

REGULAR CITY COUNCIL MEETING

Wednesday

April 3, 2002

7:00 PM

Florence K. Little Town Hall

12 Colomba Road

DeBary, Florida 32713

MINUTES

I. Call to Order

1. Invocation
2. Flag Salute

II. Roll Call

Members Present: Mayor Carmen Rosamonda, Council Member Danny Allen, Council Member George Coleman, Vice Mayor Greg France, and Council Member Bill Long.

Others Present: City Manager Richard Diamond, City Attorney Kurt Ardaman, Assistant City Manager Maryann Yaskanich, Orange City Mayor Ted Erwin, and Executive Director of Volusian Water Alliance Donald Feaster.

III. Public Participation For Any Issues Not On The Agenda

None.

IV. Approval of Minutes

1. Regular City Council Meeting held March 6, 2002.

Mayor Rosamonda entertained a motion to accept the minutes for the Regular City Council Meeting held March 6, 2002. Motion was made by Council Member Allen. Council Member Long seconded. The motion carried unanimously.

2. City Council Workshop held March 14, 2002.

Mayor Rosamonda entertained a motion to adopt the minutes as written. Motion was made by Council Member Long. Council Member George Coleman seconded. The motion carried unanimously.

V. Strategic Planning Reports

None.

VI. Presentations

1. Proclamation Declaring April Water Conservation Month.

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Mayor Rosamonda introduced Mayor Ted Erwin of Orange City. Mayor Rosamonda read and presented the Proclamation to Mayor Erwin as a representative of the Volusian Water Alliance. The Proclamation stated that on March 24, 1998, the Governor and the Cabinet of the State of Florida designated the month of April as Water Conservation Month in the State of Florida, stating the need to conserve water and protect our vital resources. It was further stated that on March 23, 2000, Volusia County Council, by request of the Volusian Water Alliance, designated April as Water Conservation Month. Mayor Rosamonda declared April 2002 as Water Conservation Month in the City of DeBary.

2. Volusian Water Alliance – Request to Reconsider Withdrawal From Inter-local Agreement.

Mayor Rosamonda introduced Mr. Donald Feaster, Executive Director of Volusian Water Alliance. The Mayor also reminded the Council that the City voted to drop out of the Water Alliance. The Water Alliance Chairman issued a letter asking the City to reconsider the decision and Mr. Feaster attended the Council meeting to answer Council's questions. Mr. Feaster, a civil engineer, has been involved with the water arena since 1966. He stated that the Water Alliance is strictly a planning body with absolutely no authority to regulate water use; the regulator is St. Johns River Water Management District. Mr. Feaster stated that: the City of DeBary uses about 2 million gallons of water daily, supplied by Volusia County; that the City of DeBary could be their own supplier if they so wanted; that it was stated in the Interlocal Agreement that only those cities or utilities who actually supply water have a vote; that 10 of the 16 cities in Volusia County have water production facilities; and that they are the voting members. He stated that: the Alliance, in conjunction with SJRWMD, has hired a consultant to study the implementation of the water supply plan; that the consultant will present a report and make recommendations; that the report will go to the Alliance Board for action or recommendation; and then will go to all elected officials of the County. It was suggested that it would benefit DeBary to participate in those discussions even though they do not have a vote and that the elected officials for the City should have input into the Water Supply Plan. There was discussion on the Interlocal Agreement and any changes that could be made to it. It was suggested by City Attorney Ardaman to wait until the report from the consultant is received to see what changes are recommended and then bring it back to Council for consideration. Mayor Rosamonda brought up his concerns about voting, questioning Eminent Domain powers in the City and also the fact of an additional step in the process to receive well permits. It was stated by Council Member Long that he would like to see the Council reconsider being a member of the Alliance. Mayor Erwin stated that the important thing is to have someone from the City of DeBary sitting in on the Alliance meetings, knowing what is going on, so that the City of DeBary can stay informed.

VII. Public Hearings

Members of the Council should disclose for the record the substance of any exparte communication that has occurred before or during the public hearings for the following items.

1. Second and Final Reading – Ordinance No. 10-01 – Rezoning 67.86 Acres
Located on the Southeast Corner of Dirksen Drive and South US Highway 17-92 From A-2 (Rural Agriculture) and C (Conservation) to MPUD (Mixed Use Planned Unit Development).

City Attorney Ardaman read Ordinance No. 10-01 by title. Mayor Rosamonda declared the public hearing on the second and final reading of Ordinance No. 10-01 open. Mayor Rosamonda mentioned discussions from a prior workshop. One of the discussions was the possibility of hiring a consultant to verify some of the numbers that Mr. Costa presented, and what the City's participation should be in this project. Mr. Costa had asked the City for \$2.9 million. Two consultants have provided proposals for their services: Miller, Sellen and Connors and Walsh from Orlando and the Florida Planning Group. Three bids from appraisers were also presented. Mark Watts with Cobb, Cole and Bell, 150 Magnolia Ave., Daytona Beach, was present on behalf of Empire Cattle. Council Member Coleman, Council Member Allen and Vice Mayor France disclosed prior discussions with interested parties. Fred Lotz, 126 Sher Lane, DeBary, spoke against spending the taxpayers' money without a vote by the citizens as to where their money goes. There was a discussion on apartments versus single-family dwellings at the project site. Eugene Stump, 106 Berkwood Ct., DeBary, and John Harvey, 61 Floridana Road, DeBary, spoke in favor of a Town Center. Mr. Stump and Mr. Harvey proposed an option for the consideration of land across the street from Florence K. Little Town Hall for the new City Hall Complex with the Police and Fire stations along with the Town Hall, instead of at the south end of town. It was also stated that the City would never recoup their investment of \$2.9 million in the Town Center. Mayor Rosamonda stated that it is in the record that the City is not going to spend anywhere near \$2.9 million.

Lee Bellow, 217 DeBary Drive, DeBary. Council Member Long stated that he has had conversations with Mr. Bellow on numerous occasions, about this subject. Council Member Allen also has had conversations with Mr. Bellow. Mr. Bellow voiced his feelings against the Town Center and suggested the need for a Public Works Department for the City. Mayor Rosamonda asked for the Council's interest in hiring a consultant and read the two bids for consulting fees. 1.) Miller, Sellen and Connor and Walsh for \$23,000 and 2.) Florida Planning Group for \$3,000. Council Member Allen wanted to make a motion giving the project 10 acres of R-8 zoning, 10 acres of R-3 or R-4 zoning and the remainder in B-9 zoning as a PUD. City Attorney Ardaman stated that a motion could not be considered at this time and that this would have to be presented to Steve Costa for consideration and there would have to be agreement between the City and the property owners; that for the City to make an informed decision the Council should hear

the consultant's report on the numbers and/or whether the City should be involved at all. A motion was then made by Council Member Allen not to hire a consultant and giving the project 10 acres of R-8 zoning, 10 acres of R-4 zoning and the rest B-9 zoning in a PUD and have it come back to Council for final approval of the plan. Council Member Coleman seconded. There was discussion on the second reading of the ordinance. Council Member Coleman withdrew his second and Council Member Allen withdrew his motion. A motion was made by Council Member Allen to deny Ordinance No. 10-01. There was some discussion on the mixed uses of the project. Council Member Coleman seconded. It was mentioned by Mayor Rosamonda that denial of this Ordinance could possibly bring the City into a lawsuit. City Attorney Ardaman suggested trying to come up with an acceptable alternative for the property, without a denial of this plan. It was suggested not to deny the motion, but to continue this hearing to a time certain, to allow further discussion with the developer about particular uses on the property. Mayor Rosamonda entertained a motion to approve the Florida Planning Group proposal for a \$3,000 fee, to review the marketing study, to review the assessment of the estimated construction cost and project reviews, an assessment of the long-term costs and benefits to the City from the project, to assess the possible financial options for funding of the City's portion of the project, and to provide the City with recommendations on participation in this particular project. A motion was made by Council Member Long and seconded by Vice Mayor France. There was no further discussion. The motion carried 3-2 with Council Members Allen and Coleman dissenting. A motion was made by Council Member Long to table Ordinance No. 10-01 for 60 days until the regularly scheduled meeting on June 5th at 7:00 PM. The motion was seconded by Vice Mayor France. The motion carried unanimously.

2. Second and Final Reading – Ordinance No. 05-02 – Vacating a Portion of Plantation Road.

City Attorney Ardaman read Ordinance No. 05-02. Mayor Rosamonda declared the public hearing open for the second reading of Ordinance No. 05-02. There were no comments from the public. Mayor Rosamonda entertained a motion to adopt the Ordinance on second and final reading. A motion was made by Council Member Long and Council Member Coleman seconded. There was no discussion. The motion carried unanimously.

3. Second and Final Reading – Ordinance No. 06-02 – Amending Requirements for Fences.

City Attorney Ardaman read Ordinance No. 06-02. Mayor Rosamonda declared the public hearing open for the second and final reading of Ordinance No. 06-02. For the public record, Mayor Rosamonda stated that some changes have been made to this ordinance from the first reading. It deals with wooden fences along major corridors. It was suggested by Vice Mayor France that a clause be added to this ordinance prohibiting gates in these fences, crossing the rights-of-way, unless granted a right-of-way use permit that would allow ingress and egress. It was suggested that there be a minimum of five

years, for newly-permitted fences, before the homeowner had to remove the fence and abide by the ordinance. It was also suggested that those people who erected fences without the proper permitting not be given the same option, out of fairness to those who did. Mayor Rosamonda stated that the ordinance should be changed to read, five years from the date of this ordinance and not the original ordinance. Exemption for any properties with agricultural uses was discussed. Richard Taughten, whose home at 277 Adelaide Street, abuts Highbanks Road, stated that wooden fences are the only kind of fences that the Homeowners Association allows. It was stated that the only way a homeowner could have a pool in that particular area would be to screen it. Mayor Rosamonda made a motion that this Ordinance No. 06-02 be re-advertised and have a rehearing with the changes, at the May 1, 2002 meeting, at 7:00 PM. A motion was made and seconded. There was no further discussion. The motion passed unanimously.

4. First Reading – Ordinance N0. 07-02 – Expanding the Saxon Woods Streetlighting District to Include Unit 2B

City Attorney Ardaman read Ordinance No. 07-02. Mayor Rosamonda declared the public hearing open for the first reading of Ordinance 07-02. There were no comments from the public. Mayor Rosamonda entertained a motion to approve. A motion was made by Council Member Long and Council Member Coleman seconded. There was no discussion. The motion carried unanimously.

5. Request for a Variance to Section 110.1(c) Nonconforming Lots – D-02-001 Gordon & Sophia Pickett at 161/163 W. Highbanks Road.

Scott Ashley, Planner for Volusia County, stated that the purpose of this request is to separate two lots on Highbanks Road; that both of these lots are platted as 100' x 300' lots, but the current zoning of RR, Rural Residential, requires a minimum lot size of 1 acre. The applicant built on one lot in 1993; that the other lot was purchased as an investment. Because the lots separately are not conforming, they have to remain under common ownership according to the zoning ordinance. Staff recommended approval of the variance to split the lots. Mayor Rosamonda entertained a motion to approve variance Case D-02-001. A motion was made by Council Member Long and Council Member Allen seconded. There was no discussion and the motion carried unanimously.

6. Request for a Variance to the Front Yard Setback – D-02-002 Jeff Lynch at 20 Savanna Street.

Scott Ashley, Planner for Volusia County, stated that this request was a variance to the minimum front yard setback requirement from the edge of the travelway of Savanna Street: 77 feet in lieu of the required 115 feet, to construct a single-family residence. The property is east of South U.S. Highway 17-92 and has a zoning of A-1 (3) Prime Agriculture. The A-1 zoning requirement is a minimum of 10 acres, however the parcel is only 1.2 acres in area and is legally non-conforming. Access to the property is by way of a 10 ft.-wide private dirt road known as Savanna Street. The purpose of the increased

setback is that, in case of future widening of roads, no damage would be done to any property. The purpose of the request is to build a new home on the site and remove the existing old home from the site. Approval was recommended by Staff subject to the two conditions listed. It was stated that two Council Members had spoken with Mr. Lynch on this matter. It was requested that Mr. Lynch remove the kitchen and the meter from the existing house on the property before a C.O. would be given for the new house. Mayor Rosamonda entertained a motion to approve variance Case D-02-002 conditional upon having only one meter on the property and that all kitchen facilities be removed within 30 days of the C.O. of the property. A motion was made by Council Member Long and Council Member Coleman seconded. There was no further discussion. The motion carried unanimously.

VIII. Growth Management and Development Review

1. Request for Final Site Plan Approval – 02-F-FSP-0022 – Florida Power & Light.

This request was for final approval of a Reception Building on the corner of Barwick Road and U.S. Highway 17-92. This is a 480 sq. ft. building on 1.19 acres. Mayor Rosamonda entertained a motion to approve the Final Site Plan 02-F-FSP-0022, provided the conditions from Palmer Panton's letter of March 5, 2002 are met, and requiring a silt fence during construction. A motion was made by Council Member Long and seconded by Council Member Coleman. The motion carried unanimously.

2. Request for Overall Development Plan Approval – 02-S-ODP-0232 – Nuckolls Subdivision

Palmer Panton, Development Manager for Volusia County, explained that this is a request for a two-lot subdivision with lot sizes of 1.24 acres on 2.6 acres within the City of DeBary at the end of River Drive which is a private, non-City maintained road. Sewers would be provided by individual on-site septic tanks and water by on-site individual wells. This request was denied by the Volusia County Development Review Committee since it does not meet the requirements of the City's subdivision regulations: new lots are supposed to be created on paved public roads and there was a concern about water quality from on-site wells. There was some discussion on subdivisions and lot sizes. Carolyn Evans, representing the property owner, stated that the term "Subdivision" is misleading. All the property owner wants to do is split her 2 ½ acres into two parcels of land. Mayor Rosamonda entertained a motion to approve 02-S-ODP-0232. The motion was made by Council Member Coleman and seconded by Council Member Long. The motions were withdrawn and Mayor Rosamonda entertained a motion to adopt the Overall Development Plan Approval 02-S-ODP-0232, and waiving all the platting requirements for this project. Council Member Allen made the motion and it was seconded by Council Member Long. There was no further discussion. The motion carried unanimously.

IX. Old Business

1. Bid Number 02-01 – Lawn Maintenance Services; Parks and Recreation.

Richard Diamond, City Manager, explained that this is a bid for maintenance for four parks: Gateway, Memorial, Power, and Dinosaur. The lowest bid is ABC Express Lawn Care, for \$5,762, which is recommended by staff. A motion was made to approve ABC Express Lawn Care by Council Member Long and seconded by Council Member Allen. It was stated that this company had good references. The duration for this service is for one year with a possible extension of six months to coincide with the fiscal year. The motion carried unanimously.

2. Resolution No. 02-09 – Adoption of Policy for Extending/Renewing Contracts for Purchases of Goods and Services.

City Manager Diamond read Resolution No. 02-09. This is a proposed policy for contracts that can be bid out /or renewed. It states that any contracts over \$50,000 must be re-bid and the bidding process cannot be waived, except for sole source purchases, emergencies, lease or rental of real property, and contracts with other government agencies. A motion to approve the Resolution was made by Vice Mayor France and seconded by Council Member Long. There was discussion on bids over \$8,000 and the Council having the authority to waive those bids, but still having to approve them. The Resolution states that the Council will not waive the bid process if a contract is over \$50,000, but will get new bids. The motion carried unanimously.

3. Award of Bid for Emergency Generator at Florence K. Little Town Hall.

City Manager Diamond stated that there is \$20,000 in the current budget for an Emergency Generator for the Town Hall. A companion bid from St. John's River Community College lists a generator from Sabett Inc. for \$13,995 and that, for an additional \$5,582, they will make it a turn-key project: remove the existing generator, and hook up the new unit. It is proposed that it be fueled by natural gas. Florida Public Utilities will install two 120-gallon propane tanks and the cost to the City will be \$1,760 to extend the existing line. The bid for Generak Power Systems was recommended by Staff in the amount of \$19,577.71. Mayor Rosamonda entertained a motion to approve \$19,577.71 to Sabett, Inc. for the Generak 60kw Generator. The motion was made by Council Member Allen and seconded by Council Member Long. There was some discussion about selling the old generator. The motion carried unanimously.

X. New Business

1. Request for Proposals 02-02 – Banking Services

City Manager Diamond stated that proposals were solicited from the banks in the area. There was a mandatory pre-bid conference with representatives from five of the major banks. Proposals were received from Bank of America, First Union National Bank, and

Southtrust Bank. It was recommended by Staff to award banking services to First Union National Bank based on monthly fees and interest rates. Mayor Rosamonda entertained a motion to approve First Union National Bank as the City's financial institution. The motion was made by Council Member Long and seconded by Council Member Allen. Vice Mayor France stated that he spoke to Mr. Diamond about making this a multi-year contract. This contract is for three years with an additional two years, if approved. The motion carried unanimously.

2. Code Enforcement Board Resolution No. 02-01 – Requesting that the City of DeBary Proceed with Foreclosures of Liens for Non-Homesteaded Properties.

The Code Enforcement Board Resolution proposes to foreclose on existing liens for non-homestead properties. It was stated that people refuse to communicate with the City, and that these people are not in compliance. Mayor Rosamonda stated that foreclosure should only occur where it is financially feasible for the City; that it could cost the City thousands of dollars to take over the property, maintain it and by the time it is sold - subject to liens - it is sold at a loss. It was suggested that a financial analysis needs to be done before the City would proceed with a foreclosure.

3. Resolution No. 02-10 – Adopting CDBG Annual Plan for Fiscal Year 2002/2003 and CDBG Five Year Budget Projections.

This Resolution deals with the Community Development Block Grant for the next Fiscal Year and also updates the Five Year Plan. It was recommended by staff that the City Council authorize funding the shuffleboard court at Bill Keller Park (which is one of the few eligible projects within the existing target area) for the first year and that a drainage project be added to year five. Mayor Rosamonda entertained a motion to adopt Resolution 02-10. The motion was made by Council Member Long. Council Member Coleman seconded. The motion carried unanimously.

4. Consideration of Amendments to Legal Services Contract with Fishback, Dominick, Bennett, Ardaman, Ahlers, Sikes and Bonus.

In reviewing the billings, it was noted that City Attorney Ardaman had submitted bills for charges for a law school graduate, and also a law clerk, rather than the full amount for an attorney, which was not provided for in his contract. City Attorney Ardaman has amended the billing and has proposed this amendment to the contract that would allow him to charge for a legal assistant at \$65 per hour, law clerk at \$90 per hour, and law school graduate at \$100 per hour. There are only two rates specified in the existing agreement: \$75 per hour for paralegals and \$125 for attorney time. Mayor Rosamonda entertained a motion to adopt the proposed First Amendment to the City of DeBary's Attorney contract. Council Member Allen made the motion and it was seconded by Council Member Coleman. The motion carried unanimously.

XI. For the Good of the Order (Routine Recurring Business)

1. Board/Committee Reports

2. Board/Committee Appointments

- A. Board: Senior Advisory Committee G. France -1
Term Expires: October 3, 2003
Incumbent: None
Length of Term: Two Years

Recommendation was made by Vice Mayor France to appoint Diane Forrest to the Senior Advisory Committee. Mayor Rosamonda entertained a motion to approve Diane Forrest to the Senior Advisory Committee. Council Member Allen made the motion and it was seconded by Vice Mayor France. The motion carried unanimously.

- B. Committee: 10-Year Anniversary Celebration G. France -1
Term Expires: 30 Days After Celebration
Incumbent: None
Length of Term: One (1) Year

Vice Mayor France stated that this appointment will be made at the next meeting.

3. Member Reports/Communications

A. Mayor and Council Members

Council Member Coleman reported on the Little League Opening Celebration. Vice Mayor France, Council Member Allen, Council Member Coleman, City Manager Diamond, and Parks and Recreation Coordinator Leslie Butler attended. Council Member Coleman also attended the DeBary Civic Association meeting and dinner, Code Enforcement meeting, Senior Committee meeting, Volusian Water Alliance meeting, met with the Boy Scouts and their parents at Gateway Park, attended the Art League Sale, and the Easter Egg Hunt at Gemini Springs. There was discussion on Gateway Standards and also on paving Shell Road.

Council Member Danny Allen stated there may be problems with the County. He stated that Florida Public Utilities is trying to open their building and now needs a new sealed survey for their sign. A discussion followed on complaints about the County.

Council Member Long asked for the Council's approval for him to go to the Florida Redevelopment Association's Annual Conference October 16th through 18th in Jacksonville. He encouraged Council to join him for this event.

Vice Mayor France stated to Council that he would like to attend the Rail~Volution, in Washington D.C. in October.

Mayor Rosamonda attended the Economic Development Advisory Committee Meeting. He stated that he is very excited about the potential with the consultant, Florida Planning Group. He mentioned his communication with DBCC about the site next to the retention pond and the possibility of the City acquiring the site. He mentioned the possibility of parking for the retention pond park and the many uses of the 15,000 sq. ft. building. He stated that DBCC would like to be totally out of their building by July 31, 2003. Mayor Rosamonda asked the Council to delegate authority to City Manager Diamond and City Attorney Ardaman to meet with DBCC personnel to negotiate the possibility of the City purchasing the building. Mayor Rosamonda entertained a motion to authorize the City Manager and City Attorney to negotiate a non-binding proposal and bring it back to the City Council for approval. A motion was made by Council Member Long and Vice Mayor France seconded. The motion passed 4-1 with Council Member Allen dissenting.

B. City Attorney

City Attorney Ardaman mentioned the Riverside at DeBary development and the requirement to pave Fort Florida Road. He mentioned that there is a problem with the right-of-way between Highbanks Road and the Riverside at DeBary Development, along Fort Florida Road. The problem being questions of title of the right-of-way by others. The Developer of the project was asked to agree to secure his promise of indemnifying and holding the City harmless with a lien on the property that is to be developed; also for the mortgage holder to subordinate the mortgage to the City's interest. The developer offered title insurance on the right-of-way property up to \$1,500,000.00. It was the consensus of the City Council to get a guarantee from the title company, with lien rights for this property.

The second issue was approval of final, preliminary subdivision plats, and overall development plans. It was stated that because the Council does not review these plats at an earlier stage, it can create some serious consequences for the developer at the final plat stage. It was stated that the ODP reflects the preliminary plat; that this was the reason that the Council determined to waive the review of the preliminary plat, because the issues would be addressed at the ODP. There was further discussion on this issue. City Attorney Ardaman will discuss the issue with the City Manager.

There was discussion of banners across U.S. Highway 17-92.

C. City Manager

City Manager Diamond reminded the Council of Phase One of the Zoning Comprehensive Plan Conflicts Workshop next week to review proposed changes and receive input from the public. He also pointed out the 2002 schedule for hosting dinner meetings of Volusia League of Cities and that DeBary is scheduled to host the League of

Cities in October, however, Port Orange wanted to trade its August dinner meeting date for DeBary's October date. It was the consensus of the City Council for DeBary to keep the October date in order to allow time to plan the dinner. The possibility of a dinner cruise was mentioned.

There was some discussion about Lake Helen and a fireworks donation.

XII. Adjournment The meeting was adjourned at 10:40 PM.

**Approved May 1, 2002
City of DeBary
City Council**

Carmen Rosamonda, Mayor

ATTEST:

Maryann Yaskanich, City Clerk