

**City of DeBary**  
**REGULAR CITY COUNCIL MEETING**  
**Wednesday**  
**August 19, 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 7:00 p.m.

**II. Roll Call**

**Members Present:** Mayor Garcia, Vice Mayor 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, Finance Administrator Jimmie Seelbinder, 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.

Richard Cadie, 219 Margarita Road, voiced concern regarding a stormwater project previously completed in his area. He stated that with the removal of the existing underdrain, the groundwater is now backing up and flooding his property, and he thinks that it is a health and safety issue because it smells like sewage. Mr. Gonzalez stated that Mr. Hamstra is working on putting together a plan to correct the problem, and he asked Mr. Cadie if he would be willing to grant the City an easement to go in on the side of his house. Mr. Cadie answered that he would be agreeable to the easement.

Millie Murray, 219 Valencia Road, thanked the people that trimmed the trees, and she said they cleaned up after themselves very nicely.

**IV. Approval of Minutes**

1. Special City Council Meeting Held April 22, 2009.

Council Member Conoley made a motion to approve the minutes, and Council Member Marks seconded. The motion passed unanimously.

2. Regular City Council Meeting Held May 6, 2009.

Council Member Conoley made a motion to approve the minutes, and Council Member Marks seconded. The motion passed unanimously.

## **V. Additions, Deletions, or Amendments to the Agenda**

Council Member Conoley asked to add a discussion of the audit to the agenda and voiced concern that the audit has yet to be completed.

Vice Mayor Erickson asked if the bid award for the Monroe/Catalina project might be moved up. Mayor Garcia responded that it would be the first item discussed under New Business, followed by Council Member Conoley's discussion of the audit.

## **VI. Presentations**

1. Certificate of Appreciation to the Driveway Stenciling Team from the Journey at the First Baptist Church of Orange City.

Mayor Garcia read the certificate aloud and thanked the Church members for their work.

2. Woodbound Lake/Lake Charles Outfall Improvements and Cost Alternative by David Hamstra of Professional Engineering Consultants, Inc.

Mr. Hamstra noted that DeBary is well ahead of the average rainfall for the whole year, and they have only made it to August. He updated the Council on the status of the pumping throughout the City, as well as the lake levels.

Mr. Hamstra explained the drainage in the area of Woodbound Lake and Lake Charles. He outlined four alternatives that the Council might choose to solve the flooding that occurs in the area. He entertained questions from the Council.

There was Council consensus that the fourth option was the preferred choice as it involves grant funding for the acquisition and demolition of 300 May Place. He added that because there has been repetitive flooding at the property, they would be eligible for FEMA grant funding.

Jim Gangitano, 309 La Creek Court, voiced concern that the lakes are continuing to rise; that his neighbors are scared and losing sleep; that the situation is a health and safety issue; that they are in terrible shape and need the Council's help; and that they are requesting more pumps.

## **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 item:*

None.

## **IX. Growth Management and Development Review**

None.

## **X. Old Business**

### 1. Fire Service Proposals from Orange City and Deltona.

Mr. Gonzalez gave a summary of the proposals received from Orange City and Deltona and outlined the services that would be included.

Mayor Garcia thanked both cities for stepping forward to assist DeBary and then gave his justification for choosing Orange City.

Kurt Vroman, 318 Colomba Road, said he would like to reiterate his support for the Deltona Fire Department.

Don Neyer, 207 East Highbanks Road, stated that in terms of geography, it would make sense to choose Orange City; that replacing the fire station would be done quicker with Orange City; and that the City cannot afford to pay another half million dollars for fire services with Deltona.

Council Member Lenzen made a motion for DeBary to partner with Orange City for fire services, subject to the city attorney's acceptance of the contract. Council Member Marks seconded, and the motion passed 4-1, with Vice Mayor Erickson dissenting.

### 2. Request from Gateway Center for the Arts Sign Relocation.

Mr. Gonzalez summarized the request and noted that the original sign location was proposed at the intersection of Highway 17-92 and Saxon Boulevard because of the Saxon extension. He added that the request is for a two-sided stand-alone sign that would be moved ten feet from the original location. He recommended approval and noted that the DeBary Art League is paying for the sign.

Terry Lodge, representative for Gateway Center for the Arts, stated that the sign would be paid for and built by volunteers, and it would cost the City nothing.

Vice Mayor Erickson made a motion to approve the relocation of the Gateway Center for the Arts sign. Council Member Conoley seconded, and the motion passed unanimously.

## **XI. New Business**

### 1. Bid Award for Monroe Avenue, Catalina Drive and Pond OS Stormwater Capital Improvement Project, Bid No. 05-09.

Mr. Gonzalez briefed the Council on the project and the bid process. He stated that the low bidder, Blue Ox Enterprises, LLC, previously performed work in the Saxon Woods subdivision that was found to be unsatisfactory; that staff has determined that Blue Ox Enterprises was neither responsive nor responsible in the performance of its previous work; and that staff recommends that the bid be awarded to the Briar Team, Inc. He recommended that the Council approve a total budget amount of \$747,260.00 for the Monroe Avenue, Catalina Drive and Pond OS Stormwater Capital Improvement Project, Bid No. 05-09. He clarified that the amount is the summation of the The Briar Team's low bid amount of \$665,760.00, plus the cost for GAI

Consultants, Inc. to provide construction engineering and inspection services for \$52,540.00, and a contingency reserve of \$28,960.00.

Mr. Ardaman stated that the Council is required to award the bid to the most responsible and responsive bidder. He added that staff has determined the low bidder, Blue Ox, is not the most responsible and responsive bidder.

Mr. Ardaman read an email and letter received from Arthur Kozac of Blue Ox into the record.

Council Member Conoley asked Mr. Gonzalez to explain how the staff determined that Blue Ox was neither responsive nor responsible.

Vice Mayor Erickson asked Mr. Ardaman to explain the rules of the bidding process outlined in the City Code of Ordinances.

Council Member Lenzen concurred with staff's assessment of Blue Ox.

Vice Mayor Erickson made a motion to approve a total budget amount of \$747,260.00 and to approve Bid No. 05-09; he stated that the amount is the summation for the Briar Team, Inc., GAI Consultants to provide engineering and inspection services, and the contingency reserve. The motion was seconded by Council Member Lenzen.

Council Member Conoley said he would like to separate the motion so that the construction inspection services are not approved with the bid award to the Briar Team.

Mr. Gonzalez stated that it is a 180-day project and would begin in mid-September.

Mayor Garcia called for a vote on Vice Mayor Erickson's motion. The motion passed 4-1, with Council Member Conoley dissenting.

Mr. Gonzalez explained the process for the RFQ process and noted that engineering services are not bid out in the way that construction projects are bid.

2. Discussion by Council Member Conoley Regarding the Audit.

Council Member Conoley voiced concern that the Council has not received the audit in a timely manner, and stated that they should have the audit before preparing the budget.

Mr. Seelbinder answered questions from Council Member Conoley regarding the audit and explained why the audit had not been completed.

3. Recommendations for Update to the Comprehensive Emergency Management Plan.

Safety Coordinator Alan Williamson reported on the recommendations for an update to the Comprehensive Emergency Management Plan. He noted that any changes within the plan have to be approved by the City Council.

Council Member Marks made a motion to accept the changes to the Comprehensive Emergency Management Plan. Vice Mayor Erickson seconded, and the motion passed unanimously.

4. Change Order for Westside Emergency Flood Management System – Alternative Pipe Material.

Mr. Hamstra explained that the contractor suggested a cement lining of the pipe that would speed up the project and save money. He clarified that the change order provides for a \$200,000 contract cost reduction and a decrease to the contract duration by sixty days.

Eugene Stump, 106 Birkwood Court, suggested that the City obtain the sales office property at the DeBary Golf and Country Club and create one big retention pond.

Vice Mayor Erickson made a motion to approve the change order, and Mayor Garcia seconded. The motion passed unanimously.

5. Selection of New City Manager.

The Council members each named their selection. Vice Mayor Erickson selected Kenneth Weaver. Council Member Conoley selected Kenneth Weaver. Council Member Marks selected Kenneth Weaver. Council Member Lenzen selected John Drago. Mayor Garcia selected Anthony Gonzalez.

Mayor Garcia stated that Mr. Weaver has three votes, Mr. Drago has one, and Mr. Gonzalez has one.

Vice Mayor Erickson made a motion to approve Kenneth Weaver as the next City Manager, subject to an acceptable contract. Council Member Conoley seconded, and the motion passed 4-1, with Mayor Garcia dissenting.

Council Member Conoley made a motion to perform a background investigation on Mr. Weaver. Council Member Marks seconded, and the motion passed unanimously.

## **XII. Council Member/Committee/Staff Reports**

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

Vice Mayor Erickson made a motion to extend the meeting fifteen minutes. Council Member Marks seconded, and the motion passed unanimously.

Vice Mayor Erickson voiced concern regarding the delinquency of the audit that was discussed by Council Member Conoley earlier in the evening.

Council Member Marks informed the Council that WAV is dissolved, and they have asked for a letter of resignation from each city. Mayor Garcia stated that the letter was done, and he would sign it and send it as required.

- B. City Attorney

Mr. Ardaman informed the Council that Hazen Construction sent a demand letter to the City claiming damages related to the bid award for the West Side Emergency Flood Management System, and that they have offered to settle for \$15,000.

Council Member Lenzen stated that he is unwilling to settle because the City did not do anything wrong. The rest of the Council agreed.

Mr. Ardaman asked the Council what they wished him to do in regards to the city manager contract. He asked the Council to take the current contract, make comments, and then send them to him so that he could prepare a new contract for Kenneth Weaver.

Mr. Ardaman informed the Council that the City has been sued by Janet Basalari. He added that the Florida League of Cities is representing the City in the matter, as representation is included in the City's insurance coverage.

C. City Manager

Mr. Gonzalez had nothing further to report.

**XIII. Adjournment**

The meeting adjourned at 11:14 p.m.

**APPROVED  
CITY OF DeBARY  
CITY COUNCIL**

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**Bob Garcia, Mayor**

**ATTEST:**

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**Stacy Tebo, City Clerk**