

City of DeBary
REGULAR CITY COUNCIL MEETING
Wednesday
June 4, 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

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

Absent: Vice Mayor George Coleman

Others Present: City Attorney Kurt Ardaman, City Manager Richard Diamond, and City Finance Administrator James Seelbinder.

III. Public Participation For Any Issues Not On the Agenda

Melinda Helbraun, 146 Cedar Springs Circle, stated that she was not in favor of the proposed site for a High School in DeBary; that she had information that the site would not be adequate and an additional school would have to be built; that she felt that the City of DeBary should pay the School Board the \$25,000 non-refundable deposit paid for the site and proceed to purchase the property for a Town Center; that students from DeBary would not be guaranteed attendance at a school in DeBary; and that the School Board should be fiscally responsible.

Steve Lyon, 178 Community Drive, representing Operation DeBary Save Our Schools stated that the members of the group wished to receive specific information from each Council Member regarding their reasons for voting for the Resolution passed on May 7, 2003; that a response was requested within one week unless the Council Members wished to discuss it at this time.

It was discussed that appointments could be made to meet with Council Members individually; that there was information available in the Minutes for the meeting of May 7, 2003; that Council Members could provide information via email.

Daniel Lee, 401 Hollingsworth Court, representing Operation DeBary Save Our Schools stated that signatures were being gathered in support of the proposed High School in DeBary; that data was being gathered and the group wished to do a formal presentation at the next City Council Meeting; that he asked the City Council Members if they would be willing to re-vote on the Resolution after the information was presented. It was discussed that the goal of the group was to

provide additional facts based on research; that the matter could only be brought back before the City Council of the City of DeBary by a dissenting Council Member. City Attorney Ardaman noted that the City Council could not legally bind itself to any action; that after the presentation, the Council could choose whether to take any procedurally appropriate action.

Mr. Lee asked if an appeal or request for a re-vote could be made or if such an action had been taken in the past. City Attorney Ardaman stated that there was no reason that the City Council could not reconsider the Resolution if appropriate procedure was followed. Mayor Rosamonda discussed that the group could make a presentation; that it would not be an Agenda item; that after the presentation they could make a request of the City Council to reconsider the Resolution and it would be the will of the City Council of the City of DeBary whether they wished to take any further action.

IV. Approval of Minutes

1. Regular City Council Meeting held May 7, 2003.

Motion to approve was made by Council Member Gunter. Council Member Carson seconded. The motion carried unanimously.

V. Presentations

1. Proclamation – Expressing Appreciation to the West Volusia Chamber of Commerce.

Mayor Rosamonda read a Proclamation on behalf of the City Council of the City of DeBary that proclaimed July 1 to July 7, 2003 as Chamber of Commerce Week expressing appreciation for the steadfast efforts of Linda White, David Bridgeman and all those involved in supporting and promoting economic development in the communities. Mr. Bridgman thanked the City Council for their support and recognition.

VI. Public Hearings

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 any Quasi Judicial Proceedings.

Mayor Rosamonda asked for a motion to close the City Council Meeting and open the Land Planning Agency of the City of DeBary. Motion was made by Council Member Gunter. Council Member Carson seconded. The motion carried unanimously.

1. Ordinance No. 09-03 – First Reading – Amending the Future Land Use Map of the Adopted Comprehensive Plan by Changing the Land Use Designation for Property West of Enterprise Road from Residential/Low Density to Commercial/Office – Oscar Wilson – Case 03-SS1

Tom Brooks, Contract Planner for DeBary, discussed the site and the request for the change; that the land use was changed when changes were made for consistency with the Future Land Use Map; that an easement from Terra Plantation Lane provide access to the property; that future access would be from Enterprise Road; that the building would be medical and professional offices; and that Enterprise Road would be four-laned and there would be little traffic impact.

It was discussed that appropriate buffers would be required for the adjacent residential area; that the entrance from Enterprise Road would provide adequate access for emergency vehicles and access would be reviewed when the Site Plan was presented; and that the residential easements be vacated and adjacent lots have been purchased for access to Enterprise Road.

Tom Smith, 305 Glen Club Drive, representing the applicant, stated that he was providing cross access from the adjacent office building that he owned. The configuration of the lots and area in question was reviewed; that the lots were divided between Orange City and DeBary; and that a wall could be constructed to tie into the existing wall to divide the development from the residential areas. It was discussed that Orange City had been consulted for the portion in that city; that they had no objection to the cross access; that Volusia Utilities would allow cross access on a portion of their property and they would vacate any access from Terra Plantation Boulevard; that Stormwater runoff would be all onsite and would not impact Glen Abbey; and that the outflow was believed to be out to Enterprise Road. It was further discussed that the issue of the road becoming public would have to be researched; that the easements would be recorded on the deed. Attorney Ardaman reviewed legal aspects of the type of easements; that the issue could be addressed during the development. It was discussed whether the portion of the property in Orange City could be annexed; Orange City would have to de-annex the area first.

City Attorney Ardaman read Ordinance No. 09-03 for the Land Planning Agency by title. Mayor Rosamonda entertained a motion to recommend approval to the City Council of the City of DeBary. Motion was made by Council Member Gunter. Council Member Allen seconded. The motion carried unanimously.

The Land Planning Agency was closed without objection and the City Council public meeting was reopened. City Attorney Ardaman read Ordinance No. 09-03 by title. Mayor Rosamonda entertained a motion to approve Ordinance No. 09-03 as recommended by the Land Planning Agency. Motion was made by Council Member Gunter. Council Member Allen seconded. The motion carried unanimously.

2. Request for a Variance from the Required Rear Yard Building Setback for an Existing Single-Family Dwelling – 242 Columba Road – Case D-02-001

Volusia County Planner Scott Ashley reviewed the Request; that the property was under construction and had been permitted; that the builder had discovered the error after a foundation survey; that the entire structure would have to be demolished in order to make corrections if the variance is not granted; that the homeowner was not at fault; and that the variance would be for 1.1 feet of the required 20 feet of the setback.

Sean Gowan, 239 DeLeon Road, stated that he had concerns with the granting of the variance; that he had no desire to cause any hardship to the homeowner, but was concerned with flooding issues in the area and construction of a swale; that there appeared to be runoff into adjacent yards; and that the setback only applied to the distance from the property line and not between houses.

It was discussed that there had been work on drainage in that area; that Volusia County had provided assurance to the City that side and rear swales would be constructed and gutter downspouts directed away from adjacent homes. Liability for runoff to adjacent properties was discussed.

It was discussed that there were frequent errors by builders; that the foundation survey was done late in the process; that the builder ceased construction and reported the problem as soon as the error was noted; that foundation surveys were not required for all construction; that the home was set higher than the older surrounding homes; that the drainage issue was being addressed; and that the swale was designed to carry water onto the road for runoff.

Mayor Rosamonda entertained a motion to approve the Variance for the North Rear Yard Setback from 20 feet to 18.9 feet in Case D-03-001. Motion was made by Council Member Carson. Council Member Allen seconded. 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. Request for Final Plat Approval – Riviera Belle Unit 1 (Riverside at DeBary) – 03-S-FPL-0021
- *2. Request for Extension of Subdivision Overall Development Plan Approval – DeBary Plantation Unit 21- 01-S-ODP-0193
- *3. Ordinance No. 08-03 - First Reading – Amending Ordinance No. 13-98 by Changing the Desired Minimum Salaries Requirement for Use of the Economic Development Opportunity Fund.

- *4 Ordinance No. 10-03 - Establishing Code Enforcement Liens as Super Priority Liens.

City Attorney Ardaman discussed that in Item 1 he wished to add conditions to be imposed on the Plat for consideration by the City Council as part of the Consent Agenda; that all conditions should be included with any approval; that the grant of easements, covenants, by-laws must be recorded; and dedication of Ft. Florida Road right-of-way.

City Attorney Ardaman read Ordinance No. 08-03 and Ordinance No. 10-03 by title. Mayor Rosamonda entertained a motion to approve the Consent Agenda with the condition on Item No. 1 that additional comments from Staff be included as well as the five items referred to by City Attorney Ardaman. Motion was made by Council Member Gunter. Council Member Carson seconded. The motion carried unanimously.

VIII. Growth Management and Development Review

1. Resolution No. 03-08 – Revising Land Development, Zoning, and Comprehensive Plan Fee Schedules.

City Attorney Ardaman read Resolution No. 03-08 by title. City Manager Diamond discussed the previous revenue analysis for building and zoning fees; that the recommendation at that time was to allow the County time to complete a fee review.

Palmer Panton, Volusia County Land Development Manager, discussed that comparisons had been made with other counties as well as with local municipalities; that on average fees appeared to be consistent; that Volusia County charged the City an amount to cover costs for various review services provided to the City. It was discussed that if excess funds were collected and paid to the County whether the County would return those funds; and that there had been challenges throughout the State where lawsuits had been filed to refund fees collected that were greater than the cost of the services provided. Mr. Panton stated that he felt that enough research had been done to qualify the basis of the costs. It was further discussed that impact fees could be escrowed but development fees were not; that extensive research of the fee structure had been done. Mayor Rosamonda entertained a motion to approve Resolution No. 03-08. Motion was made by Council Member Gunter. Council Member Allen seconded. The motion carried unanimously.

2. Request for Waive of Gateway Corridor Standards – Dollar General Store
– 03-F-FSP-0148

Palmer Panton, Volusia County Land Development Manager, reviewed the request; that the conceptual Site Plan was reviewed in December of last year prior

to the adoption of Gateway Corridor Standards; that the applicant had been advised of the change to the Gateway Standards; and that there was a question as to which Standards should be used by Staff. It was discussed that appropriate notice had been given both publicly and directly to the applicant; that the original lot purchase may have been made under the previous Standards. City Attorney Ardaman discussed that he was not aware at this time that there were any grounds for equitable estoppel.

John Wanamaker, 102 James Pond Court, Broker for the applicant stated that the contract for the property had been written in August; that the County had notified him in September that the zoning was appropriate for the project at that time; that they had attended the County Technical Staff Review for review of the Site Plan and their comments were provided to the Engineer for the conceptual Site Plan that was submitted in December; that Volusia County had provided a letter dated December 24, 2003 regarding issues to be addressed for Final Site Plan approval; that the letter regarding the change to Gateway Standards was dated December 31, 2003; that the developer had spent \$20,000 at that point and that to meet the Standards for a two-story building, the property was no longer cost effective; that City Manager Diamond had communicated with the City Attorney regarding the matter; that it would be a hardship to meet the revised Gateway Standards and the County had advised that the case be presented to the City Council; that the waiver they were requesting was the two-story requirement; and that they could create a structure compatible with existing buildings.

Kim Booker, 170 Bloxham Avenue, Orange City, FL 32763, the property owner, stated that she had purchased the property for development purposes or resale; that the Standards would prohibit her from constructing a building for rental purposes; that since the effective date of the Ordinance, the project was already underway and it had become a financial burden due to the additional costs of compliance; that they did not request a variance of all Standards but only the two-story façade requirement of the Village Center Overlay; and that, since this was the only project underway at the time of the ordinance change, a Variance was requested.

It was discussed that the property was under contract with contingencies and had not yet been closed on; that the notification in December offered sufficient time to make changes to the Site Plan; that the Variance request was not limited and was for a waiver of the entire Gateway Standard requirements. It was further discussed that the project was still early in process; that it did not appear to be a hardship at this stage; and that sufficient notice had been given. Mr. Wanamaker stated that notice had not been received until December 31, 2003; that the delay to date had been due to lack of information as to procedure and which Standards would be applied; that it was a request for a partial waiver only; that the current property owner had purchased the property over one and one-half years prior anticipating development under the standards current at that time; and that the process had

been started prior to the change of Code and customarily would have proceeded under the Code in effect at that time.

It was further discussed that City Manager Diamond had requested advice of the City Attorney under the Burt Harris Act; that there had been requests for guidance that took some time; and that there had been notice of pending changes to the Ordinance. City Attorney Ardaman reviewed legal doctrine in the State of Florida that where an ordinance is under consideration, even if not formally approved, a developer would be subject to the terms of a new ordinance. It was discussed that the letter from the County was sent with conditional approval of the conceptual Site Plan; that the letter advising the pending change to the Ordinance was sent seven days later; and that funds had already been expended by the developer at that point. Mr. Wanamaker stated that he had approached the City Manager in January and had been waiting on advice from the City Attorney and the County for advice for procedure.

It was discussed that the property appeared buildable under the new Standards; that other property owners might have similar issues; that the request for Waiver was not partial; that the request was actually an exception to the Ordinance; and that the City Council of the City of DeBary could choose to allow the applicant to modify the request.

Mayor Rosamonda made a motion to deny the request in Case 03-F-FSP-0148. It was discussed that no action be taken; that it was not the intent of the City to impede business development; that the applicant could amend the request and provide an architectural rendering; that a building offering transitional architecture based on adjacent properties could be proposed; that the height of the façade was the issue; and that in the Village Center Overlay portion of the Gateway Standards a two-story façade was required. No action was taken.

IX. Old Business

None.

X. New Business

1. Request to Waive Code Enforcement Fines at 239 Eldorado Drive –Billy Bishop

City Manager Diamond reviewed action taken by the Code Enforcement Board; that fines had accumulated to the amount of \$128,100; that foreclosure proceedings had been started by the City Attorney; that the tenant was notified of the pending action; that an Affidavit of Compliance had been issued in March of 2003; that the daughter of the property owner was residing in the house since September 2000; that she was representing her father who was requesting that the lien be released and foreclosure proceedings terminated; that her claim was that

her father was not notified of the lien on foreclosure; and that she had no notice of violations.

City Manager Diamond reviewed Chapter 162 and notice requirements; that sufficient notice had been given under State Law requirements; that circumstances differed from previous foreclosure situations; that in many cases a minimum of administrative costs were collected; that the figure of \$3,429 was in the original amount but that the City Attorney had advised that there would be additional legal fees; that there was not an existing policy for this particular situation; and that the City Council of the City of DeBary could use this case to set policy for similar cases in the future with consideration of mitigating circumstances.

Shelly Fabian Cruz, daughter of owner Billy Bishop, referenced a letter that she had provided; that she was not aware of the liens when she moved into the property in October; that Mr. Bishop allowed her to reside at the property due to personal circumstances in return for repairs and maintenance; that she had completed repairs prior to being aware of liens; that Mr. Bishop was not aware of the foreclosure proceedings; and that she would have brought the property into compliance sooner had she been aware of the issue.

City Attorney Ardaman advised that Administrative costs now totaled \$5,204.63. Ms. Curtis stated that Mr. Bishop resided out of state and was not in good health. Motion was made by Council Member Gunter to reduce the fines to \$5,204.63 and waive the balance of Code Enforcement fines. Council Member Allen seconded. It was discussed that a time frame for payment should be included; that with liens in place it would not be possible for the property owner to obtain a new mortgage for the property; that that might be the means necessary for the property owner to pay the fines; that a stipulation agreement for payment over a term of some months could be made; that Homestead should not be allowed until the terms of any agreement had been met. City Attorney Ardaman recommended that a recorded agreement could be executed to protect the City's claim; that the current fine could be left in place and upon payment of a stipulated amount by a certain date, the balance of the fine could be waived; and that the property owner could request payment terms if unable to pay the stipulated amount in the short term. It was discussed whether additional fees might be incurred; that authority could be given to City Manager Diamond to negotiate a payment stipulation agreement of up to 12 months and, upon payment in full, the liens would be released; that the motion needed to be restated; and that a letter from the City could be provided if a mortgage was required. The second was withdrawn and the motion was restated. Mayor Rosamonda entertained a motion that upon payment of \$5,204.63 and any additional legal fees incurred hereafter, that the City would waive the balance of the liens on the property, allowing the property owner up to 12 months, to be negotiated by the City Manager to pay this liability in full. Council Member Gunter motioned to approve with the payment amount of \$5,204.63 as discussed. Council Member Allen seconded. The motion carried

unanimously. City Attorney Ardaman advised Ms. Curtis that immediate action was needed.

2. Consideration of Settlement Agreement – Senez/Miller v. City of DeBary

City Attorney Ardaman noted that a complete agreement was not available as comments were still pending; that a copy of the draft Settlement Agreement had been provided to City Manager Diamond; that the document was not finalized; and that it would probably come before the City Council at the next meeting or at a special meeting, if necessary, for formal approval. City Manager Diamond commented that City Council could set the terms and amount of a settlement and authorize City Attorney Ardaman to finalize an agreement; that the amount proposed for settlement was \$71,000 with \$25,000 paid through the Florida League of Cities Trust. Mayor Rosamonda entertained a motion to authorize up to \$71,000 to be used as a settlement to the Senez/Miller case and authorize the City Attorney and the City Manager to draft necessary documents to obtain that settlement. City Attorney Ardaman advised that the City would enter into an Agreement to complete the permitting and construction of the stormwater pond in accordance with the study by Professional Engineering Corporation (PEC) within 18 months. Mayor Rosamonda included Mr. Ardaman's comments as entertained for motion. Motion was made by Council Member Allen. Council Member Carson seconded. The motion carried unanimously.

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

1. Board and Committee Reports

10 Year Anniversary Celebration Committee:

Patrick Fulton, 145 S. Highway 17-92, DeBary, Chair of the 10 Year Anniversary Committee introduced Members of the Committee; Peg McAllister, Jane Wright, and Maxine Epstein. Mr. Fulton noted that a package had been provided with information gathered by the Committee; that a Carnival might not be feasible at Gemini Springs; that radio station sponsorship had been reviewed; that local and national entertainment groups had been contacted and estimates provided; that a draft of a logo for the event had been drawn; that a flyer or brochure for advertising was proposed to help offset the cost of the event; and that every effort was being made to make the event self-supporting. It was discussed that the support of the County Council was being sought to try and hold the Carnival at Gemini Springs; that the County should be asked to define what would be considered a Carnival; that other events would also require heavy trucks; that staged events had been held at Gemini Springs in the past. It was discussed that a VIP Dinner at DeBary Hall could be held for 140 to 180 persons; that a portion of the tickets would be available for sale and a portion for invited guests such as the Governor and Congressman Mica; that companies could sponsor tables; that there

was an estimated per plate price; that there would be entrance charges for the Carnival if it was held and the City would receive a percentage of ticket sales; that graduated levels for sponsors might be offered. It was discussed whether U. S. Highway 17-92 could be closed down for a Carnival; that setup time would be prohibitive; that a golf tournament and a 10K run would be among other events; and that a workshop could be scheduled if necessary. There was further discussion that without the Carnival there would not be other sources for revenue; that the County had agreed to waive access fees with the stipulation that those attending could not be charged for entry.

Economic Development Advisory Committee:

Carol Lawrence, Chair of the Economic Development Advisory Committee, introduced Vice Chair Don Kitner and Member Jane Wright. She discussed recent activities of the EDAC; that they had developed and recommended the Strategic Plan and had begun implementing it; that they were focusing on priorities of the Plan beginning with lower cost-effective elements; that the City Webmaster was being consulted to enhance the City Website; that the Gateway Corridor Standards had been reviewed as well as the Economic Opportunity Fund Ordinance; that they had a request for proposals for firms to conduct a study for the possible creation of a Community Redevelopment Agency (CRA); that six responses were received and a short list of four were being interviewed on Saturday June 7, 2003 and Council Members were invited to attend; and that Rick Michael, the County Economic Development Chief was encouraging cooperative efforts between the County and the City of DeBary to attract quality businesses.

City Manager Diamond noted a written report submitted by the representative of the Volusia Growth Management Commission.

2. Board/Committee Appointments

- A. Board: Senior Program Advisory Committee
Alternate At-Large
- B. Board: Teen Program Advisory Committee
Teen D.Allen (1)
G.Coleman (1)

There was discussion of the feasibility study for a Teen Center as a cooperative effort by the Tri-City area.

3. Member Reports/Communications

- A. Mayor and Council Members

Council Member Gunter noted the interest expressed at the Tri-City Summit in a multi-purpose building; that it appeared to be attractive to more municipalities than just the Tri-City area; that he was concerned that the construction of the retention easement in Glen Abbey had not commenced; that the Golf Course was not cooperative and had caused delay; and that he requested that the City Council direct City Manager Diamond to move forward with having the dirt removed. City Manager Diamond noted that he had received an estimate and a contract; that minor corrections could be made and the company could start by June 16, 2003 at the latest. City Manager Diamond thanked Council Member Allen for his assistance. It was discussed that letters would be sent to residents to advise of that start date; that the County would be scheduled to do the swale reconstruction and notice would be sent.

Council Member Carson discussed that he had met with City Manager Diamond and Leslie Butler with Parks and Recreation, had gone to Community Park and had created a list of improvements that were needed; that City Manager Diamond had reviewed the Maintenance Contract and that changes could be implemented; that Council Member Carson had revised an annual fertilizing schedule; and that City Manager Diamond had not received any information to date regarding the property in Glen Abbey.

Council Member Allen discussed the ballparks; that the possibility of having Volusia County contracting for maintenance again; that the County might be willing to re-bid on a multi-year contract; and that if the City Council was willing, the County would submit that bid. It was discussed that the local County Council Member would present the suggestion to the County Council. There was additional discussion that there had been dissatisfaction in the past with County maintenance; that the County had not provided an individual to assist with Park programs; that the current Director of Parks and Recreation was to provide support and implementation of programs as well as supervise maintenance; that the parks were not in good condition; that if a proposal was considered from the County, that City Manager Diamond could also provide a proposal for improving the current situation to compare; and that projects and programs had not been completed to expectations. It was discussed that City Manager Diamond could create a plan to implement a City program to compare with the County proposal; that a consultant could be brought in to provide a feasibility study; that Staff could provide a best practices study; and that the goal was not to create additional departments or add staff. It was the consensus of the City Council that proposals from the County and from the City Manager would be provided to be considered for an October effective date; that County Council Member Long would be prepared to present the request for bid to the County Council. City Manager Diamond

advised that the current Parks and Recreation Coordinator for the City of DeBary had submitted her resignation effective July 4, 2003; that if a County bid was accepted, the position would not be necessary; but the position should be advertised. There was discussion of handling the duties in the interim period.

Council Member Allen discussed that DeBary Nursery was concerned with required fence setbacks; that it would adversely affect their business; that they were willing to replace the fence type according to our regulations, but they advised that they would consider legal action. It was discussed that Gateway Standards would also impact setbacks; that notices would be sent out in the near future that the amortization period for the fences would be ending November 2004.

Mayor Rosamonda discussed the recent Budget Workshop; that he had been unable to attend due to Legislative Day in Tallahassee; that Streetscape Budget funding should be included; that he would consider eminent domain action on the Progress Energy Park property; that after 3 and ½ years there had been no progress with negotiations; that either another site should be selected or eminent domain considered; that it was important to the City to have an appropriate park venue; and that he would appreciate the opinion of the Council. City Manager Diamond stated that there had been some recent encouragement through the efforts of Council Member Allen; that a deadline could be set to provide some resolution; that after the end of the fiscal year, other decisions could be made; and that there were funds in the Land Bank for purchase if needed.

- B. City Attorney
- C. City Manager

XII. Adjournment. The meeting adjourned at 9:35 PM.

**APPROVED JULY 2, 2003
CITY OF DeBARY
CITY COUNCIL**

Carmen Rosamonda, Mayor

ATTEST:

Maryann Yaskanich, City Clerk