

**City of DeBary**  
**REGULAR CITY COUNCIL MEETING**

**Wednesday**  
**January 8, 2003**  
**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**

1. Swearing in of Council Member Carson.
2. Swearing in of Council Member Gunter.

Incoming Council Members were sworn in and welcomed. Former Vice Mayor France was thanked for his service to the City of DeBary and was presented with a plaque and a Key to the City. Former Council Member Long was thanked for his service and congratulated on his new position with the County Council. A plaque and a Key to the City were presented to Mr. Long.

2. Election of Vice Mayor.

Nominations for Vice Mayor were discussed. Mayor Rosamonda entertained a motion to nominate Richard Gunter. No motion was made. Mayor Rosamonda entertained a motion to nominate George Coleman. Motion was made by Council Member Allen. Council Member Carson seconded. The motion passed unanimously.

**Members Present:** Mayor Carmen Rosamonda, Vice Mayor George Coleman, Council Member Danny Allen, Council Member Christopher Carson, and Council Member Richard Gunter.

**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**

Jack Star, 203 Admiral Lane, stated that he objected to the density of the proposed development at the end of Highbanks Road and that he did not feel that fire and safety services were adequate for the increased population.

Mayor Rosamonda asked that City Manager Diamond meet with the Fire Chief and convey Mr. Star's concerns.

Eugene Stump, 106 Birkwood Court, stated that he had met with the CEO of First Community

Bank; that he was willing to put a fountain in the retention pond next to the Bank; and that he would like the area to be a prototype for the implementation of Gateway Standards enhancements.

#### **IV. Approval of Minutes**

1. Regular City Council Meeting held December 11, 2002.

Mayor Rosamonda entertained a motion to approve the Minutes for December 11, 2002. Motion was made by Council Member Gunter. Vice Mayor Coleman 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. Ordinance No. 17-02 – Second and Final Reading - Providing for Placement of Utilities Underground for New, Reconstructed, Expanded or Relocated Utilities.

City Attorney Ardaman read Ordinance No. 17-02 by title. City Attorney Ardaman noted that he had spoken with representatives of three major utility companies; that their representatives were in attendance; that they had concerns regarding the language of the Ordinance; he suggested that Council comments be heard; that staff would meet with the representatives; and that the Ordinance be re-advertised after any appropriate language adjustments were made to the Ordinance. Mayor Rosamonda entertained a motion to table Ordinance No. 17-02 to the meeting of February 5, 2003 at 7:00 PM. It was discussed that if substantial changes to the Ordinance were made, two additional readings would be required and that comments from the representatives and the City Council should be heard at this time. Vice Mayor Coleman disclosed ex-parte communication with interested parties.

Mr. Larry Strickler, 1687 Kingston Road, Longwood, representing BellSouth, noted that BellSouth wished to cooperate with the City; that a good deal of new development included underground utility installations; that State Statutes regarding telecommunications might supersede some requirements of the proposed Ordinance; that some requirements might not be feasible for future expansion of utility needs; and that representatives should meet with City Attorney Ardaman to review any conflicts.

Sophia O'Keefe, 3300 Exchange Place, Lake Mary, representing Florida Power Company, now known as Progress Energy, agreed with many of Mr. Strickler's comments; that more specific language was needed in the Ordinance; that Progress Energy had provided suggestions for language changes to City Attorney Ardaman for review; that they would like to meet with City Attorney Ardaman to resolve the wording; and that there are Public Service Commission Codes that govern underground utility installations. It was noted that Progress Energy's suggested

language referring to the composition of residential developments was taken directly from the Public Service Commission Code.

Bob Coleman, 425 North Williams Boulevard, Daytona Beach, representing Florida Power & Light stated that there was no opposition to an Ordinance governing underground utility installations but similar Ordinances had been written to incorporate the Public Service Commission Code and the Florida Administrative Code rules and regulations for underground electrical utilities; that suggested changes had been submitted to City Attorney Ardaman; that requirements included in the original Ordinance would not be feasible in some instances; and that Florida Power & Light would be happy to meet to resolve the issues.

David Rasmussen, 107 Forest Point Lane, Longwood, stated his concern with the effective date of the Ordinance and stated that the Ordinance's impact on businesses and industrial developments needed more study. It was discussed that it was the vision of the City that all existing utility lines would be underground wherever possible and that the proposed CRA would assist in obtaining grant funds to pursue that vision and lessen the financial impact of placing utility lines underground to the City. Mr. Rasmussen stated that industrial developments would have changing power needs and retrofitting underground lines would be cost prohibitive.

Council Member Gunter motioned to table Ordinance No. 17-02 to allow time for Staff to meet with the utility company representatives and that the Ordinance shall be read on February 5, 2003 at approximately 7:00 PM. It was noted that the Ordinance would have to be re-advertised if substantial changes were made; that meetings would have to occur quickly to be prepared for the next Council meeting; and that a time certain should be set to hear the Ordinance. Council Member Allen seconded. The motion carried unanimously.

2. Ordinance No. 23-02 – Second and Final Reading – Gateway Corridor Standards.

City Attorney Ardaman read Ordinance No. 23-02 by title. It was noted City Manager Diamond had discussed the latest changes with each Council Member. Mayor Rosamonda entertained a motion to approve Ordinance No. 23-02. Motion was made by Vice Mayor Coleman. Bill Long, former DeBary Council Member, asked for clarification regarding the screening of fences. City Manager Diamond noted that the Standards called for painting or vinyl coating of chain link fences, even if screened. It was discussed that language could be added or removed to address the impact to existing properties; that language in other City ordinances and codes also applied; and that if modifications were made to an existing property, which amounted to a percentage of the total appraised property value, the Gateway Standards would then have apply. Don Kitner, 111 Amberglow Court, with Florida Public Utilities stated that they preferred to utilize foliage to screen chain link fencing. There was additional discussion of the Ordinance's language; that as currently written, chain link fencing required full screening from public view from the road; that new plantings would not be of sufficient height to screen chain link fencing; that the Land Development Code had specifics for the size of plantings, but were not included in the requirements of the Gateway Standards; that time frames for growth of plantings could be allowed; and that language be changed to address screening and planting and growth of foliage. Mayor Rosamonda entertained a motion to approve Ordinance No. 23-02 on second reading,

changing paragraph I-3 to add said sentence and remove last sentence to read “chain link and wood fences not permitted unless screened from view from public rights-of-way, parking lots and adjacent properties”; Second sentence to read “If foliage is used for screening then foliage must screen the fence within 24 months of installation.” Motion was made by Council Member Gunter. Vice Mayor Coleman seconded. The motion carried unanimously.

3. Ordinance No. 24-02 – First Reading – Establishing an Architectural Review Board. – Council Member Long.

City Attorney Ardaman read Ordinance No. 24-02 by title. It was discussed that a Board could be established or the Council could perform such reviews and that, if an architect were required for the Board, the cost would add to permitting costs. No action was taken.

4. Ordinance No. 25-02 – Second and Final Reading - Creation of Springview Industrial Park Streetlighting District.

City Attorney Ardaman read Ordinance No. 25-02 by title. Mayor Rosamonda entertained a motion to approve Ordinance No. 25-02. Motion was made by Vice Mayor Coleman. Council Member Gunter seconded. The motion carried unanimously.

5. Ordinance No. 01-03 – First Reading– Adoption of Administrative Amendments to the Future Land Use Map (FLUM) of the Comprehensive Plan.

City Attorney Ardaman read Ordinance No. 01-03 by title. Mayor Rosamonda noted that changes were primarily administrative. City Manager Diamond reviewed comments received from the Department of Community Affairs (DCA); that comments as to Case D-02-017 noted concerns regarding the proposed boundary changes to wetlands; that a wetland survey was done by the County; that County Staff recommended changes to the map; and that a textual amendment to the Comprehensive Plan to allow single family residents as a permitted use in the Environmentally Sensitive Land Classification would assure existing houses could be rebuilt or expanded. Ron Paradise, Volusia County Planner, stated that he felt that the matter would be resolved with DCA. It was further discussed that existing houses in the area would be removed from the Environmentally Sensitive Land Classification as well as lots exempted from the Land Development Regulations; that the Volusia Growth Management Commission certifies amendments to County and City Comprehensive Plans for consistency with Land Use Codes; and that lots purchased by the City were within the wetland areas. Mayor Rosamonda entertained a motion to approve Ordinance No. 01-03, which also approves the County report in the Ordinance. Motion was made by Vice Mayor Coleman. Council Member Allen seconded. The motion carried unanimously.

6. Ordinance No. 03-03 – First Reading – Adoption of Amendment to the Future Land Use Map (FLUM) of the Comprehensive Plan – Hugh West Trust.

City Attorney Ardaman read Ordinance No. 03-03 by title. City Manager Diamond reviewed the request; that DCA had concerns with wetlands areas; and that wetlands may be separately

designated or an amendment be made to the Comprehensive Plan that wetlands not be considered when calculating residential density. Tom Brooks, Volusia County Planner, answered questions that density increases did not have to be allowed even when traffic capacity was available. Mayor Rosamonda, Vice Mayor Coleman, and Council Members Carson and Allen disclosed ex-parte communication with interested parties. There was further discussion of residential density requirements under the current Comprehensive Plan for the area; that changing the Comprehensive Plan would allow greater density; and that Fort Florida Road would then have increased traffic.

Steve Costa, representing Hugh West Trust, stated that he understood the concerns of area residents; that there were higher residential density development surrounding the request area; that there was adequate service for roads at this time to support higher intensity development; that a traffic study would be done; that road improvements would be made by the developer where required; that road improvements would benefit the area neighborhoods; that there were no residential parcels larger than five acres surrounding the request area; and that they wished the opportunity to develop their property.

Mark Watts with Cobb & Cole, 150 Magnolia Avenue, Daytona Beach, discussed the traffic issues; that there was not any specific funding mechanism for road improvements in DeBary; that impact fees and developer improvements were the only sources of funding without additional costs to the City; that the Staff report showed adequate sewer and water capacity; that Staff reports indicated sufficient road capacity; that a developer would provide road improvements; that Agricultural Residential Zoning Classification was not appropriate for the area; and that the Comprehensive Plan provided for appropriate development where infrastructure was adequate.

It was discussed that there was a portion of the property required for preservation; that approximately 10 acres of wetlands would not count towards density calculations; that, under current zoning, approximately 8 houses could be built on the entire parcel; that the Developer had not yet determined the type of development; and that the proposed amendment would allow for a range of densities. City Attorney Ardaman was asked for opinion as to what could be approved or denied by the City Council. Tom Brooks noted that the report provided by DCA was a worst-case scenario and that the maximum number of units would not be feasible under the Land Development Code. City Attorney Ardaman replied that not approving maximum density under a specific zoning classification would require justification and that further information was needed from the County Planner and Developer. Mr. Brooks commented that maximum density did not have to be allowed. City Attorney Ardaman replied that the matter might become open to litigation; that if the change to the Comprehensive Plan were approved, rights to a rezoning would become stronger; that this was an appropriate stage to determine long-range planning goals for the City; and that there might be restrictions in place that would not allow certain densities indicated by the Planner's report. It was further discussed that land use categories could be made more specific in the Comprehensive Plan.

Mr. Costa stated that conformity would require them to limit density to one-third to one-half acre lots, which would be similar to the character of the surrounding neighborhoods and

accommodate approximately 40 houses. Mr. Brooks stated that density could be held to 1 unit per acre and that restrictions under the Land Development Code would not allow maximum density. There was further discussion of amendments to be made to the Land Development Code and then repeated in the Comprehensive Plan to accommodate future development issues.

Keith Rourke, 111 Traders Cove Boulevard, President of the Traders Cove Homeowner Association, stated that an application had been previously denied; that the traffic study needed to take into account the busier summer season; that the Developer had not communicated with the residents in the area; and that the quality of life in the area needed to be preserved.

Robert Crollinger, 102 Admiral Lane, read a statement on behalf of Patricia Duncan who was unable to attend; that the issue had been previously denied; that four homes per acres was too high a density; that future development would increase traffic in the area; that school overcrowding would become an issue; and that she would prefer 2.5 acres per homesite not including roads and drainage. Mr. Crollinger read additional names that he was representing; Osling, 209 Admiral Lane, Burkhart, 218 Sher Lane, Lee, 208 Sher Lane, Walsh, 123 Sher Lane, Visivades, 201 Captains Cove Circle, and Bennington, 106 Sher Lane; that the traffic report was not attached to the document; that he felt development should be restricted prior to reaching maximum road capacity and not after; that he felt there were discrepancies between the document and reports from the St. John's River Water District; that there were currently water restrictions in the area; that current the City's parks and recreation facilities were not adequate for the present population; that there would be concerns with impact in other areas; that justification for rezoning had to be provided; that the report did not address the impact on safety, public services or schools; and that the request be denied.

Bob Watson, 106, Admiral Lane, stated that he believed the developer should have submitted a detailed plan for proposed development; that he felt the density was excessive; that proposed lot sizes should be consistent with the area; that traffic needed further consideration; and that he was opposed.

Mayor Rosamonda entertained a motion to deny Ordinance No. 03-03. Motion was made by Council Member Allen. Vice Mayor Coleman seconded. It was discussed that development to the area was desirable, but the density issue had to be resolved; and that further review of the City's Comprehensive Plan and Land Development Code was needed. The motion carried unanimously.

## **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. Letter of Understanding – Volusia County Sheriff's Office Personnel.

- \*2. Ordinance No. 02-03 – First Reading – Expansion of Leisure World (Meadowlea on the River) Streetlighting District.
- \*3. Final Site Plan – FPC/DeBary Plant Office Addition – 03-F-FSP-0137.
- \*4. Resolution No. 03-01 – Opposing Proposed Western Beltway.
- \*5. Purchase of Copy Machine and Color Printer.

Mayor Rosamonda reviewed items for the new Council Members. City Manager Diamond reviewed Item 2 and Mayor Rosamonda reviewed Item 4. City Attorney Ardaman read Ordinance No. 02-03 and Resolution No. 03-01 by title. Motion to approve was made by Council Member Gunter. Vice Mayor Coleman seconded. Then motion carried unanimously.

### **VIII. Growth Management and Development Review**

1. Subdivision Overall Development Plan – DeBary Commercial Subdivision – 02-S-OPD-0548.

Palmer Panton, Volusia County Land Development, reviewed the Plan; that the addition of the interior road was proposed to reduce traffic turning off of Highway 17/92. Roger Van Auken, representing the Developer, stated that he had spoken with all parties involved; that a compromise had been attempted with the parties; and that there was an objection to moving the Johnson Building driveway. It was discussed that other interconnections were considered; that removal of the rear easement might allow connected parking lots; that adjacent residents might be affected; that the proposed plan addressed future development to the commercial area; that civil litigation issues might be involved in moving the driveway; that under permissive uses, the change would be required by FDOT; that the proposed use was for multiple retail; that the property could be developed without changing the road; that if the current driveway configuration was not changed, the area would become a hazard to traffic and pedestrians; and that the County was trying to prevent future traffic issues for that area. Mayor Rosamonda entertained a motion to approve ODP 02-S-OPD-0548. Motion was made by Council Member Carson including County Staff recommendation. Council Member Gunter seconded.

There was additional discussion that reparation had been offered for the changes required to the driveway; that a written agreement should be provided; that the developer should indemnify and hold harmless the City for any civil action taken by Mr. Johnson; that the County was requiring the proposed road change; and that the developer was trying to reach a compromise with all parties. It was discussed that the developer could amend the request and leave the cul-de-sac; and that there might be advantages if the road provided greater exposure for the Johnson building. Richard Moody, also representing the developer, noted that the Mr. Johnson was concerned with access to leased areas of the building; that the developer wished to be cooperative with all parties; and that the sale of the Developer's property was contingent on the approval of the ODP. There was further discussion that a hold harmless should be required; that the Developer would have to be provided with a hold harmless from Mr. Johnson and preferred not to proceed without

it; that Mr. Johnson had been made aware of the meeting; that the matter could be brought back at the Special Meeting of the City Council on January 15, 2003; and that the City could attempt to contact Mr. Johnson for his response. The motion was withdrawn. Mayor Rosamonda entertained a motion to approve ODP 02-S-OPD-0548 contingent upon a Hold Harmless Agreement either from Mr. Johnson or from DeBary Estates & Associates. City Attorney Ardaman noted that the Hold Harmless would be subject to approval by Council or the City Attorney. Motion was made by Council Member Allen. Vice Mayor Coleman seconded. The motion carried unanimously.

#### **IX. Close of Regular City Council Meeting/Open Executive Session**

Appointments to the Economic Development Advisory Committee were discussed at this time; that the new Council Members had an opportunity to appoint members; that the Council shall appoint all members and allow the Committee to determine who shall serve as an alternate member. Mayor Rosamonda entertained a motion to appoint Tom Donohue, Betty Gigantino, Tracy Good, Carol Lawrence, and Jane Wright as individual Council Member appointees and to appoint Donald Kitner, Dick Tosh, and Don Woodruff as at-large appointments subject to the Committee meeting on or about the 16<sup>th</sup> of January to select an alternate among those three. Motion was made by Council Member Carson. Council Member Allen seconded. The motion carried unanimously.

#### **X. Close Executive Session/Open Regular City Council Meeting**

City Attorney Ardaman stated that with respect to ongoing litigation with Joseph Chinelli, Volusia County, and the Florida Department of Transportation, he required advice from the City Council and such advice needed to be withheld from public hearing at this time and for this proceeding because it relates to settlement negotiations, strategy sessions and litigation expenditures; that the private executive session would be recorded by a Court Reporter; that the time of commencement and termination would be recorded; that all discussion in the proceeding, names of all present and names of all speakers would be recorded; that none of the session would be off of the record and all of the session would be on the record; that the session would be transcribed by the Court Reporter and filed and held with the City Clerk and not released to the public until the conclusion of litigation; that present at the session would be the City Council Members present, City Manager Diamond, the Court Reporter, and City Attorney Ardaman. Mayor Rosamonda entertained a motion to close Public Hearings. The motion was made and seconded. The motion carried unanimously.

The public hearing was re-opened after the conclusion of the Executive Session.

#### **XI. Old Business**

1. Consideration of Settlement – Chinelli vs. City of DeBary et al.

City Attorney Ardaman recommended that the City Council consider a settlement of the Chinelli litigation involving Volusia County and the Florida Department of Transportation; that a total

settlement would be contingent upon finalization of the case with Volusia County and the City of DeBary, that the settlement was a total of \$260,000 between the County and the City, with \$150,000 being paid by Volusia County and \$110,000 paid by the City of DeBary, with 50% of that \$110,000 being paid by the Florida League of Cities and contingent upon receipt of acceptable releases from Volusia County and the plaintiff, and contingent upon Volusia County carrying out its portion of the settlement. Council Member Carson made the motion to approve the settlement as recommended by the City Attorney. Council Member Gunter seconded. The motion carried unanimously.

## **XII. New Business**

1. None.

## **XIII. For the Good of the Order (Routine Recurring Business)**

1. Board Committee Reports
2. Board/Committee Appointments
  - A. Board: Citizens Advisory Committee – Volusia County Metropolitan Planning Organization.
  - B. Board: Senior Program Advisory Committee  
Alternate
  - C. Board: Teen Program Advisory Committee  
Teen
  - D. Board: Economic Development Advisory Committee

There was discussion of appointments needed on the various Committees; that Mayor Rosamonda wished to be appointed to the Metropolitan Planning Organization to represent the City of DeBary. Motion was made by Vice Mayor Coleman. Council Member Allen seconded. The motion carried unanimously.

3. Member Reports/Communications
  - A. Mayor and Council Members

Mayor Rosamonda discussed that a developer had requested a workshop regarding a development proposal for property at the south end of Fort Florida Road in order to address issues and Council concerns prior to presentation of a Residential Planned Unit Development to the City Council; that the bid deadline was immediate for the DBCC building; that the Council could meet to determine whether a bid should be submitted and for what amount; that the meeting had to be held as a public hearing; that the Tri-City Summit meeting had been re-

scheduled; and that Mayor Rosamonda proposed a meeting on January 15<sup>th</sup>, 2003 for the DBCC bid discussion and to hear the developer's presentation. The meeting was scheduled for January 15, 2003 at 6:00 PM without objection. Mayor Rosamonda also discussed a letter received from the Volusia County School Board asking the City of DeBary to declare their intent regarding participation in the Saxon Boulevard road extension project; that for the information of new Council Members, discussions had been held with involved agencies to encourage shared financial participation; that it was a \$5 million dollar project; that approximately \$2 million was needed to complete the road; that City Manager Diamond had obtained estimates for loans for the City to provide upfront funding with the condition that the County would reimburse the City; that meetings were scheduled to obtain commitments from other parties; that Orange City had passed a resolution that a Saxon Boulevard site was their first choice for a High School site; and that the matter could be added to the January 15<sup>th</sup> agenda for additional discussion.

Vice Mayor Coleman discussed his attendance at the Transition Team meetings concerning the formation of a new water cooperative entity; that a copy of the new rules was available for review by the Council Members; that he had met with members of the Moose Lodge who did clean up on Highway 17/92 as part of the Adopt-A-Road program; that some advertisement of the program to encourage additional participation was needed; that DeBary Boards and Committees should be making regular reports to the City Council, that he attended and would be attending several DeBary Committee and Board meetings; and that he had toured regularly the Fort Florida Road development area as well as Lake Charles to review the water situation. Council Member Allen noted that he felt that the Finance Administrator, James Seelbinder, should attend the January 15<sup>th</sup> Special City Council Meeting to address any Budget issues that might arise. Council Member Carson asked that information be provided regarding the DBCC building issue. There was discussion of changing meeting dates for the City Council meetings. Council Member Gunter asked that additional work should be done regarding the drainage issues in the City; that drainage plans should be reviewed; that negotiations were being pursued for easements for new drainage structures; and that the Council felt DBCC should reimburse the City for the cost of pumping their retention area.

- B. City Attorney
- C. City Manager

**XIV. Adjournment.** The meeting adjourned at 11:25 PM.

**APPROVED February 5, 2003  
CITY OF DeBARY  
CITY COUNCIL**

**Carmen Rosamonda, Mayor**

**ATTEST:**

**Maryann Yaskanich, City Clerk**