

**MINUTES
REGULAR MEETING
DESTIN CITY COUNCIL
JANUARY 22, 2019
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 Gary Jarvis
Councilmember Steven Menchel
Councilmember Cyron Marler
Councilmember Parker Destin

Councilmember Chatham Morgan
Councilmember Prebble Ramswell
Councilmember Skip Overdier
Councilmember Rodney Braden

Destin City Staff

City Manager Lance Johnson
Community Development Director Louis Zunguze
Parks & Recreation Director Lisa Firth
Finance Director Bragg Farmer
City Land Use Attorney Kimberly Kopp

City Clerk Rey Bailey
IT Manager Webb Warren
Code Compliance Manager Joey Forgione
City Attorney Kyle Bauman

CALL TO ORDER, INVOCATION AND PLEDGE OF ALLEGIANCE

Mayor Gary Jarvis called the meeting to order at 6:00 PM. Pastor Kevin Wendt of Grace Lutheran Church gave the invocation; which was then followed by the Pledge of Allegiance)

AGENDA APPROVAL

Motion by Councilmember Destin, seconded by Councilmember Overdier, to approve the agenda passed 7-0 (Council members Morgan, Destin, Marler, Overdier, Menchel, Ramswell and Braden voted “yes”).

1. APPROVAL OF MINUTES

A) Approval of minutes of January 7, 2019 Special City Council Meeting

Motion by Councilmember Marler, seconded by Councilmember Overdier, to approve minutes of January 7, 2019 Special City Council Meeting passed 6-0 (Council members Morgan, Destin, Marler, Overdier, Ramswell and Braden voted “yes”; Councilmember Menchel abstained from voting).

B) Approval of minutes of November 19, 2018 Regular City Council Meeting

Motion by Councilmember Marler, seconded by Councilmember Overdier, to approve minutes of November 19, 2018 Regular City Council Meeting passed 6-0 (Council members Morgan, Destin, Marler, Overdier, Ramswell and Braden voted “yes”; Councilmember Menchel abstained from voting).

2. PROCLAMATIONS / RECOGNITIONS / **SPECIAL PRESENTATIONS / ANNOUNCEMENTS

3. PUBLIC COMMENTS ON AGENDA ITEMS THAT ARE NOT PUBLIC HEARINGS AND ANY OTHER MATTERS NOT ON THE AGENDA

Mr. Greg Featherston, a Destin resident, representing Emerald Grande and Harborwalk Village, addressed the item on the agenda relating to creating legislative provision for collecting fees at the exit versus the entrance point to a private pay for parking facility. He stated they are not in agreement with collecting parking fees at the exit point, but would remain open-minded to this option. He continued there are a lot of things to consider; including roadway configuration at the intersection of Stahlman Street and US Hwy 98, the parking lot configuration on their property, the ingress and egress available to them and the operation of the parking lot itself. He asked they be given the opportunity to meet with the City Manager and staff on this issue and come back with their findings or for the City Council to hold a public workshop to further discuss this issue.

Councilmember Braden asked why the Emerald Grande is against collecting parking fees at the exit point.

Mr. Featherston explained that the primary concern was it could create a gridlock in the property, which could then affect the traffic on US Hwy 98.

4. CITY MANAGER REPORTS

A) Request from David Theriaque to Dismiss Code Enforcement Appeals/Violations

According to the Land Use Attorney, the subject code enforcement appeals involve three properties located within Destin Pointe, regarding first floor structure within the flood zone. The City of Destin executed a Settlement Agreement last year with the private property owners. The Settlement Agreement provided that the parties would request that FEMA accept Section 1316 Declarations for the subject properties within 95 days, and that the City would subsequently dismiss the pending code enforcement appeal. Due to delays at FEMA, quite possibly at first due to Hurricane Michael, and currently, due to federal government shutdown, the 1316s are still being processed by FEMA. It is believed that ultimately, the 1316s will be issued by FEMA, and that dismissal of the code enforcement appeal will be rendered moot accordingly. Therefore, there is likely little risk to the City in dismissing the pending code enforcement appeals and violations as being requested by Mr. Theriaque, attorney for the property owners. At some point, FEMA is expected to issue the 1316s, and the properties will be removed from the insurance program.

Councilmember Ramswell moved to go forward with the steps necessary to dismiss Code Enforcement Appeals/Violations, as requested by Mr. David Theriaque; seconded by Councilmember Menchel. Motion passed 7-0 (Council members Morgan, Destin, Marler, Overdier, Menchel, Ramswell and Braden voted “yes”).

- B) Receipt of Report from Fisher Planning and Development Services in Connection with Bert Harris Pre-Suit Notice Submitted by Destin Fishing Fleet.

The City Manager noted that the City Council directed him to enlist the services of Ms. April Fisher of Fisher Planning & Development Services to prepare an independent evaluation of the development rights of the subject property based on the City’s Comprehensive Plan amendments, in response to the pre-suit notice of Bert Harris claim submitted to the City by the Destin Fishing Fleet. She asked Council to provide further direction to staff on how to proceed.

Councilmember Destin asked what financial exposure the City may have in terms of attorney’s fees in the event the Fishing Fleet files a Bert Harris claim.

The City Attorney explained that the Bert Harris litigation would be a bifurcated process. The first step would be the trial court determining whether the Fishing Fleet had any vested rights for existing use that has been inordinately burden. Based on the report they received there is substantial likelihood the City will prevail at that stage; and so the City’s primary risk is the attorney’s fees associated with the claim, which is estimated to be \$10,000 to \$20,000.

The Mayor asked whether the City would be required to obtain its own appraisal if they decide not to take further action based on their special counsel’s recommendation and then the Destin Fishing Fleet files a lawsuit.

The Land Use Attorney stated that the City would not necessarily be required to obtain an appraisal at that time. It would depend on how the lawsuit is progressing; adding that the City Attorney feels the City has a strong case.

The City Attorney clarified that the initial step in the proceeding is simply an entitlement as determined by the trial judge. If the Destin Fishing Fleet prevails at that first step, then the City would be required to obtain an appraisal.

According to the Land Use Attorney, she would defer to the Council on whether or not there is an amount they want to offer for a settlement; or if there is anything they wish to discuss as far as settlement. She continued that they should at least provide a statement of allowable uses per Florida Statutes to them; which could be consistent with the existing zoning and comprehensive plan currently in place.

Councilmember Destin moved to direct the City’s legal counsel to communicate a settlement offer of \$12,000 to the Destin Fishing Fleet, and send a statement of allowable uses to the opposing counsel; seconded by Councilmember Braden. Motion passed 7-0

(Council members Morgan, Destin, Marler, Overdier, Menchel, Ramswell and Braden voted “yes”).

Councilmember Morgan asked what legal protections are afforded to the City if they make a bonafide settlement offer.

The Land Use Attorney replied that if the City makes a bonafide settlement offer and the Fishing Fleet rejects it and files a lawsuit, the City could potentially be entitled to reasonable costs and attorney’s fees if the City prevails on the lawsuit because the Fishing Fleet rejected the settlement offer.

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

C) Clement Taylor Park Restoration Request to submit the RESTORE Act Direct Component Grant Application

The City Manager noted that during a presentation at the December 17, 2018 Destin City Council meeting, Council directed staff to ask the Okaloosa County and U.S. Department of Treasury if excluding a portion of the park would interfere with grant funding. A request was then sent to the County, along with the revised drawing, inquiring if a portion of the southeast corner of the park would be considered a material modification to the County’s accepted RESTORE Direct Component Multi-year plan. Based on the fact that the project budget and scope will not change as a result of the exclusion, the U.S. Department of Treasury advised that it would not constitute a material modification. He asked for Council’s approval to move forward with the Clement Taylor Park Restoration Project and submit a RESTORE Act Direct Component Grant application to Okaloosa County for U.S. Department of Treasury review.

Councilmember Overdier moved to authorize City staff to move forward with the Clement Taylor Park Restoration Project and submit the RESTORE Act Direct Component Grant Application to Okaloosa County for U.S. Department of Treasury review; seconded by Councilmember Menchel. Motion passed 7-0 (Council members Morgan, Destin, Marler, Overdier, Menchel, Ramswell and Braden voted “yes”).

D) Announcements
1) Coyote Mitigation

The City Manager announced that by the Council’s direction, staff has scheduled a site visit this week with representatives from USDA-Wildlife Services. This agency also contracts with Okaloosa County to provide the Wildlife Management Plan for the Destin Executive Airport and has experience dealing with this issue. They currently offer relocation services to the County and the City for coyotes found to be rogue. He continued they would have a better idea on what the next steps should be after that meeting. Furthermore, Florida Fish and Wildlife (FFWC) are willing to do some type of education/outreach over the coming months to provide information to the public on human-wildlife interactions and how to best manage and prevent coyote conflict.

The City Manager also made the following announcements:

- Airport Road Engineering RFQ submissions – Presentations on February 4th Council meeting
- Code Compliance after hour complaints
 - ❖ 850-279-6658
 - ❖ code@cityofdestin.com
 - ❖ Information to be placed on all Code Compliance Department vehicles
- Paid Parking Workshop – Monday, February 4th from 5-6 PM, Annex Council Chambers
- Workshop – FLUM & zoning maps alignment – Tuesday, February 26th, 5-7 PM, Annex Council Chambers
- Destin History and Fishing Museum Gumbo Contest on Saturday, January 26th, 11 AM to 1 PM, Destin Community Center

5. PUBLIC HEARINGS

- A) Second reading of Ordinance 18-29-CC – Amendments to Short-Term Rental Ordinance and Establishing Maximum Occupancy Limits.

The City Attorney read proposed Ordinance 18-29-CC by title, and then presented it to the City Council on second reading.

AN ORDINANCE OF THE CITY OF DESTIN, FLORIDA RELATING TO OCCUPANCY LIMITS FOR SHORT-TERM RENTALS; PROVIDING FOR AUTHORITY; PROVIDING FOR FINDINGS OF FACT; PROVIDING FOR THE AMENDMENT OF CODE OF ORDINANCES ARTICLE VI - REGISTRATION OF SHORT- TERM RENTALS; AMENDING SECTION 13-108, LOCAL RESPONSIBLE PARTY REQUIRED; AMENDING SECTION 13-114, POSTING OF SIGNAGE; CREATING SECTION 13-117, OCCUPANY LIMITS; CREATING SECTION 13-118, EXEMPTION FOR PRE-EXISTING AGREEMENTS; PROVIDING FOR INCORPORATION INTO THE CODE OF ORDINANCES; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

The Land Use Attorney noted that the size of the signs was changed to 18” x 18” and the grandfathering clause language has been amended.

Councilmember Overdier pointed out they were going to include everyone with a development order, not just those people who currently have a rental property, with the grandfathering clause.

According to the Land Use Attorney, the Council would need to incorporate that language into their motion.

The Mayor opened a public hearing to receive comments for or against the proposed ordinance.

Mr. Bill Reddington, a Destin resident, noted there were 123 Bert Harris claims filed against the City of Anna Maria as a result of the short-term rental ordinance the City has adopted; and that two of the claims he studies are for \$280,000 and \$260,000. He stated that the same thing would happen to the City of Destin if they decide to adopt the proposed ordinance and limit occupancy; adding that the City's \$100,000 a day limit on Bert Harris claims would not be able to cover these lawsuits. He urged the Council to enforce the short-term rental regulations they currently have on the books and to study the economic impact that regulating occupancy would have to the City of Destin

Mr. Darryl Shelton, a Destin resident, stated that there had been countless hours of volunteer time as well as staff time that have been spent in trying to reach a consensus with regards to regulating short-term rentals in the City's single-family neighborhoods. There have been false accusations made against some members of the Short-Term Rental Task Force. One out of town short-term rental manager even claimed criminal activity against some of its members; while another very large rental management owner stated that the term quality of life was a code word for racism. He continued that one side wants no regulation at all while the other side claims the proposed ordinance is far too liberal especially with regard to the large number of occupancy being allowed. He searched the internet to find occupancy limits that is as liberal in other cities around the country without success. He read House and Senate bills that propose to regulate short-term rentals and found none with liberal occupancy limits as the proposed two people per bedroom plus 4 more people (2+4). He feels that adopting a regulation that proposes a 2+4 occupancy limit, with a maximum of 24 occupants, would be a step in the right direction. He urged the Council to adopt the proposed ordinance; or, they would be risking losing the support from people as it would appear they are in favor of the State legislation preempting home rule.

Mr. Chad Blankenship, a Destin resident, stated that he works for a vacation rental company. He then asked the following questions:

- *How will the number of required parking spaces be determined?*
- *Will the sign stickers be numbered, in order to prevent theft?*
- *Will the grandfather clause remain in effect if the property sells?*
- *While the sign must be 18" by 18", is it possible to have a rider under the sign that has the specifics to the house (i.e., occupancy levels and number of parking spaces)?*
- *In reference to section 13-114(c) of the ordinance, what would an example be when the responsible party's phone number is different from the rental contact phone number?*

Mr. Blankenship also stated they are not against regulation as long as they are fair, equitable and enforceable.

Ms. Gail Pipes, a Destin resident, stated that many short-term rental owners do not like the proposed ordinance because it would prevent them from bringing in a crowd of people into a house in a residential neighborhood. She urged the Council to consider the quality of life of the full time by adopting the proposed ordinance. It is a win-win proposition for those who are for or against

short-term rentals. It is fair not only to the rental property owners and renters, but also to full-time residents of the City.

Mr. John Pipes, a Destin resident, stated that he listened attentively to both sides of the argument and tried to be open-minded. There are a lot of rental property owners that do a good job controlling their renters making sure they follow the rules and regulations in the neighborhood. But, there are also a fair amount of uncontrolled situations. Many believe that the root cause of the problems is occupancy; and that he believes the proposed ordinance would allow the City to more effectively manage these situations.

Mr. Dan Burns, a Destin resident, stated that his family has had to deal with the consequences of the actions of individual rental corporations. His parents bought their dream house in the early 1980s and lived in that house for over 35 years. They very rarely had any problems because their neighbors cared about their neighborhood. They would never allow their houses to be used as party houses packed with multiple families, or wedding venues with hundreds of attendees. They have seen incredible changes that occur in Destin over the years; most of which have worsen the lives of many people that live here. Today, in many residential areas of Destin, individual owners and corporations who own single-family houses have no respect for the full-time residents. They advertise 4-bedroom houses in a single-family neighborhood as capable of sleeping 20 or more people. Some of the owners have tried to intimidate residents who complaints with threats and other harassments. He asked the Council to consider what kind of rental house they would want their elderly parents, their young children or family to live next to during their deliberation.

Ms. Marcie Bell, a Destin resident, noted that she was previously approached by a member of the short-term rental industry and asked her if she would support an occupancy standard of 2+4. She did not have an opinion at that time, but she now feels it is a good start; adding they can live with it during the upcoming summer season and then readdress the issue afterwards, if necessary. She also reported having a new short-term rental in her street even though the homeowner previously denied renting the home. However, parties are being conducted in that home, with loud music being played and shouting matches among the occupants. They later found out the home is a vacation rental home, but they refer to it as "co-hosting through Airbnb." They claim they do not have to register the property with the City and had a list of thing they did not have to do. The City staff contacted the owners today and informed them they need to register the property and follow all the rules for short-term rentals. She urged the Council to be aware of individuals or groups that try to get around the rules.

Mr. Ben Giles, a Miramar Beach resident, read the following statement from Florida Statute, Section 509.242(1) (A): *"A hotel is any public lodging establishment containing sleeping room accommodations for 25 or more guests and providing the services generally provided by a hotel and recognized as a hotel in the community in which it is situated or by the industry."* He then stated than none of the short-term rental homes in Destin meet this definition. He also stated that his houses on Hutchinson Street and Woodward Street should not be included in the proposed ordinance. They are located in mixed-use zoning and not residential zoning, with a classification of Crystal Beach Resort; which is similar to the nearby hotel as well as the Henderson Beach Inn. He

added that cutting his occupancy by 40 percent would have serious detriment to his business and so he has no choice but to oppose this ordinance.

Councilmember Ramswell noted that the City's Land Development Code defines hotel as *"an establishment where lodging is provided for compensation other than in a dwelling unit and for 25 or more person"*; and that she stands by this definition.

Ms. Diana Barnes, resident of Texas and a short-term rental property owner in Destin, stated that she purchased her home in 1995 knowing it would have to be rented to be able to pay the mortgage, taxes, insurance and repairs, while at the same time allowing her family to use the property. She continued there have been many references made to the ordinance adopted by the City of Anna Maria; but, they should not base their decision on an ordinance from another city whose demographics, size and scope of tourism, residential and seasonal population and stature differ greatly from Destin. She stated that the proposed ordinance would affect the livelihood of many property owners in Destin. She also stated that if her livelihood is to be altered by a Short-Term Rental Task Force, she would like that Task Force to be balanced and fairly created. She asked the Council to suspend their vote on the proposed ordinance until such time there has been a thorough and careful analysis of facts by a Task Force equally represented by people who are in favor of or against short term rentals, that a revision of the proposed ordinance has been prepared and all property owners in the City of Destin have been properly notified of the proposed change.

Mr. Ken Wampler, a Destin resident, discussed the economic impact of tourism to the City of Destin. He stated that Okaloosa County collects about \$400 million in bed tax money; most of this money is generated by people staying in lodging establishments. About \$276 million are collected by the bed tax collectors from tourists, and approximately \$188 million is generated in ancillary income in services, such as fishing, restaurants, and entertainment. He stated that tourism generates a lot of income for the City of Destin, its residents and businesses. The Tourist Development Council (TDC) approved funds for the dredging of the East Pass; the residual effect of which is that Holiday Isle is getting sand for which its residents did not have to pay. They also secured funding for the crosstown connector for \$3.5 million. He asked the Council to delay adoption of the proposed ordinance; adding that addressing parking, noise and trash would solve the other ancillary problems they are experiencing.

Mr. James Barnes, a resident of Texas and rental property manager in Destin, stated that the Short-Term Rental Task Force did not represent all the stakeholders in Destin. The 7 person committee consisted of two anti-short term rental residents and two board members of Holiday Isle Improvements Association who is actively trying to get rid of short-term rental homes. He continued that another member of the Task Force is also a member of the Florida Restaurant and Lodging Association that is well known for their lobbying efforts against short-term rental homes. Only two members of the Task Force are pro-short term rentals. The non-resident short-term rental owners were not represented at all. He also argues that the Task Force made a rushed decision even though there is so much information to consider; and that the livelihood of short-term rental owners would drastically be changed by this committee's recommendations. He urged the Council not to copy the City of Santa Maria's occupancy ordinance and adopt it for the City of Destin as the size

and scope of tourism and rental, and potential Bert Harris claims in the two cities are not even remotely comparable.

Mr. Scott Meadow, a Texas resident and property owner in Destin, stated that he and his family started coming to Destin in the early 1990s. They came to Destin because of tourism and bought their first of several properties in 2014. They have a great management company that manages their property. They even hired an outside company to oversee the management company. He also stated that they are active owners who care about Destin. They are in Destin 5 months out of a year, and they work hard to take care of their properties. He asked the Council to keep in mind that the short-term rental industry brings in a lot of money to Destin.

Having no further comments from the public, the Mayor turned the matter over to the City Council for discussion and consideration.

Councilmember Ramswell asked the Land Use Attorney to address the issues raised concerning the City of Anna Maria and the Bert Harris claims.

According to the Land Use Attorney, she and the Mayor had some discussions with the attorney for the City of Anna Maria regarding the Bert Harris claims and the amount of money spent in settling their cases. They were informed that no dollars have been spent in settlement payouts so far; instead, the City of Anna Maria grandfathered in some of the occupancy. The City of Anna Maria had a maximum occupancy of 8; but, they grandfathered in occupancy of 2+2. The City also sent out notices to short-term rental property owners advising them that they have a statutory time limit of a year to file a Bert Harris claim or lose their chance to do so.

The Mayor asked the Land Use Attorney to address the claim that out of town rental property owners were not properly notified of the action being contemplated tonight.

The Land Use Attorney stated that they have followed all code and statutory requirements; adding there is nothing in the code requiring the City to do more than what they have already done in this case. She added they have also been discussing this issue in public meetings for over two years.

Councilmember Marler noted that out of town property owners contribute to the property taxes that they use to run the City, and that they should be given the same rights as the permanent residents. He continued that the action this Council is contemplating on taking tonight may have some economic impacts, such as reduced property taxes and bed taxes. They already have many rules and regulations on the books. They should give them a chance to work before they pass any more ordinances. He also stated they have to get used to the fact that Destin is as resort community, and that they need to be fair to each of the parties involved in this case.

Councilmember Marler moved to continue second reading of Ordinance 18-29-CC to the second City Council meeting in October 2019 to allow the Code Compliance Department to enforce and collect data on the current short-term rental ordinances; and

determine at that time if other rules and regulations, including occupancy, need to be applied., Motion died for lack of a second.

Councilmember Overdier moved to approve Ordinance 18-29-CC on second reading, with an added stipulation that anyone with a current development order approved by the City of Destin be added to the grandfathering clause; seconded by Councilmember Ramswell.

The Land Use Attorney noted they could add the stipulation regarding the grandfathering clause to the ordinance without bringing it back for another reading; unless the Council wants staff to bring it back.

There is a general consensus not to bring the ordinance back for another reading if the motion passes.

Councilmember Menchel noted he had previously asked Capt. Nix from the Sheriff's Office if he would be in the position to run the calls for service to all enforcement actions at rental houses during the season to give the City a better way to ascertain if in fact things are being policed properly. He feels that with the new Code Compliance Department and the Sheriff's Office, they would have a better understanding of where they stand in this case.

According to Capt. Nix, they would be able to track it again this year and provide a report to the City at the end of the season.

Mr. Joey Forgione of the Code Compliant Department noted they would be working a lot closer with the Sheriff's Office this year. They would contact the Sheriff's Office upon receiving a complaint and they would respond together. They would also document the complaints and provide a copy of the report to the desk sergeant; adding they would build a case file for the problem houses for future action, if necessary.

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

- B) Second reading of Ordinance 18-23-LC Amend Section 7.12.01(A)2 of the Land Development Code changing the designation of an 11.543 acre parcel of land located on U.S. Highway 98 from Commercial General (CG) to Town Center Mixed Use (TCMU)

The City Attorney read proposed Ordinance 18-23-LC, and then presented it to the City Council on second reading.

AN ORDINANCE OF THE CITY OF DESTIN, FLORIDA, AMENDING THE OFFICIAL ZONING MAP AS REFERENCED IN THE LAND DEVELOPMENT CODE, SECTION 7.12.01(A)2 ZONING MAPS TO INCLUDE A CHANGE IN THE ZONING DESIGNATION OF AN 11.543 ACRE AREA OF LAND LOCATED ON U.S. HIGHWAY 98, DESTIN, FLORIDA FROM COMMERCIAL GENERAL (CG) TO

TOWN CENTER MIXED USE (TCMU); PROVIDING FOR AUTHORITY; PROVIDING FOR FINDINGS OF FACT; PROVIDING FOR JURISDICTION; PROVIDING FOR ZONING MAP AMENDMENT; PROVIDING FOR INCORPORATION INTO THE LAND DEVELOPMENT CODE; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

The City Clerk sworn in the following individual for testimony:

- Mr. Chip Dillard
- Mr. David Stenecki

The Land Use Attorney noted they have nothing to add to this ordinance, which was previously heard by the Council, unless the applicants want to speak.

Councilmember Destin expressed concern that if they went ahead and approve the rezoning of the property and provide the increase in density, there are no assurances that if the property is sold to a different developer that the new to stay within the current proposal. He recommends tabling this item until after the FLUM Workshop scheduled for February 26th which would include the TCMU discussion.

Councilmember Destin moved to table this item until after the FLUM workshop on February 26th; and instruct the City's Land Use Attorney and staff to explore any avenue they can use in lieu of rezoning that would allow the applicants to get their designation for long-term rental use of their property. Councilmember Braden provided a second to the motion.

Councilmember Morgan wants to know if they could legally put a condition in the development order to hold the applicants to 16 instead of 24 units per acre.

The Land Use Attorney stated it is something she would have to discuss with the applicant.

The Mayor inquired as to the timeline the applicants have to conduct their due diligence before they have to execute the contract to purchase the property.

The applicant expressed concern that if they waited until after February 26th, they could run out of time to execute the contract and put a significant amount of money at risk. He also noted that the number of units they have presented was way under the limit for the zoning.

Councilmember Destin reiterated there are no legal guarantees the applicants will not change their mind later on; adding that if they sell the property, there is nothing that would legally bind the new owner to stay within the current proposal.

Councilmember Morgan added that if the applicants are sincere with their proposal, they should not have any problems putting a deed restriction or condition in their development order to keep it at 16 units per acre.

Councilmember Marler offered a substitute motion to approve Ordinance 18-23-LC on second reading. Motion dies for lack of a second.

Councilmember Braden stated that every developer seemed to want to cram as many units per acre as they possible could on a small property and short-term rental owners try to build large houses and pack as many people as they could into those houses in an effort to make as much money as possible. He continued that people always talk about preserving the City's heritage and protecting the quality of life of the citizens; however, they always do just the opposite.

Councilmember Menchel noted there have been some instances when the Council had given their seal of approval on a project that did not go the way it was planned. He suggests scheduling an earlier workshop because what happens in that workshop may or may not effect this proposal.

Councilmember Destin explained that the reason for his proposal to table this issue until after the February 26th workshop was to simply give staff time to come up with some other mechanisms, in lieu of rezoning, that would allow the applicants to get their designation for long-term rental use of their property. He continued that one of the main reasons for the workshop was to address the Town Center Mixed Use (TCMU) from the visioning standpoint and address the question of why they have some high densities set up in the TCMU instead of single-family residential homes to encourage long-term residents in Destin.

The Land Use Attorney informed the Council that she has just spoken with the applicants and they have requested to continue this item to the February 4th Council meeting to allow them time to get approval from the property owner to volunteer some conditions for the property.

Councilmember Ramswell wants to know the difference unit-wise between TCMU and Commercial General (CG).

According to the Community Development Director Louis Zunguze, the main difference between the two districts the way the comprehensive plan is set up now is that there is more creativity in the TCMU for pedestrian oriented amenities and similar type of enhancements. Depending on the size and shape of the lot, they may or may not maximize that level; whereas under CG, they simply do what they are entitled to do. There is not much flexibility in terms of creativity between the City and the developer.

Concerning the request from the applicant to continue second reading of the ordinance to February 4th, Councilmember Ramswell pointed out that their workshop is scheduled after that date and so they would not have rezoned anything by February 4th.

The Land Use Attorney clarified that the applicants are concern about the timing because of their pending contract to purchase the property. They only have until the end of February to

decide what to do at the end of their due diligence period; and so if they could get the approval of the owner to volunteer some condition, they would then be able to rezone and satisfy the concerns some of the Council expressed tonight.

Councilmember Destin offered an amended motion to continue second reading of Ordinance 18-23-LC to February 4, 2019 to allow applicants time to get approval from the property owner to volunteer some conditions for the properties. Councilmember Menchel provided a second to the amended motion.

The Mayor opened a public hearing to receive comments for or against the proposed ordinance. Having none, the Mayor called for a vote on the motion.

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

6. CONSENT AGENDA

- A) Request for use of City rights-of-way for Valentine's 8K run
- B) Request for use of the City's rights-of-way for Chiropractic Run for Health
- C) Second Addendum to 3TP planning consultant contract.

Motion by Councilmember Marler, seconded by Councilmember Overdier, to approve Consent Agenda items 6A thru 6C, as printed above, passed 7-0 (Council members Morgan, Destin, Marler, Overdier, Menchel, Ramswell and Braden voted “yes”).

7. COMMENTS/PRESENTATIONS FROM MAYOR, COUNCIL, LAND USE ATTORNEY AND CITY ATTORNEY

- A) Councilmember Braden
- B) Councilmember Ramswell

Councilmember Ramswell announced that the Destin High School plans are moving forward. They have made significant progress and they actually have a financial consultant who will look at various properties and make some selections and possibly some negotiations.

- C) Councilmember Menchel

Councilmember Menchel requested that the City Manager draft a letter to FDOT urging them to change the starting time for the 3R project on US Hwy 98 from February to August 2019 to alleviate the bottleneck on the road.

- D) Councilmember Overdier
- E) Councilmember Marler
- F) Councilmember Destin
 - 1) Discuss creating legislative provision for collecting fees at the exit vs. the entrance point to a private pay for parking facility

Councilmember Destin moved to direct staff to conduct some research on this issue and to draft a proposed ordinance for Council to consider; seconded by councilmember Ramswell.

Mr. Greg Featherston, a Destin resident, requested that they be allowed to work with staff and provide them the information they have available regarding this issue.

The Mayor suggests the City contacts all affected property owners along the harbor with a private pay for parking facility and encourage them to participate in the discussion.

Councilmember Marler suggests they delay making decision on this issue until after they have their discussions on what to do with their own parking lots.

Motion passed 6-1 (Council members Morgan, Destin, Overdier, Menchel, Ramswell and Braden voted “yes”; Councilmember Marler voted “no”).

- G) Councilmember Morgan
- H) Mayor Gary Jarvis

The Mayor suggests that since the purchase of Gulf Power by NextEra Energy is now complete that the Council authorizes Councilmember Destin to re-negotiate the franchise agreement or discuss the right to purchase agreement with Gulf Power and then report back to Council by the first meeting in March 2019.

Councilmember Destin noted that both he and Mr. Schef Wright, special counsel for the City, have been in contact with Gulf Power after the acquisition with regards to continuing the negotiations. He stated that Gulf Power was very receptive and anxious to meet. They have their new CEO and senior staff members, and they plan to contact the City within the week to set a date to meet and continue the negotiations. He added they will give the Council a full report as soon as that meeting takes place.

I) Land Use Attorney

- 1) Update on TRC Status, as of January 22, 2019. (Section 2.26.04(E), Land Development Code; Pursuant to Ordinance No. 1806LC).

The Land Use Attorney reported that the City has not received any development applications since the last update in January, and so there will not be a TRC meeting in February. The next TRC meeting is Tuesday, March 19th.

J) City Attorney

- 1) Update to East Pass dredge administrative action

The City Attorney reported that on Tuesday, January 15th, the Board of County Commissioners met and considered the Sherry's settlement offer. The offer was for the sand to be split 50-50 between the City of Destin and Okaloosa Island. He stated that the County Commissioners voted to accept the settlement offer and instructed the County Attorney to negotiate a final written settlement agreement with Donovan and the Sherry's. He continued that the settlement agreement is contingent upon FDEP's acceptance of the agreement. He believes the County is trying to make FDEP a party to that agreement because FDEP has the final authority over the placement of the sand. However, FDEP is bound by State Statute which requires the sand to be placed on the adjacent eroding beaches; therefore, there is no guarantee that FDEP will accept the settlement agreement. In which case, the City of Destin needs to make sure they are in a position to act accordingly and as quickly as possible to get the East Pass dredged in the event FDEP disapproves the settlement agreement. He asked the Council to consider approving a motion directing him and the City's special counsel Ken Oertel to take action to ensure the East Pass is properly dredged, including petitioning FDEP for an emergency order allowing for the dredging of the East Pass.

Councilmember Destin moved to direct the City Attorney and the City's Special Counsel Ken Oertel to take action to ensure the East Pass is properly dredged, including petitioning FDEP for emergency order allowing for the dredging of the East Pass, in the event FDEP does not approve the settlement agreement between Okaloosa County and Donovan and the Sherry's. Councilmember Menchel provided a second to the motion.

The City Attorney noted that he and Mr. Greg Stewart of Okaloosa County drafted some additional language on the temporary easement agreement because the "gap" property owners were skeptical of executing the easement agreement as it existed and wanted more protections. They also worked with Oceana's attorney in drafting the language acceptable to Oceana.

Mr. Guy Tadlock noted that the additional language the City Attorney spoke of would be very helpful as there have been some misunderstandings among the "gap" property owners as to what exactly is going on. He also noted there is a deadline that is quickly approaching, and so they need to work hard and quick on this issue.

The City Attorney noted that the County has artificially imposed a February 1st deadline; however, they really have until the date that the dredge actually arrives.

Motion passed 7-0 (Council members Morgan, Destin, Marler, Overdier, Menchel, Ramswell and Braden voted "yes").

The City Attorney also pointed out that Donovan and the Sherry's Administrative Action was previously dismissed by the FDEP. They filed a motion for extension of time to file an amendment to this action. He recommends the Council approving a motion allowing him and Mr. Oertel to file a document opposing the request for extension of time.

Councilmember Destin Motion to direct the City Attorney and the City's Special Counsel Ken Oertel to file a document with FDEP opposing granting Donovan and the

Sherry's additional time to amend their petition preventing the City of Destin from dredging the East Pass; seconded by Councilmember Ramswell. Motion passed 7-0 (Council members Morgan, Destin, Marler, Overdier, Menchel, Ramswell and Braden voted "yes").

The Mayor suggests that after the East Pass is dredged, that they work with the FDEP so that the City of Destin can act accordingly and in a more standalone capacity in the future.

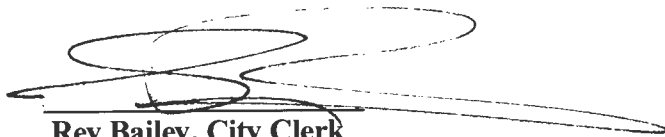
The City Attorney noted that he and Mr. Oertel have been planning on ways for the City to avoid finding itself in the same predicament in the future and to be able to do the dredging more properly.

Having no further business at this time, the meeting was adjourned at 8:15 PM.



Gary Jarvis, Mayor

ATTEST:



Rey Bailey, City Clerk