

1 **MINUTES OF THE REGULAR MEETING** of the City Council of the City of Orange City, Florida,
2 held on Tuesday, September 9, 2008 at 7:00 p.m. in Council Chambers, 201 N. Holly Avenue, Orange
3 City.

4
5 **CALL TO ORDER**

6
7 The Meeting was called to order at 7:06 p.m. by Mayor Strickland and roll call was taken.
8

9 **ROLL CALL**

10
11 **PRESENT:** Mayor Harley Strickland; Vice Mayor Jeff Allebach; Council Members; Tom Laputka,
12 Tom Abraham, Don Sherrill, Jim Mahoney; City Attorney William Reischmann; Acting
13 City Manager Chester Murray, City Clerk Deborah Renner

14
15 **ABSENT:** Donald Sandford

16
17 Mayor Strickland requested that the City Manager's Report be moved forward on the agenda to be heard
18 at this time. He noted that a representative from the Department of Transportation (DOT) was present in
19 the audience.

20
21 **It was the consensus of Council to hear the City Manager's report at this time.**

22
23 **7. REPORTS:**

24
25 **A. City Manager**

26
27 Mr. Murray advised that there were about thirty businesses in the City affected by the floods from
28 Tropical Storm Fay, although there could be more that the City is not aware of. He said that about three
29 residential units and a church were also damaged. One of the hardest hit areas is the Royal Oaks
30 Professional Center on Treemonte where ten businesses were seriously affected and the buildings
31 evacuated. This resulted in 75-90 employees being displaced. Mr. Murray advised that damage from
32 previous storms caused about \$800,000 in damage in this area and the flooding this time was worse.
33 The owners do not have a damage estimate as yet.

34
35 Mr. Murray reported that the hospital was one of the areas most severely impacted by the flooding. He
36 said that City crews responded during the flooding. Since then, Congressman Mica, FEMA, Volusia
37 County, Orange City and the Hospital have been working together to address the issue. The City has
38 installed a pump system at the hospital which will drain into Goose Lake (located behind the Holiday
39 Inn off Saxon Drive) and eventually out to the river. As a precautionary measure when it appeared
40 Florida may be in the path of Hurricane Ike, another system was installed which would have moved the
41 water to Duck Pond on the Ford property on Veterans Memorial Parkway.

42
43 Mr. Murray continued his report, advising that a large swale on Threadgill which had ruptured has been
44 repaired. Approximately 1,000 feet of pavement in the Fawn Ridge subdivision still requires the

1 installation of an under drain to effect a permanent repair. Mr. Murray acknowledged the mosquito
2 problem and said that an assessment is being conducted to see if aerial spraying will be required.

3
4 Mr. Murray advised that the federal government requires that mitigation funds be made available
5 following a presidential disaster in order to avoid repeated losses in the future. Staff is attending those
6 meetings with the hope of funding for drainage improvements along Threadgill and 17-92 which flows
7 into Miller Lake. To date, the City has expended \$435,000 in response to the emergency and all but
8 12.5% of that should be reimbursed to the City by FEMA, leaving the City's cost at \$30,000 - \$40,000.
9 \$150,000 of the money was spent on pumping equipment for the Hospital. As a non-profit corporation,
10 the Hospital is eligible for funding from FEMA, but was not qualified with the Agency prior to the onset
11 of the storm. Since then, they have been registered with FEMA. Mr. Murray stated that it is the City's
12 intention to transfer responsibility for the pumping system to the Hospital as soon as they are registered
13 with FEMA.

14
15 Mayor Strickland noted that a number of meetings were held in advance of Hurricane Ike to develop an
16 emergency plan to keep the water out of the hospital so that it could continue to function. Now that the
17 immediate crisis is past, the City will be shifting the responsibility to the hospital.

18
19 Council Member Abraham noted that the Invocation and Pledge were not done this evening. Mayor
20 Strickland responded that they would be next on the agenda.

21
22 Mr. Reischmann reiterated that, as previously noted, the City intervened on behalf of the hospital
23 because the hospital was not registered with FEMA at the time. He noted that a public safety issue was
24 involved since the hospital's emergency room was in danger of being closed down due to flooding and
25 this was why the City became involved. At the meeting mentioned previously which was held last
26 week, it was agreed that it was important to memorialize the agreement with the Fords that water could
27 be moved onto their property in the event of an emergency. In addition, an agreement was developed
28 between the City and the hospital that the City would be reimbursed for any out-of-pocket expenses
29 arising from response to the flooding. Mr. Reischmann stressed that at the time these meetings were
30 held, there was speculation that another major storm system was heading for the state. Since that
31 meeting, the hurricane turned away from Florida and the hospital received its FEMA certification. Once
32 the paperwork with FEMA has been finalized, the City will no longer be involved in this issue and will
33 be reimbursed for all monies spent on the hospital drainage problems along with a release from liability
34 from the hospital and the Fords. Mr. Reischmann advised that a resolution would be brought back to the
35 Council for authorization to execute a "right-of-entry" agreement and a release and the documentation
36 necessary for reimbursement from FEMA. He summarized by stating, "Obviously, the intent is to make
37 the City whole with the appropriate legal documentation for the expenses that it has incurred and to
38 document and to seek releases from the Fords for the work that has been done."

39
40 Mr. Murray next addressed Mill Lake. He advised that Todd Hammerle from DOT was present. Mr.
41 Murray provided information as to how the Mill Lake drainage system operates. He advised that there
42 is a sixty inch line laid along 17-92 from Rhode Island to New York Avenue. The low point in the line
43 is at the intersection of Blue Springs. He explained that the sixty-inch line acts as a reservoir which is
44 transferred to Mill Lake when the water reaches a certain height. When excess water comes through the
45 line, two electric pumps at Mill Lake automatically turn on. The system was built in 1967. The line
46 from Mill Lake goes to French Avenue and eventually out to the St. Johns River north of Blue Springs

1 into the wetlands area. Mr. Murray advised that because of the distance from this area to the river, there
2 is a loss of efficiency in the pumping. He said that it was discovered during preliminary tests ahead of
3 the storm that one of the two four-inch electric pumps was not functioning. It took DOT a while to find
4 a diesel-fueled pump, and to put a larger pump in took a few days. Mr. Murray said that the water is
5 starting to recede and that one of the families in the area is back into their home. He assured everyone
6 that there is a contingency plan in case of another rain event. Private contractors have been identified
7 that could lay a pipeline along Thorpe into the retention pit at Public Works. Mr. Murray said that this
8 could be accomplished in twelve to fifteen hours. He asked that everyone remain patient.

9
10 Council Member Sherrill noted that there is still a line along 17-92 out of DeBary which goes to Mill
11 Lake. He said that line has been in place for about four years. Mr. Murray responded that that was an
12 emergency line which was installed during the hurricane floods of 2004. He said that this line no longer
13 functions and has been rerouted south.

14
15 Todd Hammerle, DOT, came forward. He said that the water there no longer goes to Mill Lake, it is
16 sent to DeBary in accordance with an agreement with them.

17
18 Mr. Murray said that the City is providing use of the Council Chambers to the SBA to use as a business
19 office to take loan applications from businesses that have been affected by the floods. Underinsured
20 individuals may also be eligible for loans.

21
22 Dick Harkey, Congressman Mica's Office, was present in the audience. Mayor Strickland asked
23 whether there was anything he would like to add. Mr. Harkey responded that Congressman Mica is
24 concerned about "the long-term solution, the one that's going to cost us in the millions of dollars." He
25 said the Congressman asked him to relay that if the cities are ready to properly correct the problems, he
26 could assist with a study that takes about a year. He said that this process is called a "reconnaissance
27 study." Upon completion of that study, the City can decide if it wants to proceed to the next phase
28 which is a feasibility study. Mr. Harkey advised that the reconnaissance study is 100% paid for by the
29 federal government. The next study is funded on a 50/50 basis. Construction is funded 65% by the
30 federal government and 35% by the local governments. Mr. Harkey stated, "If you're interested in
31 actually doing some long-range, comprehensive stormwater flood control, this is what he wanted me to
32 relay to you."

33
34 *(The Manager's Report concluded and the Mayor called for the invocation and Pledge of Allegiance)*

35
36 The invocation was given by Council Member Sherrill, followed by the Pledge of Allegiance.

37
38 **1. PRESENTATIONS:** None at this time

39
40 **2. CITIZENS COMMENTS:**

41
42 Al Blue, 447 N. Oak, came forward and said that six weeks ago he brought to Council's attention the
43 fact that Florida Public Utilities (FPU) had laid new gas lines and had not replaced the grass in the right
44 of way on French Avenue. He requested that FPU correct the situation and lay sod from Sparkman to
45 Oak Avenue. Mr. Blue said that during the storm, he was told that the St. Johns River Water
46 Management District (SJRWMD) would not allow pumping into the river. He said that he called the
47 District and asked whether this was true. Mr. Blue said that he was told that no one from Orange City

1 had requested to pump water into the river. He said that it was also denied that anyone at the District
2 had prohibited pumping of water due to contamination which could kill the fish. Mr. Blue said that he
3 attended a meeting in DeLand, hosted by Congressman Mica, at which representatives from SJRWMD
4 were present. He said that he attended another meeting the next day at the hospital in Orange City and
5 again questioned whether the City was ever told they could not pump water into the river and, again, he
6 was told “no.” Mr. Blue noted that water has been standing in Mill Lake for over two weeks. He said
7 that it was contaminated and was “a health hazard.” He recalled that it had taken three days each to
8 pump out the Post Office and Pooser Park and stated, “It’s taken over two weeks to get the water off the
9 roads and out of the house and off the church and out from under the houses at Mill Lake.” Mr. Blue
10 stated that there was “no excuse” for this to have taken so long. Mr. Blue noted that there are ten vacant
11 houses within a block and a half of his house which are still being charged a garbage assessment.
12

13 Mr. Reischmann said that one of the concerns about putting water into Goose Lake was that there is a
14 connection from Goose Lake to Trout Lake and there was a concern that it may be contributing to a rise
15 in Trout Lake which threatened some homes in the area. Mr. Blue said that his understanding was that
16 the objective was to pump Goose Lake into the right of way which would send the water to DeBary. He
17 noted that the pumping would also affect Trout Lake because the two are connected. Mr. Reischmann
18 responded that Orange City was not involved in that action, it was Volusia County’s jurisdiction. He
19 reiterated that the City had no role in pumping into Goose Lake. Mr. Blue maintained that the City
20 should be cooperating with neighboring jurisdictions. In regard to Mill Lake, Mr. Blue expressed that
21 even though the lake belongs to DOT, the City should have taken more initiative to get DOT to do
22 something because of the threat to homes and other private property in the area.
23

24 Robert Gregory came forward and expressed his opinion that the lanes on 17-92 which were closed
25 during the flooding should have been reopened much sooner. He observed that long after the water had
26 receded, the lanes remained closed. Mr. Gregory stated, “It turned my street, West Ohio, into a
27 speedway. I’ve been there twenty-one years and never seen traffic as bad as I saw it because DOT
28 closed those lanes off.” He asked whether in the future, the City could “step in and use common sense
29 and move that stuff where it doesn’t interfere with traffic.” Mr. Gregory said that the police did respond
30 immediately to complaints, but he suggested that the City should have the authority to overrule DOT in
31 cases like this. Mr. Murray responded that the water there was a direct result of the flooding of Mill
32 Lake. Mr. Hammerle advised that the elevation in that portion of the road is low which causes a backup
33 of water. He said that DOT’s decision was based on public safety and he noted that two lanes of traffic
34 did remain open and flowed relatively smoothly given the conditions. He said that DOT decided to take
35 a conservative approach and wait until the water was almost completely gone to open the other lanes.
36 Mr. Hammerle said that had they been contacted that it was causing problems elsewhere, they may have
37 reassessed the situation, however, they received no such calls. He advised that the decision was also
38 influenced by the fact that additional storms were threatening at that time.
39

40 Council Member Laputka observed that Mill Lake appears to have “gotten shallower over the years.”
41 He asked Mr. Hammerle if he could attest to that. Mr. Hammerle responded that he could not speculate.
42 Council Member Laputka questioned whether the Lake could be made deeper. Mr. Hammerle
43 responded, “Probably not.” He explained that because it is a “wet pond” which always has water, any
44 additional capacity would be taken up by the ground water. He said the only way to increase capacity
45 would be to make it wider. Council Member Laputka recalled that there had been talk of making the
46 area into a park. Mr. Hammerle said that there had been discussions regarding transferring ownership of

1 the Lake to Orange City. Mr. Murray said that part of the “stormwater to reuse” plan would involve
2 Mill Lake. He said the hope was that DOT would give the property to the City, but that they would
3 clean it out before that happened. Mr. Hammerle said that DOT was willing to work with the City to
4 make this happen and had committed to funding at some level. Mayor Strickland recalled that in the
5 past, the Lake had been dredged in preparation for use as a retention pond.

6
7 Ted Erwin, 613 Chambers Way, came forward and stated that at the September 3rd Special Meeting
8 called to discuss the retirement of the City Manager, he was denied permission to address the Council.
9 Former Mayor Erwin alleged that action was a violation of state law. He said that he contacted both the
10 First Amendment Foundation and the Attorney General’s office. He read from the response he received
11 from the First Amendment Foundation as follows: “Generally the public has an inalienable right to be
12 present and to be heard at most public meetings. A Government Agency can adopt reasonable rules and
13 require orderly behavior and allow for the orderly progression of public meetings. This includes
14 limiting the amount of time which individuals can speak when a large number of people attend and wish
15 to speak. The sunshine law requires a meeting of public boards and commissions to be open to the
16 public at all times. This means that public board members should not pass notes during a meeting in
17 lieu of having an open discussion before the public and all conversations between the members must be
18 audible.” Next Mr. Erwin read from the response from the Attorney General’s office: “Public agencies
19 are allowed to adopt reasonable rules or regulations which ensure the orderly conduct of public meetings
20 which require orderly behavior on the part of the public meeting. This includes limiting the amount of
21 time an individual can speak. When a large number of people attend and wish to speak, requesting that
22 a representative from each side of the issue rather than everyone present.” Mr. Erwin said that he is
23 “contemplating filing a complaint to the State Attorney General’s office.”

24
25 Mr. Reischmann said the citations read by Mr. Erwin are from Chapter 286.011 of the Florida Statutes.
26 He reiterated that the decisions made by the Council at the last meeting were made during a public
27 meeting as required by the “Government in the Sunshine” law. He said that notice was given of the
28 meeting and minutes were taken as required by law. Mr. Reischmann said that in most circumstances
29 the public is afforded the opportunity to participate during a meeting given the reasonable constraints
30 that can be placed. He explained that in a “quasi-judicial” matter, there is an absolute right for all
31 interested parties to participate. In certain circumstances where executive decisions are being made,
32 there can be an opportunity for that governmental body to proceed without public participation. Mr.
33 Reischmann referenced page 5 of the “Council Rules & Procedures” Section 6(a) and read from the
34 section as follows: “Citizen comments may be made on items not on the Agenda only during the time
35 designated by the Council. Otherwise, citizens may address the Council only on items under discussion
36 with the permission of the presiding officer after a motion and a second is made when applicable.” He
37 continued reading from Section 6(b): “Each person addressing the Council shall complete a speaker
38 request form listing their name, address and the topic they wish to address. The speaker may then step
39 to the microphone, give his or her name and address clearly for the record and shall limit his or her
40 address to three minutes unless any member of Council requests further information.” Mr. Reischmann
41 expressed his opinion that “the nature of the matter that was conducted and the manner in which it was
42 conducted were consistent with the requirements of 286.011 as has been evaluated and given guidance
43 to by the Attorney General.” Mr. Erwin asked whether a vote was taken on the issue. Mr. Reischmann
44 responded that the minutes would reflect that there was not a specific vote taken to determine whether or
45 not Mr. Erwin would be allowed to speak. Mr. Erwin clarified that his question was whether a vote was

1 taken on the issue. Mr. Reischmann responded, "Yes, there was." Mr. Erwin stated, "Therefore, I have
2 every right to speak and everybody in the Council Chamber had a right to speak."
3

4 Henry Durica, 1310 E. Lansdowne, came forward and commended the City employees who waded
5 through "chest-deep" water during the flood, although he expressed his concern for their safety. Mr.
6 Durica suggested that the City purchase a boat and life jackets to be used in these types of situations.
7 Mr. Durica commended Mr. Blue for his research into the hospital flooding issue. He said that he also
8 attended the meeting at the hospital and left with the impression that water was to be pumped to the
9 River through DeBary. He stated, "Drastic measures call for drastic action." Mr. Durica asked whether
10 the City has imminent domain over a wetland which would give them the authority to place water into a
11 wetland temporarily. Mr. Reischmann responded that there is a statutory procedure for imminent
12 domain, explaining that it applies to the taking of private property, not public property. Mr. Durica
13 stated, "For the last few years, all I've heard is we have a 'do nothing' Congress, and we all know we
14 have a 'do nothing' Legislature in Tallahassee. I do not want to have a 'do nothing' City Council in
15 Orange City." He urged the Council to take steps to prevent this from happening again.
16

17 Vernon Stafford, 350 S. Orange Avenue, came forward and stated that the flood came within a few feet
18 of his house. He said that the mosquito problem is terrible in the area. Mr. Stafford said that the smell
19 is so bad you can hardly stand to go outside. He asked, "What are we going to do about it?" Mr.
20 Stafford stated that he worked for DOT for five years and one of his jobs was to pump Mill Lake to
21 disburse the water. He advised that there is a gauge at Blue Springs that tells when the Lake is too full.
22 Mr. Stafford maintained that "there should be some kind of communication between the State and the
23 City to let everyone know what's going on." He suggested that sandbags could have been used in the
24 area to reduce the flooding. He suggested that the road could be reopened by pumping the standing
25 water into the retention area by the church. In conclusion, Mr. Stafford stated, "We just need to think
26 about some of the things that we do and let's do something that's going to make some sense. Those
27 mosquitoes need to be sprayed...I can't take it any more."
28

29 Yvonne Edwards, came forward and said that she lives directly across from Mill Lake. She said that
30 after the rain, the water had risen to the parking apron at her house. She said that she saw reports on the
31 news of flooding on 17-92, the Hospital, and the sidewalk that collapsed from the flood, however, there
32 was nothing about the plight of the residents on Blue Springs. The road has not been passable and
33 there is a "green sludge", the area smells and the mosquitoes are terrible. She said that in response to a
34 request for mosquito spray, she was told that it would have to wait until the area dried up. Ms. Edwards
35 expressed concern regarding the spread of diseases like encephalitis. She said that the area was covered
36 in tadpoles 3-4 feet deep which have now hatched into black frogs which create a terrible noise. She
37 also said that the noise from the pump is very loud. Ms. Edwards said that she made a report to Channel
38 13 news about the situation and stated, "The black area...two main streets, we can't even get out." She
39 said that no one from the City came to the house to check on the situation or talk to the residents about
40 what was being done. Ms. Edwards stated, "We are people. We are taxpayers and we are residents.
41 Somebody should let us know that the City cares about us. We shouldn't feel like we've been thrown
42 away in the flood land." She asked what the City plans to do about the situation and suggested placing
43 sand on top of the muck in the area now.
44

45 Evelyn Robinson, 311 E. Cherokee, came forward and said that she has been calling the DOT in an
46 attempt to get some answers and information. She questioned who is responsible for the cleaning and

1 maintenance of Mill Lake. Ms. Robinson noted that Banana and Rose Avenues along with Orange
2 Avenue and Blue Springs were also affected by the flooding. She expressed concern over possible
3 contamination of the water in the area. Ms. Robinson said that she was told that the County would spray
4 for mosquitoes upon request. She said that she did believe the City is concerned about the citizens and
5 asked what can be done to help them. She noted that no one in the area has flood insurance. Paul
6 Johnson, Public Works Director, came forward and said that his office requested last Thursday that the
7 County spray for mosquitoes. Mr. Johnson said that he met with the head of mosquito control last
8 Friday and they have authorized spraying for the neighborhoods and said that it would be done as soon
9 as the rains stop.

10
11 Lisa Stafford, 461 Clark Street, came forward and expressed her concern for elderly people in the area,
12 particularly on Banana Street. She said that the smell and mosquitoes are "ridiculous." She asked the
13 City Council what can be done. Ms. Stafford acknowledged that Mayor Strickland did call at the
14 beginning of the flood and offered assistance. She said that she had to take her granddaughter to the
15 hospital because of a reaction to the mosquito bites and now she can't play outside. Ms. Stafford
16 questioned how often DOT checks the pumps at the lake to ensure they are working. She said she was
17 told that when the red light is on, the pump is not functioning. Mr. Murray responded that there are two
18 pumps and one of them was not working. Mr. Hammerle said that the pumps do not run together, they
19 back each other up. He said that the pumps are not inspected on a regular basis, however, they are
20 inspected "frequently." Ms. Stafford thanked Congressman Mica and said that after her call, she finally
21 started to see some response. She asked when spraying would be done. Mr. Johnson responded that he
22 was told by DOT that the City would have a commitment as to the date by Thursday.

23
24 In conclusion, Mr. Murray stated that the City contracts with Volusia County for mosquito control
25 services. He advised that the worst kind of disaster is a flood. When the ground is flooded, septic
26 systems become unusable which could be causing some of the odor. He said that the land must dry out
27 to a certain point in order to treat for the smell. He noted that the rain event surpassed the 100-year
28 flood event calculations. The area around Mill Lake is a "closed basin" and there is no way to get the
29 water out except to pump it which takes time. Further, the problem involves the entire drainage basin
30 that comes into the Mill Lake area. He ensured the people in the audience that staff is aware of their
31 plight and that they are concerned about returning things to normal as quickly as possible.

32
33 Michael Salzano, 2893 Doe Run Trail, came forward and said that there is a hole at the end of their cul
34 de sac which is about three and a half foot wide and three and a half foot deep. He said it is washing out
35 under the sidewalk that goes around the retention pond. Mr. Salzano expressed his concern for children
36 playing in the area and requested that someone rope it off and put some cones up.

37
38 Cathy Salzano, 2893 Doe Run Trail, came forward and said that she was at the meeting during which
39 Mr. McCue was granted a pay increase. She said that when she attended the last Council meeting, he
40 was given a standing ovation. Ms. Salzano questioned why Mr. McCue was now gone. Mayor
41 Strickland suggested that Ms. Salzano read an article that appeared in last week's Beacon newspaper
42 which discussed the separation, or that she read the minutes from that meeting.

43
44 **3. CONSENT AGENDA:** (None at this time)
45

1 **4. ORDINANCES – FIRST READING:**

- 2
- 3 **A. ORDINANCE NO. 363:** An ordinance of the City Council of the City of Orange City,
4 Florida, providing for a non-exclusive franchise to Emerald Waste Services, LLC (EWS),
5 for the collection and disposal of commercial trash, garbage, recyclable materials and
6 other refuse within the City limits; providing for definitions, terms, condition, rates,
7 compliance with laws, arbitration, standards of performance, collection, regulation
8 operations, hours, routes, penalties, accounting, complaint resolutions; containing a
9 repealer provision; a severability clause and providing for an effective date.

10
11 **Council Member Laputka moved to adopt Ordinance No. 363 on first**
12 **reading, seconded by Council Member Sherrill.**

13
14 Christine Davis, Finance Director came forward and stated that this item is being presented because
15 Emerald Waste Services (EWS) recently purchased Waste Management. This Agreement will grant
16 EWS the same rights as other commercial waste haulers in the City and will obligate them to payment of
17 the franchise fees as provided for in the Agreement.

18
19 Council Member Mahoney noted that all commercial franchises are annual agreements which expire on
20 December 31st of each year. He noted that the Agreement specifies a twice weekly pickup which would
21 prohibit the mobile home parks from negotiating 1/1/1 service if they so desired. He suggested that staff
22 may want to revisit this provision prior to renewal of the contracts.

23
24 **Motion passed by 6/0 roll call vote of the Council.**

- 25
26 **5. PUBLIC HEARINGS/ORDINANCES – SECOND & FINAL READING:** (None at this
27 time.)

- 28
29 **6. RESOLUTIONS:** None at this time

30
31 **7. DISCUSSION AND ACTION:**

- 32
33 **A. Rubberized Surfacing of Splash Pad at Veterans Memorial Park**

34
35 John Davis, Parks Superintendent, came forward and said that conversations had been held regarding
36 resurfacing the splash pad with a soft surface that could prevent possible injury. He advised that the
37 recommended vendor, Mr. Coody, was present and brought a sample of the proposed material. Mr.
38 Davis stated that one of the reasons for pursuing the resurfacing was also because if someone were to
39 fall and scrape their skin causing bleeding, the pad has to be shut down.

40
41 Council Member Sherrill asked whether this material was the same as the sample Council was shown
42 during the grand opening of the splash pad. Mr. Davis responded that the form of the emblem would be
43 Council's decision. He said that the current pricing is for a blue/gray/black rubberized coating. If an
44 emblem is desired, there will be an adjustment in the price. Mayor Strickland noted that it also includes
45 the maintenance. Mr. Murray said that the intent was for the coating to be multi-colored. He showed
46 Council a sample of the proposed material. Mayor Strickland expressed concerns regarding

1 maintenance. Mr. Davis said that different colors could be mixed together. Mr. Coody advised that
2 something is added to the color to prevent fading. Mr. Davis displayed a photo of a site where the
3 coating had been used. He said that the cost of the coating could be part of the FRDAP grant the City is
4 applying for. In response to a comment from Mayor Strickland, Mr. Murray stated that FRDAP grants
5 have historically been the easiest grants to acquire. He expressed his confidence that the City would be
6 successful with their application and that this would allow recovery of some of the costs as the grant will
7 pay the City for work that has already been done. In response to a question from Council Member
8 Laputka, Mr. Davis confirmed that all of the bids are for exactly the same materials. Mr. Davis also
9 requested that Council set a date for the opening and closing of the pad. Mayor Strickland suggested
10 that the pad may be open to coincide with the school schedule so that it would be available for the kids.
11 Mr. Davis responded that it would not be difficult to turn the pad on and off as needed. The Mayor said
12 that he would like it to be available whenever possible because of the goodwill it promotes. Mr. Davis
13 said that a final decision regarding an operating schedule could be deferred until a later date. He said
14 that if Council approves the resurfacing, the material would be ordered and the job would be completed
15 within two to three weeks after the material arrives. If a design is chosen, it may take longer. Council
16 Member Laputka spoke in favor of having a design in the surface. Mr. Davis said that he had discussed
17 with Mr. Murray using brighter colors which would be more appealing to the children. Mayor
18 Strickland expressed that he did not want the project to be delayed because of the selection of a design.
19 Mr. Murray said that he would rely on Mr. Coody for advice regarding color selection and also on the
20 choices of staff regarding possible designs. He said that the design would be brought back to Council
21 for review prior to ordering the material. Council Member Mahoney asked if all three quotes utilize the
22 same material. Mr. Davis responded, "yes." Council Member Mahoney noted that only quote #2
23 identified the area and thickness of the proposed material. He stated, "The only observation I want to
24 make is if it's the same material, then for the difference between #1 and #2, you're talking two-thirds as
25 much more coverage. As long as we're aware of that and that was factored into this decision other than
26 just looking at the lowest price." Mr. Johnson explained that the splash pad is 30 foot, but the surface is
27 40 foot because of the 5 foot walkway on both sides. Mr. Murray suggested addressing the schedule for
28 the operation of the pad at the end of the first year.
29

30 **Council Member Sherrill moved to award the contract for resurfacing**
31 **of the Splash Pad to Coody Pools, seconded by Vice Mayor Allebach**
32 **and passed by 6/0 roll call vote.**
33

34 B. Discuss Appointment of Interim City Manager
35

36 Mayor Strickland noted that he had not received direction from Council regarding negotiating an
37 agreement to appoint an Interim City Manager. He said that he asked Mr. Reischmann to provide some
38 "generic" information regarding the form of a possible contract.
39

40 Mr. Reischmann distributed a sample contract and a list of possible items to be addressed in the contract
41 (a copy of which is attached and becomes a permanent part of these minutes). Mr. Reischmann
42 recommended that the next step is to appoint an individual to serve in this capacity. Mayor Strickland
43 requested that Council review the information provided by Mr. Reischmann and add their comments
44 regarding figures and terms and return it to him so that he can begin the negotiations with whomever is
45 selected for appointment. He said that if there appears to be dissension among the Council as to the

1 contract terms, a special meeting may be required for the negotiation. The Mayor said that he would
2 like to receive direction on the contract terms prior to beginning the appointment process.

3
4 Council Member Mahoney suggested that Council select their choice for appointment prior to the
5 commencement of negotiation of the terms of a contract as whomever is chosen for the position may
6 have personal requirements that will dictate the negotiation process. Mayor Strickland responded, "That
7 would be clearly one way of doing it and I think that some of that could be done in the public and also
8 there may be issues that need to be negotiated and someone would need to do that. That's why I was
9 suggesting what concerns the Council would want to bring to any Interim Manager."

10
11 Council Member Sherrill suggested that it would be appropriate to use Mr. McCue's contract as a basis
12 for the Interim Manager's contract. Mayor Strickland responded that choosing an existing staff member
13 for the position could add different concerns. He stated, "If something were to happen and this were not
14 working, it's a different situation because I would want people protected."

15
16 Mr. Reischmann discussed the following options: (1) hire a permanent City Manager, (2) hire an
17 Interim Manager from outside the organization such as was done when Mr. Miller was hired, or (3)
18 appoint an existing City employee to fill the position who, at the end of their term, would return to their
19 previous position in the City. He said that the form he provided to Council was used in another City for
20 option (3). He said that when making a temporary appointment from within the organization, there are
21 specific needs and concerns for that employee which would need to be addressed.

22
23 Council Member Laputka began the discussion by stating that Mr. Murray is currently serving as Acting
24 City Manager, having been appointed by Mr. McCue to serve in his absence. He recommended
25 considering Mr. Murray's appointment to the Interim position.

26
27 Council Member Mahoney stated, "If we were to go outside, then you've effectively undermined
28 whatever justification there was for the actions you took at the last meeting." He expressed his hope
29 that Council was all in agreement not to look outside the organization to fill the position. Council
30 Member Mahoney advised that Mr. McCue had spoken to him of appointing Mr. Murray to the Interim
31 position, and that he had also mentioned appointing Chief Baskoff. He said that because of the
32 downturn in the workload of the Development Services department, he would recommend Mr. Murray's
33 appointment over Chief Baskoff, noting that there "doesn't seem to be a downturn in police activity."

34
35 Mr. Reischmann advised that an opinion has been issued by the Attorney General that any Police
36 Officer is an Officer within the definitions of the Florida Statutes for purposes of consideration of dual
37 officeholding. Therefore, Chief Baskoff would be prohibited from serving as Interim Manager unless he
38 resigned from his position as Chief.

39
40 Council Member Mahoney noted that Mr. McCue had made the comment that if the Development
41 Services Manager's position was defunded, it could be assumed by the Manager, therefore, likewise the
42 Development Services Manager could serve as City Manager. Council Member Mahoney stated, "I'm
43 very comfortable with Mr. Murray acting as our Interim City Manager."

44
45 Council Member Sherrill stated, "I feel the same way."
46

1 Vice Mayor Allebach agreed and said that it was part of the plan as presented by Mr. McCue. He stated,
2 "To me, Chester is who I want."
3

4 Council Member Abraham said that he did not agree with appointing the senior-most person
5 immediately as Interim Manager. He said that he has watched Christine Davis, Finance Director, over
6 the past couple of years, noting that she has been praised by Mr. McCue. He said that he could not
7 understand the logic of appointing Mr. Murray to the position. Council Member Abraham stated, "She
8 has been doing a good job here, year after year after year." He expressed that Ms. Davis should be
9 "given a chance to be a candidate in this whole process." He appealed to the rest of Council to consider
10 Ms. Davis' appointment. He said that the qualifications of both candidates should be considered. In
11 response to a question from Council Member Laputka, Council Member Abraham stated, "It seems to
12 me that you are ruling out the other department heads and affecting the morale of the whole City. This
13 is unfair."
14

15 Mayor Strickland stated that he has had discussions with Ms. Davis regarding this issue. The Mayor
16 said that it is important to recognize the talent among City staff. He stated his understanding after
17 discussions with Ms. Davis that she would prefer not to be considered for the position. He asked Ms.
18 Davis, "Is that accurate?" Ms. Davis responded, "No." She clarified that what she had tried to convey
19 was that her situation differed from Mr. Murray's in that he would most likely retire upon fulfillment of
20 his contract as Interim City Manager, while her intention would be to return to her position as Finance
21 Director.
22

23 Council Member Mahoney noted that Ms. Davis' workload would not be decreasing as Mr. Murray's
24 has. He clarified that the direction under consideration was to enter into negotiations with Mr. Murray
25 to serve as Interim City Manager. Mr. Reischmann suggested that a motion and a second were in order
26 to officially select the individual with whom to begin negotiations. He said that negotiations with
27 multiple candidates could take place, however, he was not recommending that.
28

29 **Council Member Mahoney moved that the Mayor enter into**
30 **negotiations for a contract for Interim City Manager with Chester**
31 **Murray, seconded by Council Member Sherrill.**
32

33 Vice Mayor Allebach commended Ms. Davis for her aspirations toward advancement. Council Member
34 Mahoney said that his concern was for Ms. Davis' workload. He said that Mr. McCue had not
35 mentioned her as a potential candidate for the position. He also noted that during the discussions
36 leading up to this, the only other department head position considered for defunding was the
37 Development Services Director with the recognition that the workload would allow that individual to
38 fulfill the responsibilities of both positions. Council Member Abraham stated, "Mr. Mahoney, you have
39 to remember who knows the finances better in this City at this time." Council Member Mahoney
40 responded that it was Ms. Davis. Council Member Abraham questioned why this was not being
41 considered when making the choice for Interim Manager. He asked, "What is anybody's argument here
42 against Christine Davis because she knows the finances and the budget?" Council Member Mahoney
43 responded that it is not an argument against Ms. Davis. He said that Ms. Davis' responsibilities remain.
44 Council Member Abraham said that he did not believe that Mr. Murray has any experience in auditing
45 and he questioned his capability to assist in the audit process. He said that he is looking forward to new,

1 innovative thinking, not the continuity that Mr. McCue spoke of. Council Member Abraham noted that
2 there is no female perspective on the Council and stated, "We need a change."
3

4 Council Member Sherrill noted that in the vast majority of circumstances, Mr. Murray was Mr. McCue's
5 choice for Acting Manager when he was gone. He said that his experience under Mr. McCue gives him
6 an "overall knowledge" of the position. Council Member Sherrill praised Ms. Davis' knowledge in the
7 finance area, but stressed that Mr. Murray has had more practical experience in the role of City
8 Manager. He expressed his understanding that the arrangement would only be for a maximum of
9 eighteen months and then a permanent City Manager would be hired. He suggested that would be a
10 good time to consider Ms. Davis.
11

12 In response to a request for clarification from Council Member Mahoney, Ms. Davis said that she
13 intends to be a long-term employee with the City if possible. She said that she would be willing to serve
14 as Interim Manager in the short term and that she would not require any type of a contract that requires a
15 buyout as she would plan on returning to her job as Finance Director when a permanent City Manager is
16 hired.
17

18 **Motion passed by 5/1 roll call vote with Council Member Abraham**
19 **voting, "no."**
20

21 Mayor Strickland reiterated that he would like to have input from the Council on the contract
22 negotiations.
23

24 Mr. Murray stated that he is not applying for the Manager's job as he is approaching retirement.
25 However, he was willing to serve in the short term. He urged Council to move quickly and to have a
26 contract ready for execution at the next Council meeting in order to relieve the "state of limbo" that the
27 employees are currently experiencing.
28

29 Council Member Sherrill suggested that a special meeting be called regarding the appointment and
30 contract. Mayor Strickland responded that if everyone is in agreement, that would not be necessary. He
31 said that once he is able to review Council's feedback, he will be able to determine whether a special
32 meeting is required or not. He said that he would like to have Council's comments returned to him by
33 Friday afternoon.
34

35 **3. REPORTS:**
36

37 **A. City Manager**
38

39 Mr. Murray reported that inquiries had been made as to whether the City was going to waive permit fees
40 for storm damage repairs. He clarified since the City contracts for building permit services, if the fees
41 are waived it would be an expense for the City, not just a loss of revenue. He said that a rough estimate
42 of the amount of revenue the permits would generate came to about \$3,000 to \$4,000. He suggested that
43 if Council wishes to implement the waiver, it limit the City's costs to \$10,000 and should only be for a
44 limited time. The Mayor said that he would prefer to wait to see if there is a demand for the waivers
45 before any action is taken.
46

1 Council Member Mahoney empathized with the citizens who spoke previously about the odor from the
2 floods, stating that he recalled not being able to go outside because of odors from the landfill. He stated,
3 "I want us to do what we can to help alleviate that." Mr. Murray said that he would contact the Health
4 Department in the morning to see what can be done.

5
6 B. Mayor/City Council

7
8 Mayor Strickland had no further report.

9
10 C. City Clerk

11
12 The City Clerk reminded everyone about the Summit Meeting to be held this Saturday in DeLand at the
13 county administration building at 8:30 a.m. Council Member Abraham, Mayor Strickland and Vice
14 Mayor Allebach said that they would be attending.

15
16 D. City Attorney

17
18 The City Attorney had no further report.

19
20 Council Member Mahoney asked if Council's procedures regarding citizen input are "too conservative,
21 given the responses that Mayor Erwin received." Mr. Reischmann responded that he did not know what
22 information Mayor Erwin had provided to the people he had spoken with in regard to this issue, stating,
23 "Any answer is dependent upon the information." He said that he has reviewed the matter carefully and
24 that it was his belief that the process followed would be supportable in a court of law. Mr. Reischmann
25 cautioned that no one has the authority to prevent a citizen from going to court and challenging the
26 process. If that did happen and the City lost the challenge, it is possible that the action taken last week
27 could be deemed void. If that were to happen, Council would have to go through the process again. He
28 stated, "If you want to take the most conservative approach given what you've heard this evening from
29 the former Mayor, what you could do is you could renote this, reagendaize it and go through the
30 process again at the next meeting." Mr. Reischmann clarified, "I'm not suggesting that you should do
31 that or that you need to do that. You've asked me a question and I'm giving you the different scenarios
32 that are out there." Council Member Mahoney suggested that Council revisit the Rule & Procedures and
33 stated, "What I'm suggesting is that we tread carefully here and, what am I saying? We allow people to
34 speak."

35
36 Council Member Laputka noted that Council Member Sandford has been absent for several weeks. He
37 asked, "I'd like to know where we stand on all of this." Mr. Reischmann responded, "The Charter
38 speaks to that." He read from Section 2.09 of the Charter as follows: "Absence by a member, meaning
39 a Council Member, from four consecutive regular meetings of the City Council shall cause the seat to
40 become vacant unless such absence is excused by the City Council." Council Member Laputka said that
41 he has never heard a motion to excuse any of the absences. Vice Mayor Allebach said it appears the
42 absences must reach four in number before Council can take any action. Mr. Reischmann said that there
43 is not a specific process for dealing with this situation. He said that Council could discuss it now or wait
44 until the number of absences has reached four. He stressed that it must be four consecutive regular
45 meetings. Mayor Strickland said that he would prefer to see this issue addressed as an agenda item at
46 the next Council meeting. Council Member Sherrill suggested that perhaps the matter should be

1 clarified in the charter so as to prevent abuse. Vice Mayor Allebach concurred with the Mayor about
 2 having this issue on the next agenda. Council Member Abraham said that he felt the charter is very
 3 clear on this issue and that if Council Member Sandford does not attend the next meeting, he is off the
 4 Council. Mr. Reischmann suggested that Council could consider whether one or more of the absences
 5 could be deemed excused. He advised that this is the first time this issue has arisen in the time he has
 6 been with the City. He said that, normally, the party that is to be absent calls in and notifies the Clerk or
 7 someone to request that the absence is deemed "excused."

- 8
 9 **4. APPROVAL OF MINUTES:** August 25, 2008 Budget Workshop
 10 August 26, 2008 Regular Council Meeting

11
 12 **Council Member Laputka moved to approve the minutes of the**
 13 **August 25, 2008 Budget Workshop, seconded by Vice Mayor Allebach**
 14 **and passed by unanimous 6/0 voice vote of the Council.**

15
 16 **Vice Mayor Allebach moved to approve the minutes of the August 26,**
 17 **2008 Regular Meeting and passed by unanimous 6/0 voice vote of the**
 18 **Council.**

19
 20 **5. COUNCIL COMMENTS**

21
 22 Council Member Abraham said that many of the stormwater issues can be solved with State and Federal
 23 grants, but these are hard times and the Federal Government can not offer much help. He stated, "This
 24 is the year when people need to go out and change the system of sending money out to other countries
 25 and not taking care of the Americans and the American problems."

26
 27 Mayor Strickland thanked the citizens for attending. He stated, "Citizen involvement is important. We
 28 need to hear from you." The Mayor said that tonight's meeting was "good."

29
 30 **6. ADJOURNMENT**

31
 32 There being no further business, Mayor Strickland adjourned the meeting at 9:40 p.m.

33
 34
 35 **RESPECTFULLY SUBMITTED:**

APPROVED ON:

36
 37
 38
 39
 40 Deborah J. Renner, CMC
 41 City Clerk

September 23, 2008