

City of DeBary
SPECIALCITY COUNCIL MEETING
AND EXECUTIVE SESSION

Wednesday
April 22, 2009
5:15 PM

City Council Chambers
16 Colomba Road
DeBary, Florida 32713

MINUTES

I. Call to Order

Mayor Garcia called the meeting to order at 5:15 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: Acting City Manager Anthony Gonzalez, City Clerk Stacy Tebo, City Attorney Kurt Ardaman, and Assistant City Attorney Dan Langley

III. Business

Request by City Attorney for Executive Attorney-Client Session to Discuss Pending Litigation Pursuant to Section 286.011(8), Fla. Stat. concerning DeBary Real Estate Holdings, LLC v. City of DeBary, Volusia County Circuit Court case no.: 2009-10280-CIDL and DeBary Real Estate Holdings, LLC v. City of DeBary, Volusia County Circuit Court case no.: 2009-10293-CIDL.

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

Executive Attorney-Client Session (Closed to Public) to Discuss Pending Litigation concerning DeBary Real Estate Holdings, LLC v. City of DeBary, Volusia County Circuit Court case no.: 2009-10280-CIDL and DeBary Real Estate Holdings, LLC v. City of DeBary, Volusia County Circuit Court case no.: 2009-10293-CIDL.

Estimated Length of Session: 45 minutes.

Names of the Persons Attending: Mayor Bob Garcia, Vice Mayor Norm Erickson, Council Member Lenny Marks, Council Member Jack Lenzen, Council Member Van Conoley, Acting City Manager Anthony Gonzalez, City Attorney A. Kurt Ardaman, Assistant City Attorney Dan Langley, and Court Reporter.

V. Termination of Executive Session and Reopening of Public Meeting

The public meeting reopened at 6:25 p.m.

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

None.

VII. Approval of Minutes

None.

VIII. Additions, Deletions, or Amendments to the Agenda

Mayor Garcia stated that they would discuss the separation agreement at this time.

XIV. New Business

1. Maryann Courson Separation Agreement and General Release.

Mr. Langley stated that he drafted a general release as instructed by Council and explained the payment amounts. He said the purpose of the release is for Ms. Courson to agree that she would not sue the City for any reason in exchange for payment.

Mr. Ardaman said that there is not a requirement for Ms. Courson to sign a general release, and there is not a requirement for a lump sum severance payment. He added that it would be Council's determination as to whether she is entitled to payment of her accrued personal hours or if it would be limited to twenty-five hours.

Mr. Ardaman discussed the retirement calculations provided by Finance Administrator Jimmie Seelbinder with the Council.

Former City Manager Maryann Courson stated that she is not required to sign a release; that she is entitled to full payment of her personal time; and that she does not dispute the numbers provided by Mr. Seelbinder.

Council Member Lenzen said Ms. Courson is entitled to payment of her accrued personal hours, but he does not understand Mr. Seelbinder's calculations for retirement contributions.

Mr. Ardaman stated that something is needed for Ms. Courson to sign that states she is in agreement with the payment amounts.

The Council discussed the spreadsheet provided by Mr. Seelbinder. There was consensus that further clarification was needed to determine the final payments.

Ms. Courson stated she is willing to sign a document agreeing to the numbers, but she is not willing to execute a release.

Vice Mayor Erickson made a motion to hear the issue on May 6th. Council Member Conoley seconded. The motion passed unanimously.

IX. Presentations

None.

X. 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.

XI. 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 item:

None.

XII. Growth Management and Development Review

1. Discussion of Comprehensive Plan.

Mr. Gonzalez informed the Council that he asked Shalene Estes, planner with GAI Consultants, to attend the meeting to answer questions.

Vice Mayor Erickson spoke about the vision statement and stressed the importance of reviewing the comprehensive plan annually.

Ms. Estes reminded the Council that the recommended changes in the EAR (Evaluation and Appraisal Report) have to be done because the Department of Community Affairs (DCA) has based their sufficiency findings on those changes.

Mr. Gonzalez suggested that they have Ms. Estes lead them throughout the comprehensive plan review process.

Council Member Marks voiced dissatisfaction with the Council serving as the LPA (Local Planning Agency) and said he would be more comfortable with the LPA being a separate body of individuals.

Mr. Ardaman informed the Council that State law gives the Council an option of either serving as the LPA or appointing a separate body to make recommendations to the Council.

Mr. Ardaman outlined the advantages and disadvantages of both options and noted that some people feel that it removes politics from the equation because appointed individuals, rather than elected officials are hearing the request.

Council Member Conoley discussed conservation and “no build” areas with Mr. Ardaman. Ms. Estes noted that the resource conservation (RC) and the environmentally sensitive land (ESL) categories are the closest designation that the City has to “no build” areas.

Mayor Garcia asked what sections should be discussed at the next meeting. Ms. Estes noted that section three is rather large and should be covered alone. Council Member Marks suggested that they could cover section eight, as it is only one page when they address section three.

The Council discussed possible locations for the gambling issue in the comprehensive plan.

Mr. Ardaman explained his research to answer Council’s query as to if it would be allowable to prohibit gambling in the City. Mr. Ardaman provided an extensive explanation to Council. He stated that there is a general prohibition against gambling in Florida Statute 849, but it does

provide for exceptions, such as the lottery; that the City could not place a prohibition on gambling in the City; that there is statutory language related to card rooms that is different than most of the other forms of gambling; that the City could not pass ordinances that are in conflict with State law; and that they could adopt rules related to gambling so long as they do not contradict State law.

Mr. Ardaman discussed parimutuel activities at the county level with Council Member Conoley.

Council Member Conoley asked if they could hold a referendum to ask DeBary residents if they want gambling in the City. Mr. Ardaman answered that he would get the attorney general opinion for the Council; that a non-binding poll would probably be okay, but he would prefer to answer the question following further research; and that they definitely could not do it on a rezoning issue because it requires a quasi-judicial hearing.

Council Member Lenzen said that the racetrack applicant's attorney stated during the rezoning hearing that DeBary has nothing in its comprehensive plan to prohibit a poker room and horse track, and that it leads him to believe that other cities might have something in their plans to prohibit it. Mr. Ardaman said that his suggestion is not to prohibit it, but to regulate it.

Mr. Ardaman noted that they do have the ability to prohibit card rooms.

Vice Mayor Erickson suggested a general statement in the comprehensive plan that refers to the land development code for regulation.

James Chestnutt, 390 Hickory Springs Place, voiced his opposition to gambling in the city.

Millie Murray, 219 Valencia Road, voiced her support for former City Manager Maryann Courson.

XIII. Old Business

None.

XIV. New Business

1. Maryann Courson Separation Agreement and General Release.

This item was discussed earlier in the meeting.

XV. Council Member/Committee/Staff Reports

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

Mayor Garcia stated that the City has not given up on the FEMA buyouts, and he hopes to receive the grant letter within the next seven to ten days.

Mr. Gonzalez asked the Council for direction regarding advertising of the city manager position and affirmed that it should be posted with the Florida League of Cities and the Florida City and County Managers Association. Council Member Marks said he also wanted it posted in a national periodical for city managers.

Council Member Conoley suggested a specific date rather than leaving the position open until filled. Council Member Marks said he wanted to see a new manager seated within sixty days and recommended a twenty-one day posting period. There was Council consensus to post the position for twenty-one days.

Mr. Gonzalez asked the Council to consider a salary range. Council Member Conoley said they should take the current economic conditions into consideration when determining the salary, and they should work on the contract ahead of time.

Mayor Garcia stated that they should not pay the new city manager above what Ms. Courson was being paid. Council Member Marks said that \$85,000 would be a good lower number. Mr. Conoley suggested a range of \$85,000 to \$95,000, and the other members agreed.

Mayor Garcia informed everyone that he would be meeting with Orange City regarding fire services.

The Council agreed to schedule the next comprehensive plan workshop to discuss sections three and eight on either May 12th or May 14th at 6pm. The members agreed to email staff their preferred date.

B. City Attorney

Mr. Ardaman had nothing to report.

C. City Manager

Mr. Gonzalez said the City should be receiving a letter soon from County Manager Dineen regarding the discontinuation of County fire services.

XVI. Adjournment

The meeting adjourned at 10:10 p.m.

**APPROVED August 19, 2009
CITY OF DeBARY
CITY COUNCIL**

Bob Garcia, Mayor

ATTEST:

Stacy Tebo, City Clerk