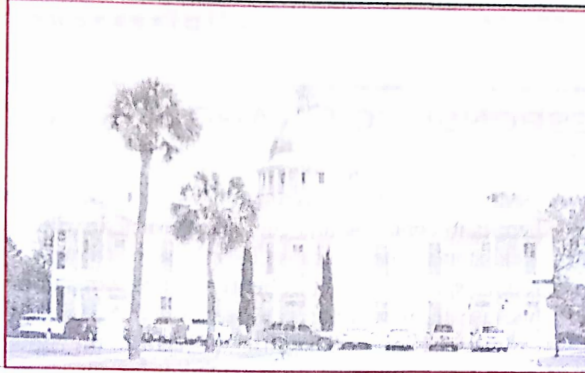


# Dispatches from DeFuniak



# From Councilman Ron Kelley

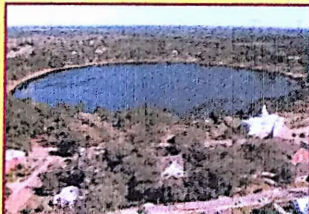
D E F U N I A K

F L O R I D A

S P R I N G S

### SPECIAL POINTS OF INTEREST:

- Walton County Heritage Museum on Circle Drive.
- The DeFuniak Springs Library on Circle Drive.
- The Chautauqua Winery on U.S. Hwy. 331 South.



## SO ARE THE DAYS OF OUR LIVES

Greetings!

“Like sands through the hourglass, so are the days of our lives.” Those words once opened a popular soap opera and still seem fitting today.

Despite insistence by a few that some great tragedy has occurred and the sky is surely falling, life goes on without a ripple on the waters of our daily lives. Business is booming, people are working and great things are coming to our lovely town.

Remember hearing that the City Council would not be receiving any more grants because of the accusations made in the local Grand Jury Report? Not true at all.

The City continues to rack up grants. We will soon be receiving an FDOT grant in the amount of \$2.9 million

dollars over the next two years for the City’s Industrial Park site development and access road improvements in preparation for a 5,000-foot runway. The runway extension itself is still a few years away because these other steps have to be taken first. Laying the groundwork is never glamorous, but it must be done or the big, flashy things will never occur.

We’ll also be getting a CDBG (Community Development Block Grant) in the amount of \$700,000 to replace a sewer main and repave a section of Live Oak Avenue between U.S. 331 and 23rd Street.

I must confess that I do take some satisfaction in pointing out that this was just another baseless rumor that has now

been put to rest.

Last, but certainly not least, the Council has agreed to keep the millage rate at the same, low 4.5 mils. In other words—no tax increase again this year!

The Council members feel that our citizens are taxed enough already and should not have to endure any more. Interim City Manager Craig Drake said our various department heads had already trimmed away the fat before submitting their budget requests. The Council will be able to balance the budget, while continuing to meet the needs of our community.

In my opinion, that is what good fiscal responsibility is all about.

- Councilman Ron Kelley  
July 25, 2018

## SILENCE SPEAKS LOUD AND CLEAR

Recently, the City received a letter from the Internal Revenue Service claiming that the city owes \$95,000 in back taxes and penalties from 2014.

With most federal agencies, information would have been quickly forthcoming and the city would have been able to determine what may have caused the problem. However, this is the IRS.

The Council had to authorize the city’s auditing firm, Saltmarsh, Cleveland and Gund, to address the issue with IRS representatives. Mayor Bob Campbell quickly called former Finance Director Joe Brown, who sent a letter saying that failure to make proper payments began during

the term of previous Finance Director Thomas Carman. Brown said he thought he (Brown) had corrected the issue by the time he resigned and felt that the current problem was little more than a clerical error by the IRS.

City Marshal Mark Weeks just reported that during that time, some of the Police officers were notified by the Social Security Administration that they had not paid sufficient funds to SSA. This was news to the Council.

There are several takeaways from this issue. One, if Joe Brown’s letter is true, then this is yet another case where a city official made the decision to hide a significant problem from the Council, and ultimately failed to resolve it. In this case, Brown’s letter makes clear the fact

that he was aware of the IRS issue yet he obviously failed to notify the Council. Sound familiar?

Council members, not being psychic, had no way of knowing it had occurred. It was not caught by the city auditing firm either.

The second point is — if Social Security payments were incorrect, that would be the fault of the IRS — not the City. No one pays money directly to Social Security. We all pay the IRS—who then sends funds to Social Security.

If the City owes anything at all, it will be because the finance director willfully hid the facts from the Council — again.

Same song, second verse.



## CITY'S RESPONSE TO GRAND JURY REPORT

In regards to the Grand Jury Report released on February 8, 2018, the city's legal firm, Adkinson Law Firm, spent several months researching that document, along with City records and state documents, and wrote a response that was released on May 28, 2018. Clay Adkinson produced the 23-page document on behalf of the DeFuniak Springs City Council.

In this issue, we will examine the City Report, the facts and conclusions it contained and my own observations. Obviously, since the document was written by an attorney, it requires careful study. I have reviewed the document, sought clarification and found its conclusions to be credible and well-reasoned.

Before proceeding, let me say that the City has no criticism for the members of the Grand Jury, who appeared to be decent, law-abiding citizens selected from the local jury pools. However, they may have been given incomplete or erroneous information from which to draw conclusions.

In any grand jury proceeding, the State Attorney's Office is able to present whatever information it chooses, in whatever fashion it chooses, without restriction. Obviously, it will only present information to the grand jury that supports its case and the conclusion it desires the grand jury to reach. No one else gets a chance to introduce additional information or offer a rebuttal to the information the state attorney has presented.

I know that does not seem fair but that is how a grand jury proceeding works. Florida is also one of the few states that allows a grand jury to be convened without an indictment being sought, as in this case. Instead, the state attorney, through the grand jury, is allowed to simply critique a governmental agency and offer its own recommendations. It should also be noted that its recommendations are just that – recommendations. They carry no legal weight, nor is there any legal requirement to act on them.

Now to the City Report. My goal here is to condense and summarize Mr. Adkinson's report because I don't have room for the 23 pages in the report and because legal writings can be difficult to follow. However, his original report and all its supporting documentation is available on the city's website [www.defuniaksprings.net](http://www.defuniaksprings.net).

In the introduction, Mr. Adkinson explains that grand jury proceedings are secret under the law. The identity of the jury members and the testimony they received are not public, nor are court transcripts available to the public. Also, the City cannot be represented by legal counsel in a grand jury hearing or confront witnesses or introduce rebuttal evidence.

Under the heading of Financial Audits, the City Report notes that \$220,975 was withheld by the state due to the late postings of the City's fiscal year audits, which must be filed with the state each year. The Grand Jury report called for improve processes in the financial matters of the City. However, as Adkinson wrote, "It must be noted at the outset that many of the issues identified as failures by the City were not process or systemic, but rather the function of individuals not following tasks or processes that were in place."

In other words, the problems were not due to a lack of financial processes or protocols, but by individuals not doing their job.

The City Report goes on to say, "The Grand Jury's comments on this mentions 'instability' and the efforts of 'other City employees attempting to pick up the slack and perform job duties [outside their position, training and experience].' That commentary, while rightly commending the efforts of City staff to fill a void, only scratches the surface of the extent of the actual problem.

"The last person to hold the Director of Finance position in the times relevant to the Grand Jury report was an individual by the name of Joe

Brown. Mr. Brown is not mentioned in the Grand Jury's report...Mr. Brown's dereliction of duty, by failing to properly respond or even notify the City Council of the nature of the State's communications in a sufficient manner, prevented the City from being able to mitigate or avoid the imposed financial penalty.

"This is not to excuse the failings of other officials who received similar communications from the state of Florida, or who became aware of these issues, including the Mayor and City Manager. As this subject falls under the direct duty that the Director of Finance held, any discussion on this subject is incomplete without directly stating that Joe Brown failed to perform his duties on behalf of the City..."

"For these reasons, it appears grossly inadequate to comment on failings of the City without directly addressing individuals eschewing their public duty. Exacerbating matters, a former (Interim) City Manager raised the allegation, in writing, that an active effort, between the Mayor and Joe Brown, to conceal the audit deficiencies and loss of tax revenue from the City Council was ongoing."

In other words, the City Report confirms that the Grand Jury's comment on "instability" was inadequate because it did not consider Brown's failure to do his job or the failure of Mayor Campbell and former City Manager Sara Bowers to inform the Council of the problem. In fact, none of the three ever responded to the state at all.

As the City Report correctly notes, "No amount of process or procedure can resolve an issue that is brought about by the intentional wrongdoing and subversion of existing policies by one or more individuals."

The Grand Jury also suggested that the City suffered from a lack of institutional knowledge in finances. However, the City Report noted that a closer ex-



amination of the facts “cast doubt on the idea than an inadequate knowledge of finance was present within the City.” After all, City Manager Sara Bowers, who had previously been the director of finance for two decades, was present at City Hall and should have been able to recognize the failings of the current director. “The Grand Jury attempts to remedy knowledge and institutional instability by placing the City Manager directly over the Director of Finance in a control capacity...the suggestions offered would appear to create potential conflicts with the required role of each position. Given that fact, the interplay the Grand Jury recommends is curious and appears to overlook internal controls that must exist.” In other words, their “fix” would have caused more problems.

The City Report does agree that the turnover of Finance directors was a contributing factor in the problems and the Grand Jury report made several recommendations relating to the financial system, chain-of-command, software and debt structure. Most of those recommendations were actually taken from the exit letters of former Finance Director John McCue, who only served for five months, and Joe Brown, who was at the heart of this controversy, but was completely ignored by the state attorney.

However, as the City Report correctly notes, any person coming into that position should not merely comment on perceived problems but actually “bring forth proposed plans of action for the Council to implement.” That did not happen here.

The City Report also questions why these issues were not identified by the City’s auditing firm and suggests that in the future, a more thorough scope of work be identified, as well as timelines to be complied with and that these safeguards be included in future agreements between auditors and the City.

Under the heading Reserve Accounts, the Grand Jury noted that minimum balances were not properly maintained in accordance with an ordinance passed by a previous Council in 2000. The City Report also notes that while hav-

ing a Finance director undergo training on DeFuniak Springs City Code, it is more important that the director actually fulfill their duties – “something prior Finance Directors did not do.”

The Grand Jury correctly pointed out that the proper balances were not maintained but made no mention of the fact that on Sept. 26, 2016, the Council instructed Joe Brown to make the necessary transfer into a reserve account, yet he failed to do so. As the City Report states, “This clearly was an example of a Director of Finance completely failing to perform required duties, even when instructed to do so by the City Council.”

There is also no mention of the fact that the City Reserve Accounts dropped below the required amounts starting in 2007 (during the tenure of Mayor Harold Carpenter and City Manager Kim Kirby) and continued on for four years through 2011, when three new Council members inherited the deficit.

The next section of the City Report is titled BP Settlement Money and notes that this was another criticism of the Grand Jury report. The Grand Jury found it “frightening to think that \$386,000 could be received and expended without drawing the attention of anyone.”

As I have noted before, since it was not specifically earmarked by the Council, in a \$20 million budget, the money – spent over several months’ time on routine expenditures – would be *unlikely* to be noticed by anyone.

The City Report actually delves deeper into this. It states that the Grand Jury assumed this was a once-in-a-lifetime windfall and should have been earmarked. However, the City Report correctly states that the BP settlement money was not RESTORE Act funds, Triumph Gulf Coast funds, NRDA or any other type of funds that would come with strings attached in terms of use. In fact, the funds were *replacement* dollars that the City would otherwise have received, had it not been for the BP Deepwater Horizon oil spill.

The Grand Jury report suggests that the deposit and later expenditure of these funds was a problem. The City Report correctly disagrees. The City was not required to earmark the funds or account

for their expenditure, nor was it bound by the simple suggestion of a single Council member.

The City Report states, “Thus the statement of the Grand Jury that suggests this money was ‘received and expended without drawing the attention of anyone’ is wholly inaccurate.”

In other words, the Council knew the funds had been received and knew where they were placed and did not specifically earmark those dollars. While, in hindsight, using those funds to replenish the reserves might have been a good idea, the Grand Jury still offered no evidence or suggestion that the funds had not been spent on other equally necessary expenditures.

Is it possible that the reason senior staff did not recommend earmarking those funds might be because it could have exposed the gaping hole in the City budget caused by the loss of state tax revenue – a loss the Council was not aware of yet? We do not know.

Under the heading of Government Organization, the City Report takes up the question of the town charter, as posed by the Grand Jury. I do not know what the charter has to do with the withholding of tax revenue, but since the Grand Jury included it, I’m glad it was also addressed in the City Report.

It is in this section where the errors in the Grand Jury report are most easily recognized. As the City Report states, “The Grand Jury’s report contains serious omissions and mistakes that must be addressed with regard to the City and the governing documents for the City that actually exist.”

According to the Grand Jury report, “The City Charter for DeFuniak Springs was written in 1903 and very few sections have been updated.” However, the City Report clearly notes, “That quoted section from the Grand Jury report is wholly inaccurate.” Although the State Attorney’s Office failed to notice it, the original 1903 Charter was repealed in 1921. The new Charter of the City of DeFuniak Springs provided a much more detailed set of operational standards for the City. “What cannot be questioned is that merely citing the 1903 Special Act as the sole governing document for the City of DeFuniak Springs is erroneous.”

(Continued on Page 4)



## GRAND JURY REPORT (CONTINUED)

The City Report goes on to say that in the 40 years after the 1921 Charter was enacted, the state legislature passed special acts on at least 18 separate occasions, revising multiple sections of the City's Charter. Therefore, the Grand Jury's finding "mischaracterizes the entire nature and extent of the City's governing provisions. Additionally, the Grand Jury's report makes no mention of the effect of the 1969 grant of 'home rule authority.'"

Constitutional Amendments to Florida's Constitution and subsequent legislation – the 1973 Home Rule Act – removed the restriction that municipal governments were restricted to only the powers listed in the City's Charter. In fact, with certain exceptions, limitations on municipal power contained in charters before July 1, 1973 were nullified by Florida law. As the City Report unequivocally states, "For these reasons, the criticism of the City's lack of a current Charter are wholly misplaced."

The Grand Jury's report goes on to criticize the City's form of government as poorly defined and – horror of horrors – a hybrid form of government. However, as the City Report emphatically states, "Any suggestion that the City does not have a clearly defined form of government is mistaken. While a hybrid form may best describe the practical workings of the City today, hybrid forms of government are quite common."

One of the things noted in the recent seminars presented for the Council by the Florida League of Cities was the fact that there is no single, standard city charter. There are none that are inherently correct or incorrect. They are unique to their cities. *In fact, in the entire state of Florida, there are no two charters that are exactly alike.*

"Clearly, the City Council is the legislative branch of government for the City of DeFuniak Springs, and the Mayor and City Manager operate in a form of tandem executive branch," according to the City Report.

Council members are considering the possibility of making changes to the City Charter. However, as the City Report correctly states, "...any Charter change, including additions, are required to be done by referendum, which requires an election held for the public to approve that change."

Finally, let me say that I not only appreciate the months of careful research, insight and effort that went into the creation of the City Report, I wholeheartedly agree with its razor-sharp observations and conclusions.

I also agree with the final paragraph of the report, which states, "A close reading of the findings in this section of the Grand Jury's Report indicates that the concern appears more in terms of day-to-day reporting, chain of command, and knowledge bases for all those involved. This relates, in Counsel's opinion, to the aforementioned process elements that can be improved upon."

I concur. We should always strive to improve. Government should always look for ways to increase efficiency, reduce waste, spend wisely and work diligently to improve the qual-

ity of life for the people we serve.

The Council has already taken several important steps to improve these issues — not because of Grand Jury suggestions, but because they represent common-sense fiscal policy.

However, all good government should begin at home. We should always ask "How do I govern myself, my actions and the things I say and do?" The Grand Jury report has been used like a club to beat down your City Council and blame them for every real and perceived ill in the city. In my opinion, this City Report makes it obvious that while the Council is responsible for fixing the problems caused by a few bad apples, it is not to blame for creating them.

It is easy to accuse government of imperfection, for all mortal things are full of imperfection. However, as I detailed in last month's issue, there can be no question that things are far better in DeFuniak Springs today than they were eight years ago. The Council has accomplished so many excellent things despite the challenges.

Yes, there have been setbacks that might have crippled some towns, but each challenge has been faced head-on. Even though the Council was deliberately betrayed and thousands of dollars of revenue was withheld by the state as a result, no city services were harmed or reduced and there were no hurtful lay-offs for staff. Annual funding was still provided for our important community activities, new projects were launched, more businesses were welcomed to DeFuniak Springs and more jobs were created.

To find out about the true state of your city, never settle for gossip, go straight to the source and contact a City Council member. All contact information is readily available on the City website and through the Clerk's Office at City Hall.

In closing, I will leave you with a quote from Notre Dame football coach Lou Holtz, who said, "Show me someone who has done something worthwhile, and I'll show you someone who has overcome adversity."

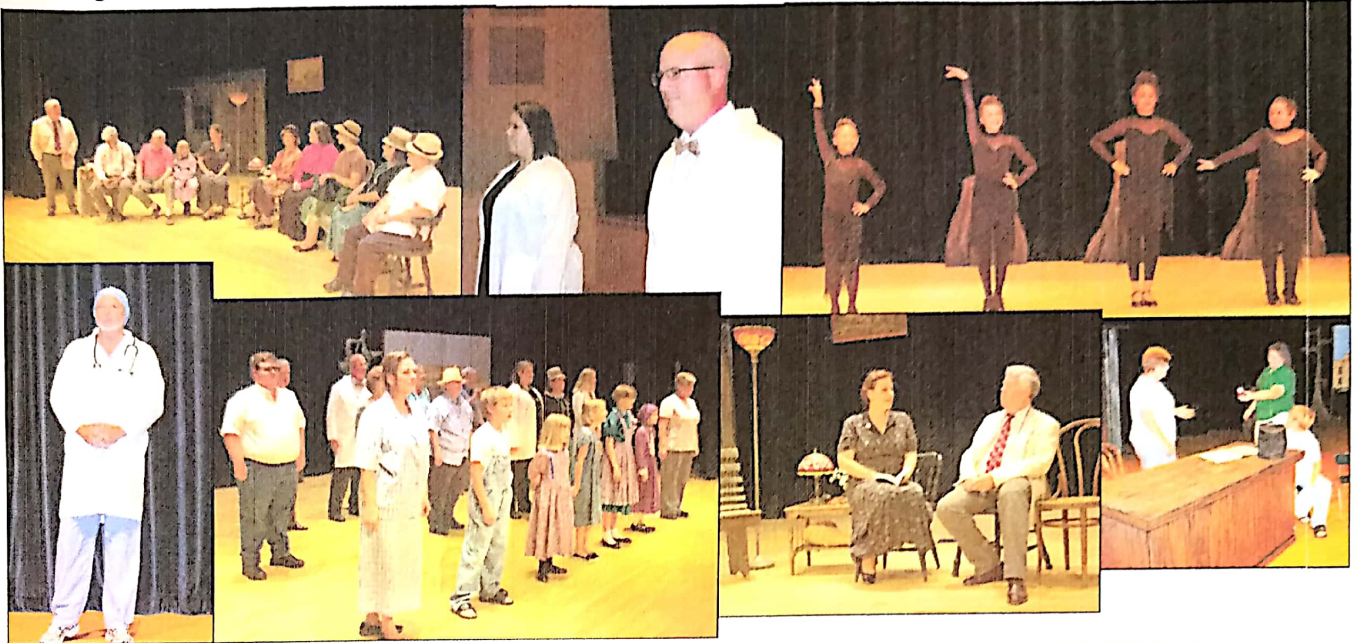
### IMPORTANT NUMBERS

DeFuniak Springs City Hall – (850) 892-8500  
DeFuniak Springs City Marshal/Police - (850) 892-8513  
DeFuniak Springs Fire Department - (850) 892-8515  
Walton Co. Sheriff's Office - (850) 892-8111  
Walton Co. Health Dept. - (850) 892-8015  
Healthmark Regional Medical Center – (850) 951-4500  
Bright House Cable - (866) 876-1872  
Gulf Power - (800) 225-5797  
CHELCO Electric Cooperative - (850) 892-2111  
Florida Driver's License - (850) 892-8121  
DeFuniak Springs Library - (850) 892-5724  
DeFuniak Springs Post Office - (850) 892-5714  
Walton Co. Superintendent of Schools - (850) 892-1100  
Walton Co. Chamber of Commerce - 892-3191



## Honoring America and our Heritage

Walton County's Folk Life Play series, Grit & Grace, just produced their latest show, "In Sickness and In Health." The play dealt with the Spanish Flu of WWI, the opening of Lakeside Hospital and the long-time practice of optometrist Dr. Don Wennerberg, among others. There was drama, laughter, music and dancing. In short, it was all we have come to expect from Grit & Grace.



The annual Fourth of July Celebration, sponsored by the DeFuniak Business and Professional Association, was another success story. The day featured lots of flags and patriotic themes, speakers, food and craft vendors, great southern country music by Nashville-recording artist Shane Owens and lots of spectacular fireworks. It was a great day to be an American living in DeFuniak Springs!

