

**City of DeBary
CITY COUNCIL MEETING**

Wednesday

May 6, 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 7:02 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, Safety Coordinator Alan Williamson, and City Attorney Kurt Ardaman

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

None.

IV. Approval of Minutes

1. City Council Workshop held January 28, 2009.

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

V. Additions, Deletions, or Amendments to the Agenda

Council Member Conoley said he would like to add a discussion of the procedures for selecting a new city manager to the agenda. The Council agreed to discuss the item at the end of New Business.

VI. Presentations

1. Sergio Pacheco, Field Operations Supervisor, for Volusia County Animal Control.

Mr. Pacheco explained Volusia County's mandatory spay/neuter ordinance to the Council and noted that their main goal is to educate the public to reduce the large numbers of animals that are put to sleep each year.

Mr. Pacheco described the Pet Vet Cruiser's operations and outlined the daily operating expenditures for the bus. He stated that the bus is able to perform between eighteen to twenty surgeries per day. He explained the qualifying process for residents to utilize the low cost sterilization program.

Mayor Garcia voiced concern regarding the City subsidizing the program and stated that if a resident qualified to pay only \$5, then the City would have to contribute \$55. Mr. Pacheco stated that although the City does pay, it would reduce the costs of animal control in the long run. Mr. Pacheco discussed the cost analysis with the Council.

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 item:

1. Ordinance #03-09 – Second 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 noted that staff removed the rain sensor portion as requested by Council during first reading.

Council Member Conoley informed the Council that he obtained a copy of the SJRWMD budget and would provide it to the City Clerk for copying. He voiced concern regarding the enforcement of the ordinance.

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

2. Ordinance #05-09 – Second Reading – Amending the Land Development Code to Clarify the Minor Amendment Process for Planned Unit Developments.

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

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

IX. Growth Management and Development Review

1. Discussion of DeBary Golf & Country Club Sales Office by City Attorney.

Mr. Ardaman outlined the options available to Council and distributed a list of eleven permitted uses available to the property owner.

Kevin Kronk, contractor and past president of the Volusia Homebuilders Association, stated that DeBary has a stellar building department; that Jim Stroupe followed the Florida Building Code when he issued the permits to rebuild the sales office; that nothing in the building code prohibits the installation of three meters; and that the Council should be happy with a professional like Mr. Stroupe in the building department.

Val Emerson, 104 Barclay Court, stated she is upset because there is a full-service real estate office being operated by Mr. Hagood in the country club without code enforcement action by the City.

Vice Mayor Erickson asked Mr. Ardaman to clarify the permitted principal and accessory uses for the sales office property. Mr. Ardaman explained the residential medium density category and the allowed uses.

Jim Stroupe, DeBary Building Official, stated that the three meters have never been installed and gave the Council an update on the repairs that have been done in the building. He said that since it was not a change of use, permits were issued as a fifteen-year existing business to repair flood damage.

Mr. Ardaman stated that he felt the language in the PUD speaks to removal of the “use”, rather than the “structure”, and that it is time for the building to convert to one of the permitted uses listed in his memorandum to the Council.

Scott Rost, attorney for Ray Hagood, noted that there are eighteen acres of commercial use designated in the PUD; that no one is arguing that eighty percent has not been reached; that Mr. Hagood was not the original developer; and that Mr. Hagood deserves the use of the building and property.

David McLean, 472 Sotheby Way, said the eighty percent was met when Mr. Hagood bought the individual lots because he is not a developer.

Mary Shoup Love, 345 McLaren Lane, stated that it is common practice to verify zoning before issuing a building permit.

Judith Hynes, 313 Hampton Hills Court, said she did not buy into a development that has commercial in the front.

Glenn McNutt, 100 Barclay Court, agreed that the eighty percent was achieved long ago and asked for a copy of the permitted use list provided by Mr. Ardaman.

Roger VanAuker, 734 Briarcliff Drive, said the existing building could be divided into 550 square foot apartments without Council approval.

Val Emerson, 104 Barclay Court, voiced concern regarding stormwater runoff generated by a multi-family use on the property.

Vice Mayor Erickson said that Mr. Hagood has a right to convert the building to one of the eleven permitted uses provided in the memorandum by Mr. Ardaman.

Mr. Ardaman stated that the building is vacant, and therefore, there is no current use. He added that the building permit should be revoked and any fees should be refunded.

Brenda Cullum, 441 Fenwick Court, said that she has worked in the sales office for the last seven years; that she has never heard a person say that the office is an eyesore; and that only opposing realtors have said that they want the building torn down.

Council Member Conoley made a motion that if the eighty percent threshold is met, his interpretation is that the building may not be used as a sales office at 100 DeBary Plantation Boulevard. Council Member Marks seconded, and the motion passed unanimously.

Mr. Gonzalez stated that staff would revoke the building permit and refund any permit fees that have been paid.

X. Old Business

1. Separation Agreement with Maryann Courson.

Mr. Gonzalez said that the payments were itemized as previously requested by Council.

Council Member Conoley noted that both Ms. Courson and the City have the right to sue in the future because Ms. Courson refused to execute a general release.

Vice Mayor Erickson made a motion to approve the agreement, and Council Member Lenzen seconded. The motion passed unanimously.

XI. New Business

1. Award of Change Order to the Magnolia/Aster/Dahlia Stormwater CIP for the Emergency Repair/Improvement Projects – DeBary Villas and Glen Abbey Club.

Kevin Hare, construction engineer with GAI Consultants, explained the need for a change order to the Council. He stated that they used a modified bid process and approached three contractors already working for the City to obtain quotes; that he recommended Masci Corporation complete the NRCS projects; and that they would be adding 45 days to the original contract to allow for the expedited completion.

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

Mr. Hare entertained questions from Council Member Conoley regarding the shortened time frame.

Mr. Gonzalez stated that Mr. Hare took direction from City staff to get the project done; that the federal government provided very limited time for the NRCS projects to be completed; and that the modified bid process was used because the City had no other choice.

Council Member Conoley distributed copies of the GAI construction engineering contract to the rest of the Council. He stated that the construction companies have been bidding lower than the engineer's estimate, and he felt that GAI might also lower their prices too to save the taxpayers some money.

Lynn Gibson, construction engineering manager with GAI, stated that they have been holding the same rates since 2007, but he would be willing to negotiate their rates with the Council. He said he would be willing to donate his time on the project.

Council Member Lenzen stated that for \$34,000 of taxpayer funding, it is the bargain of the century; that he agrees the contract should be looked at in the future, but not at this time; and that the rush is due to the other partner in the projects.

Mr. Hamstra explained that NRCS is a special federal program for restoration efforts; that they provide a 75 percent match; that the City had to be a sponsor and had to get legal documents in order; that it has been an extremely expedited process in order to secure the federal grant dollars; that DeBary Villas is paying their portion without funding from the City; and that if the City delays, the City would lose \$152,000 from NRCS.

Council Member Conoley said he does not like to be rushed in making decisions. The Council discussed the need to get the projects completed prior to hurricane season.

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

2. Bid Award for Stand-by Contracts for Emergency Debris Removal.

Safety Coordinator Alan Williamson said that the City currently piggybacks on the City of Tampa's contract, and the RFP was done so that DeBary would have its own stand-by contracts.

Vice Mayor Erickson made a motion to approve the four companies recommended by Mr. Williamson, and Council Member Lenzen seconded. The motion passed unanimously.

3. Bid Award for Handicap Parking Areas and Roadway CDBG Project at River City Nature Park.

Mr. Gonzalez recommended Whitehouse Contracting LLC as the low bidder.

Vice Mayor Erickson made a motion to approve, and Council Member Marks seconded. The motion passed unanimously.

4. Discussion Regarding City and County Joint Use of the WSEFMS RSSF for Stormwater Flood Protection and Reclaimed Water Disposal.

Mr. Hamstra gave the Council background information regarding the borrow pit and asked for direction on whether to continue the dialogue with the County. He stated that the County would contribute three million dollars for the use of the pit; that the County would be required to carry the reclaimed water in a separate line to the borrow pit; that the borrow pit can hold 220 million gallons of water; and that there would be sophisticated electronic monitoring to measure the amounts of water being pumped into the pit.

Council Member Conoley voiced the need to get moving on the West Side System.

Council Member Marks asked if the pit could be dug deeper. Mr. Hamstra answered that it could not be made deeper, but they could expand the pit on the property to the east.

Council Member Conoley made a motion to direct staff to continue coordination efforts with the County to finalize an interlocal agreement. Council Member Lenzen seconded, and the motion passed unanimously.

5. Stipulated Settlement Agreement – DeBary Real Estate Holdings, LLC v. City of DeBary.

Mr. Ardaman informed the Council that the other party agreed to dismiss the two lawsuits permanently.

Vice Mayor Erickson moved to approve the agreement, and Council Member Lenzen seconded. The motion passed unanimously.

6. City Manager Selection Procedure Discussion

Ms. Tebo informed the Council that she advertised with the FLC, the FCCMA, the ICMA, and the FAC.

Mr. Gonzalez said that the Range Riders representative would be at the Council meeting on May 20th.

Vice Mayor Erickson said that he would like a copy of each resume and cover letter that is submitted.

Council Member Conoley said he has been calling applicants that he considers qualified to ask questions. Mr. Ardaman noted that it is appropriate to gather information.

Council Member Conoley said he wants to discuss how the Council will reduce the large number of applicants to a small list of finalists. He added that he welcomes input from the Range Riders, but does not want them to decide the list of finalists.

Council Member Lenzen said he wanted to hire someone that has been a city manager before.

Council Member Marks made a motion to extend the meeting to 12:20, and Vice Mayor Erickson seconded. The motion passed unanimously.

Council Member Conoley asked if May 21st would be long enough for advertisement. Vice Mayor Erickson suggested that they wait to see how many are received on the 21st, and then they could decide if further advertising is needed.

XII. Council Member/Committee/Staff Reports

1. Board / Committee Appointments
Historic Preservation Advisory Board
Regular Member Council Member Conoley

Council Member Conoley made a motion to appoint Glenn McNutt. Council Member Marks seconded, and the motion passed unanimously.

Regular Member Vice Mayor Erickson

City Council Meeting

May 6, 2009

Page 6

Vice Mayor Erickson made a motion to appoint Mike Beeghly. Council Member Conoley seconded, and the motion passed unanimously.

Public Safety Advisory Committee
Alternate Member

At-Large

Strategic Planning Committee

Mayor Garcia asked for a motion to approve the list of 21 individuals interested in the Committee. Motion made by Council Member Conoley and seconded by Council Member Marks. The motion passed unanimously.

2. Member Reports/Communications
 - A. Mayor and Council Members – Schedule Budget Workshop Dates (Mayor Garcia)

Mayor Garcia asked for a tentative budget workshop date in June and a motion to extend time. Council Member Conoley made a motion to extend to 12:35, and Vice Mayor Erickson seconded. The motion passed unanimously.

Mr. Gonzalez suggested Thursday, June 11th at 6:00 p.m. The Council agreed

Mayor Garcia spoke briefly about the fire services transition from Volusia County to the City of Orange City or to the City of Deltona. Vice Mayor Erickson made a motion for the Mayor to continue working on the fire services transition. Council Member Conoley seconded, and the motion passed unanimously.

Vice Mayor Erickson suggested that the city have a clean slate before a new manager is hired and perform a forensic audit.

Council Member Marks said he would like Ms. Tebo to contact the former chairman of the Economic Development Advisory Committee so that eventually the committee could be reinstated.

Council Member Conoley said he would like to authorize the Mayor to write a letter on behalf of the Council regarding the importance of the library in DeBary.

- B. City Attorney

Mr. Ardaman had nothing to report.

- C. City Manager – Permit Fee Waivers Associated with Tropical Storm Fay.

Mr. Gonzalez asked the Council to set an ending date for the permit fee waivers. Council Member Conoley made a motion to end the permit fee waivers associated with storm damage on August 1, 2009. Vice Mayor Erickson seconded, and the motion passed unanimously.

XIII. Adjournment

The meeting adjourned at 12:45 a.m.

**APPROVED
CITY OF DeBARY
CITY COUNCIL**

Bob Garcia, Mayor

ATTEST:

Stacy Tebo, City Clerk