MINUTES
SPECIAL MEETING
DESTIN CITY COUNCIL
JUNE 28, 2018
DESTIN CITY HALL
ANNEX COUNCIL CHAMBERS
6:30 PM

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

Destin City Council

Mayor Gary Jarvis
Councilmember Rodney Braden
Councilmember Chatham Morgan
Councilmember Prebble Ramswell
Councilmember Skip Overdier
Councilmember Parker Destin
Councilmember Tuffy Dixon
Councilmember Cyron Marler

Destin City Staff

City Manager Carisse LeJeune
Deputy City Manager Steve Schmidt
Public Information Manager Doug Rainer
City Clerk Rey Bailey
IT Manager Webb Warren
City Attorney Jeff Burns

CALL TO ORDER

Mayor Gary Jarvis called the meeting to order at 6:30 PM. He called for a moment of silence followed by the Pledge of Allegiance.

NEW BUSINESS

1. Capt. Royal Melvin Heritage Park

Mayor Jarvis explained he called this special meeting so that the City Council could establish a clear direction on the commitment, strategy and time line for the Heritage Park/Gateway to the Harbor. He would like the focus to be on the project itself, the park design and the requirements behind it; and to decide whether or not they would even want to have a park. He continued it is also the goal of this meeting to improve the governance of this Council, to make these decisions in a public process and in a clear, transparent, and defensible manner to prevent confusion, angst, inefficiencies; and to produce a policy or plan that is satisfactory to all concerned. He added he would pose 3 questions to the Council, with an expectation that the answers to those questions would be accompanied by motions to be voted upon by the Council.

The Mayor asked the following question:

"Do we want to continue the park construction in the plan? and if so, I'd like to have a motion to that effect."

Councilmember Dixon asked for clarification of the question.

The Mayor rephrased the question:

"Do we want to continue developing the park in the property not as the plan that was presented, but the plan that started it in 2007?"

Councilmember Overdier stated that he is making a motion in that regard; seconded by Councilmember Dixon.

Councilmember Ramswell asked for further clarification with regards to the plan being referred to by the Mayor.

The Mayor noted that he provided the City Council a copy of a 2016 newspaper article when the Council voted to proceed with the Heritage Park; adding it was either the 30% or 60% that was presented to the City Council at the time. He continued that the Council voted at the time to keep moving forward with developing the park. He stated that the current motion should probably read, **"***Continue developing the property for the Royal Melvin Heritage Park/Gateway to the Harbor."*

Councilmember Ramswell noted she took the word "*plan*" as in "*design plan.*"

Councilmember Braden stated that it clarifies matters for him as to whether or not they should continue to build this park.

At this time the Mayor announced he would allow public comments on the question, "***Do you think the City of Destin should move forward with the development of the Heritage Park/Gateway to the Harbor?"***

Attorney Mike Chesser, representing the Destin Fishing Fleet, stated that they have a contractual right to have the Council reaffirms their intention to move forward with developing the park. He also stated that after the Destin Fishing Fleet developed their own property, and when Mr. Melvin was offered a price to purchase this property, the Destin Fishing Fleet held the first right of refusal. After the City received the State funding for the purchase of the property, the Destin Fishing Fleet took a step back and allowed the City to purchase the property and move forward with its own idea for that property rather than trying to integrate this property within the parcel the Fishing Fleet had already purchased, developed and were already using. He added it was part of the agreement to build the bathrooms on the beach because they feel it is unfair to keep asking people to come to Destin and having them use the Destin Fishing Fleet facilities.

The City Attorney Jeff Burns asked Mr. Chesser if he was asserting that the Destin Fishing Fleet has a contractual right in the property that is going to be a park, and if they have expectations that the bathrooms will be built; and if so, whether it is the only contractual obligation they expect.

Mr. Chesser maintained that when the Fishing Fleet took a step back and allowed the City to purchase the property, they had an expectation the park is going to be built; and that if the City is not going to build the park, they would put in the bathrooms and open them to the public.

Mr. Burns asked if that was a verbal or a written agreement.

According to Mr. Chesser, there was an amended lease agreement with Mr. Melvin when the City made arrangement to purchase the property outlining what they are going to do, and what the Destin Fishing Fleet will get out of the deal; adding he brought a copy of that document with him tonight.

Mr. Dewey Destin asked for further clarification of the motion. He wanted to know if there was an intent to reverse the decision made at the last joint special CRA meeting to make some modifications to the design elements of the plan.

The Mayor explained the intent was not to change anything that was discussed during the joint special CRA meeting, but to get on record this Council's commitment to build a park.

The Mayor asked the City Clerk to read the current motion on the floor.

The City Clerk read the following motion: "***To move forward with the development of the Heritage Park/Gateway to the Harbor.***"

Mr. Burns stated that if the Council wants to redesign some of the elements of the park, he would recommend changing the verbiage of the motion to say they intend for a park to eventually be constructed as opposed to saying they want to move forward with the construction of the park. He explained it would lead to a clearer motion as opposed to some confusion later on.

The Mayor stated that if the Council approves the current motion on the floor, he would try to obtain more clarity with his second question.

Mr. Burns explained that moving forward with construction is different than the Council's intent for a park to be built. It could apply for the project to be shovel ready, which is not the case at this time.

Councilmember Dixon noted that the motion was to move forward with a park; not construction of a park.

The Mayor asked the City Clerk to re-read the motion.

The City Clerk read, "***To move forward with the development of the Heritage Park/Gateway to the Harbor.***"

The Mayor called for a vote on the motion, which passes 7-0 (Council members Morgan, Destin, Marler, Overdier, Dixon, Ramswell and Braden voted "yes").

The Mayor announced the City Council made a commitment tonight to build a park/gateway.

The Mayor asked the following question:

"Who will have the primary design responsibility and who will have the final approval?"

Councilmember Dixon stated he would like to make a motion for the City Council to have the final approval, but he would also want the Mayor to clarify the question especially about the design of the park.

The Mayor explained that during the joint special CRA meeting, the Harbor CRA Advisory Committee members expressed their feeling about not having a fair amount of input on the design of the park. Also, some members of the Council do not feel they have given a fair amount of input on the design of the park beyond the 60% plan. The purpose of his question was to clarify who will have the primary responsibility on the design process and who will have final approval of the final plan.

Councilmember Dixon noted it needs further clarification because the design sometimes involves the engineers.

The Mayor suggests using the phrase "conceptual design."

Councilmember Dixon moved for the City Council to have final approval of the conceptual design of the park and the final approval on the final park design prior to any application being submitted.

The City Manager noted that when the approval to submit was granted back in 2016, the rest of the process included providing additional documentation and components to the application process. She continued that the development order at 100% design and to accept the grant award has to come before the Council. The Council would have had and still has the authority to review and approve the 100% design and accept an award of grant. If neither one of these things did not happen, they would not be able to go forward. The process since 2016 has been the 30%, 60% and 90% plans. The 90% plan was provided to the County to be submitted to the Treasury Department with the understanding they were going to award the grant based on the plans; but, those were not the final plans because final plans would have to come before Council at a 100% before development order application was approved and award of grant was received.

Mr. Burns noted that according to the Restore Act coordinator who actually fills out and submits the application, if the Council wants to make any changes to the design, she strongly suggests they send the 100% plans to her. She also stated that the Council has plenty of time to make these changes.

According to the Mayor, the biggest confusion about this entire process occured between the 60% and the 90% plan. He suggests they put this behind them and stay focus on who will have the final approval. The Mayor asked the City Clerk to re-read the motion.

The City Clerk read, "***The City Council will have the final approval of the conceptual plan and the final approval of the final plan prior to any application being submitted.***"

Councilmember Ramswell provided a second to the motion.

Councilmember Dixon wants to make sure the motion is clear that the Council will have final approval over the final plan and the final design.

Councilmember Overdier stated it was his understanding during the joint special CRA meeting they would send the plans back to the Harbor CRA Advisory Committee, which would then make recommended changes to the plans. The plans would then go back before the CRA Board and the City Council for their consideration. Once they make their decision, Tetra Tech would then draw up the 90% plans. These plans would then go back to the Council for approval.

The Mayor wants to make sure the current motion on the floor does not prevent the CRA Board or this Council for handing the plan to the Harbor CRA Advisory Committee and asking for their input.

Mr. Burns stated it was not inconsistent with the motion this Council voted on two weeks ago. There was direction for Tetra Tech to come back with an estimate of the cost.

Councilmember Braden stated that he would like the plans to go back to the Harbor CRA Advisory Committee for their review and recommendations, and then bring the plans back to the CRA Board and City Council for approval. He would also like to pull Tetra Tech off this project as they have been overcharging the City; adding that Tetra Tech charges the City $10,000 just to turn the restrooms 90 degrees. He also suggests that once the final design is approved, to schedule a workshop and get the public's input on the renderings of the park.

The Mayor recommends they entertain Councilmember Braden's suggestion to remove Tetra Tech from the park project at a regular meeting rather than at this special meeting.

The City Attorney agrees they should not vote on removing Tetra Tech from the park project tonight as the firm may protest because of the narrow scope of this meeting. He suggests scheduling it at a regular meeting.

The Mayor asked if anyone from the public wishes to comment on the motion on the floor.

Mr. Mike Buckingham wants to make sure the plans go back to the Harbor CRA Advisory Committee before the final approval of the design.

Councilmember Dixon stated they would meet again before final design approval.

The Mayor called for a vote on the motion, which passes 7-0 (Council members Morgan, Destin, Marler, Overdier, Dixon, Ramswell and Braden voted "yes").

The Mayor asked the following question:

"Who will represent the City in dealing with the County, State or other responsible parties on the direction and will of this Council at future meetings?"

The Mayor noted that according to the City Charter, one of his responsibilities as Mayor is to represent the will of this Council in public proceedings; and that is also part of the City Manager's responsibility if the Mayor cannot do it. He continued that under certain circumstances, the responsibility falls on the Mayor Pro Tem if the Mayor is unable to participate. He asked who this Council would like to represent the City in public proceedings.

According to Mr. Burns, this issue has to be handled on a case by case basis; and that the Council should not make a blanket motion such as this without anticipating the issues that may arise in the future. He also stated that the Mayor as well as the City Manager has certain charter power. The City Manager has enough administrative authorities to do things such as having a meeting at the State level as she had done in the past. Technically, the Mayor has ceremonial power for the City of Destin under the charter and the Council would have to vote to give the Mayor directions; which could create an issue for the Mayor if the Mayor is voted to be the sole representative. If it was determined the Mayor has negotiating ability, the Mayor would solely be subject to the Sunshine Law. He advised the Council not to make a blanket ruling at this time and allow the City Manager to continue to do what she has been doing.

The Mayor stated he would still want to hear from the Council about this particular issue even if it is not in the form of a motion.

Councilmember Braden stated he has a prepared motion he would like to offer at this time:

"I move to clarify my motion that was passed on June 18, 2018 to ratify all actions of our City Attorney to prevent submission of the Heritage Park grant application over the last few weeks, and to provide authority moving forward for our City Attorney to do whatever is necessary to prevent the filing of the Heritage Park grant application prior to this board voting on the final sets of design in the near future. I want this motion to include the following: The City Attorney acted on this board's behalf; and he and his firm's actions to prevent the application from being submitted without this Council's redesign is hereby ratified by the passing of this motion. As part of the clarification, I recognize that the City Attorney acted in accordance with the motion by notifying the County Commission on June 19th of the Destin City Council wanted and still wants to hold or abate the application pending this board's redesign of the park and that this board still desires to redesign the park. The City Attorney is hereby directed to do whatever is necessary going forward to make sure that any other governmental agencies or entities do not submit, accept or process any Heritage Park grant applications for the City Council both on the final design of the Heritage Park at some point in time in the near future. The City Attorney can present to any governmental agencies or entities that he is acting on the Destin City Council's behalf as the Council's attorney when he is performing any actions he has deemed necessary to prevent the filing of the Heritage Park grant application. The City staff shall assist him in any way if he requests City staff's assistance."

The Mayor asked if they could summarize that motion down to where they still capture its true intent and purpose.

Councilmember Braden stated they have a bad problem with interpretation, and that there is really no other way to interpret the motion he just made; adding it is a long motion but to the point.

Mr. Burns stated his interpretation of this motion was for him as the City Attorney to make sure no one submits an application until this board has voted on the final design and plans.

Mr. Burns asked the City Clerk if he could read back his version of the motion.

The City Clerk reads, "*No one can submit an application until this board has voted on the final plan and final design of the park.*"

Mr. Burns suggests adding, "*The City Attorney will have the authority to communicate with any other governmental agencies at an open public meeting to make sure no application is filed without this board having approved of the final design and plans.*"

The Mayor asked for a second on this motion.

Councilmember Ramswell provided a second to the motion.

Councilmember Overdier wants to make sure they are not trying to usurp or take away any of the City Manager's power or authority as outlined in the City Charter; and that the application would still be submitted by the City Manager and staff. He also stated that the City Attorney will make sure the application is not submitted without City Council's approval; but, they should not be putting the City Attorney in the position of City Manager.

Mr. Burns stated he would not be comfortable doing that; and that the verbiage he gave to the City Clerk meets the Council's intent.

Councilmember Dixon suggests allowing the City's Land Use Attorney, the City Attorney, the City Manager and the Mayor to meet behind close door and discuss and try to resolve any issues or hard feelings they may have among them; and then come back with some recommendations on how to solve some of the issues currently before them. He also stated he does not want it to appear they are side stepping their City Manager, but he is also aware of the City Attorney's legal involvement.

Councilmember Marler remarked that he is the senior person on Council, he has been through many City Managers andhe has been through this process many times. He continued the City Charter clearly states they have a City Council-City Manager form of government. The City Attorney is the legal advisor to the City Council and provides assistance to the City Manager and staff on legal matters. The City Manager has administrative authority while the City Council is the legislative body. The City Council makes the policy and the City Manager implements that policy. The main problem he had seen since he has been on this Council was they try to micromanage the City Manager. If the policy has legal ramifications, then the City Attorney and the City's Land Use

Attorney get involved. He also stated that when the City was founded, the Mayor had no authority whatsoever. The charter was changed to give the Mayor the power to run meetings. The City Council fired the previous City Manager and City Attorney, and left the current City Manager with no one to ask questions except from staff; but the Council keeps attacking the staff. Each member of staff is an expert on their field, but the Council is trying to do their job. It does not make sense to have a City Manager if they are not going to allow them to do the job they are hired to do. He added that according to the City Charter, the first line of defense for the Council is the City Manager, not the City Attorney; and that if they want to change the charter they could bring it to a vote by the citizens.

Mr. Burns stated he would like to clarify an ambiguity which had been established over several visioning sessions. The minutes from the two previous visioning sessions (2016/2017) contained a question as to why there is a City Attorney and a Land Use Attorney. Even though the contracts may have some ambiguity, the previous City Attorney Jerry Miller and Land Use Attorney Scott Shirley indicated that the dichotomy that has been developed over a decade was that the City Attorney represents the Destin City Council first and foremost and acts on behalf of the Council. They represent the City Council at meetings and other functions. The Land Use Attorney is also the Council's attorney, but if there is ever a conflict between staff and the Council, the Land Use Attorney provides input to staff. He added it is not exactly that clear; and that the current Land Use Attorney Kim Kopp may feel she owes the Council a complete duty.

Councilmember Braden stated he has always consulted with the City Attorney since he has been on the Council to make sure he is doing all the right things, and that he would continue to do so. He mentioned that the City Engineer made it perfectly clear at a previous meeting that this Council does not have the final approval authority on the design of the park; which is why he wants the City Attorney to make sure Council has the final approval authority over the final plan and design of the park. He added he is not trying to take anything away from staff or City Manager, but the City Attorney represents the Council.

Councilmember Dixon stated he does not feel the Council is disrespecting staff; adding he has been on the Council for 5 ½ years but he has yet to recall an instance where they have berated or discredit any staff member at any of their meetings. Sometimes tough questions have to be asked, and sometimes it may not be easy to provide the answers to these questions. He also stated that if they approve his recommendation to allow the City Manager, City Attorney, Land Use Attorney and the Mayor to meet and try to work things out, Council member Braden's motion may not be necessary.

Councilmember Dixon offered a substitute motion to have the City Manager, City Attorney, City Land Use Attorney and the Mayor to meet, discuss and try to work out some of the issues they have amongst themselves, and report back and make some recommendations to the City Council on July 16, 2018 Council meeting. Councilmember Marler provided a second to the motion.

Mr. Burns stated that the County's Restore Act coordinator would like some clarity regarding what he told them about the City Council wanting to hold up submitting the application;

and that they would like some sort of a motion from this Council to make it clear they do not want the application submitted at this time.

Councilmember Dixon suggests they make a separate motion in that regard.

Councilmember Marler commented that he meant no disrespect to Councilmember Braden or anyone else with his earlier comments. He stated that Councilmember Braden is on point that the City Attorney's job is to provide legal advice to the Council. He consults with the City Attorney from time to time and he has nothing against any member of the Council going to the City Attorney. The City Council makes the policy and they should work with the City Manager to implement that policy.

Councilmember Braden stated he is not sure what kind of issues Councilmember Dixon was referring to in his motion because he believes it is the Council's job to give direction to the City Manager and City Attorneys; and that he feels they have accomplished that tonight. He reiterated that the City Engineer expressed at the last meeting that staff would bring the plans to Council to look at, but the Council does not have the final approval for these plans. The motion he offered earlier was for the City Attorney to make sure the plans are not submitted without Council's final approval. He added that the Council had previously asked for changes to these plans, but those changes have not been made.

Councilmember Dixon stated they could make a separate motion to validate Mr. Burns' recent action before the County Commission.

The Mayor wants to make sure the intent of the current motion was for the group to meet and then make recommendations to the City Council for a chain of command as to who will be the responsible individuals for handling these issues.

Councilmember Destin believes it is basically for the purpose of mediation.

Councilmember Dixon stated that the main purpose of his motion was for the group to try to work out some of the issues that are hurting the City and to make sure they have a united front; adding he is basically asking for mediation.

Councilmember Morgan stated he would vote against this motion only because he supports Councilmember Braden's earlier motion. He continued that he believes in mediation but he also believes Mr. Burns acted in the City Council's best interest.

Councilmember Dixon suggests they ratify Mr. Burns previous action on a separate motion after they vote on the current motion.

The Mayor opened the floor for public comments.

Mr. Dewey Destin warned against asking the group to bring recommendations back to Council; stating that if they meet for the purpose of formulating some proposals back to Council, their meeting would be subject to the Sunshine Law.

Mr. Burns stated that the group can meet and work out any issues they have among them, and then simply report the result back to Council.

Mr. Jim Wood stated that he has served 8 years on the City Council and that there is a way business is conducted, motions are made and majority votes are taken. This is how guidance is given to the City Attorney, City Manager and others; and that anything done behind the scene is considered improper.

The Mayor called for a vote on the motion, which passes 6-1 (Council members Morgan, Destin, Marler, Overdier, Dixon, and Ramswell voted "yes"; Councilmember Braden voted "no").

Councilmember Dixon moved to accept the City Attorney's work with the County Commission advising them to hold up submitting any applications until this board has reviewed and approved the final plan and design of the park. Councilmember Morgan provided a second to the motion. Motion passed 7-0 (Council members Morgan, Destin, Marler, Overdier, Dixon, Ramswell and Braden voted "yes").

Mr. Burns asked if the Council would like to add some items to the next Council meeting agenda such as discussions of the time frame for designing the park since there have been some confusion about this issue. He stated that Councilmember Overdier seemed to recall the plans are going back to the Harbor CRA Advisory Committee for review and recommendations. The plans would then go back before the CRA Board and the City Council for their consideration and then to Tetra Tech for design changes. He continued that the Council may want to go ahead and clarify this issue at their next meeting.

Councilmember Morgan asked if this would take a super majority vote since the agenda for the next meeting agenda has already been published.

Mr. Burns stated that the Sunshine Law does not prohibit adding this item on the agenda at this time.

Councilmember Marler suggests adding this item on the agenda during the agenda approval portion at their next meeting.

Mr. Burns noted it would then take a super majority vote at that time in order to do so.

Mr. Burns also noted that the Land Use Attorney wanted to make sure some of the emails that were included in the agenda materials do not create any Sunshine Law issues. These emails were from individual City Council members to a representative of the County. Because they were included in the agenda materials, there was a question as to whether or not they could create a Sunshine Law issue because the Council was provided the materials ahead of this meeting. He stated that to be cautious in this case, this Council could ratify tonight's motions on an agenda item for the next two regularly scheduled meetings; adding that this cure is created by the Supreme Court

for any Sunshine Law issues. He added they could place this item under the City Attorney Comments or the City Manager Report portion of the agenda.

The Mayor asked why it has to be done twice.

According to Mr. Burns, there was a case where it was done only once and it was ruled insufficient. Some jurisdictions have done it 3 or 4 times; but twice should be sufficient.

Councilmember Braden moved to place on the next two meeting agendas the ratification of all the motions that were made in tonight's special meeting; seconded by Councilmember Morgan. Motion passed 7-0 (Council members Morgan, Destin, Marler, Overdier, Dixon, Ramswell and Braden voted "yes").

The City Manager thanked the Council for attending this special meeting and for ratifying the actions of the City Attorney's designee. She stated it was the only reason she asked the Mayor to call a special meeting because the Council just needed to ratify these actions. She continued that she is also a bit concern and discouraged that there are members of the Council that feel that giving a clear direction is not enough for the City Manager to take the proper action and that they would like the City Attorney to make sure that the City Manager follow Council's direction. She stated that she gives direction to staff, and that staff takes no action without her approval. If there is lack of confidence in her ability to direct her staff, or appropriately take action on clear direction from this Council, she would ask for this Council to take action and not just speak about the lack of confidence in her ability to perform her duties.

The Mayor stated that approving a motion to have the City Manager, City Attorney, Land Use Attorney and himself meet and try to resolve some issues should enable them to come up with some solutions that would help in this matter. He stated that the City Manager bears a tremendous amount of responsibility. He continued he is new on the job as Mayor and that all of his dealings with the City Manager have been professional. He also feels they could all work through some of their differences. As Mayor, he wants a City Manager and a City Attorney that would not only protect him by preventing him from making mistakes, but to tell him "no" when necessary. He would like to focus on making this Council, the City and staff a team to better serve the community.

ADJOURNMENT

Having no further business at this time, the meeting was adjourned at 7:07 PM.

ADOPTED THIS 16TH DAY OF JULY 2018

By:

Gary Jarvis, Mayor

ATTEST:

Rey Bailey, City Clerk