

City of DeBary
REGULAR CITY COUNCIL MEETING
Wednesday
April 2, 2008
7:00 PM

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

MINUTES

I. Call to Order

Mayor Coleman called the meeting to order at 7:00 p.m.

1. Invocation
2. Flag Salute

II. Roll Call

Members Present: Mayor George Coleman, Vice Mayor Christopher Carson, Council Member Norman Erickson, Council Member Jack Lenzen, and Council Member Leonard Marks

Others Present: City Manager Maryann Courson, City Clerk Stacy Tebo, Neighborhood Improvement Officer Dave Hooker, Parks & Recreation Director John Fletcher and Assistant City Attorney Dan Langley

III. Public Participation For Any Issues Not On the Agenda

John Likakis, 38 Seminole Drive, asked Vice Mayor Carson to explain a comment he made during the workshop held on March 15, 2008 regarding private expectations.

IV. Approval of Minutes

1. City Council Meeting held March 5, 2008.

Mayor Coleman entertained a motion for approval. Motion made by Council Member Erickson and seconded by Council Member Lenzen. The motion passed unanimously.

2. Special City Council Meeting held March 10, 2008.

Mayor Coleman entertained a motion for approval. Motion made by Council Member Erickson and seconded by Council Member Marks. The motion passed unanimously.

3. City Council Workshop held February 29, 2008.

Mayor Coleman entertained a motion for approval. Motion made by Council Member Marks and seconded by Council Member Lenzen. The motion passed unanimously.

4. City Council Workshop held March 15, 2008.

Mayor Coleman entertained a motion for approval. Motion made by Vice Mayor Carson and seconded by Council Member Erickson. The motion passed unanimously.

V. Presentations

1. Proclamation for April as Water Conservation Month.

Mayor Coleman read the proclamation aloud.

2. Discussion of Lee County Prisoner Program by Carole Fucillo-Ollivier.

Ms. Fucillo-Ollivier explained the program to the Council and recommended that DeBary undertake a similar program to save money.

VI. 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. Resolution #08-07 – Orlandia Heights Banking Signatures.
2. Resolution #08-09 – Memorandum of Agreement with FDOT for Highway Maintenance.
3. Permissive Use Agreement with SJRWMD for Installation of Telemetry Equipment at Gateway Park.

Mr. Langley read Resolutions #08-07 and 08-09 aloud by title.

Mayor Coleman entertained a motion for approval of the consent agenda. Motion made by Vice Mayor Carson and seconded by Council Member Lenzen. The motion passed unanimously.

VII. 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 #05-08 – Second Reading – Amending Chapter 38 Solid Waste of the DeBary Code of Ordinances.

Mr. Langley read Ordinance #05-08 aloud by title.

Council Member Marks noted that the ordinance would limit collections times to the hours between 6:00 a.m. and 9:00 p.m.

Council Member Erickson moved to approve Ordinance #05-08, and Council Member Lenzen seconded. The motion passed unanimously.

2. Ordinance #06-08 – First Reading – Amending Chapters 1 and 3 of the Land Development Code for Canvas Carports.

Mr. Langley read Ordinance #06-08 aloud by title. He noted that the City Attorney's office did their best to incorporate the Council's wishes when they drafted the ordinance.

Council Member Erickson moved to approve Ordinance #06-08 on first reading. Vice Mayor Carson seconded. The motion passed unanimously.

3. Resolution #08-08 – Request from DeBary Golf and Country Club Homeowner's Association for Temporary Use of Modular Sales Office.

Mr. Langley read Resolution #08-08 aloud by title.

Ms. Courson explained that the Homeowner's Association (HOA) approached the City to use the existing trailer for their meetings and ask for a temporary use permit to be approved by the Council.

Rick Dwyer, 154 Hickory Stick Court, voiced his opposition to the request and stated that their board members are not wholly representative of the community. He questioned the cost and liability associated with approval of the temporary use and said the homeowners do not want to absorb the cost of the trailer, regardless of the amount.

Patricia Kistenmacher, 416 Greenridge Court, stated that she and her husband are strenuously opposed to the approval of Resolution #08-08, and that the time for the removal of the trailer is overdue.

Al Keller, 128 Hallstrom Court, agreed with the two prior speakers and said that the residents of Hampton Hills Estates want the trailer removed.

John Hynes, 313 Hampton Hills Court, said they need better communication between the residents and the HOA; that the trailer is in violation of the zoning codes; and that the Council should deny the request.

Gary Starkweather, 687 Newhall Lane and representative of the Westridge Homeowner's Association, stated that his entire community is opposed to the request.

Jack Harwell, 213 Hazeltine Drive and representative of the DeBary Plantation Master HOA, gave the Council background information on the trailer and the reason for their request. He stated that the trailer is valuable to the HOA from a meeting and storage point of view.

John Shepherd, 445 Quail Meadow Court, said that there has been a lot of misinformation spread throughout the community; that he believes the HOA should hear residents with concerns at the start of their meetings for better communication; and that they do have a major space issue.

Mike Kolba, 441 Quail Meadow Court, said he is upset with the miscommunication that has been occurring and the incorrect information being disseminated in the community. He said that the HOA should send out letters to each individual homeowner, so that there is better communication in the future.

Phil Jenkins, 137 Hammock Oak Circle and treasurer of the HOA, clarified their budget and the parking situation, said that they would mainly use the trailer for storage, and spoke of the lack of meeting places in DeBary.

Mayor Coleman said he would not approve the request. Council Member Erickson moved to deny Resolution #08-08, and Council Member Lenzen seconded.

Council Member Marks disclosed ex-parte communications and said he saw another trailer behind the one in question with paint cans and other code violations. He stated that the comprehensive plan and the land development code do not support the request.

Vice Mayor Carson said he also received a large number of emails, and agreed with the other members to deny the request.

Mayor Coleman called for a vote on the motion to deny, and it passed unanimously.

VIII. Growth Management and Development Review

1. Consideration of Request from Claudio & Carmen Hernandez to Abate Code Enforcement Lien on Property at 670 Summerhaven Drive, Case #07-076-H.

Dave Hooker, Neighborhood Improvement Officer, outlined the case for the Council regarding an unsecured swimming pool. Mr. Hooker noted that the owners are out of state, and already reimbursed the City for the expense of the fencing around the pool. He explained that the Code Enforcement Board (CEB) recommended a reduction to staff costs due to the actions taken by the owners to work with the City, and the fact that they were not aware of the fine at the time of its imposition. He said that when they purchased the property, the title company gave the wrong address to the property appraiser's office, so they did not receive the City's notice in their mail in New Jersey. He added that the owners' nephew has visited him multiple times to ensure compliance with the City's codes. He stated that the estimate of costs is \$300.

Council Member Erickson made a motion to reduce the lien to \$300. Council Member Lenzen seconded. The motion passed unanimously.

2. Consideration of Request from Allen Woodruff to Abate Code Enforcement Lien on Property at 54 S. US Highway 17-92, Case #07-018-H.

Mr. Hooker summarized the case for the Council involving a tenant causing multiple violations at the former site of Bella Vita restaurant. He said that the CEB recommended that the lien be reduced to fifty percent or more of the total.

Mayor Coleman noted that the owner would probably never recover the money owed to him by the tenant.

Allen Woodruff, property owner, explained the chain of events leading up to the current situation. He stated that his attorney advised him that he could not legally enter the restaurant and do anything and that the eviction process could take two or three years. He explained that he initiated the eviction process, but then stopped because he wanted the tenant to correct the violation and knew if the tenant were being evicted he would not comply with the City.

Rick Dwyer, member of the Code Enforcement Board, spoke on behalf of Mr. Woodruff and asked the Council to reduce the lien due to the mitigating circumstances of the case.

Chris Yacenda, 101 Marta Road, stated that his business is located next door to Mr. Woodruff's property and said that he witnessed the tenant's actions. He asked the Council for leniency so that Mr. Woodruff could renovate the building and get it occupied.

The Council discussed the circumstances and agreed that the owner did what he could to remedy the situation. Mr. Woodruff said that before the tenant left, he removed everything from the building and damaged the property.

Council Member Erickson moved to reduce the lien to \$2,500.00. Vice Mayor Carson seconded the motion.

Danny Allen, 140 Fort Florida Road, asked why code enforcement was not done on the tenant. Mr. Langley answered that the Florida Statutes require that the property owner is responsible for the lien.

John Wilson, 114 Pine Valley Court, said that \$2,500 is a lot of money that Mr. Woodruff would never get back and asked the Council not to exacerbate the problem. He added that he is disturbed that the tenant has moved across from the library and is still a problem in DeBary.

Council Member Lenzen agreed with Mr. Wilson.

Council Member Erickson withdrew his prior motion, and moved to reduce the lien to one dollar. Council Member Lenzen seconded. The motion passed unanimously.

3. Final Site Plan Application for Technical Electrical Systems.

Brian Nelson, Senior Planner with GAI Consultants, outlined the application for the Council and noted that the 5,000 square foot retail space limitation of the Village Center Overlay District would not be exceeded. He stated that if Council approves the final site plan, staff asks that Council impose the three conditions recommended by GAI.

Council Member Erickson moved to approve the application subject to the three conditions stated by Mr. Nelson. Council Member Marks seconded. The motion passed unanimously.

4. Final Site Plan Application for DeBary Business Center.

Mr. Nelson summarized the project and stated that it is consistent with the comprehensive plan, the land development code, and executed development agreement. He added that the three conditions were taken from the development agreement.

Council Member Lenzen asked if the entrance was approved by FDOT. The applicant, Lee Munizzi, stated that they have a signed agreement with SJRWMD for joint access, as well as the permit from SJRWMD and FDOT; and that the billboard would be removed after the lease expires in August.

Council Member Marks said he would like to see them use bahia grass, rather than St. Augustine.

Council Member Lenzen moved to approve the application subject to conditions two and three on the staff report. Council Member Erickson seconded. The motion passed unanimously.

5. Request to Correct Scrivener's Error – Resolution #98-17, Minor Amendment Glen Abbey PUD.

Alan Watts, attorney for the owner, requested a technical amendment to correct the legal description originally recorded with Resolution #98-17; he stated that the legal description includes property that his client does not own. He asked the Council to add the survey of March 1999 as an exhibit in lieu of the original text.

Mayor Coleman entertained a motion for approval. Motion made by Council Member Erickson and seconded by Council Member Marks. The motion passed unanimously.

IX. Old Business

1. River City Nature Park Improvements.

Parks and Recreation Director John Fletcher asked the Council to make a decision on the placement of the handicap parking spaces to utilize the CDBG funds.

Council Member Carson stated that he does not want the parking in option A visible from the outside to preserve the beauty of the park. He suggested adjusting it to the north.

Council Member Erickson moved to approve options A and M. Council Member Lenzen seconded. The motion passed unanimously.

X. New Business

1. Mast Arm Wind Loads Update Proposal – Turn Lane at the Southwest Corner of Highbanks Road and 17-92.

Assistant City Manager Anthony Gonzalez explained that the construction drawing needed to be updated to comply with the new wind load requirements.

Ms. Courson informed the Council that grant money substantially funds the project; that the City would use the franchise fee fund to pay the City's portion of 25%; and that the Volusia County MPO would pay 75%. Council Member Marks said he is not in favor of the project and accepting the grant.

Council Member Lenzen asked former Council Member Greg France for historical information relating to the reason for not placing the mast arm at Highbanks and 17-92.

Mr. France said that the two reasons for changing to the mast arm signal are hurricane mitigation and to improve the aesthetics of the City. He added that the former city manager told him it could not be done because of a future turn lane that has never come to fruition.

Council Member Erickson said grant money is not free because it is taxpayer money.

Fred Ferrell, Traffic Engineering Data Solutions, Inc., stated he is retired from FDOT and is very familiar with the requirements and processes involved in the project. He explained that the design was completed a few years ago, and the FDOT now requires 130 mph wind speed in Volusia County; that any new traffic signal requires a mast arm; and that if over half of the poles are replaced, then the signal has to be updated to a mast arm.

Council Member Marks moved to deny the proposal, and Council Member Erickson seconded. The motion failed 2-3, with Mayor Coleman, Vice Mayor Carson and Council Member Lenzen dissenting.

Council Member Lenzen moved to approve the update proposal for \$5,750. Vice Mayor Carson seconded. The motion passed 3-2, with Council Member Marks and Council Member Erickson dissenting.

2. Request from DeBary Sonshine Academy Regarding Purchase of 74 W. Highbanks Road.

Ken and Mary Dietzel, owners of DeBary Sonshine Academy, explained that they would like to expand their business to the adjacent property at 74 W. Highbanks Road and asked the Council for their opinion.

Mark Corradini, 72 W. Highbanks Road, voiced his opposition to the request and said he is very concerned with the traffic on Highbanks Road. He said that the business should be in a commercial area, rather than in a residential zone.

Dan Kern, 70 W. Highbanks Road, said that when the special exception was originally approved, the Sonshine Academy was told they could not expand the business.

Council Member Erickson said he would like to look at the conditions of the special exception approval.

Ms. Courson said she would have that information to the Council by Friday, and the Council could talk about it further on April 23rd due to the late hour. The Council agreed to schedule the Highbanks Marina workshop from 6:30 to 8:00, and then have a special meeting at 8:00 to carry the rest of the agenda and the Sonshine Academy request.

Council Member Marks said he would like to have the discussion of the city manager on the May 7th meeting at the beginning of the meeting, and he would also like to start discussion on the budget at that meeting.

XI. Council Member/Committee/Staff Reports

1. Member Reports/Communications
 - A. Mayor and Council Members – Discussion of City Manager (Council Member Erickson).
 - B. City Attorney
 - C. City Manager

XII. Adjournment. The meeting adjourned at 11:07 p.m.

**APPROVED April 23, 2008
CITY OF DeBARY
CITY COUNCIL**

George Coleman, Mayor

ATTEST:

Stacy Tebo, City Clerk