

RELEASED PORTION ON POLICE DEPARTMENT LITIGATION AT THE TUESDAY, NOVEMBER 8, 2016 COUNCIL MEETING

**APPROVED AND SEALED AT THE JUNE 10, 2014, COUNCIL MEETING
RELEASED MARTIN LAWSUIT AT THE FEBRUARY 10, 2015 COUNCIL MEETING**

**CLOSED SESSION MINUTES
MOREHEAD CITY, N.C.**

TUESDAY, MAY 13, 2014

The Honorable Council met in CLOSED SESSION in the Council Chambers of the Municipal Building, 202 South 8th Street, Morehead City, N.C., during a Regular Meeting of the Council held on Tuesday, May 13, 2014, at 5:30 p.m., as per G.S. 143.318.11[a] to approve the CLOSED SESSION MINUTES of Tuesday, April 8, 2014; to receive an update on the Martin vs. Town of Morehead City litigation, D.H. Griffin Contractors vs. Town of Morehead City litigation and discuss other potential litigation with the City Attorney. Those in attendance were:

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| MAYOR: | Gerald A. Jones, Jr. |
| MAYOR PRO TEM: | George W. Ballou [Absent] |
| COUNCIL: | William F. Taylor |
| | Demus L. Thompson |
| | Harvey Walker |
| | Diane C. Warrender |
| CITY MANAGER: | David Whitlow |
| CITY ATTORNEY: | Nelson Taylor, III, Derek Taylor, Mike Thomas |
| CITY CLERK: | Jeanne M. Giblein |

Potential Lawsuit – Jack’s Waterfront Bar, 512 Evans Street – Jeff and Keri McCann

City Attorney Nelson Taylor distributed a complaint which his firm is prepared to file. He explained that in the early 1900’s the original seawall was done by contract between Morehead City and contributions on the part of the property owners. Fill would be pushed behind it and the owners’ property lines would continue to the seawall. In the 1980’s the first seawall project was 4th Street, it did not come to the end of 6th Street as the Town ran out of money. In the 1990’s the Town came back with another project when the 6th and 7th Streets wall collapsed. The North Carolina Railroad agreed that Morehead City could repair the seawall. In a phone conversation, City Engineer Tyndale Lewis explained to City Attorney Nelson Taylor that the project began at the end of 6th Street and encompassed 7th and 8th Streets. In 1994, the project was completed. The new seawall pushed five [5] feet seaward from the old seawall. The early 1900’s agreement does not have anything to do with the new seawall.

Since 1994, Morehead City has exercised dominion over that area. The Town can prove 20 years adverse possession. Since 1994, there have been a number of agreements for individuals to use the area. The Davis Fish Company had two [2] headboats with an agreement with the Town of Morehead City for dockage space. Lucky International entered into an agreement with the Town of Morehead City even before the new seawall was finished

for use of the water area. Lucky International specifically provided that the dock area would be kept open to the public.

The McCanns came in after that period. They have admitted that the boardwalk belonged to the Town of Morehead City. The complaint says that the Town of Morehead City is the owner of that property. City Attorney Nelson Taylor felt that the City had a strong case and that the State of North Carolina should be a part of this action. If there is a dispute on the title of the land, if the state has any possible ownership, the state can be part of the dispute. With titles to real property, it is presumed that the state owns the property.

City Attorney Nelson Taylor proposed the following options:

1. Discuss this with the state and hope the state will give us a quick claim deed to the property.
2. The argument would be that the state and the City has done all it can for the public.
3. It is possible that the state could ask about the prior rental income the City has collected and request that the City pay something to the state.

City Attorney Nelson Taylor would file the complaint in June after the City Manager had an opportunity to discuss the matter with the state. Another option is to contact the attorney for CAMA and question why they are allowing this bar to use state waters? Why is a bar being allowed to exclude the public from public waters?

Councilman Walker MOVED, seconded by Councilman Taylor, and carried unanimously [Councilman Ballou absent], to return to OPEN SESSION.

Gerald A. Jones, Jr., Mayor

Attest:

Jeanne M. Giblin, City Clerk