

1 **MINUTES OF THE SPECIAL MEETING** of the City Council of the City of Orange City, Florida,
2 held on Wednesday, February 18, 2009 at 7:00 p.m. in Council Chambers, 201 N. Holly Avenue,
3 Orange City.

4

5 **CALL TO ORDER**

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7 The Meeting was called to order at 7:00 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, Jim Mahoney; City Attorney William Reischmann; Interim City Manager Chester
13 Murray, City Clerk Deborah Renner

14

15 **ABSENT:** Council Members Don Sherrill and Donald Sandford

16

17 1. **RESOLUTION NO. 527-09:** A resolution of the City of Orange City, Florida, approving a
18 Supplemental Developer's Agreement between the City of Orange City, Florida and Sparkman
19 LLC, Developers of Sparkman Ridge Subdivision R-PUD; repealing all resolutions in conflict
20 herewith; and providing for an effective date.

21

22 Vice Mayor Allebach read the title of Resolution No. 527-09 into the record.

23

24 **Council Member Laputka moved to approve Resolution No. 527-09,**
25 **seconded by Vice Mayor Allebach.**

26

27 Mr. Reischmann announced this is a Special Meeting called by the Council at the Feb 10th meeting and
28 is consistent with the requirements of the Charter. The purpose of the meeting is to consider Resolution
29 No. 527-09, the Supplemental Developer's Agreement for the Sparkman Ridge Subdivision which had
30 been postponed to this date at the February 10th Council meeting.

31

32 Mr. Murray discussed the details of the negotiations with Sparkman, LLC. Sparkman, LLC agreed to a
33 \$110,000 advance payment of the loan reducing the total amount of the loan to \$547,000. He recalled
34 the 2005 Developer's Agreement which provides that if the developer does not complete the portion of
35 the road known as the Sparkman connection, the City can complete the road and assess the property for
36 the costs. Mr. Murray advised that the Supplemental Developer's Agreement strengthens the City's
37 position regarding the formation of a special assessment district.

38

39 Mr. Murray advised Council that the recent discussions centered around two issues; the first being the
40 "Due on Sale Clause" which mandates that the loan would become payable in full if the property was
41 sold as a whole prior to development. That clause was modified to read that the City would have the
42 option to either allow the loan arrangements to pass to the purchaser or to call the "due on sale" and
43 require payment in full. Mr. Murray spoke about the Joint Participation Agreement (JPA) the City has
44 with the County for construction of the roads in the school area. He said the JPA is a unit priced
45 contract and that any overages from the originally stated costs of work/materials must be approved by
46 the City. He expressed his confidence that the project expenses would not increase. Mr. Murray
47 advised that there is \$10,000 in "contingency money" which would be applied to the loan if not used. If
48 cost overruns exceed that amount, the City would absorb the costs. One major issue which surfaced
49 during negotiations was the possibility of a sink hole developing in the area and incorporating language
50 which would hold the developer responsible should that occur. The City agreed that they would

1 consult with the Developer and his engineers to determine the most expeditious way to handle the issue
2 should it occur. Mr. Murray expressed his confidence that that this would not become an issue since
3 work has been taking place in the area for nearly three years without incident.
4

5 In conclusion, Mr. Murray noted that the document has been “strategically modified” from the version
6 distributed last week. He said that he has discussed the major changes in the revised document.
7

8 Mr. Murray advised that BB&T agreed to reduce the original amount of loan by \$110,000 as a result of
9 the advance payment from Sparkman LLC. Next, Mr. Murray distributed copies of a GSG Debt
10 Generator (a copy of which is attached and becomes a permanent part of these minutes). He advised
11 that these details will be more fully covered when the Special Assessment Resolution is presented at the
12 first meeting in March. Mr. Murray discussed the details of the loan noting the interest rate is 4.050%
13 with a quarterly payment schedule for a term of 15 years. The total cost of the loan is \$547,000, which
14 includes construction costs totaling \$422,000; GSG consulting costs of \$27,850; and \$10,000 in
15 contingency. He reiterated unused funds in the contingency would be used to reduce the bank note. Mr.
16 Murray said the Debt Service Reserve Fund is \$24,419 which represents six months worth of payments
17 required at the start of the loan; the Capitalized Interest is \$24,738 which represents the first year’s
18 interest on the loan. Mr. Murray explained the special assessment would take effect with the November
19 2009 tax roll, but would not be due until March 31, 2010. The City would still be required to make
20 quarterly interest payments. The Cost of Issuance is estimated at \$38,000 and includes administrative,
21 consultants and bond counsel costs. The total loan amount is \$547,000, which is substantially less than
22 the \$750,000 originally requested.
23

24 Mr. Murray said the Assessment Administration item was reduced significantly from \$15,000 to \$1,000.
25 He explained that fee was for reviewing the tax roll each year. Staff felt that \$15,000 was too much for
26 one parcel and determined that city staff could do it internally. The Tax Collector costs are fixed at
27 \$1,060. In addition, there is an opportunity for a 4% statutory discount if the assessment is paid early.
28 Mr. Murray discussed the Modified Debt Service. He stated that the total annual assessment is \$53,019.
29 Mr. Murray advised that if each parcel is assessed individually, the City could expect a 95% payment
30 rate which would equal \$350 per parcel. With one parcel, the amount will be \$333. He advised that the
31 figures he is presenting are based on 100% payment. He said that once the property is subdivided into
32 202 parcels, the cost to the City will be \$20 per year per lot. He said that he is recommending the
33 assessment based on the 100% rate.
34

35 Mr. Murray concluded by stating that Mr. Swartz sends his apologies that he could not be present this
36 evening. He advised that Mr. Swartz and his entire staff/team have been “most cooperative” and
37 delightful to work with. He said Mr. Swartz is a “good corporate citizen” in this town.
38

39 Mr. Reischmann introduced those present: Jeff Larson, D.A. Davidson, Orange City Financial Advisor;
40 Heather Encinosa, Nabors Giblin, attorney retained by the City to help with the formation of the special
41 assessment district; Camille Evans, Bryant Miller Olive, attorney assisting with the loan documents;
42 and Kim Booker, Booker & Associates, attorney for Sparkman, LLC. Mr. Reischmann stated that it is
43 important to remember that the purpose of the Supplemental Developer’s Agreement is to modify the
44 2005 Sparkman, LLC Developer’s Agreement. Mr. Reischmann discussed the need for a revised
45 Agreement due to the dramatically different economic environment today as compared to 2005 when the
46 original Agreement was signed. He explained that the agreement clarifies the business relationship that
47 the City has with Sparkman, LLC. He stated “I think it’s important for all of us to understand and for
48 the record to reflect why we are here tonight talking about a supplemental developer’s agreement.”
49

1 Mayor Strickland referenced page 2 of the memo which discussed a 1% pre-payment penalty on the
2 original \$750,000 loan amount. Mr. Murray responded that the document the Mayor was referencing
3 was the cover memo from the agenda item as presented at the meeting last week. He said that because
4 of the nature, length, and interest rate, a 1% penalty would apply if the loan were repaid early. Jeff
5 Larson, the City's financial advisor came forward. He said the City has two abilities to prepay the loan
6 without penalty. There is a one-time ability to prepay with unused loan proceeds, such as the \$10,000
7 contingency fund. If that occurs, the loan would be downsized and the assessment slightly reduced. If
8 after five years the City decided it wanted to pay off the note, the 1% prepayment penalty would be
9 applied. Mr. Larson explained that City would secure a lien on the land, pay off the amortized mortgage
10 note and the 1% penalty plus costs to transfer a clean title to the next owner. The City would retain the
11 right to approve the transfer of title to any prospective buyer. Mr. Larson advised that the loan amount
12 is \$548,000.

13
14 Council Member Mahoney noted the 1% prepayment penalty, and stated his understanding that there
15 would be a 1% increase in the interest rate from 4% to 5% if the City chose to prepay. Mr. Larson
16 responded that the 1% pre-payment penalty is calculated on the loan amount. Mr. Murray said that it is
17 on the balance of the loan. Mr. Larson clarified that the penalty applies to the balance due on the loan
18 after interest is paid off and the penalty would be applied to the remaining current balance of the loan.
19

20 Council Member Mahoney stated, "I see the \$53,000, after everything is accumulated, the \$53,000
21 annual expense that's going to be levied against the property. We're arguing that we don't need to go to
22 a 95% number, we can keep it at 100% because there's one property. But the whole rationale behind
23 having the 95% was as the lots are sold and the properties developed, that obligation is assessed to that
24 specific property. So to the extent that a property doesn't pay, there's a fall-off rate." He expressed his
25 understanding that GSG would help to identify the properties that have been sold so that the assessment
26 can begin to be distributed to the new property owners.
27

28 Council Member Mahoney questioned whether there could be a benefit to other property owners thereby
29 creating a position from which the assessment district could be challenged by the owner. Mr.
30 Reischmann responded that the property owner acknowledges these improvements will benefit his
31 property by agreeing to the original developer's agreement. He said it is important that the property
32 owner has consented to this agreement otherwise he would have the ability and standing to challenge
33 this process. Mr. Reischmann responded, "I would submit and I would argue that there's no other
34 property owner who has an ox that could get gored." Council Member Mahoney noted that the City
35 would execute a loan tomorrow for \$548,000 and would write a check to Volusia County for \$454,514
36 for payment of the road. He asked how the utility cost was factored into the process. Mr. Murray
37 responded the funds would be transferred to the City's bank in the morning noting nothing would be
38 executed prior to receipt of those funds. Mr. Reischmann stated that closing instructions specifically
39 provide that as a requirement for loan closing.
40

41 Mayor Strickland asked Kim Booker, Booker & Associates, to come forward. He asked if she was
42 satisfied with the terms of this agreement. Ms. Booker responded in the affirmative. She said everyone
43 worked diligently to work out the details of this agreement. She stated, "We are happy with the final
44 terms of the agreement." Ms. Booker acknowledged that the property does receive a substantial benefit
45 from the improvements and that it is an asset for her client to be done in this way. She thanked the City
46 for its cooperation in getting the matter resolved so quickly.
47

48 Mr. Larson observed that the proposed project is a public/private partnership. He noted for the record
49 that the \$110,000 payment made by the developer lowered the annual assessment for future residents.

1 Ms. Heather Encinosa, Nabors, Giblin & Nickerson, came forward and stated that Mr. Murray had
 2 covered the details of the agreement. She said it “ties down” all the loose ends. Per the 2005
 3 Developer’s Agreement, the City already has the ability to assess the property. This agreement details
 4 how it will be done and how much it will cost. Ms. Encinosa stated, “I think that this is a good example
 5 of a nice public/private partnership.”
 6

7 Camille Evans, Bryant Miller Olive, came forward. Ms. Evans advised that she had the closing
 8 documents for the loan and advised that they could be signed following the close of the meeting.
 9

10 Mike Smith, BB&T, came forward and stated that he was present to sign the loan documentation on
 11 behalf of BB&T. Mr. Smith thanked the Council for consideration the loan with BB&T. Mayor
 12 Strickland thanked BB&T for their willingness to do business with Orange City.
 13

14 **Motion passed by a 5/0 roll call vote of the Council**

15
 16 **2. ADJOURN**

17
 18 There being no further business, Mayor Strickland adjourned the meeting at 7:34 p.m.
 19

20
 21 **RESPECTFULLY SUBMITTED:**

APPROVED ON:

22
 23
 24
 25 Gloria Williams
 26 Deputy City Clerk
 27

March 24, 2009