

CLOSED SESSION:

**City of DeBary
CITY COUNCIL MEETING
AND EXECUTIVE SESSION
WEDNESDAY
March 2, 2005
6:30 PM**

Florence K. Little Town Hall
12 Colomba Road DeBary, Florida 32713

AGENDA

I. Call to Order

II. Roll Call

III. Business

Request by City Attorney for Executive Session Relating to Litigation of Stewart-Marchman Center, Inc., Case # 2004-101-21-CIDL and Case # 2004-101-87-CIDL.

Estimated Length of the Attorney-Client Session: 1/2 Hour

Names of the Persons Attending: Mayor Carmen Rosamonda, Vice Mayor Richard Gunter, Council Member Christopher Carson, Council Member Patrick Fulton, Council Member Danny Tillis, City Manager Maryann Courson, City Attorney Kurt Ardaman, Litigation Counsel, Scott Pendley and Assistant City Attorney Daniel Langley, and Court Reporter.

IV. Recess Public Meeting and Open Executive Session with City Attorney

V. Termination of Executive Session and Reopening of Public Meeting

VI. Adjournment

If any person decides to appeal any decision made by the City Council with respect to any matter considered at this meeting or hearing, he/she will need a record of the proceedings, and for such purpose he/she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based (FS 286.0105).

Individuals with disabilities needing assistance to participate in any of these proceedings should contact the City Clerk at least three (3) working days in advance of the meeting date and time at (386) 668-2040.

City of DeBary
REGULAR CITY COUNCIL MEETING
Wednesday
March 2, 2005
7 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 Richard Gunter, Council Member Chris Carson, Council Member Patrick Fulton, and Council Member Danny Tillis.

Others Present: City Manager Maryann Courson, City Attorney Kurt Ardaman, and City Planning Administrator Anita Gonzalez

III. Public Participation For Any Issues Not On the Agenda

Rhonda Miller, 3040 Cat Tail Lane, representing the Summerhaven Homeowners Association as President, discussed a meeting held with the HOA and CED Development; that a 216-unit apartment complex off of Enterprise Road in Orange City was proposed; that it was adjacent to DeBary and the Summerhaven development; that there was opposition to the apartment development proposed for limited income rentals; that there were concerns with issues such as storm water retention and runoff, overcrowding of schools, proximity to similar complexes within less than two miles; and that it was requested that the DeBary City Council support opposition to the development. Ex-parte communication with interested parties was disclosed by City Council Members.

It was discussed that the situation was unusual in that the location was at the boundary of Orange City and would affect DeBary residents; that guidance by City Staff and the City Attorney could be given to the residents as to what actions might be appropriate; that the matter was affected by zoning and permitting and not by planning agreements between the two cities; that Orange City Comprehensive Plan and development regulations should be reviewed for guidance; that elected officials in Orange City could be contacted; and that the media could be contacted.

It was discussed that DeBary Planning Administrator Anita Gonzalez meet with Orange City's Planning Director and that the City Council be provided information to determine if any action was appropriate by the DeBary City Council.

Ms. Miller enquired whether her presence would be appropriate at meetings of the Orange City Council meetings and if DeBary City Council would hear Orange City residents in any similar matter.

John Likakis, 38 Seminole Drive, discussed possible tax assessments and expressed his desire that the City Council assign a date for review of the Storm Water Assessments in the future that there might be a termination date of those assessments.

Mark McCandless, 225 Englenook Drive, enquired when construction might begin on the retention pond for discharge drains. It was discussed that a letter had been sent to the Developer and Engineer by the City Attorney; that a meeting was requested to review costs and reimbursements prior to construction; that the matter would be addressed expeditiously; that interim pumps would be maintained in case of rain events; that if the developer did not respond timely, the City would complete the work and bill the costs to the developer; that the County had relied on the engineer that the pipe had been installed; that the inspection process would be revised in the future; and that the engineer would be held accountable.

IV. Approval of Minutes

1. Regular City Council Meeting held January 5, 2005.
2. Regular City Council Meeting held February 2, 2005.

Motion to approve minutes as presented was made by Council Member Tillis. Council Member Fulton seconded. The motion carried unanimously

V. Presentations

1. DGCC Village – Glenn Storch; Attorney for Contract Purchaser.

Glen Storch, Attorney with Storch, Morris and Harris representing Robert Hall, the contracted purchaser of the site; that the purchase was not yet finalized; that concepts for the site were a concern to the residents; that he had met with City Staff and the City Planner; that the site was adjacent to the Library and a possible City Hall site; and that the site configuration presented challenges to design.

Mr. Storch discussed some ideas that had been presented; that there was commercial zoning; that combined uses would be advantageous to the site with first floor offices and shops with pedestrian walks; that second and third stories could be condominiums; that various aesthetic amenities, such as vegetation buffers and water features could be included; that input from surrounding residents would be welcomed; that market studies would be done as to whether the area would support that type of development; and that an apartment complex or low income rentals was not planned.

It was discussed that the property was 500 feet wide; that the location of buildings and the rear direction was a concern. Mr. Storch discussed that blending phases of commercial to residential could be done; that resident concerns would be addressed during the planning; and that buffers and aesthetic screening would be provided in any concept. There was also discussion that the concept at this time was commercial and retail on first stories and condominium or town homes on second and third stories; that large parking areas were not desirable; that storm water retention for the quantity of buildings was a concern; that any planning would have to meet requirements; that the storm water areas would be amenities with fountains; and that the number of structures was not yet able to be determined.

It was further discussed that the concept appeared to be more appropriate than initial impressions; that more discussion was needed; that a meeting at the DeBary Country Club could be held for resident discussions; that blending the design with proposed City Hall site and Library would be desired; that a parking garage was in the concept stage; and that the visual impact on Highway 17/92 was of concern.

Richard Ashe, 109 Balmoral Court, discussed that he had concerns that communication had not been adequate regarding the project; that he felt there was conflict between zoning and the proposed use; and that he enquired where plans might be obtained for public view. It was discussed that concept plans were in development; that the City had met with the developer to clarify what would be desirable to the City; and that the plans had to be submitted for further review and public hearings. Mr. Ashe stated his concerns with impact to the neighborhood and he enquired if zoning would be changed and what notice the public would have of those changes.

City Manager Courson clarified that appropriate zoning was in place but a change to the Comprehensive Plan would be required; that two hearings before the City Council would have to be held; that advertisements would be placed in the Daytona Beach News-Journal of the hearing times; that the change to the Comprehensive Plan would probably require up to nine months; then site plan review would have to be presented to the City Council; that a village concept appeared more desirable than a strictly condominium development; and that City Staff would assist in disseminating information on community meetings on the project.

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 to Commercial Sign Regulations at 320 Dirksen Drive – Applicant FMS Management (IHOP) - D-05-001 (continued from 02-02-05 meeting).

Volusia County Planner Scott Ashley discussed that notices had not been properly given and the matter needed to be continued. Mayor Rosamonda entertained a motion to continue to April 13, 2005 at 7:00 PM. Motion was made by Vice Mayor Gunter. Council Member Tillis seconded. The motion carried unanimously.

2. Request for Special Exception for permanent concrete batch plant on Light Industrial zoned property - D-05-002.

Volusia County Planner Scott Ashley discussed the proposed development at north Benson Junction Road; that there was a history of industrial uses; that the site would have various external components for mixing and batching as well as on site storage and vehicle parking with offices and workspace buildings; that Staff conditions included maintenance of a buffer and meeting tree requirements; and that approval was recommended with conditions including a 25' minimum landscape buffer.

It was discussed that the area was near the proposed Millennium Coaches site; that there were concerns of negative impact to that business; that the zoning classification required a Special Exception; that

Seminole Precast, a similar operation was not immediately adjacent to either site; that specific reasons would be required to deny a special exception; that the area was primarily heavy industrial use and the proposed use was consistent; that the applicants were amenable to meeting required conditions; and that more conditions could be added if additional protection was needed for adjacent businesses.

Nelson Figueroa, CEO of Millennium Luxury Coaches, 390 Miller Road, Orange City discussed that he did oppose the site of the concrete plant; that he had concerns for traffic safety as his business would grow over time; that he had viewed other sites in the area; and that he felt the area was suited to light industrial.

John Wanamaker, 102 James Pond Court, discussed that he had assisted Millennium Coaches in locating the DeBary site; that the proposed concrete plant might produce conditions detrimental to Millennium Coaches' product; and that sufficient buffer would not be able to be provided. It was discussed that the major concern was dust and traffic; that the existing concrete plant was distant enough not to be a problem; that the product was high end coaches and aesthetics were important to the business; and whether the companies would be amenable to meeting to discuss what compromises might be available.

Mr. Figueroa discussed that if the exception were granted, they would still move forward with their project, but would probably proceed cautiously.

Jerry Kicholon, representing Inland Materials, discussed that the company was a family-owned business; that there would not be mixing trucks of cement but manufacturing of block; that dust would not be exposed to the air and would be filtered; that the materials were dry and would not produce dust; that the location would be at the western property line and would be 500 or more feet from the Millennium Coach property; that they desired to be good neighbors and maintain the character of the area; that by granting the special exception, the concrete could be manufactured on site rather than trucked in therefore minimizing traffic; and that the plant was for block and was completely different than a concrete batch plant where concrete was pumped into mixing trucks.

It was enquired whether there were plans to move existing concrete batch plants from other areas to the DeBary site in the future and whether the entries and parking areas would be paved to minimize road dust. It was discussed that the yard would be concrete paving; that industry requirements would need control of water; that it was highly unlikely that the manufacturing process would change to create any future issues; that changes had actually been made to require additional filtering requirements; and that the block had to be stored on concrete.

It was also discussed that very little water was used in the process and there would be minimal runoff and would be stored in retention on-site; that the site in Deltona was a ready mix site for concrete and did not manufacture block; and that the manufacturing would be interior and only completed block would be stored outside. It was reiterated that there was not going to be dust or traffic from mixing trucks; that deliveries per day might be approximately 30 per day; and that additional buffer areas could be added. There was also discussion of the added weight of trucks on the roadways; that the block trucks would not be running in front of the Millennium site; and that the existing plants would be running heavier trucks.

It was also discussed that an additional condition could be added; that the use would only be for concrete block construction; and that no other concrete plant use could be added at a later date.

Kathleen Kuehne, 230 Benson Junction Road, enquired what future plans there might be for Benson Junction Road; that the road was only two lanes and heavier truck traffic was increasing; and that she had moved an entrance to Shell Road because she felt the traffic was hazardous. It was discussed that Traffic Engineering could do a study; that a road study for capacity, weight and life expectancy of the roadway should be done; that the budget should be reviewed for any needed repaving; and that Ranger Construction had paid a substantial amount for high grade repaving from their business to Highway 17/92.

Mayor Rosamonda entertained a motion to approve the Special Exception for the permanent concrete block batch plant for the manufacture of concrete block only at this site in Case D-05-002. It was enquired whether the landscape buffer needed to be addressed; that Staff recommendation was for a 25' buffer around the perimeter. It was also discussed that a traffic study would take a minimum of 30 to 60 days and that it was not certain how quickly the County could complete a study. Motion was made by Vice Mayor Gunter to approve Case D-05-002 for a Special Exception subject to the five conditions. Council Member Carson seconded.

There was further discussion that there was not sufficient reason to deny the Special Exception; that the use was not inconsistent; that it was encouraged that the neighboring businesses work in cooperation to maintain a clean and inviting area for both; and that there were still concerns with the traffic issues. The motion carried unanimously.

3. Request for Special Exception for outdoor storage of products in the South Highway 17/92 Overlay District - D-05-003.

Volusia County Planner Scott Ashley discussed the request by Realvest Development, LLC on behalf of the owners; that it was in the industrial area of Benson Junction Road; that the outdoor storage area would be to the rear of the buildings adjacent to power line easements and would have landscape screening; and that approval was recommended with conditions. It was discussed that there was a fence proposed around the outdoor storage area; that access to the area would be gated; that there was no residential area facing the site; that there would be landscaping around the fencing; that privacy webbing could be added to the chain link; and that vinyl chain link could be required for aesthetics.

It was further discussed that the final concept plan for the building was not yet submitted; that the items to be stored would depend on the leasing; and that limitations could be imposed.

Pat Calloway, 240 Shady Oaks Circle, Lake Mary discussed that the storage would be limited to what was allowable by Code; that the buildings were small bay warehouses; that the spaces were intended to be accessible from the buildings only; that the outdoor spaces would be leased depending on leased building space; that it was anticipated for small construction and manufacturing uses; that there would not be room for large machinery; that permitted uses in that zoning classification needed to be reviewed to determine what might be stored; and that there was a concern with toxic or hazardous materials.

Scott Ashley discussed allowable uses; that some could be excluded such as dry cleaning chemicals and fertilizers; that the Special Exception allowed for imposition of restrictions; and that the first condition of the Staff recommendation could be made specific to allowable size or materials.

Mayor Rosamonda entertained a motion to approve Case D-05-003 adding condition four that the outside use can only be used by the tenants of Building C and not off premise users. Motion was made by Council Member Fulton. Vice Mayor Gunter seconded.

Kathleen Kuehne, 230 Benson Junction Road, enquired about retention ponds for the site; that her property was low and prone to flooding; that paving of the proposed site would cause additional runoff; and that she would like to know what preventative measures would be in place. It was discussed that the preliminary site plan provided for a retention area on the Benson Junction side; that the final site plan had not yet been approved; that the City had the responsibility to address the runoff from the road; and that the matter would be researched by City Staff. It was further discussed that the current plan was concept and the final plan would require Council review and approval. 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.*

Item number two was removed from the Consent Agenda for discussion.

- *1. Resolution No. 05-04 Support, Adopt, and Participate in Volusia County's Local Mitigation Strategy (LMS).
- *2. Resolution No. 05-05 Establishment of Charter Review Commission.
- *3. Authorization of Funds for Demolition of Structures on Oglesby Property.

City Manager Courson read Resolution No. 05-04 by title. Motion to approve the Consent Agenda for item numbers 1 and 3 was made by Vice Mayor Gunter. Council Member Fulton seconded. The motion carried unanimously.

Item number 2 was discussed at this time. It was discussed that Resolution No. 05-05 should include review of the entire Charter; that appointments should be made prior to adoption of the Resolution; that the Resolution could be passed and the appointments made at a later time; that in Section 1 language could read consisting of five members, one to be appointed by each City Council Members within a certain number of days of adoption; that Section 7 contained limitations on meeting times and should be removed; that the time specific might be required by law or statute; that Section 3 set time limits of one year for completion; and that a 60-day limit should be set for appointments.

City Manager Courson read Resolution 05-05 by title. It was noted that the term commission should be

used consistently. Mayor Rosamonda entertained a motion to approve Resolution No. 05-05, making the appropriate change in the Title and making said changes to Section 1 and Section 7. Motion was made by Vice Mayor Gunter. Council Member Fulton seconded. The motion carried unanimously.

VIII. Growth Management and Development Review

1. Request for Establishing a Deadline for Payment of a fine on property located on Old Mill Road.

City Planner Anita Gonzalez discussed that a waiver of fines and liens had been previously requested by the property owner; that it was requested that a deadline be set to pay the balance due of \$11,765.00; and that if the deadline was not met that Council would authorize the legal fees to foreclose on real and personal non-homestead property.

It was discussed that 30 days was adequate given the period of time already passed. Mayor Rosamonda entertained a motion that on the Duvall property on Old Mill Road, the amount of \$11,765.00 be paid within 30 days of approval of the motion and that failure to pay within the 30 days from the date of the motion would result in the full amount of fines to be due and payable in the amount of \$284,765.00 and authorizing the initiation of legal proceedings as deemed necessary by the City. Motion was made by Vice Mayor Gunter. Council Member Tillis seconded. The motion carried unanimously.

2. Request to Release/Waive Code Enforcement fine for Riverside Condominium of DeBary at 313 Dirksen Drive (continued from 02-02-05 meeting).

It was discussed that a letter had been sent by a representative of the Condominium Association that she was unavailable due to a family emergency; that no other Board Member was adequately prepared to discuss the matter; that a continuation was requested.

It was discussed that information could have been provided prior to the meeting date via other methods of communication; that other Board Members should have been cognizant of the situation; that an additional 30 days might not be excessive; that adequate time had passed to have provided information; that the fines had terminated once compliance had been met; that some understanding should be given since the courtesy of a letter had been extended; that the person scheduled to appear was not the only representative of the Condominium Association and another should have taken their place. Motion was made by Vice Mayor Gunter to continue the matter until April 13, 2005 at 7:00 PM. Council Member Tillis seconded. The motion carried 3-2 with Council Member Carson and Council Member Fulton dissenting.

IX. Old Business

None.

X. New Business

1. Request from Citizens for DeBary, Inc. for funding.

It was discussed that funding was requested for two events: the Easter Egg Hunt at DeBary Hall and the Father/Daughter Dance at DeBary Elementary School and that the request had been formalized for \$2,655 for in-kind services. It was discussed that there were items that did not appear appropriate for City compensation; that there was not another meeting before the first event; and that Assistant City Manager Anthony Gonzalez could possibly provide more information.

Assistant City Manager Gonzalez discussed that the request for funds for a photographer had been added to the initial request and that the group volunteers worked with the City Staff to organize the events. It was also discussed that there was no revenue generated from the event; that the Citizens for DeBary did assist in other City events; that there were funds in the Budget allotted to charitable events; and that the City was not obligated to request the details of expenditures as long as the event did take place. It was also discussed that business contributions could be sought to support the events and that, in future, the events should be part of the annual budget as "City Events."

There was further discussion of budgeting the event in the future as a joint venture; that sponsorships should be pursued in the future; that the Citizens for DeBary would still be soliciting for additional funds from other sources; and that line items would be added to the budget in the future. Mayor Rosamonda entertained a motion to approve up to \$2,655 for the Easter Egg Hunt and the Father/Daughter Dance. Motion was made by Council Member Fulton. Council Member Carson seconded. The motion carried 4-1 with Council Member Tillis dissenting.

2. Discussion - Volusia County Universal Tag Program.

Continued until April 13, 2005 at the 7:00 PM City Council Meeting. It was discussed that the topic would be of interest to many members of the public.

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

1. Board/Committee Reports
 - A. Economic Development Advisory Committee:
Transmittal of EDAC Resolution Supporting Construction
of West Volusia Cultural and Corporate Training Complex

City Manager Courson discussed that the Interlocal Agreement should be ready at the meeting of April 13, 2005; that the transmittal was recommended for approval by the Economic Development Advisory Committee; that it would be included with the presentation in April. Mayor Rosamonda entertained a motion to accept the recommendation of the DeBary Economic Development Advisory Committee. Motion was made by Council Member Fulton. Council Member Tillis seconded. The motion carried unanimously.

2. Board/Committee Appointments

- A. Committee:
 - 1. Economic Development Advisory Committee

Member (new) At Large

It was discussed that Ms. Christy with Christy’s Jewelers had expressed interest; that Tim McLaughton had also made application. Mayor Rosamonda entertained a motion to appoint Tim McLaughton as Member At Large to the Economic Development Advisory Committee. Motion was made by Council Member Fulton. Vice Mayor Gunter seconded. The motion carried unanimously.

Alternate (new) City Council

Mayor Rosamonda entertained a motion to appoint Ms. Christy as Alternate Member of the Economic Development Advisory Committee. Motion was made by Council Member Tillis. Council Member Fulton seconded. The motion carried unanimously.

- B. Commission:
 - 1. Charter Review Commission

Member	Mayor Rosamonda
Member	Vice Mayor Gunter
Member	Council Member Carson
Member	Council Member Fulton
Member	Council Member Tillis

It was discussed that nominations should be prepared for the April 13, 2005 meeting.

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

Vice Mayor Gunter discussed attending the meeting of VCOG which included the Universal Tag Program; that the Chairman had requested setting higher goals for the organization; that he also attended the Hoedown at DeBary Hall; and that he felt the Council should make better use of DeBary Hall Historic Site as an asset to the community.

Vice Mayor Gunter also discussed the appraisal of the property at City Hall; that \$150,000 had been paid in 1994; that the appraisal had been for \$285,000; that he would discuss it with the appraiser; and that response from the County of Volusia regarding their property was not encouraging.

Mayor Rosamonda discussed that the antique lighting could be used to enhance the Welcome Center at DeBary Hall Historic Site on Mansion and Sunset streets; that an estimate could be obtained; that the style should be consistent; and that future Council Meetings could be held in the new facility once completed.

Council Member Carson discussed that he anticipated information from other Council Members on the future skateboard park.

Council Member Tillis enquired whether fire hydrants would be added with the water installation to DeBary Hall. City Manager Courson noted that she had forwarded enquiries to Maryann Connors and had requested a meeting; that she had not yet received a response; that she was waiting on response on an additional email; that the County Manager and County Council Members should be carbon copies on future communications; and that a call would be placed to County Council Member Long.

Council Member Tillis also noted his attendance at MPO, a meeting regarding a skateboard park and a CEU meeting; that he had discussions with City Staff on possibly acquiring property currently owned by the Chamber for the skateboard park; that the Chamber's property is located next to Memorial Park; that he had additional information on parks in other communities; and that some arrangements might be made to obtain the property. Council Member Tillis also attended the Hoedown at DeBary Hall and felt that future support by the City could include volunteers to repair and paint fencing or tasks of that nature.

Council Member Tillis also discussed meeting with the Johnsons regarding a potential City Hall building; that there were plans to obtain an appraisal; that the space was adequate for five to ten years in the future and would be an asset to sell if the City expanded in the future; that it might be possible to move in within 90 days; and that the current City Hall could be used as the Sheriff's Office and would save leasing a separate building for them. It was discussed that the building was two thirds built; that the additional space could be completed for the City Hall space; and that the Johnsons would lease back the other portion of the building for one year. Council Member Tillis also discussed that he would be in Tallahassee on the 29th and 30th of March visiting the Legislature as the representative for DeBary.

Council Member Fulton discussed that there was a great deal of interest in the skateboard park; that he had attended the YMCA installation banquet; that he attended the previous WAV meetings and the ECHO meetings for the conference center and for Rob Sullivan Park; and that he had reimbursed the City for a dinner meeting that he was unable to attend.

Council Member Fulton enquired the status of the planters. City Manager Courson discussed that a registered letter was being sent and that, if the contractor did not respond in the time frame, the contract would be deemed canceled. Council Member discussed that the matter might be a breach of contract. It was further discussed that pricing would have to be checked on the secondary bidder since eight months had passed but that it was preferable to starting another bid process. Council Member Fulton also enquired about the time frame for removal of the streetlights; that it was scheduled for April 4, 2005; that it might be done in phases; and that some poles would be removed but details were not available.

Mayor Rosamonda discussed a meeting with Mr. Rasmussen scheduled for March 10, 2005 to discuss the borrow pit; that it included six acres of uplands, 20 acres of plateau and approximately 37.5 acres 40 feet deep; that the property could be used for public works, soccer fields and for storm water; that 12 acres had to be mitigated; that it would be a combination of a purchase by the City; that they would agree to finance over five years; that the information would be presented to City Council in April; that the Storm Water system could be started; and that it would be a minimal cost to obtain property for the soccer

fields. It was discussed further that the 12 acres to be mitigated would provide public access to the borrow pit.

- B. City Attorney
- C. City Manager

It was discussed that the City Manager had been attending Homeowner meetings and answering enquiries for the citizens and providing another avenue for communication. It was also discussed that a PDF link could be added for the weekly reports on the web site.

It was also discussed that the franchise with Comcast would be coming up for renewal; that it had been suggested to them to provide web cast capabilities to broadcast Council meetings; that the representative appeared amenable to cooperating with the City; that there were numerous complaints within the City with Comcast; and that there was now to be a monthly report of complaints provided.

XII. Adjournment: The meeting adjourned at 11 PM.

**APPROVED June 7, 2005
CITY OF DeBARY
CITY COUNCIL**

Carmen Rosamonda, Mayor

ATTEST:

Stacy Tebo, City Clerk