

City of DeBary
SPECIAL CITY COUNCIL MEETING

Wednesday
October 17, 2018
6:30 PM
City Council Chambers
16 Colomba Road
DeBary, Florida 32713

MINUTES

I. Special Meeting Call to Order at 6:53 PM

II. Roll Call: Mayor Garcia, Vice Mayor Handy-Peters, Council Members Bacon, Benfield and Vihlen present

Others Present: City Manager Ron McLemore, City Attorney Kurt Ardaman, IT Director Eric Frankton, Finance Director Elizabeth Bauer, Growth Management Director Matt Boerger, TOD Director Roger Van Auker, Parks Director John Fletcher, Stormwater Engineer David Hamstra and City Clerk Warren Graham.

III. Growth Management and Development Review

1. Sign Grant for Blackie's Bar.

Council Member Bacon made the motion to approve the sign grant in the amount of \$1,500.00 for Blackie's Bar. Council Member Benfield seconded the motion, motion approved 5-0.

2. Sign Grant for Chevron Gas Station.

Council Member Vihlen made the motion to approve the sign grant in the amount of \$1,500.00 for the Chevron Gas Station. Vice Mayor Handy-Peters seconded the motion, motion approved 5-0.

3. Historic tree removal, 121 Rosa Bella View.

Karen Chasez and Larry Chenoweth addressed the Council. Council Member Vihlen made the motion to approve the removal of the historic tree. Vice Mayor Handy-Peters seconded the motion, motion was approved 4-1, Mayor Garcia voting No.

4. Historic tree removal, 346 Lake Crescent.

Karen Chasez addressed the Council.

Vice Mayor Handy-Peters made the motion to approve the removal of the historic tree. Council Member Benfield seconded the motion, motion approved 5-0.

IV. New Business

1. City Manager requesting the City Council to consider adoption of Resolution 18-26, advising voters to carefully weigh the benefits and potential adverse effects of Amendment 1.

Mort Culligan addressed the Council.

Council Member Benfield made the motion to not take any action on Resolution No. 18-26.

Council Member Bacon seconded the motion, motion carried 4-1 not to approve Resolution No. 18-26, Vice Mayor Handy-Peters voting No.

2. City Manager is requesting direction from City Council regarding reimbursement from the Henin Group for damage to City roads caused by the Developer's Hauling Activities in accordance with the May 10, 2017 Road Maintenance Agreement.

Mort Culligan addressed the Council.

Council Member Vihlen made the motion to approve the results of the engineer's study and to charge the developer, Henin Group, \$80,601.74 for their share of the damage to Ft Florida Road.

Council Member Benfield seconded the motion, motion approved 5-0.

3. City Manager requesting the City Council to review the follow-up report to the July 10, 2018, preliminary report regarding the cancellation of the July 4, 2018, fireworks and to provide direction it deems appropriate.

Mort Culligan and Ryan Renfro addressed the Council.

The City Manager read the agenda item details aloud for the Council, the Council agreed to make the entire agenda item part of the official minutes.

REQUEST

City Manager requesting the City Council to review the follow-up report to the July 10, 2018, preliminary report regarding the cancellation of the July 4, 2018, fireworks and to provide direction it deems appropriate.

PURPOSE

This request is needed at this time to provide a follow-up report of the fireworks cancellation as recommended in the July 10, 2018, preliminary report.

REPORT

On July 10, 2018, the City Manager presented a preliminary report to the City Council regarding the cancellation of the planned July 4, 2018, fireworks providing for an overview of the event and requesting the City Council to authorize the City Manager and City Attorney to complete a thorough investigation of the causation of the conditions giving rise to the cancellation.

Following interviews with the Orange City Fire Marshall, Orange City Fire Chief, City Staff, owner of the fireworks company, and other fireworks professionals, the following findings are made:

On June 29, 2018, the fireworks company, Creative Pyrotechnics, was issued a permit from Volusia County authorizing the location from which the fireworks could be fired, as

approved by the County Fire Marshall. The permit prohibited the fireworks from being fired within approximately forty-five (45) feet, as measured by the Fire Marshall, of three grain silos located in the park due to fire risk. Additionally, NFPA Fire Code 1123 required fireworks to be located not less than twenty-five (25) feet from the silos.

Approximately three (3) days prior to the event, the Company delivered fireworks canisters to the site. In consideration of daily rainy conditions, the Company took no precautions to protect their fireworks' canisters from rain.

Approximately 10 a.m. on July 4, 2018, Orange City Fire Marshall, Robert Scott, inspecting the site noticed that the fireworks had been set up to fire adjacent to the silos in violation of the permit and the Fire Code. Fire Marshall Scott informed Creative Pyrotechnics' personnel they could not fire from that location.

At approximately 12:15 p.m., DeBary Parks and Recreation Director, John Fletcher, met with E.J. Wepple, the owner of the fireworks company and inquired as to why his company set up in the non-permitted site. The owner of the company admitted his company set up in the unpermitted site due to it being a larger show than previous years, moss in a tree near the show, and most importantly, a power line being too close to the permitted site.

Unfortunately, Mr. Wepple did not give City personnel any advanced notice of his problem prior to the day of the event.

- The fireworks' company representative on site advised the Fire Marshall, event manager, and City personnel that it would take 2-1/2 to 3 hours to complete the setup at the permitted site and they did not have the personnel to relocate the fireworks' canisters in time for the event.
- After consideration of the situation, City personnel advised the company representative that the Orange City Fire Marshall, Fire Chief, City staff and Volusia County Sheriff's Department personnel would help them move the fireworks' canisters to a site approximately 40 feet away from the silos in order to save the fireworks event.
- At approximately 2:30 p.m., the volunteer team returned to the site and completed the fireworks' canisters relocation around 3 pm.
- After the relocation of the fireworks' canisters, a heavy thunderstorm hit the park lasting until approximately 3:45 to 4:00 p.m.
- Following the end of the storm, a meeting of the team was held with the fireworks' representative who had recently completed a conversation with the owner of the fireworks company, and advised the team that the company could not safely fire the show due to the amount of water on the ground.
- Following the decision by the company, Orange City Fire Marshall inspected the permitted site and found it to be above the ground level where water was standing.
- Additionally, based upon measurements taken by the Fire Marshall, the power line was a sufficient distance from the permitted site, and had it not been, the site would not have been permitted. According to the Fire Marshall, the tree was not a hazard, and if it had been a hazard, the site would not have been permitted.

CONCLUSION

- The Company violated its permitted specific location for the fireworks event stipulated by the Volusia County Fire Marshall and NFPA Fire Code 1123.
- The Company owner had been on the site and was familiar with the site conditions on numerous visits in previous years.
- Had the Company not knowingly violated the permit and set up in the unpermitted location, the Company would have been able to fire the complete first show and possibly a portion of the second show from the permitted location.
- Had the Company advised the City of their problem with the larger show prior to the date of the event, City personnel and the Company could have worked together to have found a solution to their problem.
- With full knowledge of prevalent weather conditions leading up to the event, the Company failed to properly plan for the likelihood of inclement weather conditions.
- A review of other area cities experiencing similar weather on July 4, 2018, revealed that no other July 4 firework displays were cancelled other than three others being performed by Creative Pyrotechnics.
- Discussion with a firework expert noted that responsible fireworks companies would have taken proactive steps before the show to protect the show from the excessive rainfall that was being experienced in the area for several weeks, and would never have violated a permit.
- Based upon the opinions of the Orange City Fire Marshall, Orange City Fire Chief, and City Parks and Recreation Director, all of whom have extensive experience in regulating and monitoring fireworks events, the company did not have sufficient trained staff on site to respond to the crisis of their own making, as a result of violating their permit.
- From the actions and comments of the Company representative on the site, the Orange City Fire Marshall and Fire Chief, who both have extensive experience in regulating and monitoring the public safety of fireworks events, each had serious concerns regarding the competency of the on-site fireworks' company representative.
- Additionally, upon review of the permit, it was discovered that the licensed fireworks shooter approved in the permit was not on the site during the event.
- The fireworks permit issued two (2) weeks prior to the event gave the Company ample time to locate the fireworks consistent with this permit.
- Creative Pyrotechnics was negligent, violated its permit, and the Company caused unnecessary financial losses to the vendors who invested substantial monies in participating in the event for business purposes, and a substantial loss of goodwill and credibility to the City of DeBary.

RECOMMENDATIONS

In consideration of the above findings and conclusions, staff is recommending that the City Council authorize the City Attorney and City Manager to attempt to negotiate a fair and reasonable settlement of the damages incurred by the City and its participants in the event due to the negligence of Creative Pyrotechnics.

Council Member Benfield made the motion to have the City Attorney and City Manager to attempt to negotiate a fair and reasonable settlement of the damages incurred by the City and its participants in the event due to the negligence of Creative Pyrotechnics. Council Member Vihlen seconded the motion, motion approved 5-0.

4. Staff is requesting direction from City Council for the upcoming holiday events; Tree Lighting and Christmas Parade.

Mort Culligan addressed the Council.

Council Member Benfield made the motion to have additional activities during the Holiday Event to include \$5,000.00 for the ices skating rink. Council Member Vihlen seconded the motion, motion approved 5-0.

5. City Manager is requesting the Mayor and City Council to authorize the City Attorney and City Manager to approve Task Order No. 2015-26 with Pegasus Engineering in order to design, secure permits, and prepare construction plans in order to implement Phase 1 of the Woodbound Lake Stormwater Pump Station and Force Main project in the amount of \$65,437.00. This fee encompasses only the Phase 1 force main improvements and is inclusive of two required subconsultant services.

Mort Culligan addressed the Council.

Council Member Vihlen made the motion to approved Task Order # 2015-26 in the amount of \$65,437.00. Vice Mayor Handy-Peters seconded the motion, motion approved 5-0

6. City Manager requesting the City Council to approve the new solid waste agreement with WastePro.

Council Member Vihlen made the motion to approve the solid waste contract for the term of seven years with WastePro. Council Member Benfield seconded the motion, motion approved 4-1. Council Member Bacon voting No.

V. Informational Items

1. Consistent with Section 2-190 of the City Code, the City Manager is providing the City Council with the final cost for the repair of the sinkhole on Rosedown Blvd.

2. The City's Stormwater Engineer, David Hamstra gave the Council an update on the lake pumping activities.

IV. Adjournment

Meeting Adjourned at 10:04 PM

**APPROVED
CITY OF DEBARY
CITY COUNCIL**

ATTEST:

Annette Hatch, City Clerk

Bob Garcia, Mayor