked Mr. Bernard Johnson, Gulf Power General Manager, who was in attendance, if he would like to speak on this issue.

Mr. Johnson came up to the podium and addressed the Council. He stated that Gulf Power has serviced the City of Destin since its incorporation in 1984. The franchise agreement was signed in 1986. He has been with Gulf Power for 29 years; and in different capacity has had the opportunity to watch Destin grow. Gulf Power has been in existence for 90 years. It was rated the #2 utility company overall in 2014 based on a customer valued benchmark. They were ranked #1 in a similar survey in 2015. He also stated that they go out of their way in providing exemplary level of service to all their customers. They have a team of over 1,400 dedicated employees and they put the City of Destin and other customers at the forefront of everything they do on a daily basis. Their resources and expertise enable them to respond quickly, effectively and promptly when needed; particularly when responding following a hurricane or other storm events. He further stated it would be a large financial obligation and a significant undertaking on the part of the City to maintain the system. It includes infrastructure of poles, wires, transformers and substations of a high quality. All these resources have allowed the company to provide highly reliable service and exceptional value to the City of Destin 24 hours a day, 7 days a week. He added they have enjoyed great relationships with City officials and their staff over the years and are looking forward to continuing that relationship.

According to the Mayor, they would certainly want to negotiate a new franchise agreement, and possibly adding undergrounding the utilities to the service. They also want the opportunity to consider other options. He asks if Gulf Power is receptive to giving the City a 6-month to a year franchise extension.

Mr. Johnson stated they are willing to work with the City of Destin in the negotiation process.

Councilmember Braden stated that Gulf Power has done an amazing job serving the City; but, it has been a huge embarrassment for the entire community that Council has only been given 3 days to make a very important decision.

Councilmember Foreman stated that he did not think about the franchise until the City got involved in the undergrounding part of it about two months ago. He then contacted the City Clerk who provided him with a copy of the franchise agreement; at which time he learned the agreement has reached the 30-year point. He continued it is not uncommon for something like this to slip past people's mind because no one really thinks in terms of 30 years. It was unfortunate, but he understands how it could happen and they just need to do their best to manage the situation.

Councilmember Marler wonders why Gulf Power seems a little resistant to undergrounding the utilities when it can really benefit a coastal town like Destin; adding it would be less of a problem in the event of a hurricane or other severe weather because power could be restored a lot quicker.

According to Mr. Johnson, they have no problems with undergrounding the utilities; but, it is primarily a developer or property owner that wants it done. It is a cost that has to be borne by the individual entity as opposed to the taxpayers subsidizing the associated cost. He also stated when it comes to ease of repair; overhead lines are better. They could easily spot the problem; whether it is a tree on the line, a broken line, or even an animal on a transformer. They could get to it quickly and make the repair. Whereas with the underground utilities, they may have to dig a hole to determine where the fault is and make the repair; which could take a lot more time.

At this time, the Mayor called for a 10-minute break

The Mayor announces that during the break, he learned that Gulf Power will have to consult with their legal counsel before making a decision on the franchise extension. He stated he would need a motion from the Council asking for 6 months to 2 years franchise extension from Gulf Power. He also stated that Mr. Wright will enter into a negotiation with Gulf Power immediately; and that if they have not come to some agreement by mid-day Thursday (May 19th), the City would send a letter to Gulf Power informing them of their intent to exercise the purchase option.

Councilmember Dixon moved to authorize special counsel to negotiate 6-24 months franchise extension with Gulf Power; and if extension is not granted, the City will send a letter to Gulf Power notifying them of the City's intent to exercise the purchase option that is in the present franchise. Councilmember Marler provided a second to the motion.

Mr. Wright stated they will work with Gulf Power the next two days to obtain an extension on the existing franchise with the provision the City would still retain the option to purchase the system. The extension would last from 6-24 months depending on what they were able to work out. If they do not get the extension, the City of Destin will send a letter to Gulf Poser notifying them of its intent to exercise the option to purchase the system as provided for in the current franchise agreement.

At this time, the Mayor asked if any member of the public wishes to speak on this subject.

Ms. Leigh Moore, representing the Howard Group, walked up to the podium to address the issue. She stated that she would like to clarify the content of the email the City Manager sent to members of Council prior to this meeting. She stated that they have a keen interest in undergrounding utilities in Destin, and that they have made their interest known many times during public meetings. They have originally discussed this issue with Gulf Power and others because of

the plan for 6-laning of Hwy 98. They felt it was the perfect time to underground utilities when they are doing a roadway improvement project. They were not aware of anyone in the local government doing it and they felt it was important enough to take it on and get an idea of the potential cost of the project and to explore potential funding options. Their plan all along has been to pass on the information they gather to the local governments hoping they would take over the project from there. They have made many people aware of their efforts throughout the process including Walton County Commissioners and staff, Okaloosa County Commissioners and staff, and the City of Destin Council members, City Manager Greg Kisela and staff. They have made suggestions to the City in public meetings; but, they did not recommend the City not initiate a franchise renewal discussion. They merely suggested that the City not renew the franchise agreement before fully vetting the impact it could have on potential undergrounding projects or the possibility of increasing the franchise fee as a potential source of funding for undergrounding. They also recommended that the City requests an extension on the agreement if these issues are not resolved by the expiration date. They gave this suggestion to Mr. Kisela back in early March. They did not recommend that no action be taken on the franchise agreement or that no discussion be started on the subject; and that they did not expect this information be brought to Council 10 day before the expiration date of the franchise agreement. She added they informed Mr. Kisela many weeks ago that their talks with Gulf Power had come to a close and recommended he send a request for a binding estimate to Gulf Power for a project to underground utilities along Harbor Blvd.

Having no further comments from the public and the Council members, the Mayor called for a vote on the motion, which passes 7-0 (Council members Morgan, Destin, Marler, Foreman, Dixon, Ramswell and Braden voted “yes”).

Following this item, the next item discussed was consent agenda item #4

Having no further business at this time, the meeting was adjourned at 9:35 PM.

ADOPTED THIS 1ST DAY OF AUGUST 2016
By:



Scott Fischer, Mayor

ATTEST:



Rey Bailey, City Clerk