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Suit between city, Club Square businesses thrown out; Ruling was intended to clarify what city could, couldn't do with the area

By **DMITRY RASHNITSOV**,
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A declaratory judgement against 25 business owners in Cape Coral's downtown Club Square area was thrown out by a judge Tuesday with prejudice, according to District 1 Councilmember Tom Hair.

The city filed the request last year to get a legal opinion of what it can and cannot do with the downtown's largest public parking area, located between Southeast Ninth Place and Southeast 11th Place and Southeast 46th Lane and Southeast 47th Terrace. An attorney representing the business owners filed a motion for dismissal last year citing it is inappropriate for the court to advise the city on what it can do with the property.

In 1960, Gulf Guaranty Land & Title Co. dedicated the property to Lee County for "the perpetual use of the Public for proper purposes." Lee County dedicated the property to the city in 2005.

The city believes the language is vague and wanted to clarify three items: permit the use of the area for any proper public purpose, the city has the legal authority to enhance the area and the city has legal authority to receive revenue that may be generated as a result of any enhancements.

Robert Burandt of the law firm Roosa, Sutton, Burandt & Adamski, which represented several of the businesses, said he was not surprised by the judge's ruling.

"That's exactly what we argued, that this is not a declaratory judgement action. They are there to make decisions, not to give

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opinions,” Burandt said.

Burandt said the city can still appeal the decision, but he does not think it would win.

“If ever a judgement is judgement proof, I would say this one is,” Burandt said.

Burandt said the city can vacate the parking lot and turn over possession of it to the business owners or start the eminent domain process and condemn the surrounding businesses.

“They want to get something for nothing,” Burandt said about the possibility of the Community Redevelopment Agency facilitating the building of a parking garage in the area, or using it as part of a mixed use shopping and residential facility. “Nobody is against the community redevelopment, but why should current business patrons be required to pay more for everyone else.”

Burandt said the city should do the right thing and refund the business owners the money they spent on legal fees while fighting the case.

District 1 Tom Hair said he would be in favor of paying back those businesses for attorney costs.

“We started it, we should step up to the table and admit we were wrong and do the right thing,” said Hair, who in January spoke up adamantly against continuing the lawsuit. “I’m glad this worked out for the folks around Club Square.”

Mayor Eric Feichthaler who was also against continuing with the lawsuit said it never should have escalated to that level.

“With so many parties involved, we need to work with them in the future to clearly understand the issue,” Feichthaler said.

City Attorney Dolores Menendez said city council must direct her to file an appeal if it so chooses to.

“Nothing in litigation surprises me anymore,” Menendez said regarding the dismissal.

Hair said he would be opposed to appealing the lawsuit.



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