

City of DeBary
REGULAR CITY COUNCIL MEETING

Wednesday

May 1, 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, Vice Mayor Greg France, Council Member Allen, Council Member Coleman, Council Member Long

Others Present: City Attorney Kurt Ardaman and City Manager Richard Diamond

Mayor Rosamonda announced that the Chamber of Commerce of West Volusia presented the City of DeBary with the Beautification Award for the City Hall facilities at 137 South Hwy. 17-92. He stated that there will be an event at Community Park on Saturday hosted by DeBary's West Volusia Little League, in honor of the firefighters and policemen which celebrates Hometown Heros.

III. Public Participation For Any Issues Not On the Agenda

Fred Lotz, 126 Sher Lane, stated that developers, in fact, should pay their own way. He also stated that Mr. Henin of Trader's Cove Corporation has had trouble developing Fort Florida Road, that nothing has been done with the road in 12 years; that the road was not platted and that people claim they own the rights to the road.

Zack Fuller, 110 Pine Valley Court, discussed the issue of the Saxon Woods' subdivision fire that nearly burned his house. He thanked the Council for taking a personal interest in the incident and thanked the firefighters. He is concerned about the buffer area that had been destroyed in his yard.

Mayor Rosamonda stated, for the public interest, that the developers of the property behind Glen Abbey (Saxon Woods' subdivision) received a burn permit from the Department of Forestry to burn the debris from the clearing of the land; that the fire got out of control and came dangerously close to homes in the area and did damage to natural vegetation buffers; that this same developer was issued another burn permit two days after he had committed a violation; and that he wanted to know what DeBary's rights are as to having more control over burn permits.

Hurley Robbins, 108 Pine Valley Court, discussed the issue of the Saxon Woods' fire. He stated that the City should use its influence ensure that the vegetation that was lost in the fire be replaced by the developer; that the burnt trees should be removed before they fall onto the properties of homeowners; and that the City should pass stricter guidelines for burning. The subject of water runoff also was discussed. City Manager Diamond will be monitoring the progress of the rebuilding of the buffer zones.

IV. Approval of Minutes

1. Regular City Council Meeting held April 3, 2002.

Mayor Rosamonda entertained a motion to accept the minutes for the Regular City Council Meeting held April 3, 2002. Motion was made by Council Member Long. Council Member Allen seconded. The motion was carried unanimously.

V. Strategic Planning Reports

VI. Presentations

1. None

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. 06-02 – Amending Requirements for Fences

City Attorney Ardaman read Ordinance No. 06-02 by title. Mr. Bob Coleman, 425 N. Williamson Boulevard, Daytona Beach, was present representing Florida Power and Light. Council Member Coleman presented a modification of the barbed wire provision. He stated that the major concern was safety. Peter Kramer, 252 Adelaide Street, representing Glen Abbey Homeowners, inquired as to what the purpose was of removing the wood fencing along Enterprise Road; he stated that these fences were there for privacy, and for safety of the children; that the fences prevent vehicles from entering their property and fulfill pool enclosure requirements. It was stated that masonry, wrought iron, concrete, aluminum or plastic are the only types of fences allowed. The unfairness of pinpointing only certain areas in the City was discussed. David Ketelhut, 131 Pine Valley Court, discussed fences and security. Mike Huddleston, 114 W. Rich Avenue, DeLand, representing Wounderwood Fence Company, stated that a wood fence would last 15 to 20 years if properly maintained and that other types of fencing would be very costly to the homeowners. It was stated that wood fences were prohibited in only certain areas of the City, particularly along the main thoroughfares. Wood fences are being eliminated to beautify the City.

Mayor Rosamonda asked about the wood fences along agricultural properties for people who have a large number of cows, or a residential property with a couple of horses. Fort Florida Road was specifically discussed. Field fencing, chainlink, and barbed wire fences were discussed in regard to agricultural areas and agricultural zoned property. Mayor Rosamonda entertained a motion to adopt Ordinance 06-02 on Second Reading with the following revisions: Eliminating Fort Florida Road from Section 2-B and inserting in Section C-3, after the word "prohibited," the following language: "except around electrical substations and other public utility facilities. The additional height of up to 3 feet, resulting from the installation of the outriggers or extensions to fences surrounding substations and other public utility facilities, shall not be considered in measuring the height of the fence or the wall." The motion to adopt this Ordinance was made by Council Member Long and seconded by Council Member Coleman. There was no further discussion. The motion carried 4 to 1 with Council Member Allen dissenting.

2. Second and Final Reading – Ordinance No. 07-02 – Expanding the Saxon Woods Streetlighting District to Include Unit 2B.

City Attorney Ardaman read Ordinance No. 07-02 by title. Mayor Rosamonda entertained a motion to adopt Ordinance 07-02 on second and final reading. The motion was made by Council Member Long and seconded by Vice Mayor France. There was no discussion. The motion carried unanimously. 5-0.

3. First Reading – Ordinance No. 08-02 – Vacating a Portion of a Utility Easement at 135 Oakley Drive.

City Attorney Ardaman read Ordinance No. 08-02 by title. Tim Fiedler of Biernacki and Bauer, 223 S. Woodland Blvd., DeLand, was present representing the Hildebrands at 135 Oakley Drive. The Hildebrands have a utility easement running through their living room and wish to have it vacated. Mayor Rosamonda entertained a motion to adopt Ordinance 08-02 on first reading. The motion was made by Council Member Long and seconded by Council Member Coleman. There was no discussion. The motion carried unanimously 5-0.

4. Resolution No. 02-14 – Minor Amendment to Riverside at DeBary RPUD – to allow Development Completion Time Extensions.

City Attorney Ardaman read Resolution 02-14 by title. For the record, Mayor Rosamonda stated that this company has been trying to get this development off the ground for four years and that it was taking so long to get off the ground because of government red tape. Council Member Coleman voiced his concern for the people on Fort Florida Road and the problems they are having with the construction of the roadway. There was discussion on the development and construction of the subdivision and the permitting and utilities required before starting construction. There was also discussion on the time line for development, wording of the resolution, and water.

Thomas Baldwin, 446 River Drive, was present representing neighbors concerning the issue of central water provision to residences and impact fees. It was noted that there will have to be an extension of the water lines to River Drive in order to provide those residents with County water.

Donna McAdam, 107 Admiral Lane, a resident of Trader's Cove, discussed the issue of a paved road for the residents. She suggested putting in a temporary road until construction commences.

Mayor Rosamonda entertained a motion to adopt Resolution 02-14 as amended by City Attorney Ardaman. Motion was made by Council Member Long and Vice Mayor France seconded. There was some discussion on the progress of the County development approvals and if there would be anything to prevent commencing construction for the development. The motion was carried unanimously 5-0.

5. Request for Variance to Front Yard Setback – D-02-041 – Robert Hutchinson at 464 N. Pine Meadow Drive.

Mayor Rosamonda stated that because Mr. Hutchinson is on a corner lot he has to have a 30-foot setback on both sides. Mr. Hutchinson stated that because he has an RV, he needs a place to park it where it isn't unsightly and, therefore, he needs the front yard setback. It was stated that staff failed to notify Mr. Hutchinson of the recommendation for denial of the request for variance, and did not have adequate time to prepare an argument on his behalf. The motion was made to defer this request to the next Council meeting June 5th at 7:00 PM. The motion was made by Council Member Long and Council Member Coleman seconded. The motion carried unanimously 5-0.

VIII. Growth Management and Development Review

1. Request for Final Site Plan Approval – 01-F-FSP-0224 – The Village at DeBary.

Palmer Panton, Volusia County Land Development Manager, stated that this request is to approve a final site plan for a proposed office and retail complex, consisting of 4,525 square feet of office space and 2,905 square feet of retail, on the east side of Enterprise Road, just south of the Summerhaven intersection on Pond Court. There will also be 726 square feet of retail storage in Phase I and 9,278 square feet of retail and 2,320 square feet of retail storage in Phase II, all on about a 3-acre parcel. It was stated that all of the needed property was already purchased and that the developer would be responsible to hook up to water and sewer on that property. Mayor Rosamonda entertained a motion to approve Case 01-F-FSP-0224, the Final Site Plan Approval for The Village at DeBary pursuant to Palmer Panton's April 4th letter to revise Paragraph 1 to say "payment into the City of DeBary Trust Fund," rather than "the Volusia County's Sidewalk Improvement Trust Fund." The motion was made by Council Member Long and Council Member Allen seconded. There was some discussion about the color schemes for the buildings. The motion carried unanimously 5-0.

2. Request for Release of Maintenance Surety and Acceptance of Public Improvements – Glen Abbey Unit 8

For the record, Mayor Rosamonda stated that Unit 8 in Glen Abbey has been in existence for over a year and that the lots, sidewalks, and the road have been maintained and inspections have found them to be satisfactory and the developer is requesting the release of the Maintenance Surety Bond. There was some discussion regarding the storm water improvements and maintenance responsibilities. Mayor Rosamonda entertained a motion to approve the Release of

the Maintenance Surety and Acceptance of Public Improvements for Glen Abbey Unit 8, contingent upon a letter from the Homeowners Association that they will do the routine maintenance of the retention pond, such as mowing the grass and edging and the City of DeBary will be responsible for all structural maintenance as necessary. The motion was made by Vice Mayor France and Council Member Allen seconded. There was no discussion. The motion carried unanimously 5-0.

IX. Old Business

1. Discussion of Gateway Standards – Council Member Coleman.

City Manager Diamond stated that he would compose draft Gateway Standards, meet with the volunteer planners and the consulting company and then bring the Standards back to the City Council. There are examples from Orange City, Ormond Beach and Port Orange that will be looked at to expedite the process. It was suggested that the Economic Development Advisory Committee review the draft Gateway Standards and make a recommendation to the Council. There was no further discussion.

2. Resolution No. 02-11 – Authorizing Signatures for City Banking Services

City Attorney Ardaman read Resolution No. 02-1 by title. Mayor Rosamonda entertained a motion to adopt Resolution No.02-11 with the following changes: The Paragraph that is titled "Agents" shall be changed to "any two of the agents listed below." In Paragraph 4, add to the end of the sentence, "when approved in writing by the City Council." In Paragraph 5, add at the end of that particular paragraph, "when approved in writing by the City Council." The motion was made by Council Member Long and Council Member Coleman seconded. There was no further discussion. The motion carried unanimously 5-0.

3. Landings at Summerhaven Subdivision Pond 2 Drainage Investigation – Phase I – Preliminary Engineering/Analysis – PEC Engineering

The issue of the failure of the drainage pond was discussed. Drainage Improvement Alternative #1 is to excavate the bottom of the pond and install a PVC line on the north side and install an overflow pipe into the discharge area. Drainage Improvement Alternative #2 is to install the PVC line on the north side of the pond and construct the under drains. PEC Engineering ranked Drainage Improvement Alternative #1 the highest and Alternative #1 is their recommendation for correction of this drainage; costing about \$42,000. It was recommended by City Manager Diamond to authorize PEC to begin the construction for Alternative #1 and that the Council authorize City Manager Diamond to negotiate with PEC for the engineering and surveying costs up to, but not to exceed, \$42,000.

Ernie Senez, 3001 Annez Way, property owner adjacent to the pond failure appeared. Mr. Senez first discussed the Gateway Standards and then proceeded to discuss the retention pond situation. He stated that he has damage to his property and now has wetlands on his property that used to be high and dry property. David Hamstra, Orlando, Professional Engineering Consultants, stated that the pond was originally meant to be a dry bottom storm water pond. It has not functioned that way since it was built and has failed twice. There are two options: to try to make it a dry

bottom pond or to make it a true wet pond, by digging it deeper and reconstructing the berm so that the groundwater cannot move through the berm and preventing the water from continuously seeping onto Mr. Senez's property. The water would go directly to the lake. Mr. Senez has retained a lawyer to oversee any legalities. Mayor Rosamonda stated that the City has been following the guidelines from St. Johns River Water Management District.

Mayor Rosamonda entertained a motion to authorize the City Manager to begin the process with PEC, and authorize PEC up to \$42,000 to begin the engineering and design phase of recommended Improvement Alternative #1. The motion was made by Council Member Long and Council Member Allen seconded. There was some discussion concerning easements and costs of easements and the mandatory order by St. Johns River Water Management District. The responsibility of the original designer and engineer, if any, was also discussed. Of the \$125,000 total cost, about 2/3 is construction cost and 1/3 is survey, design and permitting costs. It was suggested to evaluate the other pond also to have an overall picture. City Attorney Ardaman suggested meeting with the property owner and his lawyer to ensure that what the City is proposing to do is acceptable to the property owner and that Mr. Senez is willing to give an agreement. The City's insurance representative should attend as well, and an overall plan could be formulated later. The motion carried unanimously 5-0.

X. New Business

1. Resolution No. 02-12 – Authorizing the City Manager to Sign FDOT Permits for the Temporary Closing of State Roads.

City Attorney Ardaman read Resolution No. 02-12 by title. This Resolution authorizes the City Manager to authorize and sign FDOT permits to close a state road for parades or any other circumstances. Mayor Rosamonda entertained a motion to approve Resolution No. 02-12. The motion was made by Council Member Long and Council Member Allen seconded. There was no further discussion. The motion carried unanimously 5-0.

2. Agreement between the City of DeBary and the Orlandia Heights Neighborhood Improvement District for Traffic Enforcement.

City Manager Diamond stated that Florida Statutes has a provision that allows local governments, having law enforcement authority, to enter into an agreement with law enforcement to enforce traffic regulations on private roads. City Manager Diamond stated that the agreement between the Sheriff's Dept. and Meadowlea was modified, for use between the Sheriff's Dept. and Orlandia Heights. It states that traffic control devices must be installed according to the Traffic Engineering plan. It was stated that the liability insurance for the District must be purchased by the District and would cost about \$5,000 per year for a million dollar policy. Any repairs to traffic signs would be done by the County and would then be billed to the District. City Manager Diamond recommended that the full Traffic Engineering plan be implemented; that all of the recommended signs be installed in order to minimize liability and also to increase the potential for enforcement; and that Staff is recommending the approval of the Agreement with the Orlandia Heights Neighborhood Improvement District for Traffic Enforcement as submitted. City Attorney Ardaman made a few changes to the wording of the Agreement. It was suggested that the City should pay the \$5,000 insurance policy payment for

the District. It was asked if, statutorily, the City has to be involved in the Orlandia Heights' traffic enforcement issue. City Attorney Ardaman stated that there probably should be a way to keep the City out of the loop. It was stated that there are other private subdivisions in the area that do not have an agreement with the Sheriff's Dept. and the City. Mayor Rosamonda stated that the City needs to provide Orlandia Heights' residents with the services that they need, such as police and fire and attempt to roads from private to public so that the City can maintain them.

Tom Bernosky, 133 Sanford Ave., representing the Orlandia Heights Neighborhood Improvement District Board of Directors, stated that Orlandia Heights is part of the City of DeBary; that Orlandia Heights wants the same law enforcement protection that is provided for everyone else; and that there is a major problem with speeders tearing up the roads. Mr. Bernosky stated that the District needs the City's help by the City entering into the Agreement. There was discussion about clearing the trees and brush from the right-of-way for visibility of the traffic signs. It was suggested that if the City is going to execute the Agreement, the City should implement the signage, and the clearing of the right of way of trees and brush. City Attorney Ardaman stated that this would be spending public dollars on a private roadway. Robert Elliott, 155 Seminole Drive, Orlandia Heights Neighborhood Improvement District Chairman of Board of Directors, discussed the issue of liability and liability insurance and the fact that the Board for Orlandia Heights was assured that they were covered under the City of DeBary's insurance policy and found that this was not the case; that the need for liability insurance is an urgent need and, if required, Orlandia Heights would pay the premiums. City Attorney Ardaman stated that there is a question whether or not Orlandia Heights is covered by the City's insurance and that he would review the former agreement to resolve this question.

Jerry Bartel, 20 Gracie Road, representing Orlandia Heights' residents, discussed the issue of the conditions of the roads and speeders. Antonette Beiser, 200 Sunnydale Drive, representing Orlandia Heights' residents, discussed the issue of public ingress/egress, the lack of law enforcement, and the liability of the property owners and the City. Mayor Rosamonda made a recommendation to purchase and install the signs, and pay the traffic sign cost of \$7400. He stated that this is a unique District; that for the best interests of the public, and common sense, the City should make sure that the District has liability insurance and that the City should pay for it as a good faith effort.

Mayor Rosamonda entertained a motion that the City of DeBary pay the \$7400 for the 102 traffic control signs and 36 street name signs; to get a determination from the Florida League of Cities if the District is covered by the City of DeBary's liability insurance; that the City pay whatever the costs to get the million dollar liability insurance, and also pay the necessary expenses to clear the brush and trees 165 feet back from the intersections to view the signs. The motion was made by Council Member Allen and seconded by Vice Mayor France. There was discussion on the cost of the signs, the installation of signs and the purpose of the signs; and since the roads are private if there are any public rights in the roads. The legalities of ATV's using the road were also discussed. The vote carried 4-1 with Council Member Long dissenting. For the record, Mayor Rosamonda stated that his determination on this particular issue is that there is a public need and a public circumstance on which the City should spend public funds.

3. Scheduling a Pre-Budget Workshop.

City Manager Diamond stated that, last year, prior to the budget, it was requested to have a pre-budget workshop to get direction and discuss the general issues that the City Council may have so that a better budget can be prepared.

Mayor Rosamonda asked Mr. Elliott to survey the Orlandia Heights' residents regarding who would be willing to turn over that portion of their property that is the road to the City in order for the City to maintain the road.

City Manager Diamond suggested that the Pre-Budget Workshop be held on May 22nd. This time was agreeable with the Council.

4. Resolution No. 02-13 – Revising the City's Investment Policy.

City Attorney Ardaman read Resolution No. 02-13 by title. Mayor Rosamonda entertained a motion to approve Resolution No. 02-13. The motion was made by Council Member Long and Council Member Allen seconded. There was no discussion. The motion carried unanimously 5-0.

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

1. Board/Committee Reports

2. Board/Committee Appointments

- A. Board: Code Enforcement Board (Alternate) G. Coleman
Term Expires: May 1, 2005
Incumbent: Pat Kear (unable to serve)
Length of Term: Three (3) Years

Council Member Coleman stated that he will have a Board appointment candidate at the June 5th Council meeting.

- B. Committee: 10-Year Anniversary Celebration G. France
Term Expires: 30 Days After Celebration
Incumbent: Mike Carley
Length of Term: One (1) Year

Mayor Rosamonda entertained the motion to approve Mike Carley to the 10-Year Anniversary Celebration Committee. The motion was made by Council Member Allen and Vice Mayor France seconded. There was no discussion. The motion carried unanimously 5-0.

- C. Committee: Public Safety Advisory Committee: D. Allen
Term Expires: May 8, 2002
Incumbent: Paul Ogden (unable to serve)

Length of Term: Two (2) Years

3. Member Reports/Communications

A. Mayor and Council Members

Council Member Coleman reported on the water shortage situation and stated that the water shortage is as bad as it was before. There was a little drop in a couple of wells and the rest are about even. He reported that he went to Gateway Park with the Eagle Scout who received congratulations from Mayor Rosamonda, the Director of Parks and Recreation, and from former Presidents Carter and Ford.

Council Member Allen mentioned a request he had for sidewalks in Glen Abbey on North Pine Drive and stated that he is cooking Saturday at the Hometown Hero's Day Celebration and needs help cooking at 7:30 AM.

Council Member Long stated that he attended the 10-Year Anniversary Celebration Committee Meeting and that he is going to the River Fest held in Alabama to do some fact-finding regarding anniversary celebrations.

Vice Mayor France stated that he attended the Stake Holder's meeting for the Commuter Rail in Orlando. He brought up the TOPS Program for funding transportation projects. He stated that \$7 million has been allocated to Volusia County, but it can be lost because it is stalled in the Senate. It was suggested that Council Members call the State Senators. He stated that he will be attending the Rails Committee Meeting on May 13th and that Congressman John Mica was going to meet with that Committee.

Mayor Rosamonda reported that he was at the Deltona Middle School and presented the Proclamation to the Ladies Auxiliary VFW 8093 for Loyalty Day, May 1st. He also stated that he attended the DeBary Economic Development Advisory Committee Meeting and that he attend the Hometown Hero's Celebration as well.

City Attorney Ardaman stated that Council should have received the ruling of Judge Sanders' regarding the Mitch Green case and he has filed a motion for a rehearing. The Judge ruled that the City did not freeze the zoning on the property. The city planner recommended approval of the rezoning request because it was consistent with the Comprehensive Plan and met all of the zoning requirements. The Judge found that the re-zoning request should not have been denied. City Attorney Ardaman requested that, under Florida Statutes 286.011, the City Council hold an executive session to discuss this pending litigation. It was requested that the City Council Members, the City Manager and a court reporter be present. The executive session was set for May 8th at 6:00 PM.

The question was asked that, does DeBary have the right to ban burning as a means of clearing property. The Division of Forestry states that they have jurisdiction over this activity, unless there is a declared emergency, local governments do not have the authority to ban or prohibit burning. City Attorney Ardaman suggested that alternatives or stricter requirements may be explored. There was discussion on burn permit requirements.

XII. Adjournment

Mayor Rosamonda entertained a motion to adjourn. The motion was made by Council Member Allen and Council Member Long seconded. The motion was unanimous. The meeting was adjourned at 11:40 PM.

**Approved June 5, 2002
City of DeBary
City Council**

Carmen Rosamonda, Mayor

Attest:

Maryann Yaskanich, City Clerk