

City of DeBary
Regular City Council Meeting

Wednesday
June 2, 2004
7:00 PM

Florence K. Little Town Hall 12 Colomba Road DeBary, Florida

MINUTES

I. Call To Order

1. Invocation
2. Flag Salute

II. Roll Call

Members Present: Mayor Carmen Rosamonda, Vice Mayor George Coleman, Council Member Christopher Carson, and Council Member Richard Gunter. Council Member Danny Allen arrived prior to Approval of Minutes.

Others Present: City Manager Richard Diamond and Assistant City Attorney Dan Langley.

Mayor Rosamonda announced at this time that DeBary Little League closing ceremonies would be held Saturday, June 5, 2004 at 9:00 AM; that a letter of appreciation was received from the Public Safety Advisory Committee thanking Elaine Swanson, Assistant City Manager Maryann Courson, Parks Administrator Anthony Gonzalez and City employees for their assistance with the recent Volunteer Appreciation Day.

Mayor Rosamonda also congratulated City Finance Administrator Jimmy Seelbinder for receiving the Distinguished Budget Award from the Government Finance Administrators Association for the third year in a row.

III. Public Participation For Any Issues Not On the Agenda

Charles Merkley with Waste Management, 1378 Volusia Avenue, Orange City discussed a recent letter to the City Manager regarding Volusia County Solid Waste and Recycling; that their contract invited participation by the City of DeBary; and that they were the current vendor. Mayor Rosamonda discussed that options for that service were being reviewed by the City Council, including that of piggybacking the County's contract.

Norm Eriksen, 15 Azalea Drive, discussed information available on the City website; that he had not observed posting of agendas and minutes for the Streetscape Committee; that he desired more formal structure and information regarding the Committee; and that he inquired whether the Committee was authorized to make formal bids and authorize allocations.

It was discussed that the City Council determines budget amounts and guidelines; that the Committee provides plans and information to be brought to the City Council for Public Hearing for discussion and alteration as needed.

Mr. Eriksen presented further inquiries and it was discussed that budget hearings had been noticed and held as public hearings; that purchases of materials for Streetscape improvements were determined through public bid to the lowest bidder; and that public charettes had been held with consultants and citizens with a formal report and recommendations presented.

Heidi Boone, 160 Briarwood Drive, discussed that she was 16 and had been invited to attend the Republic National Convention in New York; that she was seeking funding assistance. It was discussed that City funding was generally directed to City-wide events; that there were civic groups that might assist. Sharon Pertler with the DeBary Civic Association discussed that the Elsie Reed Scholarship Fund could be applied for but had to be completed in May. It was also discussed that local Republican representatives could be contacted for assistance.

IV. Approval of Minutes

1. Regular City Council Meeting held May 5, 2004

Mayor Rosamonda entertained a motion to approve the minutes as presented. Motion was made by Vice Mayor Coleman. Council Member Allen seconded. The motion carried unanimously.

V. Presentations

1. Citizens for DeBary – Music on the Green Concert Series.

John Harvey, 61 Floridana Road, representing Citizens for DeBary thanked the City for participation in the Easter Egg Hunt; that he was requesting City participation for Music on the Green for a concert on June 26, 2004 and a classic car show; that fundraising had been limited this year due to economic factors; that up to \$2,500 was being requested with 50/50 participation from the Citizens for DeBary; that it would be applied towards music, advertising, latrine facilities, waste receptacles, traffic cones and control; and that continued efforts would be made to raise funds.

It was discussed that early evening events would be held and that additional advertising would be done in greater areas. Mayor Rosamonda entertained a motion to approve in-kind services up to \$2,500 for the Music on the Green Series. Motion was made by Council Member Allen. Council Member Carson 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. Ordinance No. 04-04 – Amending the Sign Ordinance by Extending the Compliance Period for Non-Conforming Signs – First Reading.
2. Ordinance No. 05-04 – Amending the Fence Ordinance by Extending the Compliance Period for Non-Conforming Fences – First Reading.
3. Ordinance No. 06-04 – Amending the Zoning Regulations by Deleting the Compliance Requirements for Non-Conforming Outside Uses – First Reading.

Mayor Rosamonda closed Public Hearing without objection and opened the Land Planning Agency. It was discussed for the benefit of the public that the Members of the City Council also act as the Land Planning Agency as separate entities as allowed by Florida Statute.

It was discussed that the Land Planning Agency would discuss all three Ordinances at the same time. Attorney Langley read Ordinance No. 04-04, Ordinance No. 05-04 and Ordinance No. 06-04 by title.

Mayor Rosamonda opened Public Hearings for the Land Planning Agency and reviewed the changes to the Ordinances and recent workshop discussions.

It was discussed that additional workshops would be held; that a citizen committee could be created to assist in resolving issues for the future; that the current Ordinances were designed to address immediate issues; that July 21, 2004 could be scheduled for a workshop or special meeting; that issues regarding the Overlay District and Gateway Corridor Standards needed to be addressed; that either public input could be solicited, recommendations made through the Economic Development Advisory Committee, or a citizen committee created to discuss modifications; and that workshops would be held.

Mayor Rosamonda entertained a motion to approve Ordinances 04-04, 05-04 and 06-04. Motion was made by Council Member Allen. Council Member Gunter seconded. The motion carried unanimously.

Mayor Rosamonda closed the Land Planning Agency without objection and reopened the Public Hearing. Attorney Langley read Ordinances 04-04, 05-04 and 06-04 by title. It was discussed that recommendation for approval had been made by the Land Planning Agency. Mayor Rosamonda entertained a motion to approve Ordinances 04-04, 05-04 and 06-04. Motion was made by Council Member Allen. Council Member Gunter

seconded. It was discussed that the first line of Ordinance 04-04 referred back to the original date of the existing Ordinance. 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 are considered by one motion unless removed from the Consent Agenda by a member of the City Council.*

- *1. Ordinance No. 08-04 – Expanding Saxon Woods Streetlighting District to Include Unit 3A.
- *2. Ordinance No. 09-04 – Expanding DeBary Plantation Streetlighting District to Include Unit 21B.
- *3. Springview Industrial Park Unit 1, Lot 7 – File 03-F-FSP-0414 – Final Site Plan - PEMB Inc.
- *4. Springview Industrial Park Unit 1, Lot 8 – File 04-F-FSP-0337 – Final Site Plan – Haribir Properties
- *5. Vacating a Portion of the Plat of St. Johns River Estates Unit Three – Lot 5 and Lot 35, Block 38.
- *6. Springview Industrial Park Unit 2, Lot 22 – File 04-F-FSP-0365 Final Site Plan –Certified Products
- *7. Springview Industrial Park Unit 1, Lot 12 – File 04-FSP-0358 Final Site Plan – Peach Tree Roofing

Mayor Rosamonda reviewed the revised Consent Agenda. Attorney Langley read Ordinance No. 08-04 and Ordinance No. 09-04 by title.

Mayor Rosamonda entertained a motion to approve the Consent Agenda. It was discussed that in Item 7, the proper name of the business was Peach State Roofing. Motion was made by Council Member Gunter. Vice Mayor Coleman seconded. The motion carried unanimously.

VIII. Growth Management and Development Review

- 1. Request to Release/Reduce Code Enforcement Lien for 89 Sanford Avenue.

City Manager Diamond discussed the request; that the property had been brought into compliance; and that the fine totaled \$2,600. It was discussed that the original property

owner had conflicts with contractors; that the meeting she was able to appear for had been canceled; that the property had been quit-claimed; and that she wished to assist the current property owner.

It was discussed that staff recommended a reduction to \$23 in administrative costs and \$500 for site visits and direct costs; that Code Enforcement meetings were sometimes cancelled due to lack of a quorum; that she had been unable to present a request for extension of time due to the cancellation; and that the County had issued a permit that conflicted with FEMA regulations.

Volusia County Building Department Inspector Tom Reynolds discussed that incorrect information had been submitted by the builder to obtain the permit; that the current property owner had performed due diligence to bring the property into compliance; that the Builder had provided the erroneous information; that County inspectors should have made determinations at the time of construction; and that leniency should be considered due to errors outside the property owners control.

Motion was made by Council Member Carson that the Code Enforcement fine be reduced to \$23 for direct administrative costs. Council Member Gunter seconded. It was discussed that a 30-day time frame would be allowed for payment. The motion carried 4-1 with Vice Mayor Coleman dissenting.

2. Request to Release/Reduce Code Enforcement Lien for 16 Columbine Trail.

City Manager Diamond reviewed the case and sequence of events; that the outstanding lien totaled \$24,000.

Gregory Wheatley, 225 Colomba Road, DeBary discussed that he had intended to purchase the property; that the lien was discovered; that he had worked to bring the property into compliance; that he had consulted Tom Reynolds to determine requirements; that a contractor had been hired and the property was now in compliance; that he was still under contract to purchase the property; that the property owner had not been in a financial position to make the repairs or pay the lien; that he understood and appreciated the actions of the Code Board and the City; and that he requested reduction or elimination of the fine so that he could complete the purchase of the property.

It was discussed that the property was now vacant; that the contract for purchase was available for review by the City Council; that there was no contingency regarding the lien on the property; that the property would be foreclosed if Mr. Wheatley did not complete the sale; that the contract was written on May 3, 2003; and that Mr. Wheatley was unaware of the lien at the time the contract was written.

It was further discussed that the property owner was responsible for the condition; that it appeared that there would be no proceeds from the sale; that if the City foreclosed on the lien, the sale to Mr. Wheatley could not occur; that attempting to collect from other assets

would be an additional legal cost; that there did not appear to be protection in the contract for purchase regarding title defects; that Mr. Wheatley had expended approximately \$5,000 in improvements; that a waiver of the lien could be contingent upon any proceeds from the sale; that the City Attorney did not recommend that as an avenue; and that an amount and date should be specified.

It was further discussed that Mr. Wheatley did not have complete settlement figures available and that Mr. Wheatley had knowledge that the current mortgage on the property would prevent any proceeds being realized by the current property owner. There was discussion that there was empathy for Mr. Wheatley but that enforcement of Code Enforcement actions was necessary; that a resolution to the situation was desirable; that an amount of 10% of the total fines could be considered; that if the fine were prohibitive, a closing might not occur; that foreclosure would prevent the City from collection of any fines; and that it should be considered that the amount should not be prohibitive.

It was discussed that Mr. Wheatley continued to invest in the property after being made aware of the lien; that he had continued to bring the property into compliance in anticipation of recovering his investment; and that staff recommendations had been for a reduction to \$500 plus \$23 administrative costs.

Council Member Carson made a motion that the Code Enforcement fine be reduced to \$23 in direct administrative cost and \$2,400 for site visits and other indirect costs. Mayor Rosamonda seconded the motion for discussion. It was discussed that the property owner had direct responsibility but Mr. Wheatley continued to invest with the intent to recoup his cost with direct knowledge of the lien; that time to obtain permits and engineering would have contributed to the lengthy completion time; and that Mr. Wheatley would be willing to accept contingencies. The motion carried 3-2. There was additional discussion that the property owner would still have the option to pay the reduced fine and not complete the sale; that Mr. Wheatley would have to bear that risk. Council Member Carson made a motion that the fine be paid to the City within 30 days after which time the City would begin collections. Vice Mayor Coleman seconded. The motion carried unanimously.

3. Transportation Map Update – Comprehensive Plan.

City Manager Diamond discussed that a traffic study by Ghayabi and Associates had been done as directed by the City Council; that a feasibility study had been requested for construction of a loop road as existed in the Comprehensive Plan; that Volusia County Growth Management and Traffic Engineering had been contracted to do environmental and transportation analyses; that the study showed that the roadway would be expensive and there would be right-of-way and environmental impacts; that there would be benefit for regional traffic circulation; that it had been recommended to forward the report to the Volusia County Council to request the loop road to be added to the County thoroughfare plan; that CSX and Progress Energy would have to be surveyed on availability of property right of way prior to that; and that direction was required from the City Council.

It was discussed that in the past Benson Junction had been included in the thoroughfare plan; that a western bypass had been in the County plan at one time through Orlandia Heights; that there had been discussion with the County at one time that Benson Junction was to have been added as a County road but that had not been done; and that the proposed roadway would eliminate railway sidings that were necessary to certain businesses.

It was discussed further that options were to exclude it from the Comprehensive Plan, requiring an amendment or move forward and request the County add it to the thoroughfare plan and to discuss right-of-ways with CSX and Progress Energy; and that businesses would be forced to close if the roadway eliminated railway sidings. Motion was made by Vice Mayor Coleman to amend the Comprehensive Plan and eliminate it from the Comprehensive Plan. Council Member Allen seconded. It was discussed that the extension of Saxon Boulevard to the railway was still desirable and that the extension to the railroad tracks should be retained in the Comprehensive Plan. Council Member Allen withdrew his second and Vice Mayor Coleman withdrew the motion.

Mayor Rosamonda entertained a motion to revise the loop road in the Comprehensive Plan to run from Saxon Boulevard at U.S. Highway 17-92 to the railroad tracks. Motion was made by Council Member Gunter. Council Member Allen seconded. It was discussed that the Comprehensive Plan could be revised again if future needs arose. The motion carried unanimously.

IX. Old Business

1. None.

X. New Business

1. Purchase and Joint Participation Agreements with Volusia County for Oglesby Property.

City Manager Diamond discussed the parcels proposed for purchase; that a Purchase Agreement was presented for review at a price of \$960,000 with Volusia County paying 50% under the Volusia Forever Program; and that it was recommended to approve the Purchase Agreement and the Joint Participation Agreement with modifications.

Attorney Langley discussed concerns with the Purchase Agreement and the Joint Participation Agreement; that there was not a provision in the contract for a 90-day inspection period and opportunity to withdraw from the contract in the event there were issues; and that it was recommended that an appropriate provision be added to the Purchase Agreement with language “that in the event that Buyer determines, at Buyer’s discretion, that the property is not suitable for Buyer’s purpose or Buyer determines that property is not satisfactory, Buyer may terminate this Agreement on or before 120 days from the effective date by providing written notice to the Seller.”

Attorney Langley discussed also that a provision be added to paragraph 4 of the Joint Participation Agreement regarding the City's and County's obligation to fund the closing; that if the Agreements were approved this evening that the City and the County were not protected from being forced to close the property if matters were not satisfactory; that language be added to paragraph 4 to the effect that "in the event the County and/or the City elect not to fund the purchase of the Oglesby property, the party or parties which elect not to proceed to funding and closing shall have the obligation of taking the necessary steps to timely terminate the Oglesby property Agreement for Purchase and Sale"; that protection would be provided to both parties; and that suggested language would provide 120 days for property review and final determination of funding.

Bill Gardner with Volusia County discussed that the provisions appeared to be appropriate and that the County Legal Department and the property owner would have to approve changes.

Wanda Cinquegrani, 155 Homestead Ave, inquired as to the purpose of and future use for the property purchase. It was discussed that other property had already been purchased for passive parks and both properties had water access; that the property would be financed jointly with the County and the City would have control and management; that the City had also applied for grants to help reimburse the City Land Bank expenditures; and that the property was restricted from development.

Mayor Rosamonda entertained a motion to approve the purchase of the Oglesby property with the revised language as provided by the City Attorney for the Purchase Agreement and the Joint Participation Agreement as provided by the City Attorney. It was discussed that revisions would be to paragraph 4 of the Joint Planning Agreement and paragraph 5 of the Purchase Agreement. Mayor Rosamonda restated that he entertained a motion to approve the purchase of the Oglesby property pursuant to the revised language recommended by the City Attorney in paragraph 5 of the Purchase Contract and paragraph 4 of the Joint Planning Agreement as previously quoted. Motion was made by Council Member Gunter. Vice Mayor Coleman seconded. The motion carried unanimously.

2. Consideration of New Forms for City Manager's Annual Performance Evaluation.

City Manager Diamond discussed that the City Council had requested to begin the review process at an earlier time than in previous years; that examples of forms used in other jurisdictions were provided to create a new form to assist with that review; and that establishing a time to begin the process was needed. It was discussed that additional time to review information was needed; that discussion should be postponed until the meeting on June 16, 2004; that the form could be emailed for completion in the future; and that each Council Member would compile a form with suggested categories for comparison to create a final form.

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

1. Board/Committee Reports
2. Board/Committee Accomplishments
 - A. Board: Code Enforcement Board D. Allen

It was discussed that application for Code Enforcement Board had been received and that the appointment would be postponed until the next meeting.

- B. Board: Economic Development
Advisory Committee At-Large

It was discussed that Committee Member Dick Tosh had resigned as an at-large Member of the Committee; that alternate Lita Handy-Peters had been sitting on the Board for some time and should be moved to a permanent member and a new alternate appointed.

Mayor Rosamonda entertained a motion to approve Lita Handy-Peters to move from the Alternate position to the position vacated by Dick Tosh. Motion was made by Vice Mayor Coleman. Council Member Gunter seconded. The motion carried unanimously.

It was discussed that there were two applications for the alternate position; that applications had been submitted prior to the openings becoming available; that more advertising should be done to allow opportunity for additional applications; that advertising would be placed on the website; that the Council Members would prefer to speak with applicants; and that the appointment would be placed on the July 7, 2004 Agenda.

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

Vice Mayor Coleman discussed his attendance at WAV; that the budget had been revised; that charges to the cities had not been determined; that he had attended the Public Safety Advisory Committee meeting; that he had attended the Orlandia Heights District meeting and a budget was being prepared for submission; that he had attended a Veterans Memorial Bridge dedication and recognizing of Jesse Beall; that a memorial service had been held at the VFW; and that the WAV was an important matter and water use enforcement should be discussed with the Sheriff's Department.

Council Member Allen discussed that the Parks had showed improvement. City Manager Diamond stated that he wished to add the interim Parks Maintenance Contract to the Agenda for the June 16, 2004 Council meeting.

Council Member Gunter discussed recent attendance at a fundraiser for the Boys and Girls Club of Volusia and Flagler County; that it was a major event for the organization; that he had attended the Volusia League of Cities dinner in Pierson; that he had attended the memorial ceremony for the dedication of the Veterans Memorial Bridge; and that recognition was given to our veterans.

Council Member Carson discussed the Streetscape Committee; that the next meeting would be on June 15, 2004; that he would provide a report to the City Council; that he also noted improvement at Bill Keller Park; and that he hoped to see additional improvements.

Mayor Rosamonda inquired on the progress on the additional Community Park property. City Manager Diamond discussed that conceptual plans were being drawn; that workshops would be held with the City Council prior to actual design; and that the Little League should be involved in the process.

B. City Attorney

Attorney Langley discussed that the Progress Energy property had closed on May 17, 2004 and the deed had been recorded; that a request had been received from StewartMarchman to extend the 120-day stay of enforcement of the zoning interpretation decision; that appeals and litigation were still pending; that an additional stay of 120 days was requested; and that it was recommended that the stay be granted.

It was discussed that mediation would be done; that there appeared to be conflicts with scheduling that was delaying the process; and that other legal proceedings were progressing.

A motion to extend was made and seconded. The motion carried unanimously.

C. City Manager

City Manager Diamond discussed that the interim Parks Management contract would be placed on the June 16, 2004 Agenda.

XII. Adjournment

**APPROVED July 7, 2004
CITY OF DeBARY
CITY COUNCIL**

Carmen Rosamonda, Mayor

ATTEST:

Maryann Courson, City Clerk

Regular City Council Meeting

June 2, 2004