

City of DeBary
REGULAR CITY COUNCIL MEETING

Wednesday

November 6, 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 George Coleman, Council Member Danny Allen, and Council Member Bill Long.

Others Present: City Manager Richard Diamond, Assistant City Manager Maryann Yaskanich, and City Attorney Kurt Ardaman.

III. Public Participation For Any Issues Not On the Agenda

Morton Culligan, 66 Tanglewood Road objected to the paving of the roads in the Orlandia Heights Neighborhood District and stated that he does not believe that the survey, as to this issue, of residents in the area were correct.

IV. Approval of Minutes

1. Special City Council Meeting held July 10, 2002.
Council Member Coleman motioned to approve. Council Member Allen seconded. The motion carried unanimously.

2. Special City Council Meeting held September 18, 2002.
Council Member Long motioned to approve. Vice Mayor France seconded. The motion carried unanimously.

3. Regular City Council Meeting held October 2, 2002.
Council Member Long motioned to approve. Council Member Allen seconded. The motion carried unanimously

Council Member Long asked that the Council consider his request to attend the National League of Cities Conference at this time. The Council without objection, agreed to his attendance at the National League of Cities Conference. He stated that he was a dissenting vote at the hearing considering the rezoning of the West Property at Highbanks and Fort Florida Road. He is requesting that the rezoning or special exception application for the property be placed on the next Agenda. The application would be for the Church portion of the property only and would be

separate from the residential portion. It was discussed if a rehearing on this matter was appropriate. City Attorney Ardaman opined that the City Council could waive the one-year restriction against hearing a rezoning application, in substantial the same form, when the application was denied; that the Church component could be considered a separate issue; that the City Council could consider it as a new application; that it is unclear if the request is for a rezoning or a special exception; and that the matter would have to be advertised. Mr. Watts, representative for Mr. Costa, stated that a rehearing had been requested; that they were bringing an amended PUD plan for a rezoning request with a special exception; that he had reviewed the requirements of the Comprehensive Plan with staff; and that the requested changes to the zoning is to accommodate the additional components of the Church property. Mayor Rosamonda disclosed ex-parte communication with interested parties.

City Attorney Ardaman conferred with Mr. Watts regarding a rehearing; that the original application for rezoning had been denied; and that a new application for the Church property, as a separate issue, would be appropriate. Volusia County Planner Scott Ashley discussed the issue of a special exception for a House of Worship under the current zoning; that there was other Church uses that might require rezoning and a change to the Comprehensive Plan. Mr. Watts stated that the uses requested by the Church could each be allowed as a special exceptions under current zoning, however, the original request for rezoning had been to allow sufficient density for the assisted living facility; and that there were alternatives to rezoning to provide for that density. Council Member Long clarified that under the current zoning, a House of Worship was a conditional use that required Council approval. It was further discussed that the Council would need to find that the application is substantially different than the original request. Mr. Ashley noted that if a totally new application was submitted, staff review and recommendation would require additional time; and that all uses for the Church component were conditional uses under current zoning. Mr. Watts further stated that the request was for three special exceptions for the Church element only. Council Member Coleman disclosed ex-parte communication with interested parties. Council Member Long asked that the date for the next regular City Council Meeting be changed, as he would be absent on other Council business and it would be his final meeting as a member of the Council. Mayor Rosamonda entertained a motion to change the date of the regular City Council meeting to December 11, 2002. Motion was made by Council Member Long. Council Member Allen seconded. The motion carried unanimously.

V. Presentations

1. None.

VI. Public Hearing

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

1. First Reading – Ordinance No. 17-02 – Providing for Placement of Utilities Underground for New, Reconstructed, Expanded or Relocated Utilities – Vice Mayor France.

City Attorney Ardaman read Ordinance No. 17-02 by title. It was discussed that the impact of this Ordinance to industrial properties required review. Vice Mayor France discussed that the Ordinance was to provide for beautification efforts; and that language in the Ordinance allowed for review by the City Council for instances that might cause undue hardship. David Rasmussen, 107 Forest Point Lane, Longwood, asked if the scope of the Ordinance was to be restricted to Highway 17-92 and stated that utility needs for vacant industrial property could not be determined in advance and underground utilities would be cost prohibitive if required after the infrastructure of the development was in place. It was discussed that hardship cases could be reviewed on an individual basis and whether an exception for industrial construction in specific areas would be added to the Ordinance. Mr. Rasmussen noted that a change in ownership of a building would change power requirements and that there was no assurance that future Councils would approve exceptions. It was discussed that there were many industrial properties fronting the Highway 17-92 corridor and that a blanket exception would not be appropriate. Mr. Rasmussen also noted that utility companies might have an interest in providing input regarding the Ordinance. Mr. Rasmussen asked that more research be done and asked if the State of Florida was exempt from the Ordinance. City Attorney Ardaman offered opinion that there was no clear ruling as to applicability of the Ordinance to the State, but Cities usually were allowed to control land development within their boundaries; that primarily, private developers would be subject to the Ordinance; and that the Ordinance might apply to utility construction in rights-of-way. Mayor Rosamonda entertained a motion to approve Ordinance No. 17-02. Motion was made by Council Member Coleman. Vice Mayor France seconded. It was discussed that additional input from utility companies could be considered at second hearing and that there was some language that required clarification. The motion carried unanimously.

2. Second and Final Reading – Ordinance No. 19-02 - Tree Preservation.

City Attorney Ardaman read Ordinance No. 19-02 by title. Joe Waller, Program Director for Volusia County Environmental Management, discussed changes to the City Ordinance as compared to the County Ordinance pertaining to agricultural zoning; that standards were improved and clarified for tree replacement requirements and tree protection was increased; that clearing for development was addressed; that a fee resolution had to be set by the City Council; that the tree survey requirements differed for residential and commercial properties; that there were multiple levels for tree preservation requirements; and that there was no provision in the Ordinance for tree mitigation outside of the County.

David Rasmussen, 107 Forest Point Lane, Longwood, suggested review of Page 11, Item 7 regarding clearing and stated that Sand Pines might be an issue in many developments. Mr. Waller discussed the item; that Sand Pines were not considered a nuisance; that removal of Sand Pines usually required replacement; that the clear-cutting for development was regulated for aesthetic concerns; and that additional provisions might be appropriate. Discussion was held and City Attorney Ardaman read language to be added to the Ordinance as “In the event the majority of the trees to be cleared are Sand Pines, then the 20 percent limitation may be modified in accordance with a tree removal and abatement plan approved by the City Forester.” Mayor Rosamonda entertained a motion to approve Ordinance No. 19-02 with the revised section as so stated. Motion was made by Council Member Coleman. Council Member Long seconded. The motion carried unanimously.

3. Second and Final Reading – Ordinance No. 20-02 – Expansion of Saxon Woods Streetlighting District to Include Unit 2A.

City Attorney Ardaman read Ordinance No. 20-02 by title. Mayor Rosamonda entertained a motion to approve Ordinance No. 20-02. Motion was made by Council Member Long. Council Member Coleman seconded. There was discussion that the assessment rate would drop in the second year. The motion carried unanimously.

4. Ordinance No. 21-02 – First Reading – Expansion of DeBary Plantation (DeBary Golf and Country Club Streetlighting District to Include Units 13B-1, 16B-1, 16B-2 and Unit 20.

City Attorney Ardaman read Ordinance No. 21-02 by title. Mayor Rosamonda entertained a motion to approve Ordinance No. 21-02. Motion was made by Council Member Long. Council Member Allen seconded. The motion carried unanimously.

5. Ordinance No. 22-02 – First Reading – Adding Fireworks Sales as Special Exception in B-4, B-5 and B-6 Zoning Classifications and a Prohibited Use in the Village Overlay Classification – Council Member Long.

Mayor Rosamonda entertained a motion to close the City Council hearing and open the Land Planning Agency hearing. Motion was made by Council Member Long. Council Member Coleman seconded. The motion carried unanimously. City Attorney Ardaman read Ordinance No. 22-02 by title. There was discussion of a broader based exclusion of fireworks; that rapid approval of this Ordinance was desirable; and that temporary sales would be allowable. Motion was made by the Land Planning Agency to recommend approval of Ordinance No. 22-02 to the City Council. There was further discussion of sidewalk kiosks and seasonal retail sales; that this Ordinance would apply if 25% of gross sales were for fireworks; that there were no loopholes in the Ordinance. Motion was made by Council Member Long. Council Member Coleman seconded. The motion carried unanimously. Mayor Rosamonda entertained a motion to close the Land Planning Agency. Motion was made by Council Member Long. Council Member Coleman seconded. The motion carried unanimously. Mayor Rosamonda reopened the City Council public hearing. City Attorney Ardaman read Ordinance No. 22-02 by title. Mayor Rosamonda entertained a motion to adopt Ordinance No. 22-02. Motion was made by Council Member Long. Council Member Coleman seconded.

6. Resolution No. 02-28 - Authorizing Recording of Maintenance Map for a Portion of S. Shell Road.

City Attorney Ardaman read Resolution No. 02-28 by title. City Manager Diamond reviewed the accuracy of the surveys. There was discussion that there still appeared to be discrepancies; that a more recent deed appeared correct; and that paving would be done in the current road configuration. Mayor Rosamonda entertained a motion to approve Resolution No. 02-28. Motion was made by Council Member Long. Council Member Coleman seconded. The motion carried unanimously.

7. Case No. D-02-047 - Request for Special Exception by Donald and Catherine Bauerle for Off-Street Parking Area in a R-3 Zoning Classification For Property Located West of the Intersection of Highbanks Road and Fort Florida Road.

Council Members Coleman, Allen, and Long disclosed ex-parte communication with interested parties. Volusia County Planner Scott Ashley reviewed the request; that the legal requirements for a special exception had not been met and denial was recommended by County Staff. There was discussion of e-mail received by adjoining property owners; that the e-mail be added to the file; and that there were issues with other uses that might occur if the special exception was granted.

Donald and Catherine Bauerle, 48 West Highbanks Road, provided an executed notarized document between them and the adjoining properties, Mr. and Mrs. Duncan; that there was area utilized for parking by the County in the past that encroached on their property; that the County had made improvements on their property; that there was a designated Handicapped Parking space; that there was an existing survey; that there was no written agreement with the County for the use of the property; and that he wished to utilize the parking area for employees and for the convenience of customers. Mr. Ashley was asked if a developer's agreements would be required and stated that any land clearing required site plan approval due to the size of the area, and the fact that it was commercial use.

Jay Erndl, 74 River Bluff Trail, stated that he had concerns about this request; that there were lots owned by Mr. and Mrs. Bauerle in his subdivision that were adjacent to the Marina; and that residential lots might be illegally converted to commercial use. It was discussed that there were deed covenants and restrictions in his subdivision and that the affected property owner was not objecting to the proposed use. Mr. Erndl also stated his concern for future protection of the residential areas and stated that a precedent might be set if this request is granted. There was discussion of the intensity of the parking usage; that the purchase of the property by the County for a park had been proposed in the past; that a buffer is provided for; that residential areas would be protected; and that the general public had been using the area for parking for some time. Mr. Ashley reviewed buffer requirements; that natural vegetation or a masonry wall was required and that the area be used for restricted parking only. Mr. Bauerle stated that if the area were not available for use, there would be parking in public rights-of-way. There was further discussion of the possible need for a development agreement with the City. Mr. Ashley discussed that the City Council could approve the request, but recommended compliance with the land development code and that a site plan should be provided. It was discussed that the matter could be tabled until a more specific site plan could be presented; that agreements as provided by the adjacent property owners be included as part of the special exception; that full site plan preparation might be a hardship for Mr. Bauerle; that Mr. Bauerle consult with Mr. Ashley to provide a clearer diagram of the parking area; and that the conditions of the special exception and specific square footage of the parking area be added. It was further discussed that any fine for a code enforcement violation be suspended until the matter was resolved. Mayor Rosamonda entertained a motion to table the request until December 11, 2002. There was a discussion concerning the calculations of square footage of the parking area and the specific items requested by the Duncans.

Gene and Patricia Duncan, 104 Fort Florida Road, stated that a limit of 4,000 square feet for parking was satisfactory; that traffic was not an issue for them. Council Member Allen moved to approve the terms and conditions in the agreement between Mr. and Mrs. Duncan and Mr. and Mrs. Bauerle and adding Item 11, no parking within 30 feet of the south property line and Item 12, no more than 4,000 square feet of parking. Dimensions of the lot were discussed; that the lot was approximately 145 feet by 150 feet or approximately 21,750 square feet. Council Member Coleman motioned to approve. Council Member Long seconded. It was further discussed that City Manager Diamond would confirm the measurements of the parking area and recite them in the special exception approval; that a 30-foot buffer was required per code; and that the motion was to include the terms of the agreement with added items and measurements as discussed. Council Members Coleman and Long removed their motion. Council Member Allen re-stated his motion to approve the Special Exception to include the terms and conditions of the agreement between the Bauerles and the Duncans, adding Item 11; no parking within 30 feet of the south property line and Item 12; the square footage to be determined by the City Manager, the Bauerles and the Duncans and not to exceed 150 feet by 145 feet; and to add no removal of vegetation in the buffer area within 30 feet of the property line unless a fence was constructed. Council Member Long seconded. The motion carried 4-1 with Mayor Rosamonda dissenting.

VII. Consent Agenda

*Agenda Items marked with * are considered routine matters or have been previously discussed by the City Council. All items will be considered by one motion unless removed from the Consent Agenda by a member of the City Council.*

- *1. None.

VIII. Growth Management and Development Review

- 1. Final Plat – DeBary Golf and Country Club – Unit 21B.

Palmer Panton, Land Development Manager for Volusia County reviewed the request; that the actual recording of the plat would not occur until all staff comments were satisfied; and that the City Attorney review the plat map and title documents. It was discussed that there was a previous approval for 38-foot lot widths and an increase in density, which would combine lots for duplex villas. There was discussion of the traffic impact analysis; that there was a buffer between DeBary Golf & Country Club and adjoining developments; and that retention ponds and berms had been constructed in that buffer. Mayor Rosamonda entertained a motion to approve the final plat approval for DeBary Plantation Unit 21B 02-S-FPL-097 pursuant to the provisions of Palmer Panton’s letter of October 28, 2002 and the requirements of the staff report. Motion was made by Council Member Coleman. Council Member Allen seconded. The motion carried unanimously.

IX. Old Business

- 1. Agreement for Services – Chamber of Commerce of West Volusia.

City Manager Diamond reviewed the draft Agreement and stated that the cost would be five thousand dollars for services to the City for a one-year term; and that a status report would be provided at year's end. Mayor Rosamonda entertained a motion to approve.

Linda White, Executive Director for the West Volusia Chamber of Commerce, answered questions regarding community events; that DeBary would be promoted at events outside of DeBary; and that the agreement was for one year only. Motion was made by Vice Mayor France. Council Member Allen seconded. There was further discussion of distribution points for brochures; that the County's new economic development brochure would be used; that the community events calendar was posted on the Chamber's Website to facilitate coordination of scheduling; that there were no commitments for funds from Deltona or Orange City at this time; that a Chamber representative must attend, at least quarterly, DeBary's Economic Development Advisory Committee meetings; that formal presentations had not been made to the other cities in order to facilitate contract negotiations; and that payment was scheduled for two installments to allow for accountability. Council Member Coleman disclosed ex-parte communication with interested parties. The motion carried unanimously.

2. Contract Alternatives for Growth Management Services.

City Manager Diamond reviewed the report; that the particular concern with Growth Management was pertaining to building, permitting and inspections as well as development review; that the County's position was, that if the City wished to privately contract any part of the growth management services, then all services would have to be included; that private contractors had been contacted and cost comparisons made; that any increased costs would be passed on to builders and developers; that development review and planning and zoning services were compared; that there were few private agencies that provided code enforcement services; that environmental services costs were reviewed; that if growth management services were privately contracted, costs to builders and developers would be higher but might be acceptable due to improved levels of service; that because of changes being implemented at the County level, City Manager Diamond recommended regular review and monitoring of future performance by the County before making any change; and that private consultants could be contracted if improvement did not occur. It was the consensus of the Council to accept the recommendation of the City Manager.

3. Discussion of City Manager's Performance Evaluation.

The City Manager's contract was reviewed; that there appeared to be no contract issues; and that the evaluation averaged 3.17. Mayor Rosamonda recommended discussion of a 5 percent salary increase with no adjustments to the contract. Discussion of the evaluation noted that a majority of the goals and objectives were achieved; that a salary increase was not given in the first year; that there were increased insurance costs provided; that paid days off had been increased with the revision of the City's personnel manual; that a salary cap could be applied; that a salary increase had not occurred in the first year of the contract due to fiscal year timing; that if a 5 percent raise was awarded the total would average 2.5 percent per year. There was further discussion of the evaluations and goals and objectives; Gateway Standards were

discussed; and that there was a time frame of 21 months without increase any increase to the Manager's salary. Mayor Rosamonda entertained a motion to approve a 4 per cent salary increase for Richard Diamond. Motion was made by Vice Mayor France. Mayor Rosamonda seconded for discussion. The motion was denied with Council Members Allen, Coleman and Long dissenting. Council Member Long made a motion to approve a 3 percent increase. Council Member Allen seconded. The motion carried 4-1 with Mayor Rosamonda dissenting.

Goals and Objectives for the next evaluation period were discussed; that a workshop could be held to finalize the ranking due to time constraints at this meeting; that the workshop could be held after the Council's next executive session.

X. New Business

1. Amendment to Memorandum of Agreement between the City of DeBary and FDOT for the Maintenance of Highway 17-92 to Include That Portion From Highbanks Road to Saxon Boulevard.

City Manager Diamond reviewed the revised agreement; that the total compensation from FDOT would be \$33,605.12; that maintenance costs would exceed \$100,000; that the City contribution would be approximately \$80,000; that approval was recommended; and that FDOT had included maintenance of the retention area at Dirksen which was not included in the bid. Mayor Rosamonda entertained a motion to approve. Motion was made by Vice Mayor France. Council Member Allen seconded. The motion carried unanimously.

2. Bid 03-01- US Highway 17-92 Landscape Maintenance Services.

City Manager Diamond reviewed the bids submitted; that there was a mathematical error in the bid submitted from Atlantic Landscaping, who offered to honor the original total which included the mathematical error; and that the award of the to Servello and Sons was recommended. The irregularity in the Atlantic bid was discussed; that bid totals had been reviewed for corrections; that there was only one bidder that would not require subcontracting of some services; that there were concerns with the maintenance level of the ball fields; and that the low bidder had not attended the pre-bid meeting.

Steve Whitley, Atlantic Landscaping, 1851 Springwood Lane, Deltona, stated he was unable to attend the pre-bid meeting due to an emergency; that the bid of \$92,500 was correct. There was further discussion of the corrections to the figures; and that he had commercial contracts equivalent to the scope of the project under consideration.

There was discussion of reference materials that should be provided with bids; that language should be included in future bids that the City would not be obligated to accept lowest bids; that irregularities in the bid from Atlantic Landscaping constituted grounds for disqualification from the bid. Mayor Rosamonda entertained a motion to approve the bid from Servello and Son of \$108,633.64. It was discussed that re-bidding the contract might be appropriate; that service needed to start November 11, 2002; that current bid amounts were public knowledge; and that lower bids might be received if the contract was re-bid. There was discussion whether there

were legal grounds to re-bid due to the inclusion of the additional retention area in the FDOT maintenance agreement; that advertising to receive bids could be expanded. Motion to re-bid was made by Council Member Allen. Council Member Long seconded. The motion carried 4-1 with Mayor Rosamonda dissenting. City Manager Diamond asked for clarification for the current contractor to continue on a month-to-month basis. The time frame to pursue new bids was discussed; that the current contractor was servicing the south end of Highway 17-92; and that FDOT had to do a final cut before the maintenance agreement with DeBary went into effect. There was no objection to continuing the current contractor on a month-to-month basis.

3. Bid 03-02 – Interstate 4 Landscape Transplant.

City Manager Diamond noted that Volusia County was no longer maintaining the interchange; that there was an opportunity to obtain landscape plants; that FDOT and the County were amenable to the City using the plants; that bids were received; that the amount was not included in this year's budget; that the plants would be used at Gateway Park and Keller Park; and that the low bid was from Servello and Sons at \$23,663. Construction of fencing at Gateway Park and shuffleboard courts at Bill Keller Park were discussed; that irrigation would be needed at Gateway Park; that there was no time specifically identified by FDOT to remove the plants; that the plants could be used in other areas; that FDOT would be replacing those plants at the interchange in the future; that Volusia County's landscape design at the retention pond at Highbanks Road and Enterprise Road could incorporate the plants; that planting material purchased at a nursery would be of better quality and better maintained; and that it was the consensus of the City Council of the City of DeBary that more research was needed.

4. Request to Attend National League of Cities Conference and Appointment of Voting Delegate – Council Member Long.

Previously considered.

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

1. Board Committee Reports
2. Board/Committee Appointments
 - A. Board: Code Enforcement Board Alternate Coleman
Term Expires: September 4, 2005
Incumbent: None

Council Member Coleman nominated Linda Padgett, 16 Larkspur Lane. Mayor Rosamonda entertained a motion to appoint Linda Padgett as an alternate. It was discussed that there were no vacancies remaining. Motion was made by Vice Mayor France. Council Member Coleman seconded. The motion carried unanimously.

- B. Board: Citizens Advisory Committee – Volusia County Metropolitan Planning Organization.

It was discussed that there was a vacancy due to a resignation; that the position be advertised and the matter continued.

- C. Board: Freedom Festival 2003 Two Appointments Needed

Mayor Rosamonda reviewed the cooperative efforts of Lake Helen, Deland, Deltona, Orange City and DeBary to create a Committee for future Fourth of July celebrations and the request to include two representatives from each City to investigate costs, logistics and programs. It was discussed that the matter be continued until the next meeting.

- D. Board: Senior Program Advisory Committee
Notification of Vacancies

- E. Board: Teen Program Advisory Committee
Notification of Vacancies

It was discussed that all members had been notified of changes; that a member for the Teen Committee was still needed; and that Council Member Long would recruit an appointee.

3. Member Reports/Communications

- A. Mayor and Council Members

Council Member Coleman discussed his participation in the Chamber of Commerce of West Volusia 's Leadership Program; that there had not been recent meetings of the Historic Committee; and that committee and board reports were not being received. It was discussed that minutes and agendas from the Volusia Growth Management Committee were provided to the Council; that the City's Volusia Growth Management Committee attendee has not provided reports; that there had been no projects for the Historic Committee; and that meetings should be held quarterly.

Council Member Allen spoke regarding communication and time issues with Staff; that maintenance at the ball fields was not adequate; and whether annual reviews were given to Staff. It was discussed whether there was a penalty applicable for contract non-performance as to the maintenance and servicing of the ball fields.

Council Member Long asked the Council direct City Manager Diamond to provide a proposal for a cell tower. It was discussed that a cell tower was not approved in the downtown area and that an Ordinance change might be required. It was asked that a revised version of the Gateway Standards for Orange City and Port Orange be provided for first reading at the December Council meeting. City Manager Diamond noted that the revision was complete and was being reviewed by the Economic Development Advisory Committee and that he would advise the Committee that they must complete their review.

B. City Attorney

City Attorney Ardaman reviewed scheduled meetings and pending litigation issues. He also noted that there were issues regarding the Summerhaven retention pond and whether Volusia County should be contacted regarding possible liability. It was discussed that an executive session be held on November 26, 2002 at 7:00 p.m. and a workshop be held immediately after for discussion of the City Manager's Goals and Objectives and review of Gateway Standards.

C. City Manager

XII. Adjournment. The meeting adjourned at 11:40 p.m.

**APPROVED December 11, 2002
City of DeBary
CITY COUNCIL**

Carmen Rosamonda, Mayor

ATTEST:

Maryann Yaskanich, City Clerk