

City of DeBary
SPECIAL CITY COUNCIL MEETING
Monday
September 27, 2004
7 PM
Florence K. Little Town Hall
12 Colomba Road DeBary, Florida 32713

MINUTES

I. Call To Order

II. Roll Call

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 Diamond and Assistant City Manager Maryann Courson

III. Business

Council Member Carson requested to amend the Agenda and allow Public Participation at this time.

Sandra Kramer, 252 Adelaide Street, inquired about drainage issues on her street not related to hurricane issues; that she would like to know what the solution and time frame might be. It was discussed that the systems in Glen Abbey subdivision were percolation systems; that engineering had been completed and a contract had been approved for corrections on Adelaide and Delespine; and that the project had not yet started due to emergency conditions.

Ms. Kramer also inquired why there were both cobra and decorative streetlights on U.S. Highway 17-92. It was discussed that initially it had been determined to remove the cobra head lights; that there had been objections from some businesses; that a 30-60 day test would be conducted to turn off the cobra lights; and that negotiations were underway with Progress Energy to turn off the lights. There was discussion that there would be a charge to either turn them off or to remove them; that FDOT reimburses the City for the cobra lights; that the process had taken much time; that a letter should be sent to Progress Energy; that the bill would no longer be paid; and the lights would be turned off by default.

Lynn Branham, 34 Wisteria Drive, discussed that the water was now 28 inches over the seawall and flooding into her home from the rear and that Lake Maude was now overflowing into the street in the front of her home. Mayor Rosamonda discussed that an emergency meeting had been held this morning with FDOT, Volusia County and the City's consulting engineer; that it was proposed over the next 5 to 7 days to run lines under intersections and under the CSX rail lines to the river; and that a contractor was being brought in to run 16" pipes and pumps. Ms. Branham inquired whether permission had been obtained from St. Johns River Water

Management District (SJRWMD). It was discussed that emergency orders allowed pumping into the river at a time of extreme emergency.

Ms. Branham discussed that the pumps had not been running on Lake Maude. It was discussed that levels in Lake Susan had not come down far enough for Lake Maude to be pumped into Lake Susan. Ms. Branham also inquired what long-term solutions were being considered. It was discussed that a pumping system would have to be put into place. Ms. Branham discussed that there had been issues prior to the hurricanes. It was discussed that a system had been installed from Kings Lake, Lake Susan and No-Name Lake out to the river; that the system was not able to handle the current volume; that 15 pumps had been placed throughout the City; and that alternate systems were being researched for the west and south sides of the City.

Ms. Branham inquired whether a commission would be appointed to study the situation and if citizen representation would be included. It was discussed that a contract had been approved and begun by PEC for a storm water study for the entire City; that citizen input would be included in the engineering study; that a comprehensive stormwater study had never been completed for the entire City. Ms. Branham stated that she would like to see citizen representation with whichever body would be making decisions. It was discussed that the system previously installed was obviously inadequate and future decisions would be based on the guidance of the Engineer, stormwater study, and public input.

Ms. Branham discussed further that she felt it would be appropriate to establish an emergency communication plan for the future to provide more information to the community on actions being taken by the City. It was discussed that the City Council was making every effort to address issues throughout the City and that information would be made available. It was discussed for clarification that there was not yet a contractor engaged or pipes in place; that the City could not guarantee at this time what the time frame would be to get the pumping process started; and that the approval process had already begun to run the proposed lines under the CSX tracks.

Laurie Feller, 30 Wisteria Drive, discussed that she was flooded on both sides from Lake Anna Marie and Lake Maude and that she wanted to know what would be done for immediate relief from hazards such as mosquitoes and wildlife. It was discussed that mosquito spraying had been done once and that they would be contacted again for weekly spraying. Ms. Feller also discussed that the City and County had not responded to her request to block the road; that signs had been moved to her street from other locations after being informed; that the City contracted with the County and had not been able to obtain signs from them; and that a leasing company had been contacted for signs for the City.

Ms. Feller inquired whether the City had emergency funding available to bring trucks in to move water until lines could be placed. It was discussed that it was an option but the issue was with finding a location to move the water to; that there were no more areas for holding water available within the City; that some small sinkholes were being pumped into; that meetings were being held with the engineers regularly; and that water was being pumped down an I-4 swale now but the discharge to I-4 is starting to exceed capacity.

Ms. Feller also discussed that she had requested port-o-lets as the septic systems could not be used and that she was unable to move her vehicle to travel elsewhere. It was discussed that calls had been made to obtain facilities; that the City Council could direct the City Manager to order port-o-lets for the areas that needed them; that additional facilities could be placed at Town Hall as well; that they should be in place within three days; and that comfort trailers should be obtained as well.

Ms. Feller discussed further that she also hoped for citizen input for the stormwater study; that there was an equalization pipe running between the lakes that was inadequate; that she also was concerned that sandbags had been limited in the City when it was known that there were already flooding issues; and that she felt there should be better pre-planning. It was discussed that the limits had been imposed due to some persons taking unnecessary amounts.

There was an enquirer about construction of drainage lines and impact to school traffic. It was discussed that lines would be run under intersections and under school entrances; that construction times were not yet known; and that a meeting with the School Board was scheduled for Wednesday.

Leonard Marks, 32 Wisteria Drive, discussed that the lakes were still too high. It was discussed that the City was limited by the SJRWMD permit and that the state of emergency had only been recently declared to continue pumping. Mr. Marks discussed that he was concerned that Lake Monroe was too high and more pumping would not be allowed and that he also had requested port-o-lets for his area. It was discussed that the City would follow the recommendations of the consulting engineer and that the port-o-lets would be ordered. Mr. Marks also discussed that he was not satisfied with the response that he had received from the City.

John Wilson, 114 Pine Valley Court, discussed that the City should be more proactive in addressing issues; that emergency issues such as providing sandbags should be better planned; that issues caused by developers and builders should have been addressed sooner; and that legal action should be taken.

Herb Moody, 107 Pine Valley Court, inquired whether the Army Corps of Engineers could be consulted. It was discussed that David Hamstra of PEC is the City's consulting engineer and would thoroughly review this matter; and that Saxon Woods subdivision had been advised by SJRWMD of stormwater violations that had occurred. Richard Moody, DGCC, discussed that he felt that a court order would be required to stop work in Saxon Woods and that he heard construction work was continuing in that area. It was requested that Land Development Manager Palmer Panton's staff would review the area daily.

City Attorney Ardaman discussed that, if legal action was to be discussed or taken, that the list of affected residents should be provided to the private investigator for contact purposes..

George DeMatteo, 58 Madera Road, inquired where he would be permitted to pump water from his own pump. It was discussed that the City was limited as to areas where water could be moved; that it was not allowed to cross public rights-of-way; that Lake Charles was at capacity; that water was being moved from lake to lake to avoid causing flooding in other areas; and that

all basins were filled and the water table was at historically high levels. Mr. DeMatteo also inquired what could be done to prevent autos running over the water lines; that the Sheriff's Office could be consulted; and that detour signs should be placed.

Tina Lamming, 34 Madera Road, discussed that she wished to thank everyone who assisted in placing the concrete barriers; that there was water now overflowing into other areas; and that she was concerned that the berm would wash out. It was discussed that the City was trying to pump down Lake Gem and that every effort was being made to protect the area. Ms. Lamming also discussed the Federal Disaster Declaration for Volusia County; that she did not have flood insurance since the area had never been in a flood zone; and that she inquired whether the City would provide any assistance.

It was discussed that the City would be applying to FEMA and for Federal, State, and County assistance available; that it was estimated from \$5 to \$10 million would be needed to fix the entire City drainage and stormwater systems; and that the City did not have that level of funds. Ms. Lamming discussed that her concern was assistance for homeowners that would not have dollars available for repairs; that residents in her area had had to request a pump for their area; that none had been immediately available; and that she also inquired whether a permanent berm could be erected at No-Name Lake to prevent future flooding.

Annette McPherson, 438 North Pine Meadow Drive, discussed that she had contacted the City two years previously regarding runoff from the Saxon Woods development; that she did not feel any response had been received; that she had made further reports to City Hall and had not received response; and that she had contacted the developer and had received some assistance from him but the issues had not been resolved.

Ms. McPherson discussed further that construction activity was still occurring in Saxon Woods and that she had contacted City Hall but had not yet received a response. It was discussed that the engineer had inspected the area; that permits, inspections, and Certificates of Occupancy were not being issued; that the City was addressing the issues with improperly graded lots, open sand and other issues; and that a legal process would be discussed.

Tracy Rose, 436 North Pine Meadow, discussed that she was having the same issues; that she did not feel that the issues were being properly addressed by the City; and that she did not see clear resolutions being discussed. It was discussed that the City had tried various alternatives to move water; that, at this time, pumping seemed to be the best option available; and that the advice of Staff and engineers was being followed as quickly and safely as possible.

John Wilson, 114 Pine Valley Court, discussed the Saxon Wood issues; that he was concerned that the problems had not been addressed sooner; and that he inquired who had the responsibility for approving building practices and inspections. It was discussed that inspections had been made through the County and that the issues were with inappropriate construction habits of the contractor and developer. Mr. Wilson discussed that he felt that appropriate parties should be held responsible.

Mary Jo Caroselli, 61 Madera Road, discussed that many of her neighbors were in terrible situations with the flooding; that she was disappointed with the overall performance of the City; that she appreciated the individual efforts made; that she inquired why the lakes could not be dredged to hold more water; and that she also inquired why the berm was not installed sooner. It was discussed that the City had been able to build the berm when the water had reached certain levels due to previous litigation restrictions.

Ms. Caroselli discussed that signs were needed to redirect traffic and prevent damage to the hose lines; that she felt many actions should have been taken sooner; and that she was also concerned that the berm might give way. It was also discussed that FEMA did not offer assistance for flooding of homes and that the City should inquire what assistance might be available.

Patrick Fulton was thanked for his service at the emergency center. Patrick Fulton, 145 South U.S. Highway 17-92, expressed appreciation to Tom Smith with Signature Development for bringing his equipment and materials to help build the berm; that he was aware through his work at the EOC that barricades were scarce and the City had rented a supply; that he had requested Port-o-lets for Wisteria, Bougainvillea, Monroe and Madera; that more were needed; and that water and tarps were being delivered as well as additional sandbags.

It was discussed that the City had paid Little League to help with sand bags and that prisoner labor should also be used. Mr. Fulton also agreed that legal action should be taken against Saxon Woods. It was discussed that the City Council had authorized hiring a private investigator to begin gathering information. Mr. Fulton also discussed that it was important that calls be returned to citizens and that communication is critical.

It was inquired of City Manager Diamond why more pre-planning had not been done, particularly after the first and second storm events; that orders for port-o-lets and traffic signs through EOC had been cancelled by the City; that calls to rental companies for necessary items had not been made in a timely fashion; that advice from the City Council to perform emergency planning had not been done; that temporary employees had not been hired to assist City Staff; and that there should have been more appropriate action taken by the City Manager.

There was further discussion that the response of the City Manager to complaints regarding Saxon Woods had not been adequate; that the scope of the problem prior to the storms had not been communicated to the City Council or to the Staff; that it should have been readily evident what was causing many flooding issues; that Staff was not proactive in addressing issues that had been occurring over the long term.

It was also discussed that the City Manager should have searched for alternative solutions to issues; that immediate solutions for the relief of residents should have been a priority; that there were numerous complaints from residents of lack of response from City Hall; that residents had contacted Council Members citing no return of their phone calls to City Hall; and that it appeared to be the consensus of the City Council that a change in management of the City might be appropriate.

Mayor Rosamonda entertained a motion to dismiss Richard Diamond from his duties effective immediately. Motion was made by Council Member Allen. Council Member Gunter seconded. It was discussed that City Manager Diamond had discharged many of his duties in an appropriate fashion; that the evaluations of the City Manager by the City Council Members had not been completed; that the City Attorney should be consulted as to the appropriate course of action; that a severance package was included in the employment contract; and that the City Manager served at the will of the City Council.

City Attorney Ardaman discussed that he would check the City's Code and Charter; that he requested time to review; that he believed that an appeal process applied; and that Mr. Diamond had a right to respond and be heard.

Mr. Diamond responded that he disagreed with the accuracy of statements made; that he would not rebut at this time; that he worked at the will of the City Council; that if a new direction was desired by the City Council he felt a responsibility to the community to accept the decision; that he would not contest or rebut statements that he felt were not accurate; and that he would accept the decision out of professional responsibility.

There was further discussion whether the timing was appropriate considering circumstances; that an interim chain of command needed to be determined; and that assistance from outside sources could be consulted for solutions to immediate issues. Mr. Diamond suggested using a program provided through the Florida City and County Management Association (FCCMA). It was also discussed that Assistant City Manager Maryann Courson could be appointed acting City Manager in the interim; that a temporary City Manager could be hired; and that input from the Assistant City Manager should be solicited.

City Attorney Ardaman discussed that the City Charter provided that the City Council could terminate the City Manager for any reason by means of affirmative vote; that, if the vote was less than unanimous, a written request could be presented to the Mayor within seven days for reconsideration; and that the City Attorney would need to review the contract for specifics on a severance package.

It was further discussed that the City Council was required to make an appointment for an Interim City Manager; that available options should be discussed. It was inquired of Mr. Diamond whether he would appeal in the event of a less than unanimous vote. Mr. Diamond replied that if his severance package were provided, he would not choose to appeal. It was discussed that the severance package as contained in the contract for employment would be provided to Mr. Diamond.

City Attorney Ardaman clarified that the motion on the floor was to terminate the services of Richard Diamond as City Manager of the City of DeBary effective immediately but to provide severance pay as provided by contract contingent upon the agreement of Richard Diamond to not appeal the decision within seven (7) days. Richard Diamond stated that he would agree as long as there was no accusation of wrongdoing, immoral, or illegal activity.

Mayor Rosamonda entertained a motion to terminate Richard Diamond effective immediately pursuant to his contract pay in the six-month severance package pursuant that there is no appeal. Motion was made by Council Member Allen. Council Member Carson seconded. A roll call vote was taken. Council Member Allen voted aye. Council Member Carson voted aye. Council Member Gunter voted aye. Vice Mayor Coleman voted aye. Mayor Rosamonda voted aye.

It was discussed that the Florida City and County Managers Association should be consulted; that the Florida League of Cities should be called; that Range Riders was an association of retired City Managers that might be contacted; that a special meeting could be held for interviews held; and that there were various contacts known that could be called as well. City Attorney Ardaman recommended that an immediate appointment should be made for an Interim City Manager.

Motion was made by Council Member Gunter to appoint Assistant City Manager Maryann Courson as Acting City Manager with the understanding that another temporary City Manager with experience would be sought until such time as a permanent City Manager could be hired. Assistant City Manager Courson discussed that she would apply for the position of permanent City Manager. Council Member Allen seconded the motion. It was discussed that a salary equivalent to the City Manager's pay should be paid to Assistant City Manager Courson while acting as City Manager. City Attorney Ardaman requested clarification; that the salary amount would be pro-rated for the time that Assistant City Manager Courson was Acting City Manager; and that benefits would not be made equivalent to those contained in the City Manager's contract.

There was further discussion that, if another temporary Acting City Manager were hired, it could be determined at that time what role the Assistant City Manager would retain; that it could also be determined to hire a temporary Assistant City Manager and provide time to evaluate Ms. Courson; and that interviews for the permanent City Manager would be conducted. It was discussed that a car allowance would be paid for the interim appointment and that the pay rate of the City Manager had been an annual salary of \$93,342. City Attorney Ardaman further clarified that the motion was to hire Assistant City Manager Maryann Courson as temporary City Manager at a rate of \$93,342 on a pro-rata basis for the term of the position plus a \$300 per month car allowance and no severance package and no specific time limit. Council Member Gunter affirmed his motion. Council Member Allen affirmed his second to the motion. The motion carried unanimously.

There was discussion of hiring a temporary Assistant City Manager; that the acting City Manager required support staff; that two persons should be hired due to present circumstances; and that the spending authority of the City Manager should be given to Ms. Courson. Acting City Manager Courson discussed hiring temporary clerks to handle phone calls and messages appropriately. It was also discussed that personnel to assist with followup were needed; that the capabilities of the City Planner and Staff should be more fully utilized; and that Mayor Rosamonda would assist the acting City Manager with planning and support.

1. Resolution No. 04-24 Adopting a Final Millage Rate for the Levy of Ad Valorem Taxes for Fiscal Year 2004/2005.

City Attorney Ardaman read Resolution No. 04-24 by title. Mayor Rosamonda entertained a motion to approve Resolution No. 04-24. Motion was made by Council Member Carson. Council Member Gunter seconded. It was discussed that the millage rate would remain the same as the previous year. The motion carried unanimously.

2. Resolution No. 04-25 Adopting the Final Annual Operating Budget for the Fiscal Year Beginning October 1, 2004 and Ending September 30, 2005.

City Attorney Ardaman read Resolution No. 04-25 by title. It was discussed that changes to the Capital Projects would be appropriate; that drainage and storm water issues would take priority; that the budget could be amended at any time to address appropriate projects; that the stormwater study by PEC was projected to take one (1) year, due to required field work; that the hiring of City parks personnel should be done immediately; and that vehicles could be ordered under the State contract. Mayor Rosamonda entertained a motion to approve Resolution No. 04-25. Motion was made by Council Member Allen. Council Member Carson seconded. It was discussed that adjustments and amendments might occur and changes made to Capital projects. The motion carried unanimously.

3. Resolution No. 04-23 Growth Management Fee Schedules for Fiscal Year 2004/2005.

City Attorney Ardaman read Resolution No. 04-23 by title. Motion to approve was made by Vice Mayor Coleman. Council Member Allen seconded. The motion carried unanimously.

It was inquired of City Attorney Ardaman what mechanism or procedure was required to implement a drainage and stormwater fee. It was discussed that it would take some time; that it might be piggybacked onto the stormwater master planning; and that City Attorney Ardaman would bring back more information to accomplish funding as soon as possible.

4. Discussion of Joint Meeting with School Board of Volusia County.

It was discussed that the meeting with the School Board was scheduled for Wednesday, September 29, 2004; that critical issues were to be discussed including overcrowding and traffic issues at DeBary Elementary; that more effort would be made to get resolution for the dropoff and pickup issues; that future schools and locations needed to be addressed; and that the meeting would be verified.

City Attorney Ardaman inquired what action the City Council might wish to take in regard to Saxon Woods. It was discussed that there had been no response from the developer; that ownership of the retention pond was not clear; that the private investigator had not yet been hired; that the Attorney and the Acting City Manager would address the matter on the following morning; and that affidavits would be needed from parties. It was discussed that a stop work order had been issued; that it had been determined that the streets and the retention ponds were

built correctly; that it was poor construction habits that had caused the issues with the runoff; that lots were improperly graded and no sod installed; and that an injunction could be attained to require a timetable for compliance.

City Attorney Ardaman discussed that he had concerns with ramifications if the City took any action on private streets and retention ponds without supportive authority; that the regulations of the SJRWMD should be utilized to require enforcement from the courts; and that an emergency hearing could be requested citing imminent danger to residents. It was further discussed that the City Attorney should be authorized to hire the private investigator; that he should meet with the Mayor and the engineer and interview residents in both Saxon Woods and Glen Abbey; and that issues in Glen Abbey needed to be researched as well.

City Attorney Ardaman requested clarification that the direction of the City Council was to pursue legal mechanisms including lawsuits against the developer with respect to Saxon Woods and that a vote should be held. Mayor Rosamonda entertained a motion to authorize City Attorney Kurt Ardaman to hire a private investigator to conduct an investigation regarding Saxon Woods stormwater compliance and damage to the retention ponds as well as Glen Abbey Golf Course regarding stormwater pumping and construction pursuant to a lawsuit if appropriate. Motion was made by Council Member Gunter. Council Member Allen seconded. The motion carried unanimously.

It was discussed whether there was sufficient current evidence to pursue an injunction. City Attorney Ardaman discussed that the City's consulting stormwater engineer had documented existing violations and had knowledge of permitting requirements; that non-compliance did not prove the developer caused the issues; and that the private investigator would be key in determining responsibility. It was also discussed that there were extensive numbers of people to be interviewed; that a meeting with the Attorney, Mayor, the Private Investigator, and the City's consulting stormwater engineer should be held in the next few days to provide direction.

It was discussed that an evaluation needed to be done to set a final pickup date for the debris in the City; that a cost estimate was available to run the plumbing at Town Hall to the sewer system; that it was approximately \$20,000; and that it needed to be done in order to utilize the building.

IV. Adjournment. The meeting adjourned at 11:00 PM.

**APPROVED November 3, 2004
CITY OF DeBARY
CITY COUNCIL**

Carmen Rosamonda, Mayor

ATTEST:

Maryann Courson, City Clerk