

City of DeBary
CITY COUNCIL MEETING
Wednesday
April 15, 2009
7:00 PM
City Council Chambers
16 Colomba Road
DeBary, Florida 32713

MINUTES

I. Call to Order

Mayor Garcia called the meeting to order at 7:03 p.m.

II. Roll Call

Members Present: Mayor Bob Garcia, Vice Mayor Norman Erickson, Council Member Van Conoley, Council Member Jack Lenzen, and Council Member Leonard Marks

Others Present: City Manager Maryann Courson, City Clerk Stacy Tebo, Assistant City Manager Anthony Gonzalez, and City Attorney Kurt Ardaman

III. Public Participation For Any Issues Not On the Agenda - Citizen comments are limited to three minutes per speaker.

Donald McGrath, 116 Lower Lake Court, stated that the mold has spread to the rafters at 123 Lower Lake Court, and it is a public health hazard. He also said that the former Mayor publicly stated that the City flooded Lower Lake Court to save 17-92 and suggested that the City pay each of the residents \$10,000.

IV. Approval of Minutes

1. City Council Workshop held January 21, 2009.

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

2. Regular City Council Meeting held January 21, 2009.

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

V. Additions, Deletions, or Amendments to the Agenda

Vice Mayor Erickson made a motion to move the discussion of the DeBary Golf & Country Club Sales Office up on the agenda to follow presentations. Council Member Lenzen seconded. The motion passed unanimously.

VI. Presentations

1. Bus Stop Shelter Presentation by Streetscape Committee Chair Susan Preil.

Ms. Preil gave the Council a brief history of the bus stop project and explained how the Committee came to agree on the design. She stated that Spencer Fabrications has volunteered to do the design work; that they are located in Tavares; that the shelter would be the first prototype in DeBary; that the budget for the project is \$5,000; and that the Committee is seeking approval from Council on the design.

Council Member Conoley suggested a plastic backdrop for inclement weather.

Mayor Garcia recommended that the Committee check with the Heritage Corridor Scenic Highway group.

Council Member Marks said that donations and grants might be utilized for the project.

Council Member Marks made a motion to move forward with the design. Vice Mayor Erickson seconded. The motion passed unanimously.

2. Call to Action – Funding Crisis Presentation by Dr. Robert Moll, Deputy Superintendent for Financial and Business Services, and School Board Chairman Diane Smith.

Dr. Moll addressed the Council concerning the School Board's reduction in revenue and explained the funding over the last few years. He listed the steps taken by the School Board to reduce the budget. He noted that for the second consecutive year, Volusia County has the highest rate of students lost of all the large counties in the State, and therefore, has realized a loss of funding.

Vice Mayor Erickson asked the percentage of lost students. Dr. Moll answered that there were about 4,700 in the last two years out of a total of 62,000. Dr. Moll explained the formula for the cost per student.

Vice Mayor Erickson asked if the Board had considered bus schedule flipping such as Orange County has done. Chairman Smith responded that Orange County mirrored what Volusia County does already, so there would be no change to the bus schedules. He asked the status of the new high school in Orange City. Dr. Moll answered that the high school would open in August of 2010.

Council Member Conoley discussed the FTE (full time equivalent) with Dr. Moll and said the State is providing what it is required to do by law. Dr. Moll noted that a weighted FTE is much different than a regular FTE. Council Member Conoley discussed layoffs and asked how many teachers and administrators were laid off. Dr. Moll answered there were 506 teachers and approximately fifty administrators.

Mayor Garcia said he is concerned that DeBary students are traveling further to attend school. He thanked Dr. Moll and Chairman Smith for their presentation to Council.

3. Keith Bradshaw of the Four Townes Moose Lodge Presentation of Donation to the City for Strategic Planning.

Mr. Bradshaw presented a check for \$450 to the City to be used for the strategic planning process. He also invited the Council to visit the Student Reach Out Program and stated that they are in need of food donations.

IX. Growth Management and Development Review

1. Discussion of DeBary Golf & Country Club Sales Office.

George Coleman, 286 Deleon Road, challenged the statement made during public participation by Donald McGrath.

Val Emerson, 104 Barclay Court, read aloud a statement she prepared for the Council regarding the sales office.

Glenn McNutt, 100 Barclay Court, stated that Mr. Hagood continues to act counter to the wishes of the City Council in their vote of November of 2007. He said that building permits should not have been issued.

Jerry Fosnow, 369 Caddie Drive, stated that the sales center was initially created to sell property within the country club only. He voiced concern that allowing commercial use in the sales office would lower property values.

Thomas Pawlicki, 224 Birdiewood Court, said he has thirty years of real estate experience; that the site would never function as a commercial use; that it should be used as a transitional area; and that it is in violation of the zoning code.

Rick Dwyer, 154 Hickory Stick Court, submitted copies of recorded documents from 1993 relative to the issue and asked the Council to deny any request for the property to be used for commercial purposes.

Roger VanAuker, 734 Briarcliff Drive, stated he was the original development coordinator of the DeBary Golf and Country Club and gave the Council some background information. He said that the building could be converted to multi-family residential units according to the recorded development agreement.

Pablo Abreu, 429 Quail Meadow Court, said he thought the Council settled the issue in November of 2007, and he does not understand why the same issue has arisen again because the community does not want commercial development.

Eugene Stump, 106 Birkwood Court, said that the property would make a good retention pond.

Scott Rost, attorney for the property owner, said he has been involved with the country club for approximately ten years; that he agrees the subdivision is beyond eighty percent buildout; that Mr. Hagood could place between seven and eleven residential units on the property; that Mr. Hagood is entitled to compensation for the property if it is to be used as a retention pond; and that he is unwilling to demolish the building and walk away from his property interests.

Barbara Sepler, 193 Hammock Oak Circle, said that people must abide by the covenants in the country club.

Ivan Polon, 408 Quail Meadow Court, said that the sales office flooded in 2004 and 2008 and questioned why the City would allow Mr. Hagood to repair the building.

Mr. Ardaman noted that the issue comes before the Council only for discussion, and the Council should not make a determination, as there is not a pending application from Mr. Hagood.

Council Member Marks said he received many calls and emails from concerned residents and asked Ms. Courson what is going on.

Mr. Courson asked Council Member Lenzen to brief the Council on what happened at the November 2007 hearing.

Council Member Lenzen summarized the 2007 proceedings for the other members, as he was on the Council at the time.

Council Member Marks said that the ordinance was denied at the November meeting and asked how permits were issued. Ms. Courson responded that you could not stop a person from rebuilding if they are in a flood zone, and the building code allows three electric meters on one building.

Vice Mayor Erickson stated that it is important to follow codes and rules because it ensures consistency and fairness; that Ms. Courson was asked a direct question, and she deferred to Council Member Lenzen; that it was already at eighty percent in November of 2007; that the Council's denial of the ordinance was a denial of everything; and that he was ready to work with a new city manager.

Vice Mayor Erickson made a motion to remove Ms. Courson immediately. Council Member Marks seconded.

Mr. Ardaman said there is a provision in the contract for Ms. Courson to prepare a rebuttal, and the Council would have to pay full severance if they do not afford her the opportunity. Vice Mayor Erickson stated he is fully aware of the contract.

Mr. Ardaman asked Ms. Tebo to obtain Ms. Courson's contract from her office.

Council Member Lenzen stated that Ms. Courson is entitled to severance pay as a twelve-year employee of the City.

Ms. Courson said she would defer comments until she obtains an attorney.

Mr. Ardaman explained the provisions for termination in Ms. Courson's contract with the City.

Council Member Conoley asked Ms. Courson if she could give a date certain that she would resign if the motion were withdrawn. Ms. Courson declined.

Mayor Garcia asked for a vote on the motion to terminate Ms. Courson. The motion passed 4-1, with Mayor Garcia dissenting.

James Chestnutt, 390 Hickory Springs Place, asked who issued the permits for the sales office. Assistant City Manager Anthony Gonzalez answered that the City's building department issued the permits. Mayor Garcia added that Mr. Hagood was allowed to install three electric meters.

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.*

None.

VIII. 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 #03-09- First Reading – Providing for Implementation of the Water Conservation Rule for Landscape Irrigation of the SJRWMD.

Mr. Ardaman read Ordinance #03-09 aloud by title.

Mr. Gonzalez explained the ordinance to the Council. Council Member Marks said that both WAV and the SJRWMD have approved it.

Mayor Garcia noted the importance for the City to have the ability to enforce watering restrictions and entertained a motion for approval. Vice Mayor Erickson made a motion to approve with the deletion of Section 30-263, and Council Member Marks seconded. The motion passed unanimously.

2. Ordinance #04-09 – Second Reading – Illicit Discharge Detection and Elimination.

Mr. Ardaman read Ordinance #04-09 aloud by title.

Vice Mayor Erickson voiced concern regarding the provision for variances in Section 30-257. He recommended that the word “manager” be replaced with “City Council” throughout the section. He added that letter “c” on page seven should be deleted.

Council Member Lenzen made a motion to approve as amended by Vice Mayor Erickson. Council Member Conoley seconded, and the motion passed unanimously.

3. Ordinance #05-09 – First Reading – Amending the Land Development Code to Clarify the Minor Amendment Process.

Mr. Ardaman read Ordinance #05-09 aloud by title and explained the reason it was prepared.

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

4. Resolution #09-05 – Authorizing the Execution of the FDOT Local Agency Program Agreement.

Mr. Ardaman read Resolution #09-05 aloud by title.

Vice Mayor Erickson made a motion to deny, and Council Member Marks seconded for discussion.

Mr. Gonzalez explained that the resolution involves the construction of a mast arm signal and a right turn lane at the intersection of Highbanks Road and Highway 17/92; that the road plans and signal plans need to be updated; that the City would be responsible for \$126,500 (25%) and the MPO would be responsible for \$379,500 (75%); that the \$126,500 would be paid with the City's Franchise Fee Fund; that sufficient funding is available this fiscal year to construct the project; and that the City would be responsible for any cost overruns.

Fred Ferrell, with Traffic Engineering Data Solutions, addressed the Council and said he updated the signal plans. He outlined the entire project process for the Council and informed them that FDOT requested that they update the road plans.

Jim Gangitano, 309 La Creek Court, said he is familiar with construction contracts, and there is a fixed price contract that should be negotiated by the Council. He stated he is willing to volunteer his time as an attorney and resident of the City to review the contracts.

Vice Mayor Erickson made a motion to extend the meeting until 12:00 a.m. Council Marks seconded, and the motion passed unanimously.

Council Member Lenzen said there is currently a stacking problem on Highbanks Road; that it would only get worse in the future; that Volusia County MPO would pay the majority of the project; and that the taxpayers are getting a good deal.

Vice Mayor Erickson said that the City is catching up with its growth, and Council Member Lenzen made a persuasive argument.

Council Member Marks removed his second to Vice Mayor Erickson's motion of denial.

Council Member Conoley made a motion to approve Resolution #09-05. Council Member Marks seconded. The motion passed unanimously.

IX. Growth Management and Development Review

1. Discussion of DeBary Golf & Country Club Sales Office.

This item was heard earlier in the meeting.

X. Old Business

None.

XI. New Business

None.

XII. Council Member/Committee/Staff Reports

1. Board / Committee Appointments
Strategic Planning Steering Committee

Mayor Garcia asked the other Council members to provide names of any other citizens that are interested in serving on the committee.

Vice Mayor Erickson said he was unaware there was any money involved in the process, and he felt he was learning about things after-the-fact; that there are a large number of people involved; that the committee should be made aware that the Council would listen to their recommendations, but would ultimately make their own final decision; and that the Committee should have complete understanding that the Council has the prerogative to say no.

The Council discussed the number of people that should be on the committee. There was discussion that twenty individuals have already volunteered. Mr. Gonzalez suggested approving the entire list.

Council Member Lenzen said that Mr. Abels should be asked for his opinion on if the Council should proceed without a city manager and how large the committee should be. There was Council consensus that Mayor Garcia should ask Mr. Abels and report back to Council at the next meeting.

Mr. Gonzalez said that Christopher Beehner also wanted to be added to the list.

Mary Shoup Love, 345 McLaren Lane, suggested that they break the large group down into subcommittees. She added that they should move forward because it might take months to hire a new city manager.

Streetscape Advisory Committee
Regular Member

At-Large

Mayor Garcia asked Christopher Beehner to come to the podium and thanked him for volunteering. Vice Mayor Erickson made a motion to appoint Mr. Beehner, and Council Member Marks seconded. The motion passed unanimously.

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

Vice Mayor Erickson suggested that they research revoking building permits for the sales office. He voiced concern regarding enforcement of the PUD.

Council Member Lenzen suggested that Mr. Ardaman research the issue and advise the Council at the next meeting. Mayor Garcia made a motion to direct the city attorney to provide a legal opinion at the next meeting regarding the DeBary Golf and Country Club sales office. Vice Mayor Erickson seconded. The motion passed unanimously.

Val Emerson, 104 Barclay Court, asked if Mr. Hagood would receive a code violation the next morning for operating a full service real estate office. Council Member Lenzen responded that nothing would be done until the Council receives a legal opinion from the city attorney.

Council Member Marks made a motion to extend the meeting until 12:15 a.m, and Vice Mayor Erickson seconded. The motion passed 3-2, with Council Member Lenzen and Council Member Conoley dissenting.

The Council scheduled a stormwater workshop on May 18th at 6:00 p.m.

Council Member Marks informed everyone that the Heritage Corridor Scenic Highway group is planning a ribbon cutting ceremony in September.

Mayor Garcia informed the Council that he met with Orange City and Deltona regarding fire services.

Ms. Tebo asked the Council how much Mr. Gonzalez should be paid as the acting city manager. Council Member Conoley made a motion to pay Mr. Gonzalez a salary of \$80,000 while he is the acting city manager. Vice Mayor Erickson seconded. The motion passed unanimously.

Vice Mayor Erickson made a motion to extend the meeting to 12:30 a.m. Council Member Marks seconded. The motion passed unanimously.

B. City Attorney

Mr. Ardaman suggested that if the Council wants to pay severance to Ms. Courson, they should obtain a hold harmless release. There was consensus to have Mr. Ardaman bring back a release to the Council.

C. City Manager

Mr. Gonzalez had nothing to report.

XIII. Adjournment

The meeting adjourned at 12:20 a.m.

**APPROVED July 29, 2009
CITY OF DeBARY
CITY COUNCIL**

Bob Garcia, Mayor

ATTEST:

Stacy Tebo, City Clerk