

City of DeBary
REGULAR CITY COUNCIL MEETING

Wednesday
February 4, 2004

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 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 Courson, City Attorney Kurt Ardaman, and Assistant City Attorney Dan Langley

III. Public Participation For Any Issues Not On the Agenda

Chuck McDonald, 57 Pleasant Hill Drive, requested a speed limit reduction to be implemented at South US Highway 17/92; that vehicles exiting and entering the Parkview, Parkview Heights and Springview subdivisions were at risk. Mayor Rosamonda discussed that a request had been made to the Florida Department of Transportation (FDOT), as US Highway 17/92 was a State highway; and that the request was denied based on FDOT regulations.

Herbert Kretler, 50 Wentwood Drive, stated his concern that the Stewart Marchman facility was in operation; that there appeared to be an armed guard at the facility, causing concern for public safety; that the Center was closer than 500 feet to the residential area; and that he did not feel the management of Stewart Marchman had addressed the concerns of the residents and the City.

Glen Paul, 115 Cedar Springs Circle, inquired about what avenues the City might be pursuing regarding the operation of the Stewart Marchman Center and the decision that had been made regarding zoning.

City Attorney Ardaman discussed that City Manager Diamond had contacted the Code Enforcement Division asking them to implement appropriate procedures based on the zoning decision made by the City; that the City Council had the option to proceed with legal measures; and that options at this time were to proceed with code enforcement or pursue a separate legal action. It was discussed whether there was a method of expediting Code Enforcement

procedures; that there were specific conditions that might be appropriate to shorten the time required for a Code Enforcement action; that an injunction process in Circuit Court would involve all of the issues expressed as concerns by the City and the Public; that due process had to be followed; and that the Code Enforcement Board had the power only to levy fines. City Attorney Ardaman noted that at the direction of the City Council, the City Manager and City Attorney could pursue an injunction as quickly as possible under the appropriate statutes and the law; that a hearing could be scheduled for a possible temporary injunction; and that it would require an additional hearing for any permanent injunction.

It was discussed that the City could move forward with various legal mechanisms; that another option would be to meet with representatives and attorneys for Stewart Marchman to discuss relocation and the construction of another facility in a more appropriate area; and that City Attorney Ardaman would contact legal counsel for Stewart Marchman to discuss that alternative and convey their response at a special City Council meeting.

Steve Costa, 101 Curry Rise Court, DeLand, representing Empire Cattle Company, discussed that an agenda issue coming before the Council might have an impact on Empire Cattle property. Council Member Allen, Vice Mayor Coleman, Mayor Rosamonda, and Council Member Gunter disclosed ex-parte communication with interested parties. It was discussed that the agenda item regarding the Florida Power & Light property would be discussed and comments would be heard at that time; and that Mr. Costa could request to be placed on a future agenda.

IV. Approval of Minutes

1. Regular City Council Meeting held January 7, 2004.

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

V. Presentations

1. Citizens for DeBary Easter Egg Hunt.

John Harvey, 61 Floridana Drive, representing Citizens for DeBary, Inc. stated that the Easter Egg Hunt was tentatively scheduled for April 10, 2004 to be held at DeBary Mansion; that they were requesting that the City undertake this event as a City project, rather than the Citizens for DeBary group; that information on the cost of the event had been provided to the Council Members; that if the City accepted the event the admission could be free and a special needs area could be added; that the cost would be \$600; and that Citizens for DeBary, Inc. would provide volunteers for the event to the City.

It was discussed that the date would not conflict with the Volusia County Leisure Services event; that the City might combine it in future years with the County event; that, previously, fees had been charged for the event; and that the event had occurred for 14 years at DeBary Hall. Mayor Rosamonda entertained a motion to approve \$600 to the Citizens for DeBary event. Motion was

made by Council Member Carson. Vice Mayor Coleman seconded. The motion carried unanimously.

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 the following items.

1. Request for Variance – Zoning Case No. D-03-009 – Application of Peter Klich for Mike Marks, Owner for an Accessory Structure Setback of 4 feet in lieu of the Required 5 feet at 192 Hazeltine Drive in a RPUD (Residential Planned Unit Development Zoning Classification). (Request for Continuance).

City Manager Diamond discussed that the encroachment had been found to be greater than advertised and that a continuance was requested. The continuance was granted.

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.*

None.

VIII. Growth Management and Development Review

1. Overall Development Plan – DeBary Plantation (DGCC) Unit 19 – File No. 03-S-OPD-0307.

Volusia County Land Development Manager Palmer Panton reviewed the request. It was discussed that a zoning variance had been granted for some lots in Unit 19. Mayor Rosamonda entertained a motion to approve File No. 03-S-OPD-0307 as provided in the package dated December 31, 2003 by Palmer Panton. Motion was made by Council Member Gunter. Council Member Carson seconded. It was discussed that recent changes to the plat language, regarding maintenance of drainage easements, were not included as part of this request as this was an Overall Development Plan. The motion carried unanimously.

IX. Old Business

1. DeBary Annual Celebration

It was discussed that the recent 10-Year Anniversary Celebration had generated interest in a smaller annual event; that the consensus of the Council was needed to determine if and what type of event could be held; that a cooperative with the County for a bandstand at Gemini Park should be pursued; that City Staff could pursue a proposed joint project agreement with the County for a

bandstand at Gemini Springs and bring the proposal to the Council for approval; that a one-day event could be held; that there appeared to be interest from the County; and that a different date should be selected than the beginning of January due to the holidays.

There was additional discussion that there were similar events in surrounding cities; that the City could handle the event; and that a Spring event would be appropriate but should not overlap similar events in order to attract participants. City Manager Diamond discussed that City staff would bring back recommendations for dates and a budget for the upcoming budget year.

2. Installation of Fire Well at Bill Keller Park Concession Stand.

City Manager Diamond discussed that the Engineering study had been unable to certify that there would be adequate flow from Lake Charles to meet the Fire Safety code; that the option of a 2000-gallon underground storage tank had being researched by City staff; and that the request be withdrawn at this time as the storage tank would probably fall within the expenditure limits already approved for funding.

Item withdrawn.

3. Price Proposal for Construction of Phase III Emergency Flood Management.

City Manager Diamond discussed that the current underground line had not previously been approved by FDOT as a permanent discharge point onto I-4; that an engineering study had been done by URS engineering who is currently working on the I-4 project; that the construction estimate for the improvements to the discharge point and swale was \$130,457; and that approval was recommended and this proposal would avoid having to obtain easements through residential areas and would substantial reduce the length and cost of the project.

It was discussed that this was the final phase of the Emergency Flood Management System for DeBary; that it was a lower cost solution for the City; and that there had been a change to the policies of FDOT and the Federal Highway Administration as to use of their rights-of-way by other governments due to recent flooding issues. There was discussion whether additional bids should be sought and that the contractor was already on site and had personnel, equipment and material in place to be able to proceed. Mayor Rosamonda entertained a motion to approve the Phase III Plan for \$130,457 and authorize the City Manager to have Granite Construction perform the design and construction of the third phase of the Emergency Flood Management System. Motion was made by Council Member Gunter. Council Member Carson seconded. It was discussed that the prior plan would have been more costly and disruptive to residential areas and that it should be completed in conjunction with the I-4 work sometime prior to Fall 2004.

X. New Business

1. Resolution No. 04-02 – Requesting Florida Legislature to Support Municipal Issues.

City Attorney Ardaman read Resolution No. 04-02 by title. Mayor Rosamonda entertained a motion to approve Resolution No. 04-02. Motion was made by Council Member Gunter. Council Member Allen seconded. The issue of outdoor signage companies having input on the types of plantings and improvements of medians was discussed; that the matter should be brought before the Florida League of Cities; that the item could be added to the agenda of the Volusia Legislative Delegation and Volusia League of Cities or could be pursued individually by Council members; that the deadline for submission of legislative items to the would be February 14, 2004; that a resolution disagreeing with the out door advertising statute could be approved by the City Council at the next meeting; and that City Manager Diamond would design the resolution with the consensus of the City Council and would forward it to appropriate legislators. The motion carried unanimously.

2. Bill Keller Park Field Re-Sodding.

City Manager Diamond discussed that \$75,000 had been authorized in the budget for replacing ball field sod at Bill Keller Park; that companion bids or piggy back bids from other jurisdictions were authorized by the purchasing Ordinance; that staff is requesting approval of the use of companion bids from the City of Jacksonville Beach to Laser Turf for laser leveling and grading and from Lake County to Turf Grass America for installation of sod; that the total cost was \$106,620; that the amount that had been included in the budget estimate was from Volusia County; and that if the actual cost exceeded the overall Capital Project budget, a budget transfer would be requested.

It was discussed that there might be problems with the irrigation systems; that \$5,000 for irrigation repairs was included under the maintenance budget. Mayor Rosamonda entertained a motion to approve the re-sodding of Bill Keller Park and any irrigation repairs required to ensure that the irrigation would properly support the sod up to a cost of \$111,620. There was further discussion that the work would be completed prior to the upcoming season and that if there were costs overruns there might be delays in completion. Mayor Rosamonda entertained a motion to approve the laser leveling and grading of the three ball fields at Bill Keller Park and to install new sod and authorize the City Manager up to \$10,000 additional for irrigation as needed. Motion was made by Council Member Allen. Council Member Carson seconded. There was discussion that there were funds budgeted for clay for the fields; that there had been ongoing repairs to the fields; that the sod had previously been installed by the County prior to the City accepting the park; that there were irrigation areas on the west side of the park that should be checked and repaired; and that maintenance at the parks had improved. The motion carried unanimously.

3. Proposal for Codification of the City of DeBary's Land Development Code.

City Manager Diamond discussed that funds had been budgeted for the codification of the Land Development Code in the amount of \$10,000; that it was desirable to undertake the codification of the Land Development Code to incorporate and consolidate the provisions adopted from the Volusia County zoning and land development code and the various portions adopted by the City; and that the proposal from Municipal Code Corporation was for \$7,775. Mayor Rosamonda

entertained a motion to approve \$7,775 for Codification of the Land Development Code for the City of DeBary. Motion was made by Vice Mayor Coleman. Council Member Carson seconded. The motion carried unanimously.

4. Discussion of Administrative Rezoning of Florida Power and Light Property -
Council Member Allen

Council Member Allen discussed that the zoning request was for a change to the industrial utilities classification; that the Empire Cattle property at Barwick and Fort Florida Road was included in the re-zoning request; that the use could be changed to industrial; that the subject property ran south from the Florida Power and Light (FP&L) plant between Barwick Road and US Highway 17/92 stopping at Fort Florida Road; and that Florida Power and Light had no objection to Lake Konomac remaining the same zoning classification.

Bob Coleman, 425 North Williamson Blvd., Daytona Beach, of FP&L discussed that a special exception had been granted for power generation use for 320 acres of the parcel; that the remaining portion had not been re-zoned Industrial; that it was currently zoned agricultural which was not appropriate; and that it was requested that the zoning be corrected administratively rather than FP&L making an application to the City and paying a fee.

It was discussed that an Ordinance re-zoning the property would have to be brought back to the Council for approval; that adjacent property owners would have to be noticed; that the Future Land Use showed Industrial Utilities and the current zoning was Agricultural; that a Special Exception was required for a power plant pursuant to the current zoning; and that administrative re-zonings had not encompassed that area since the uses were not incompatible. It was further discussed whether there was any conflict of interest to perform administrative re-zoning for this particular property; that the Future Land Use did allow for offices, conference centers and similar uses; and that a legal precedent would not be created.

There was further discussion that there might be other repercussions if an administrative re-zoning was granted; that the agricultural zoning had been questioned in the past and had not seemed to be an issue; that other businesses could be developed in that area if the zoning were changed and would create additional revenue for the City; whether administrative re-zoning was appropriate; that utilizing the Opportunity Fund to off-set the cost of the rezoning to FP&L might be another alternative; that an economic development proposal could be presented; and that the cost to apply for a rezoning was approximately \$9,000. Mr. Coleman was asked whether an application to the Opportunity Fund might be workable; that the funds could be utilized to cover the costs of the re-zoning; that additional or outside businesses were not anticipated on the property; that the only administrative re-zoning that had been done by the City was for resolution of conflicts between the zoning and future land use; and that such a conflict did not exist on that parcel.

Steve Costa, 101 Curry Rise Ct., DeLand, representing Empire Cattle, discussed that he had a wholesale nursery wishing to relocate to the area; that the future land use classification of industrial utilities did not allow for that use; that the parcel may have been zoned in error; that

other than the FP&L property, that parcel was the only one with this particular future land use classification; that he would like to discuss the ability to allow the wholesale plant nursery use; and that a small scale comprehensive plan amendment could be made to a 10-acre portion and the remaining 30 acres could be re-classified on the next cycle.

City Manager Diamond discussed that an ordinance could be passed on a small parcel less than 10 acres; that a small parcel did not have to be sent to DCA for a full scale review but did have to go to various state agencies and the Volusia Growth Management Commission; that permitting could then be started by Mr. Costa; and that a small scale comprehensive plan amendment could come before the City Council at the next meeting. It was discussed that normal application processes could be followed; that the change to the zoning could be considered a correction; that the Comprehensive Plan had been in place for some time without issues; that the issue of setting precedent should be considered but that an efficient process to assist the creation of business opportunities could be more appropriate; and that the cost to the City should be considered.

Mayor Rosamonda discussed whether a motion was appropriate to authorize the City Manager to require the FP&L and Empire Cattle Company to utilize normal City processes as far as re-zoning their properties. There was further discussion of utilizing the Opportunity Fund to assist with the re-zoning process; that under an ordinance it would have to be shown that new jobs for the area would meet criteria; that the ad valorem tax revenue from FP&L was substantial; that the cost to Mr. Costa would not be excessive and that the matter could be brought back at the March meeting; and that the rezoning request could be made through normal channels without additional costs to the City. It appeared to be the consensus of the City Council that normal processes be followed.

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

1. Board Committee Reports
2. Board/Committee Appointments
 - A. Historic Preservation Committee Gunter
 - B. Code Enforcement Board Alternate Gunter
 - C. Economic Development Advisory Committee

The appointments to the Economic Development Advisory Committee was discussed at this time. Council Member Gunter nominated Tom Smith; Mayor Rosamonda nominated Carol Lawrence; Council Member Carson nominated Tom Donohoe. It was discussed that Dick Tosh had expressed interest in reappointment, as well as Don Kitner; that Betty Gigantino could be nominated conditional to her acceptance of the appointment; that Tracy Good could be nominated conditional to his acceptance of the appointment; and that Lita Handy-Peters had made application and could be considered as an alternate.

Mayor Rosamonda entertained a motion to approve Tom Smith, Carol Lawrence, Tom Donohoe, Dick Tosh, Don Kitner, Betty Gigantino and Tracy Good as primaries representatives on the

Economic Development Advisory Committee and Lita Handy-Peters as alternate. Motion was made by Council Member Allen. Vice Mayor Coleman seconded. The motion carried unanimously.

3. Member Reports/Communications

A. Mayor and Council Members

Vice Mayor Coleman discussed that the Volusia Council of Governments (VCOG) wanted input from the City for their goals; that the Water Authority of Volusia had selected an Executive Director; that the Public Safety Advisory Committee had retained the same members; that the Community Emergency Response Team members had met and had received training on the defibrillator; and that he and City Manager Diamond had attended a meeting in Deltona regarding growth and development issues. It was discussed that a decision had not yet been made regarding the pulling of water from the St. Johns River or the location of a possible desalination demonstration project; and that research had been done on the amount of water that could be pulled without affecting Blue Springs and the manatee population.

Council Member Allen discussed the senior programs that would be starting in the City; that a City basketball league will be starting; that various schools and facilities would be used for different City programs; that there was funding in the City's budget for programs and nominal fees will be charged which will reimbursement some of the costs to the City.

Council Member Gunter discussed the VCOG Meeting and the Tri-City Summit Meeting; that a transportation study on rail systems recommended a light rail system in Volusia County with a station in the south end of DeBary; that an increase to traffic to reach that area would impact US Highway 17/92; that there were concerns if that scenario was to occur; and that the north area of the City would be more accessible to the Four Townes area and would be less of a traffic concern.

Mayor Rosamonda discussed that the FDOT had taken over the light rail transportation study; that a presentation had shown DeBary as the last stop on Phase I of that proposed project; that copies of resolutions on the matter should be forwarded to FDOT District Secretary Mike Snyder; that the cost to upgrade Dirksen Road for a station would be more costly than to extend Saxon Boulevard; that there would be a meeting at the DeBary Civic Center on Tuesday, February 17, 2004 regarding the commuter rail; and that he has promoted the advantage of placing a station at the Saxon Boulevard extension.

Council Member Carson discussed that City Manager Diamond had accompanied him to meet with representatives from the Scottish Highland Games; that they had discussed holding a special event at Gemini Springs; and that he hoped to see a proposal to bring the event to the area.

Mayor Rosamonda discussed the Tri-City Summit; that Tom Kerry, the Water Resources Manager had made a presentation concerning the St. Johns River Cleanup; that a \$300 donation was being requested from each community to support the event; that Mayor Rosamonda asked

that the City Council approve the funds; that volunteers would be using two boats to do clean-up of the St. Johns River from the water instead of cleaning up the land as was done in previous years. Mayor Rosamonda entertained a motion to approve \$300 for the 8th Annual St. Johns River cleanup. Motion was made by Vice Mayor Coleman. Council Member Allen seconded. It was discussed that the effort had been very productive in prior years. The motion carried unanimously.

The Freedom Festival was discussed; that Mayor Rosamonda had been informed at the Mayors' meeting that Lake Helen would have a parade on Saturday; that the West Volusia county-wide event would be held on Sunday at the Fairgrounds; that donations would probably be requested in April from each community participating. It was discussed that the March City Council meeting needs to be changed; that a Council meeting is necessary prior to the 12th of March to discuss the land purchase contract with Progress Energy; that the meeting date will be Thursday March 4, 2004 instead of March 3, 2004.

- B. City Attorney
- C. City Manager

XII. Adjournment. The meeting adjourned at 9:00 PM.

**APPROVED March 4, 2004
CITY OF DeBARY
CITY COUNCIL**

Carmen Rosamonda, Mayor

ATTEST:

Maryann Courson, City Clerk