

**MINUTES
REGULAR MEETING
DESTIN CITY COUNCIL
JULY 18, 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 Carisse Lejeune	City Clerk Rey Bailey
Public Information Manager Doug Rainer	IT Manager Webb Warren
City Engineer David Campbell	Finance Director Bragg Farmer
Building Official Noell Belle	City Planner Hank Woollard
Parks/Recreation Director Lance Johnson	HR Manager Karen Jankowski
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. The Mayor called for a moment of silence; which was followed by the Pledge of Allegiance.

SPECIAL PRESENTATIONS

1. Ancillary benefits and health plan renewal recommendations – Mr. David Barton – Barton, Fenstermaker, Tondello & Associates, LLC

The Human Resources (HR) Manager Karen Jankowski briefly discussed the following topics:

- A Benefits Quality Team was organized to assist in the review and recommendation for renewal of FY 16 Benefit Plans
 - ❖ Most every department, level, and tier of coverage within the City was represented
 - ❖ Human Resources facilitated the meetings with the assistance of Finance and agents
 - ❖ During this process, team members provided information and obtained feedback from other staff members
 - ❖ Plans and the recommendations were presented to staff at the July 13th Employee Meeting
- Guardian Ancillary Benefit Renewal
 - ❖ Dental insurance rate is 6%
 - ❖ Vision insurance rate increase is 3%
 - ❖ Disability insurance rate has increased mostly due to claims usage
 - ❖ Small increase for basic life insurance due to census data

- ❖ Hospital Indemnity Policy is a recommended addition for this fiscal year due to the potential high out of pocket costs for employee
- Health Plan Renewal
 - ❖ Renewal quotes provided by Aetna (current insurer), United Health Care and Blue Cross Blue Shield
 - ❖ Guardian plans offered renewals with a modest increase due to usage of the policies
 - ❖ After careful review and coordination within the organization and discussion at the employee meeting, staff recommends the Aetna PPO Plan with its companion Health Savings Account Plan as the best option for renewal this year

Councilmember Dixon asked if there is a way for a City Council member to participate in the City's medical insurance plan if they pay 100 percent of the cost.

The City Attorney noted that Council would have to adopt a resolution for this purpose.

At this time the HR Manager asked the City's insurance agents to address this issue and to advise whether or not this is a possibility.

Mr. David Barton of Barton, Fenstermaker, Tondello & Associates, LLC stated that if Council wants to make this insurance plan available to its members they would have to go back to Aetna to find out if they would allow it; and then bring it back to Council prior to the renewal date. He continued there is a possibility Aetna may not allow it because typically one has to be a paid employee to participate in any kinds of benefit.

Councilmember Morgan moved to authorize the City Manager to renew existing ancillary benefits with Guardian to include the Hospital Indemnity policy Option 1 and to accept Aetna's proposal of PPO Plan MC OA (2000/80), with its companion Health Savings Account Plan MC OA (3000/80) that represents a 3% rate increase to be effective September 1, 2016; seconded by Councilmember Ramswell. Motion passed 7-0 (Council members Morgan, Destin, Marler, Foreman, Dixon, Ramswell and Braden voted "yes").

APPROVAL OF MINUTES

2. Approval of minutes of the May 3, 2016 strategic visioning session

Motion by Councilmember Ramswell, seconded by Councilmember Baden, to approve the minutes of the May 3, 2016 Strategic Planning Workshop passed 7-0 (Council members Morgan, Destin, Marler, Foreman, Dixon, Ramswell and Braden voted "yes").

PUBLIC HEARINGS

PUBLIC OPPORTUNITY TO SPEAK ON COUNCIL PROPOSITIONS (Agenda items #3, #9A, #10A, #14, #15, #16, #17, #18, #19, #20 & #21A)

The Mayor announced he would allow public comments for any of the remaining items on the agenda at this time.

Mr. Scott Monson, a Destin resident, thanked the Council for their service to the City. He also stated that he supports Mr. Daryl Shelton's appointment to the Local Planning Agency (agenda

item #9A), stating Mr. Shelton is an outstanding member of the community and will be a great addition to the committee.

Ms. Maryann Windes asked for permission to speak on agenda item #21A when Council reaches that subject.

Councilmember Braden moved to set aside the order of the day and allow Ms. Windes to speak later in the meeting; seconded by Councilmember Dixon. Motion passed 7-0 (Council members Morgan, Destin, Marler, Foreman, Dixon, Ramswell and Braden voted “yes”).

**CONSENT AGENDA*
RESOLUTIONS**

3. Resolution 16-11 – Supporting the Choctawhatchee Bay Estuary Program

The City Attorney read Resolution 16-11 by title.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DESTIN, FLORIDA, SUPPORTING THE ESTABLISHMENT OF THE CHOCTAWHATCHEE BAY ESTUARY PROGRAM FOR THE COMPREHENSIV MANAGEMENT, RESTORATION, AND PROTECTION OF THE CHOCTAWHATCHEE BAY ESTUARY; SUPPORTING OKALOOSA AND WALTON COUNTIES JOINTLY SUBMITTING A PROPOSAL TO THE ENVIRONMENTAL PROTECTION AGENCY FOR FUNDING OF THIS PROGRAM; PROVIDING FOR TRANSMITTAL; AND PROVIDING FOR AN EFFECTIVE DATE.

The City Manager noted that in 2015 the Okaloosa County Board of Commissioners unanimously approved a resolution expressing support for the Northwest Florida Estuaries and Watershed Project that will establish Estuary Programs for the comprehensive management, restoration, and protection of 7 Northwest Florida Estuaries – Perdido, Pensacola, St. Andrew, Apalachicola, Ochlocknee, St. Marks, and Choctawhatchee. Subsequent to that action, the Environmental Protection Agency was awarded funding from the Gulf Coast Ecosystem Restoration Council to stand up one estuary program in the amount of \$2 million. She also stated the County is asking the City to adopt a similar resolution of support for this program.

Motion by Councilmember Braden to adopt Resolution 16-11 and forward it to the Okaloosa County Board of Commissioners was seconded by Councilmember Destin and passed 7-0 (Council members Morgan, Destin, Marler, Foreman, Dixon, Ramswell and Braden voted “yes”).

**COMMITTEE REPORTS
SCHEDULED PRESENTATIONS FROM THE PUBLIC **
PROJECT REPORTS AND COMMENTS FROM MAYOR AND COUNCIL**

4. Councilmember Morgan
5. Councilmember Destin

Councilmember Destin noted the RFP the City put out for the City Attorney services is being held open for only two weeks; adding it is such a short period for a very important position. He suggests extending it to 60 days.

According to the Finance Director, the City has never sent a proposal out for 60 days because putting too large of a window out for an RFP, especially for a non-complicated RFP as this

one that does not require a detailed proposal, because it tends to become stale. He recommends a full 30 days advertisement period.

Councilmember Destin moved to direct staff to extend the time frame for the RFP for the City Attorney services from two weeks to 30 days. Councilmember Ramswell provided a second to the motion.

Councilmember Foreman asked if Mr. Scott Shirley is available to fill in as Interim City Attorney during this period of time.

Mr. Shirley replied affirmatively.

Councilmember Braden asked if Council will have the option to reject all bids after the 30 day period.

The Finance Director explained that the City's Bid Committee will review all proposals and schedule Council interviews. At that point Council will have the option to reject all bids and can instruct the City to put out another RFP.

Councilmember Braden noted that Mr. Shirley will need to be compensated for filling in the role of Interim City Attorney during this period.

Mr. Shirley stated that his current contract with the City allows him to charge by the hour for any additional projects the City assigns to him; adding it may save the City some money if he just open a billing account for his service as Interim City Attorney and invoice the City.

Councilmember Ramswell asked staff to provide a copy of the Land Use Attorney's contract to the Council so they could review it and make sure everything is being done equitably.

Having no further comments from 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").

6. Councilmember Marler

Councilmember Marler asked if staff had been able to address an issue brought about by a citizen concerning Clement Taylor Park.

Parks and Recreation Director Lance Johnson noted they have been able to get an additional swim route going out the property line that meets up with the outer edge of the public swimming area; adding it should help prevent people from swimming over to the private property portion. He continued they are also working with the private property owner to come up with additional signs: a sign that prohibits dogs in the facility and directs the public to bring their dogs to the City's Dog Park; some signs on the pier one facing towards Crab Island and one facing towards the park to prohibit motorized watercraft/vessels from going to the private pier; and more signs that would restrict motorized watercraft/vessels from coming in to the designated swimming area.

According to the City Manager, the Sheriff's Office has been doing periodic patrols at night; adding one person has been trespassed, and another person was issued a warrant for breaking a trespass order. She also stated the City's Code Enforcement staff is checking daily to make sure there are no vehicles that are parked in the facility throughout the day with people sleeping in them.

Councilmember Marler asked the City Manager to find out from FDOT the reason there are some disparities in width sizes of the newly activated pedestrian crosswalks.

7. Councilmember Foreman
8. Councilmember Dixon
9. Councilmember Ramswell
 - a. Nomination of Mr. Darryl Shelton to the Local Planning Agency

Motion by Councilmember Ramswell, seconded by Councilmember Morgan, to appoint Mr. Darryl Shelton to the Local Planning Agency passed 7-0 (Council members Morgan, Destin, Marler, Foreman, Dixon, Ramswell and Braden voted “yes”).

Councilmember Ramswell announced that today is the 10th year anniversary of the Destin Junior Lifeguard Program, with which she is actively involved. She continued it is an amazing program that teaches safety and awareness on the beach to children; and that they have had to limit the number of participants to 120 due to the tremendous response to this program.

Councilmember Ramswell requested an update on the code enforcement hearing on the porta potty issue.

According to the Land Use Attorney, the original notice of violation went out with a scheduled hearing date with the Special Magistrate of July 14, 2016. However, the attorney representing the respondent asked for a continuance to a date in August because they have a scheduling conflict with July 14th. Both parties agreed to reschedule the hearing date to August 11th. He continued this will not be a hearing at which neighbors will be allowed to testify. It is a trial type hearing on alleged violations to which the City is a party and to which the alleged violator is a party.

10. Councilmember Braden
 - a. Nomination of Ms. Myra Williams to the Environmental, Parks & Recreation Committee/Tree Board

Councilmember Braden moved to appoint Ms. Myra Williams to the Environmental, Parks & Recreation Committee/Tree Board; seconded by Councilmember Dixon. Motion passed 7-0 (Council members Morgan, Destin, Marler, Foreman, Dixon, Ramswell and Braden voted “yes”).

Councilmember Braden asked for an update on the status of rewriting the City’s tree ordinance.

The City Manager noted she has been directed by Council to put out an RFP to find a professional who could assist the Environmental, Parks & Recreation Committee/Tree Board in drafting the ordinance. She also stated the Board also received 3 separate ordinances from other municipalities; and that they will be meeting on July 26th to start reviewing these ordinances. She added they expect to have a professional on board by October 2016 to assist in the process.

Councilmember Braden asked staff to provide an update on the signage issue on North Lakeside Drive.

The City Engineer stated that he would look into it and provide an update to Council as soon as possible.

11. Mayor Fischer

STAFF REPORTS AND RECOMMENDATIONS

12. City Attorney comments

13. City Land Use Attorney comments

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

Motion by Councilmember Destin, seconded by Councilmember Ramswell, to reject all proposals to RFP 16-09-HR for City Manager Search and Recruitment Process passed 7-0 (Council members Morgan, Destin, Marler, Foreman, Dixon, Ramswell and Braden voted “yes”).

15. Establishment of the FY 2017 tentative millage rate and budget hearing dates

The Finance Director noted that the FY 2017 tentative millage rate and budget hearing dates are scheduled for September 5th and September 19th 2016, to coincide with the Destin City Council’s regular meeting dates in September. However, since the County scheduled their budget hearings on the same dates this year, the City will have to reschedule their meetings to avoid a conflict with the County’s meetings. He suggested changing the City’s September meeting dates to Thursday, September 8th and Tuesday, September 20th.

The Mayor asked if they should set the tentative millage rate at a higher rate and then reduce it accordingly during the budget hearings to meet their requirements, since their budget is not real firmed at this point.

Finance Director explained they balance the budget based on their current millage rate; and it is the Council’s prerogative to adopt a higher tentative millage rate.

Councilmember Ramswell noted they currently have a lot of major issues including storm water utilities for which they do not have any funding and have been set aside for many years. She continued they need to allocate some funding to take care of issues that continued to be a significant problem in the community. She suggests setting the tentative millage rate at 1.7 mills and asking the Finance Director to provide a list of major projects they could fund with the additional revenues.

Councilmember Ramswell moved to set the tentative millage rate for ad valorem taxes at 1.700 mills which is more than the rollback rate of 1.4808 mills and confirm the date and times of the public hearings for the FY 2017 Budget for September 8th and 20th, 2016 at 6:00 PM. Councilmember Braden provided a second to the motion.

Councilmember Braden asked if they have included the cost of hiring additional personnel for the City’s Building Department as well as additional code enforcement officers in the balanced budget at 1.500 mills.

The City Manager noted the hiring of a new Community Development Director and an additional Building Inspector has already been budgeted this year; however, the 1.500 mills does not provide for the hiring of additional staffing.

Councilmember Braden stated they need to find some money to hire additional staff to take care of some issues they have previously discussed such as vendors operating in the harbor without a business tax receipt.

According to Councilmember Morgan, they need at least one additional code enforcement officer dedicated to the harbor; but, they also need to adopt an ordinance with more power so people will obey it. For instance, if a property owner operates without a business tax receipt at Boynton Beach, they are fined \$500.00 a day or face up to 6 months in jail.

Councilmember Ramswell asked how the City's millage rate compares to other cities in the State.

The Finance Director replied the City's millage rate is in the bottom 5 percent in the State of Florida; but, they also have a property value at a rate significantly higher than a lot of other cities. They also do not have their own fire department, police department, sanitation department and other such services.

The City Manager noted that the City Engineer will bring in a list of critical infrastructure projects that need to be done in the City with the corresponding estimated costs at the next meeting.

Councilmember Dixon asked if they know much money will be carried forward to the next fiscal year.

According to the Finance Director, it is hard to tell at this time how much money they might carry forward; adding they spend a lot of money during the summer, with a lot of on-going recreation and construction projects.

Councilmember Dixon asked staff to provide Council a list of projects budgeted for Fiscal Year 2016 but will not be completed by October 1, 2016.

Having no further comments from 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").

16. Emergency maintenance dredging of the Old Pass Lagoon Channel change order #2

The City Engineer explained that based on available data, it was estimated that approximately 4000 cubic yards of sand material would be removed from the Old Pass Lagoon Channel. A pre and post survey was required by the construction contract to confirm the dredging activity was in accordance with the permitted drawings, and also to determine the amount of material dredged. The contract amount was based on 4000 cubic yards of material being dredged. The survey of the channel indicated that a total of 5,283 cubic yards of material was removed from the Channel to achieve the required depth; 1,283 cubic yards more than the original estimate. The contrived unit price for sand removal is \$12.50 per cubic yard; therefore, the contractor is due an additional \$16,037.50.

Councilmember Ramswell moved to authorize the City Manager to execute a change order to the contract with Panhandle Machine & Supply for emergency dredging of Old Pass Lagoon Channel in the amount of \$16,037.50, to fund the change order from the City's ending fund balance account and make the appropriate budget amendment. Councilmember Marler provided a second to the motion.

Councilmember Braden stated that he considers this a contractor's error in estimation; and that the City should not have to pay for their mistake.

The City Engineer noted a certified surveyor hired by the contractor came up with the estimate on the amount of material to be removed from the Channel; adding it is not uncommon for an estimate to be off this much.

Having no further discussion on the subject, the Mayor called for a vote on the motion which passes 6-1 (Council members Morgan, Destin, Marler, Foreman, Dixon and Ramswell voted “yes”; Councilmember Braden voted “no”).

17. Assignment of agreement for Professional Engineering Services for Civil Engineering, Design and Construction Services between the City of Destin and Preble-Rish, Inc. – National Fish and Wildlife Foundation Drainage Improvement

The City Engineer stated that on April 27, 2015, the Gulf Environmental Benefit Fund, administered by the National Fish and Wildlife Foundation (NFWF) announced \$4.5 million in funding for the Florida Gulf Environmental Fund Restoration Strategy. The City of Destin was awarded funds for a restoration and conservation project that represent important efforts to produce and enhance natural and living resources in the area. The City advertised for a consultant that would provide civil engineering design and construction administrative services in accordance with NFWF grant requirements. Preble-Rish was the selected firm, and the contract between Preble-Rish, Inc. and the City of Destin was executed on August 7, 2015. On April 6, 2016, Preble-Rish, Inc. joined Dewberry Engineers, Inc. As part of the transaction, Preble-Rish transferred its professional services agreements to Dewberry Engineers, Inc. He asked for Council’s authorization for the City Manager to execute the letter request for the assignment of the agreement for Professional Engineering Services for Civil Engineering, Design and Construction Services between the City of Destin and Preble-Rish, Inc. to Dewberry Engineers, Inc.

Councilmember Ramswell moved to authorize the City Manager to execute the letter of request for the assignment of the Agreement for Professional Engineering Services for Civil Engineering, Design and Construction Services between the City of Destin and Preble-Rish, Inc. to Dewberry Engineers, Inc., which will allow Dewberry/Preble-Rish to continue with the civil engineering design and permitting; seconded by Councilmember Destin. Motion passed 7-0 (Council members Morgan, Destin, Marler, Foreman, Dixon, Ramswell and Braden voted “yes”).

18. No parking signage at Crystal Beach

The City Manager noted that on June 6, 2016 City Council meeting, staff was directed to look into other municipal ordinances that may be applicable to the parking in right-of-way issues in the crystal Beach neighborhood in order to identify a system of enforcement. She stated that the City Engineer prepared a staff report that introduces 3 municipal ordinances from Orlando, Tampa and Gainesville that present variations of sign requirements, parking zones, citation, towing and/or parking by permit. There are several options for restricting and enforcing no parking in rights-of-way. City Council can determine which methods they would like to be implemented and staff can bring back a draft revised parking ordinance for their consideration.

The City Engineer pointed out that according to the City’s ordinance, parking is not allowed on prohibited areas by signage; and that law enforcement officers or parking citation specialists may issue citation. It also states they can only tow the vehicle if it is a safety hazard or a liability to the City. He went on to explain the differences and similarities among the Orlando, Tampa and Gainesville ordinances.

Councilmember Morgan noted that Gainesville seems to be the only municipality that tows vehicles parked in the right-of-way barring a safety hazard.

The City Engineer stated if they have a fairly strong towing ordinance, they need proper signage to give law enforcement and code enforcement officers the ability to enforce it. He also noted that based on his research, certain municipalities allow signage at the beginning, middle and end of a street. Some have made provisions for signage for the entire district; adding he is not sure how this would work at Crystal Beach with several entrances to that area.

Councilmember Morgan stated that parking is a quality of life issue at Crystal Beach. There are large party houses that can accommodate 4 families and are permitted with only 4 parking spaces. He added that the idea behind towing the vehicles is for the renter of these properties to be more diligent in warning the occupants not to bring more than 4 cars and alleviate some of the congestion and problems associated with these big houses.

The City Manager stated they could write into the ordinance whichever Council deems appropriate – whether to tow or to booth. The important thing to consider is how to sign it because whatever method they select, there has to be signage.

Councilmember Destin wants to know the compliance rate for civil citations. He stated that many of the out of town visitors would probably just crumple and throw them away. He also stated he is interested in exploring some sort of hybrid between designating tow away zones and civil citations.

Councilmember Marler stated that no one really pays attention to “no parking” signs. He also mentioned that the City has a towing ordinance that requires vehicles to be towed to a yard within the City limits or not more than a few miles from the City limits.

The Mayor opined that to be effective in controlling the parking problem, they have to find some method that includes towing. But, they also have to give a clear warning to people that their vehicle is going to be towed if they park illegally.

Councilmember Destin noted that some areas in Tampa did not have signage; but, they painted a curb yellow where parking is prohibited. He asked if they could do something similar in Destin.

According to the City Engineer, there are very few raised curbs in Crystal Beach or Holiday Isle. They are mostly flat curbs.

Councilmember Ramswell suggests painting the street or the edge of the road instead of the curb.

The City Engineer stated they could paint a flat curb; but, it may not have the same effect as painting a raised curb.

Councilmember Foreman stated he favors the Gainesville model; but, he can support a combination of different models. The Gainesville ordinance includes the following language:

- *“No parking where prohibited by proper signage”*
- *“No parking on public right-of-way or private lawn without permission of the owner”*
- *“Law enforcement officers or parking enforcement specialists may issue citations”*

- *“Violation of parking ordinance may result in car being towed”*

Councilmember Foreman suggests they take immediate action before the parking problem gets any worse; even if it involves towing.

Councilmember Dixon stated that he also favors the Gainesville model except for the portion that allows people to park on lawns if they have permission from the owner. He also would support towing but not before the violator is first given a citation allowing them some time to take corrective action before the vehicle is eligible to be towed.

Councilmember Ramswell stated that she likes the Gainesville model; but, she would prefer prohibiting parking on public rights-of-way and lawns completely because it would take a lot of research to confirm whether or not a person has permission from the owner. She does not like the idea of permitting for individual cars because it would be too labor intensive; but she would support signing an entire street or an entire neighborhood. She does not want to see a sign in front of every house. She also suggests contracting a roving tow truck.

The City Manager stated that with regards to towing, they could basically have a tow truck that canvass the area and pull out cars that are in violation.

The City Engineer stated they typically contract with a towing company for private property trespass towing; but not as far as right-of-way towing is concern.

Councilmember Ramswell noted she had seen it done in larger cities. She asked staff to look into it to see if this method is achievable for the City.

The City Manager provided the following summary in terms of directions from Council:

- General consensus amongst Council to utilize the Gainesville model
- Look at a hybrid of civil citations and towing that is progressive in action
- Lean towards placing signage at ends of the street only and somehow indicating that all of that street is a “no parking” zone; but, not to go the way of permitting for individual cars

The City Manager stated they would take the above information, modify the existing parking ordinance and bring it back for Council review and consideration.

19. First reading of Ordinance 16-16-CN, Waste Management, Inc. Franchise Extension

The City Attorney read Ordinance 16-16-CN by title; and then presented it to the Council on first reading:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DESTIN, FLORIDA RELATING TO THE COLLECTION AND DISPOSAL OF TRASH, GARBAGE, AND OTHER REFUSE; AMENDING ORDINANCE 11-04-CN THE EXCLUSIVE FRANCHISE TO WASTE MANAGEMENT, INC. OF FLORIDA, A PRIVATE CORPORATION, FOR THE COLLECTION AND DISPOSAL OF ALL RESIDENTIAL AND COMMERCIAL TRASH, GARBAGE, AND OTHER REFUSE WITHIN THE CITY LIMITS, AS SUCH HAS BEEN PREVIOUSLY AMENDED BY ORDINANCE 11-24-CN; PROVIDING FINDINGS; AMENDING SECTION 4, TERM TO EXTEND SAME BY TWELVE (12) MONTHS; AMENDING SECTION 19, RECYCLING PROGRAM, TO PROVIDE FOR CERTAIN REPORTING; AMENDING SECTION 29, RATES AND CHARGES,

TO PROVIDE THAT GRANTEE IS RESPONSIBLE FOR BILLING AND COLLECTIONS; AMENDING SECTION 31, DELINQUENT ACCOUNTS, TO PROVIDE NEW PROCEDURES FOR HANDLING OF DELINQUENT RESIDENTIAL ACCOUNTS; PROVIDING FOR MODIFICATION OF CONTRACT; PROVIDING FOR ENTIRETY; PROVIDING A SAVINGS CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

The City Manager explained that the proposed ordinance provides for an extension to the current franchise and agreement with stipulated adjustments. It will provide uninterrupted service for residents and businesses and will relieve the City from the bill collection process. The extension also provides time for staff to design plans to enhance Destin's solid waste and recycling program. In 2017, the City will be able to enter into a multi-year contract with a solid waste provider to help the City accomplish the 2017 organizational, objective of implementing green and sustainable concepts.

Motion by Councilmember Ramswell, seconded by Councilmember Dixon, to approve Ordinance 16-16-CN on first reading and schedule it for second reading passed 7-0 (Council members Morgan, Destin, Marler, Foreman, Dixon, Ramswell and Braden voted "yes").

20. First reading of Ordinance 16-17-CN, Gulf Power Franchise Extension

The City Attorney read Ordinance 16-17-CN by title; and then presented it to the Council on first reading:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DESTIN, FLORIDA RELATING TO ELECTRIC UTILITY FRANCHISE; AMENDING ORDINANCE NO. 048 THE FRANCHISE TO GULF POWER COMPANY, A PRIVATE CORPORATION, FOR THE PROVISION OF ELECTRIC UTILITY SERVICES WITHIN THE CITY LIMITS, AS SUCH HAS BEEN PREVIOUSLY AMENDED BY ORDINANCES NO. 048.1 AND 02-01-CN; PROVIDING FINDINGS; PROVIDING AMENDING SECTION 5, TERM OF FRANCHISE - RIGHT TO PURCHASE, TO EXTEND THE TIME BY TWO YEARS; PROVIDING FOR MODIFICATION OF CONTRACT; PROVIDING FOR ENTIRETY; PROVIDING A SAVINGS CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

The City Manager explained that the extension was negotiated and executed on May 19, 2016; but, it needed to come to Council in the form of an ordinance for adoption. The contract is for two years, at which time staff will be working with Gulf Power to negotiate a new contract.

Councilmember Braden moved to approve Ordinance 16-17-CN on first reading and schedule it for second reading; seconded by Councilmember Dixon. Motion passed 7-0 (Council members Morgan, Destin, Marler, Foreman, Dixon, Ramswell and Braden voted "yes").

21. City Manager comments

- a. Information Update and Motion to Proceed with Royal Melvin Heritage Park Project.

The City Manager asked for Council's authorization to proceed with Royal Melvin Heritage Park project. She stated that since their last discussion regarding securing the park, there had been additional information that has come to the City's attention. She then asked for the City's Grants and Project Manager, Lindsey Chabot to give a brief presentation regarding the status of the park and the status of the grants they will use to build the park.

Ms. Chabot announced that on Thursday, July 28th, the Okaloosa County Restore Act consultant, Matrix Corporation, will meet with all projects sponsors to outline the implementation schedule of their projects. She then provided a summary of the information the City provided to the Okaloosa County Restore Act Committee (ORAC) in 2015 that led ORAC to select the City's project out of nearly 50 others and to fund it for \$1.25 million.

- It began in 2002 with the creation of the Harbor District Community Redevelopment Agency (CRA); the purpose of which is to redevelop and showcase the County's unique charter fishing boat industry, its fleet, its dock and its seafood
- The first CRA project was the reconstruction of Mountain Drive in 2009, a prime business district in dire need of an uplift
 - While planning and constructing Mountain Drive, the City worked with property owners on the harbor to create a public-private partnership to construct the first phase of the harbor boardwalk; which became a reality in 2012 at a cost to the CRA of \$2.4 million
- The City also looked for a piece of property along the center of the harbor to serve as a public gateway and a site corridor from US Hwy 98 to the fishing boats and boardwalk
 - In 2006, the City received partial funding from the Florida Communities Trust to reimburse the Trust for Public Land for the purchase of 206 Harbor Blvd at a total cost of \$4.6 million
 - Soon after the closing, the City cleared the property of structures, impervious services and invasive exotic vegetation
- In 2009, the City purchased the property at the corner of Marler Street and Harbor Blvd/US Hwy 98 slightly northeast of the park entrance for public parking
 - Over the next few years, the City demolished field structures, cleared the site, and created an attractive public parking area in the heart of Destin for \$3.5 million
 - The long range vision for this parking lot is to construct a parking garage
- The City of Destin invested over \$14 million in its unique harbor district to stimulate economic growth and to remain competitive with other resort communities
- The final phase of the project is the construction of the Capt. Royal Melvin Heritage Park and Plaza, the gateway to the State's largest fishing fleet, and what separates this coastal community from any other
 - The economic downturn brought all the progress to a stand-still
 - Until the Okaloosa County Restore Act funds were made available, the City had no way to acquire the funds to construct the park
 - Two of the prime criteria for funding under the Restore Act are promotion of tourism in the Gulf Coast region, including recreational fishing; and the promotion of consumption of seafood harvested from the Gulf Coast region. Creating this park will meet these criteria
 - The Restore Act is the only funding opportunity the City will ever have to build this park. The money is on its way this year

At this time, the current conceptual of the park's design is shown on the screen. Ms. Chabot described the different amenities as shown in the plan. She also noted that the final designs plan was at 66 percent and can be completed in a few months once the authority to proceed is given by the Council. The City staff will meet with ORAC consultant on July 28th to verify their timeline for construction. She added there is only this one pot of money for individual counties, and \$1.25

million of it has been allocated for this project; however, she can guarantee that ORAC will not hold the money for this park if they cannot begin construction by April 2017.

Ms. Chabot also noted that on July 31, 2016, she will have to submit the City of Destin's annual stewardship report to the Florida Communities Trust on this past year's progress toward implementation of their grant responsibility. She is seeking Council's direction tonight on what to tell the Trust regarding the next steps. As Grants Manager it is her responsibility to spell out the following real consequences:

- The City will lose \$1.25 million in ORAC funding if they do not proceed with the existing park plan. This is once in a lifetime grant opportunity
- The City is at risk of losing the Florida Communities Trust grant of \$2.5 million because they have done nothing to proceed on the park implementation for 10 years. The City would have to borrow money to be able to refund this grant money
- The most damaging will be the loss of Destin's reputation and loss of trust from the State. It will be quite a long time before the City of Destin is awarded grant from any State agency if they renege on the Trust grant

Next, the Land Use Attorney provided a summary of the letter the City recently received from the Board of Florida Communities Trust with regards to the negotiated site plan. Mr. Shirley stated that he and the Mayor met with Florida Communities Trust staff and employees of the Department of the Environmental Protection (DEP) on June 14, 2016. Mr. Dewey Destin and his legal counsel Lisa Minshew were also present at the meeting. They reviewed and discussed the entire proposal. He stated that on Friday, July 15th the City received a response letter from DEP. He then gave the following brief summary of the letter.

- Florida Communities Trust (FCT) staff has concerns regarding the logistics and feasibility of the proposal
- The primary concern – the proposal must meet 5 minimum requirements of Florida Administrative Code (FAC) before it can be considered
 - The requirement that the square footage of the amount that is gained from the exchange being equal to or greater than the amount that is given by the governmental entity
 - FCT staff disclosed at the meeting that they have recommended a 2:1 ratio
 - The FCT Board of Trustees previously required a 3:1 ratio
 - In the estimation of FCT staff, the 1.4:1, which the City of Destin is proposing, would get the support of the FCT Board of Trustees
 - The other criteria in this section are all “to be determined” since the essential threshold criteria regarding the acreage ratio will be satisfied
- There are more systemic issues having to do with the proposal
 - The vote that requires a 75 percent support of the governing body. The DEP staff has taken the position that there should be support from 75 percent of the entire governing body
- There is a concern that the riparian amenities; the dock improvements part of the proposal may not be approved as currently proposed
- The biggest concern has been the nature of the exchange being in perpetual, non-exclusive easements. The concern from DEP was these easements do not reflect interest in property as to which the restrictive covenants that are required to be placed on these parcels or any parcels that come into the functionality of the park must all have declarations of restrictive covenants placed on them. There is a concern they simply would not work with a non-exclusive easement where a

private party was retaining a right of private use of an area that is supposedly being restricted to conservation, recreation and preservation type uses.

- There are also a number of other concerns with regards to the next phase of the project and satisfying the remaining criteria

The Land Use Attorney also stated he had done a lot of State permitting, and realistically speaking they could probably expect a year to complete this process with no guarantee the proposal will be approved by the FCT Board of Trustees.

The City Manager noted that on behalf of staff, they feel that if they are not able to commence immediately with the original park project, they are at serious risk of not being able to build the park because the grants will go away. In addition, they will be held responsible for paying back \$2.7 million which they do not have in the current budget unless they forego purchasing the cement plant.

According to the Land Use Attorney, the primary remedy as provided for in the restrictive covenants is that the parcel purchase with the State funds can simply transfer to the State; however, they assume State would accept refunds of the funds if offered.

At this time, the Mayor opened up the floor for public comments.

Mr. Dewey Destin, owner of BI, Inc., spoke first. He stated they received the DEP letter at 3:00 PM on Friday, July 15th. He stated that they feel they have met 4 of the 5 criteria. They also feel they met the fifth criteria, which is the land exchange ratio, even when they took out 6, 692 square feet of right-of-way they were giving through their parking lot to have access down to the waterfront. There were a number of questions raised about the construction of the dock; in that there was an issue with the riparian setback on their neighbor to the west. He believes the proposed dock does not intrude into the 25 foot setback of their neighbor's property. One of the FCT staff members suggested during the June meeting that they should just give the eastern side of the existing dock to the City so that no permit or new construction will be needed. They have indicated they would be glad to do that if that is what FCT wants. With regards to having to go through any more permitting on the parking, since they are turning 3 of their slips over into transient slips, it actually reduces the amount of parking required on site by 11 spaces and no further review required by the Planning and Zoning Department. The existing road, the one being proposed in the mediated settlement, is a 12-foot road and would not be subject to review. Leaving that road would actually save a Live Oak Tree on their property because the root system will be under the road. The proposed plan that was previously approved would put the retaining wall right up against the property line which would necessitate cutting the root of the tree and subsequently killing it. He pointed out they have now spent over a year in time and mediation sessions and over \$30,000 trying to give the City of Destin \$1.5 million worth of amenities in exchange for the use of an easement that has been in existence and use for over 50 years.

Mr. Destin also noted that during their June meeting, the FCT staff asked about the proposed location of the fishing museum since they could not see it in the plan. He continued that the criteria and point system that were used to meet the grant requirements included a fishing museum or a cultural center; and required classes in the cultural center 12 times a year. The City would need to figure out a way to address that issue. He also pointed out that the existing park plan is at about 60 percent, and it calls for the reduction of the bluff by 8 or 10 feet in some places; adding since they have not come up with the other 40 percent design, they really do not know exactly what they are building. They will end up killing some of the trees. Mr. Destin also pointed out the FCT staff expressed concern about the main use of their tax exempt bond. It is very important the City does

not do anything on site that would cause the tax exempt bonds to be called into question. The City has been paying the fleet for the use of the riparian slips the City bought with bond money, which could very well cause the tax exempt status of the bonds to be called into question. He suggests they asked a refund of those funds and to find out if it is legal for the City to be paying those funds. He also recommends Council calls for a special meeting to address all these issues and not be pressured by the County to make a decision before July 28th; and modify the existing plans and try to come up with a consensus on how to address all the issues brought forth tonight.

The City Manager announced they have addressed the fishing museum cultural area. They have informed the FCT the City would not be moving the fishing museum from its present location to the park property. They have had some discussion with Ms. Kathy Marler Blue, the museum director, and they are willing to go into a collaborative partnership with the City to be able to put programming and movable display at the building; and that they have a letter from the FCT accepting their alternative plan.

Attorney Lisa Minshew, representing BI, Inc, stated they have been trying very hard to give the City all the amenities that have been mentioned. She stated they need not get the DEP letter until the afternoon of July 15th; and Council should not make any decision based on this letter. They are asking for another meeting where all these issues can be addressed. She has also done a lot of permitting for the State in her 32 years of practicing law and knows that if they make a presentation to the State in a rough format, which they did in this case, a 3 or 4 page letter is not uncommon. She also feels they can address all the issues in that letter very easily and their proposal can still work. They only need a little bit more time.

Councilmember Braden wants to know why they are willing to pay the City \$1.5 million if they believe they already have an easement.

Ms. Minshew replied that Mr. Destin had always invested heavily into this community. He believes in the community and he believes in the park; and that he has tried for several years to come to a compromise that would benefit the citizens of this community. But, the alternative is they will litigate it; and that the litigation will not be over in a year.

Mr. Destin noted that several years ago, Mattie Kelly gave \$8 - \$10 million to Northwest Florida State College. He also stated this is their last opportunity to have a City dock on the harbor; and that he would like to be able to give something to this community.

Ms. Mary Anne Windes, with the Destin Fleet Marina, spoke next and read the following statement for the record:

The Fleet's attorney is out of town, so I am here asking you to move forward with the construction of the Royal Melvin Heritage Park as promised.

At your April 4, 2016 meeting, you voted unanimously 5-0 (less Jim Foreman who was absent and one abstention) to approve a land trade deal proposed by Dewey Destin for his company, BI, Inc. to take a chunk of land out of the center of the city's park on the Harbor to provide a driveway to his lower lot. The proposal that you approved, against the recommendations of those paid to protect the city, puts the Council in conflict with the city staff because it violates the law in many areas – setbacks, parking, landscape, bathrooms, stormwater, and 2-lane access to name a few. By circumventing staff and going straight to the city council, the applicant was able to by-pass the permitting process which will, at some point, have to be addressed. In other words, for this to work as approved, the city must break the laws of the city and the state.

At your next meeting on April 18, city manager Greg Kisela asked to be excused from taking this proposal to the state for ethical concerns. No one asked what the ethical concerns were. You again voted unanimously to relieve him of the responsibility and give the job to the newly elected mayor.

By the next meeting on May 2, however, the mayor had done his homework, figured out the obvious, and wrote you a letter addressing his concerns. He was verbally smacked down, and again, no one asked questions about the concerns. He requested permission to renegotiate the deal, but no action was taken leaving the original deal on the table.

So, the Mayor renegotiated the deal and took a rendering that could pass the DEP's scrutiny but still not your Land Development Code. He took the proposal to the State a few weeks ago, along with Dewey Destin and Lisa Minshew, and presented that proposal. Unfortunately, although the mayor's proposal remedied the length of the dock and whittled down the amount of encroachment of the setback, it still realistically violates the 25' setback on the Destin Fishing Fleet side as well as the Krieg property. As we told the Mayor when he presented it to us, we do not approve of it.

Let's review the deal you approved: BI (Dewey) has promised you 3 boat slips for transient use. You already have 3 transient boat slips at the Destin Fishing Fleet which are landlocked by his allowing mooring on his dock to for-hire boats in front of the city boat slips illegally. In addition, the boat slips he is promising to the city will still encroach on the 25' required setback. Permitting at DEP should not allow them. Second, he proposes to give you 2 parking spaces on his lower lot where he has already been cited for insufficient parking. He already doesn't have enough parking for what he has already but plans to build a longer dock for more boats and still no bathroom. As I understand it, his meeting with the Magistrate has been postponed with no date certain in site. Third, he offers an eyebrow raising easement the entire length of his own driveway to the two parking spaces. It's so transparent that it bears no further discussion. Finally, he offers you the easement across his boardwalk – the same one that you already have his promise in writing to give you as a condition of his building permit signed by him around January 23, 2008. Basically, he is giving you NOTHING, but you have given him permission to circumvent your LDC code and the State submerged land laws, free parking, ingress and egress over the city park for 10 years, an ability to develop a small parcel that no other land owner in Destin would dare to ask, and a portion out of the center of the people's park which will cause the park to be redesigned and stalled again. Plus, the city is to pay for the additional surveys, appraisals, and Phase 1 Environmental Audits required to accommodate his request. More taxpayer dollars for his benefit!

Dewey Destin, on behalf of BI, Inc., has delayed the progress of the city park for 10 years by claiming an easement. That claim has been proven false by no less than an affidavit of the seller, the title insurance policy, the city attorney who closed the deal, the city's land use attorney, a copy of a document signed by Mr. Destin stating that he had no easement, and by Joe Boyd, who you spend \$15,000 to obtain his advice which you chose to not take. That's at least 6 major sources that have been ignored in addition to our attorney. Never mind that he never mentioned it as he sat on the city council when the park purchase was approved.

If the landowner next to Harbor Docks' tried to build an illegal dock and shut down Charles Morgan's legal rights to the boat slips on his submerged land, would you go along with that? What I'm trying to figure out is why you are trying so hard to do something special for BI and for what reason.

The Fleet will be negatively impacted by this, and we feel threatened by this Council's actions.

This has all the appearances of a private taking for a personal gain by an elected official up for re-election, no less, which is also illegal. The Fleet has sent you a parking study that documents it.

As a final nail in the coffin, you have received a letter from the State of Florida that very nicely tells you that the Land Swap deal is not viable. He has not offered enough in trade, his commercial driveway would need to be rezoned to Conservation and would have to adhere to the Covenants & Restrictions which say no commercial activities, and he would have to report his revenues on both parcels

wherein the "Conservation" driveway is located, which if were too high, would cause the bonds to go from tax-free to taxable. Plus, and probably the reason that all of this is sort of moot is that I don't believe you can reach the six signatures you need for the application, certainly not with 2 abstentions, so why prolong the obvious and spend all the money required to make an application that doesn't comply with your Land Development Code.

In summary, the Destin Fishing Fleet is asking you to honor the agreement that the city made with us in good faith in 2010, honor the promises the city made with the State of Florida by securing the park, and secure the RESTORE ACT grant for Okaloosa County now while you can and BUILD A PARK for all the citizens of Destin.

The City Manager noted that with regards to the design of the park, the 14-foot pedestrian walkway is designed with the ability for maintenance vehicles and emergency vehicles to reach the dock area.

The Mayor stated they have been putting off trying to solve this problem for quite some time; and that he believes both grants are now at risk. He continued they have to make some decisions by July 28th. He also stated the language in the DEP letter is quite firm and gave no guarantee the proposal will be accepted even if they meet all the requirements. He also noted that in order to complete the proposal they would need appraisals, surveys, more engineering work, and create a very complex legal work to meet the State requirements. He added there is a requirement that may not be negotiable; and that is 75 percent of the entire Council has to support the proposal for the State to consider it. If two members of the Council abstained from voting on this issue, and the other 5 members vote to support it; that would only be 71 percent.

Councilmember Dixon stated that he previously abstained from voting on this issue. He continued his wife works for Real Estate Professionals of Destin, a management firm for the Destin Fishing Fleet; and that his stepdaughter works for the law firm that represents the Destin Fishing Fleet. The Destin Fishing Fleet has been involved on this issue.

Councilmember Ramswell states there are other options and ideas they could discuss tonight as alternatives to going forward with the current proposal. She suggests they discuss these alternatives before they even consider voting on this issue.

The Mayor provided a brief summary of the options available to the Council members:

- Move forward with the construction of the park without the road as originally planned. Unless Mr. Destin signs the easement over to the City, they cannot access the boardwalk from the park
- Construct the park with the proposed changes without DEP's permission. The City would have to either refund the grant money or transfer the property over to State
- Proceed with construction of the park and risk lawsuit from neighboring property owner
- Continue to pursue an agreement and risk losing the grant money and inhibit the City's ability to obtain future grants
- Put the property up for sale

Councilmember Braden stated though he has a lot of respect for Mr. Destin, he has to believe on the Mayor, City staff, and the City's Land Use Attorney; and to take their advice and protect the interest of the citizens of Destin.

Councilmember Marler stated he has a lot of respect for all the parties involved on this issue; but he has to consider what is good for the community as a whole and rely on the advice from the Mayor and City staff. He added even if they decide to vote to accept the proposal, they would not meet the 75 percent threshold required for the State to even consider it.

The Mayor noted they do not have to take a formal vote; but, they need to have 75 percent of the entire Council to sign the exchange application.

Ms. Minshew went back to the podium and stated that the DEP letter made no mention of a 75 percent vote from the Council. She then began reading the following portion of the DEP letter: *“A strict reading of this rule indicates that affirmation must be by three-fourths of all members, not affirmation by three-fourths of members who can vote. While this initial analysis is not dispositive...”*

The Mayor called for a point of order; stating that discussion is limited to members of the Council at this point and others may only speak if the Council asks a question.

Responding to Councilmember Marler’s statement, the Land Use Attorney noted that the 75 percent vote is only required should the City decides to pursue land exchange application to the State of Florida. The vote to go ahead and build the park would be by a simple majority of Council eligible to vote.

Councilmember Braden noted that by the Land Use Attorney’s statement, they would not have the percentage of votes necessary to send the application to the State.

The Land Use Attorney clarified that if the State will not change their opinion concerning the 75 percent rule, the City would never satisfy that requirement with abstentions they currently have.

Councilmember Foreman emphasized that they are facing a deadline to the ORAC over the \$1.25 million funding; and that they would lose this funding unless they are prepared to show some action soon. He continued the original design of the park did not involve boat slip; adding that the Covenants and Restrictions describes it as a pedestrian park. It is a park designed to honor the heritage of the City, and it is an adequate entrance to the harbor.

Councilmember Ramswell noted they are missing a very central point; in that the document they received from the FCT is based on a land exchange. She stated this is an existing easement. She then directed the Council’s attention to the following documents copies of which were distributed to Council members: deeds on the property – from 1936 to 2006; 2006 survey of the property; and the City’s title insurance policy written by the City Attorney Jerry Miller in 2006. She remarked that every single document makes notes specifically and expressly of “this easement” or says “subject to any easement.” She continued the 2006 survey clearly shows the 8 foot easement as well as the Destin Water Users easement. She also stated the Warrantee Deed dated December 21, 2006 prepared for the Trust for Public Land and City of Destin prepared by Attorney Jerry Miller is the only deed that has no mention of any easement and no language stating “subject to any easement.” She then noted that the City’s insurance policy states the City is exempt from coverage because of easement. She added that the Land Use Attorney and other members of City staff – Steve Schmidt and David Campbell – have all admitted it is an easement.

Councilmember Ramswell then commented and/or read portions of the following minutes of Harbor CRA meetings:

- March 18, 2013 Harbor CRA minutes: Councilmember Ramswell read:

“Steve Schmidt notes the existence of the 8-foot easement”

“Mr. Shirley states no problem we can move it, or we will just install it as a pathway.”

- August 14, 2013 Harbor CRA minutes: Councilmember Ramswell noted the minutes contain discussions about negotiating with Mr. Destin on the easement
- October 9, 2013 Harbor CRA minutes: Councilmember Ramswell noted that according to Mr. Shirley, they do not have the right of access even after he discussed it before. She added that Mr. David Campbell acknowledged the presence of an easement stating that it is a huge issue.

Councilmember Ramswell also noted that everybody has acknowledge at one point or another that this is an easement; and it became a problem when the Community Land Trust stated they do not purchase land that has an easement. She added they have spoken with them numerous times and this is what they told her.

Councilmember Ramswell wants to know the reason the Destin Fishing Fleet is interested on this issue since this is a transaction among the City of Destin, the Florida Communities Trust and B.I., Inc. She stated that the Fleet is a tenant, and that they lease riparian rights the City owned. She continued the submerged land lease that covers the dock and slips are owned by the State; and that the Fleet leases the City’s portion because the City allows it. She wants to know why this piece of property has become such a point of dispute that has involved the Fleet. She wants to know why the City is paying for slips all the way back from 2010; and why it was not paid for as an invoice to the City in 2011. The City received an invoice in January 2016 for all the prior years. She also mentioned there have been emails from a person to the City Manager in 2010 and 2013 asking when the City will put a fence up on the park, and even demanding that the City puts up the fence.

Councilmember Ramswell also spoke of the Doctrine of Merger which has been brought up as a possible reason the easement might have been extinguished. She stated the Doctrine states that the deed would not so much merge as it would supersede ancillary and outside agreements and contracts. Whatever promises not expressed in the deed are effectively nullified under the execution of the merger doctrine. She further noted that in Daniels vs. Anderson case, it states that *“courts have held an easement created by a contract but not in the deed would survive the merger doctrine.”* It also states *“we discern no multiple basis and defendant offered none from arguing against application of the merger rule when the party claims that a mutual mistake or even fraud existed at the time of conveyance of the deed.”* She added these findings give an idea as to how an easement will be viewed in terms of the doctrine; and that if they go with the very strict interpretation that all ancillary and outside agreements and contracts will be nullified, the lease agreements for riparian rights would also have been nullified and voided.

Councilmember Ramswell requests a review of the lease for riparian rights; adding it is necessary since a lot of the clauses that were added to it were done when the fishing museum was planned to be on the Fleet’s property.

City Attorney Jerry Miller noted that the title insurance policy with regards to the easement issues should only be used to understand and show that the title insurance company did not insure over any claims of easement. It is not to draw conclusion that the easements are sometimes guaranteed or insured or evidenced by the insurance policy.

Councilmember Marler asked whether the City could still move forward with the park plan despite of any litigation.

The Land Use Attorney replied that if a suit is filed against the City, the other party would file an Action for Declaratory and Injunctive Relief at the outset and in all likelihood would request a temporary injunction. There are specific requirements for establishing that a temporary injunction is necessary and justified. It involves a hearing with testimony. If the court grants the temporary injunction, they would not be able to go forward during the time the injunction is in effect. If the court denies the temporary injunction, the City could go forward with the park. If the City ends up losing the case, the City may be responsible for damages to the parcel.

Councilmember Morgan asked if a lawsuit would jeopardize the City receiving the grant money for the park.

The Land Use Attorney opined that only the existence of a court order for temporary injunction would have an effect.

Councilmember Dixon asked if an expedited hearing could be accomplished in case of litigation.

The Land Use Attorney stated the City could request it; but usually a hearing is expedited when both parties involved request it.

Councilmember Braden asked whether the City could request a Declaratory Judgement Action.

The Land Use Attorney explained that generally a Declaratory Judgement Action is filed together with a request for injunctive relief. The City could file a Declaratory Judgement Action asking a court to decide whether or not there were any rights in the easement and access across the property by the adjacent property owner. He would like to discuss this issue with Mr. Boyd, the outside attorney previously hired by the City to render an opinion on this issue and get his thoughts because there are tactical reasons why the City may want to do one remedy versus another. He would also want to discuss some options with the City Manager and then present these options to the City Council; assuming the City decides to go ahead and build the park and not to continue with the land exchange. He added the main issue is whether the City builds the fence now or at a future date. He also added the City can control the advent of litigation by controlling the date on which to curtail the access.

Councilmember Morgan asked if the City was aware of an easement when they purchased the property in 2009.

The Land Use Attorney stated he was not aware of it because he was not involved with the purchase; but, it is in the instruments that are in the chain of title.

Councilmember Morgan stated that with certain amount of due diligence, someone would have been aware of it.

The Land Use Attorney noted there is a doctrine called Constructive Notice which charges the purchaser with knowledge of that even if the purchaser has not actually looked at it.

Councilmember Marler what pressing issues are involved in putting up the fence now.

The Land Use Attorney suggests the City write a letter stating that the fence will be built within a finite period of time; adding, this condition requires 90-day notice. This will give any parties actively utilizing the road the ability to make alternative arrangements.

Councilmember Ramswell moved to set up an alternate time for a workshop to discuss strategizing their way forward in detail. Motion dies for lack of a second.

Councilmember Foreman moved to go forward with building the park, and to provide adjacent property owners with a 90 day-notice of the City's intent to fence off the park; seconded by Councilmember Marler.

Councilmember Ramswell asked if the motion includes fencing off the easement or leaving it open for access.

Councilmember Foreman stated it is almost impossible to do any constructive work on the property with traffic moving through it; adding it is both a pedestrian and vehicle safety issue.

Councilmember Ramswell asked what the title insurance usually protects.

The Land Use Attorney explained that from time to time there could be defects in the closing process; i.e., a lien is not removed from the property or irregularities in the way the paperwork is executed. When technical issues such as these are discovered, the attorney that was hired by the title insurance company would get with the parties involved to correct these issues. It also protects against bad titles.

Councilmember Ramswell asked if having an exemption to coverage written in the policy means that if forced to go to litigation, the insurance will not cover it.

The Land Use Attorney replied affirmatively.

Councilmember Ramswell noted that the City's title policy insurance specifically lists by book and page number the easement of record for this property; which means if they go to court on this issue and lose, they would not be covered.

The Land Use Attorney explained the issue on whether there would be coverage is something they would have to work out with the title insurance company at the appropriate time.

Councilmember Morgan commented it was irresponsible to purchase the property in the first place with the easement knowing they cannot have an easement according to the Covenants and Restrictions; adding it would be irresponsible to approach the ORAC on July 28th knowing this could be subject to litigation.

Having no further comments from the Council member, the Mayor called for a vote on the motion, which passes 3-2 (Council members Marler, Foreman and Braden voted "yes"; Council members Morgan and Ramswell voted "no"; Council members Destin and Dixon abstained from voting).

COMMENTS FROM THE AUDIENCE

Mr. Scott Monson, a Destin resident, urged the City to act expeditiously to enforce their ordinances by removing the porta-potty at the corner of Sunflower Court and Rosalie Drive.

Mr. Steven Menchel, a Destin resident, asked the City to prepare a proclamation that enforces their support for law enforcement.

Having no further business at this time, the meeting was adjourned at 9:50 PM.

ADOPTED THIS 3RD DAY OF OCTOBER 2016

By:



Scott Fischer, Mayor

ATTEST:



Rey Bailey, City Clerk