

1 **MINUTES OF THE REGULAR MEETING** of the City Council of the City of Orange City, Florida,
2 held on Tuesday, February 24, 2009 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 7:00 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, Don Sherrill, Jim Mahoney; City Attorney William Reichmann; Interim
13 City Manager Chester Murray, City Clerk Deborah Renner
14

15 ABSENT: Council Member Donald Sandford
16

17 The Invocation was given by Reverend Linda Bishop, First Congregational Church
18

19 **1. ABSENCES**

20
21 (Presentation of Correspondence from Council Member Sandford)

22 Shall the absence of Council Member Donald Sandford on February 10, 2009 be excused?
23

24 **Council Member Mahoney moved that Council Member Sandford's**
25 **absence from the February 10, 2009 Regular Council meeting not be**
26 **excused, seconded by Council Member Sherrill.**
27

28 Ms. Renner advised that she has provided Council with a copy of Council Member Sandford's
29 resignation letter citing a conflict with his new employment as his reason for leaving (a copy of which is
30 attached and becomes a permanent part of these minutes.) She said Council Member Sandford has
31 requested to make a statement by telephone this evening. Mr. Reischmann noted this is Council
32 Member Sandford's fourth consecutive absence and as stipulated in the Charter he has lost his seat on
33 the Council. However, Mr. Sandford's resignation would become effective tomorrow. He advised that
34 Council withdraw the motion on the floor because it is not necessary. In response to a question from
35 Mayor Strickland, Mr. Reischmann said, the matter could be brought forward at a future meeting if
36 Council Member Sandford were to revoke his resignation.
37

38 **Both the motion maker and the seconder withdrew their motion and**
39 **second.**
40

41 Council Member Abraham noted the motion included Council Member Sandford's absence on February
42 10, 2009. He questioned the need to withdraw the motion.
43

44 **Council Member Mahoney moved that Council Member Sandford's**
45 **absence from the February 10, 2009 Regular Council meeting not be**
46 **excused, seconded by Council Member Sherrill.**
47

1
2 **Motion passed by a unanimous 6/0 roll call vote of the Council.**
3

4 Ms. Renner placed a call to Council Member Sandford but was unable to reach him.
5

6 Mayor Strickland requested Council's approval to add a new item to the agenda. It was the consensus
7 of the Council to amend the agenda to add agenda item, 7D, Resolution 533-09 Acceptance of Council
8 Member Sandford's resignation.
9

10 **Vice Mayor Allebach moved that Resolution No. 533-09, Acceptance of**
11 **Council Member Sandford's resignation be added to the agenda,**
12 **seconded by Council Member Laputka, and passed by a unanimous 6/0**
13 **voice vote of the Council.**
14

15 **2. PRESENTATIONS:** None at this time.
16

17 **3. CITIZENS COMMENTS:**
18

19 Michael Salzano, 2893 Doe Run Trail, came forward. He said there is an increase in traffic in the Fawn
20 Ridge Subdivision and requested "No Thru Traffic" signs. Mr. Murray said he would investigate the
21 matter.
22

23 Robert Gregory, 314 W. Ohio Avenue, came forward and noted that Ohio Avenue has been
24 experiencing a great deal of commercial truck traffic related to the construction at the high school. He
25 said the "No Thru Trucks" signs posted are ignored. In addition, there are problems with drivers
26 speeding down Ohio Avenue to pickup and drop off students at the schools. He stated that he would
27 like the Council to "step in and do something about it." Mr. Murray advised that enforcement would
28 investigate the matter in the morning.
29

30 Eric Orr, 732 N. Volusia Avenue, came forward. He said he is representing the veterinary clinics in
31 Orange City. Mr. Orr noted an animal control services item is on the agenda this evening and offered to
32 provide his professional input, if needed.
33

34 Pastor John Reynolds, 261 S. Orange Avenue, came forward and thanked the Council for their
35 responsiveness to the situation on Orange Avenue. He complimented staff for their efforts. Pastor
36 Reynolds thanked the Council for allowing citizen input.
37

38 Vern Stafford 316 E. Rose Avenue, came forward and commented that the City cleaned up the street.
39 He thanked the Council and staff for helping them out.
40

41 Enoch Durant, 220 S. Orange Avenue, came forward and said that he has lived on Orange Avenue for
42 quite some time. He stated, "I'm not saying that it's as good as it ought to be, but it's better than it was.
43 Thanks for giving that street back to us."
44

45 Alisa Stafford, 461 Clark Street, came forward and thanked everyone for help cleaning up her
46 neighborhood. Ms. Stafford stated, "We feel like we have part ownership in that community once
47 again."
48

1 Evelyn Robinson, 311 E. Cherokee Avenue, came forward and affirmed what everyone else said. She
2 thanked Council and staff for the lights and getting rid of the drug traffic on the street. Ms. Robinson
3 stated, "The drug traffic there is not a culture that is just black, it is a culture of America and we need to
4 keep that in mind when we think of this. What happens is, that traffic that's there is going to move to
5 another street whether it be in your neighborhood or my neighborhood or whoever, it will happen." She
6 suggested that these improvements will encourage others in the neighborhood to report problems.

7
8 Alan James, 1045 E. Graves Avenue, came forward and echoed the comments made tonight. He said
9 that he got involved because he did not want his granddaughter to witness drug dealing. Mr. James said
10 that some of the residents in his neighborhood felt the matter was so important that they formed a
11 non-profit company to continue the efforts. He stated, "We are going to take it to wherever it will go."

12
13 **4. CONSENT AGENDA:** None at this time.

14
15 **5. ORDINANCES – FIRST READING:**

16
17 **A. ORDINANCE NO. 380:** An ordinance of the City of Orange City, Florida, annexing the
18 Florida Premier Group property into the Corporate limits of the City of Orange City,
19 Florida; said property being generally located on the east side of Enterprise Road,
20 approximately 450 feet south of Grand Plaza Drive, containing approximately 1.75 acres;
21 in accordance with the voluntary annexation provisions of Florida Statute 171.044;
22 redefining the boundaries of the City of Orange City by amending the appropriate sections
23 of the code of Ordinances; containing a repealer provision, a severability clause and
24 providing for an effective date.

25
26 Vice Mayor Allebach read the title of Ordinance No. 380 into the record.

27
28 **Council Member Laputka moved to adopt Ordinance No. 380 on first**
29 **reading, seconded by Council Member Mahoney.**

30
31 Jim Kerr, City Planner, provided a power point presentation (a copy of which is attached and becomes a
32 permanent part of these minutes). He said this and the following agenda item are for the annexation of
33 two properties into the City. Pointing out the locations, Mr. Kerr said that Ordinance No. 380 is a small
34 commercial center with eight tenants and that Ordinance No. 381 is for the property occupied by Arbys.
35 Both locations are under the same ownership and when the property was developed, it was divided into
36 two parcels. The properties are contiguous with the City limits and do not create an enclave. Staff
37 recommends the City annex these properties into the corporate limits.

38
39 In response to a question from Council Member Laputka, Mr. Kerr said these are voluntary annexations.
40 Council Member Mahoney questioned the motivation for the annexation. Mr. Kerr responded the
41 property owner would receive a tax savings because the City's millage rate is slightly below the
42 County's total millage rate and the City does not have storm water fees.

43
44 **Motion passed by a 6/0 roll call vote of the Council**

45
46 **B. ORDINANCE NO. 381:** An ordinance of the City of Orange City, Florida, annexing the
47 Florida Premier Group property into the Corporate limits of the City of Orange City,
48 Florida; said property being generally located on the east side of Enterprise Road,

1 approximately 300 feet south of Grand Plaza Drive, containing approximately 0.75 acres;
2 in accordance with the voluntary annexation provisions of Florida Statute 171.044;
3 redefining the boundaries of the City of Orange City by amending the appropriate sections
4 of the code of Ordinances; containing a repealer provision, a severability clause and
5 providing for an effective date.
6

7 Vice Mayor Allebach read the title of Ordinance No. 381 into the record.
8

9 **Council Member Laputka moved to adopt Ordinance No. 381 on first**
10 **reading, seconded by Council Member Mahoney.**
11

12 Mr. Kerr said that he had nothing else to add, except the property is “L” shaped and is the last parcel at
13 that location to annex into Orange City.
14

15 **Motion passed by a 6/0 roll call vote of the Council**
16

17 **6. PUBLIC HEARINGS/ORDINANCES – SECOND & FINAL READING:**
18

- 19 **A. ORDINANCE NO. 365:** An ordinance of the City of Orange City, Florida; amending
20 Section 8.3 of the City’s Land Development Code, said section being the Official Zoning
21 Map of the City of Orange City, Florida; said amendment changing the zoning
22 classification of the GEL Corporation property, consisting of approximately 33.8 acres of
23 property generally located within the northeast quadrant of Rhode Island Avenue and
24 Leavitt Avenue; from its present zoning classification of (I-2) Heavy Industrial to
25 (I-PUD) Industrial Planned Unit Development; containing a repealer provision, a
26 severability clause and providing for an effective date.
27

28 Vice Mayor Allebach read the title of Ordinance No. 365 into the record.
29

30 **Council Member Laputka moved to approve Ordinance No. 365 on**
31 **second reading, seconded by Council Member Sherrill.**
32

33 Mayor Strickland opened the public hearing.
34

35 Mr. Reischmann noted that the Land Development Code requires that a fully executed and recorded
36 Developer’s Agreement be in place in order for a property to be granted Planned Unit Development
37 (PUD) zoning. He advised that although much work has been done toward this end, it has not been
38 accomplished as yet. Mr. Reischmann said that he has had discussions with the applicant’s attorney and
39 they are agreeable to amending the effective date of the Ordinance so that it would not become effective
40 until there is a fully executed and recorded Developer’s Agreement. Mr. Reischmann asked that the
41 applicant’s attorney come forward to confirm this agreement.
42

43 Dennis Wells, Attorney for GEL Corporation, came forward and confirmed Mr. Reischmann’s
44 statements. Mr. Wells stated, “We are trying to work through to get the Developer’s Agreement
45 finalized. We’re going to make every effort that we can to get that done expeditiously.” He concurred
46 with Mr. Reischmann that it would be best to amend the effective date of the Ordinance as discussed.
47

48 **Vice Mayor Allebach moved to amend Ordinance No. 365 to change**

1 **the effective date to state that it will take effect after receipt and**
2 **recording of a fully executed Developer's Agreement, seconded by**
3 **Council Member Laputka.**
4

5 Mr. Murray advised that this is "the second step in a three-phase process."
6

7 Council Member Mahoney asked whether there were problems with the Developer's Agreement. Mr.
8 Wells came forward and stated that there were "certain things" that the City and GEL have not been able
9 to reach agreement on. He expressed his hope that some sort of compromise could be reached. Council
10 Member Mahoney stated that he supports the rezoning, but with the Developer's Agreement as currently
11 written and attached.
12

13 Mr. Wells said that one of the main areas of disagreement has been the perception regarding DEP
14 monitoring and enforcement of the GEL site. Mr. Wells stated, "The City has often felt DEP was not
15 doing its job. GEL, of course, has always felt DEP was doing more than its job." Mr. Wells advised
16 that his (and his client's) feeling about the Developer's Agreement is that it creates a "second layer of
17 enforcement" which gives the City the right to "step past DEP" or that the City may believe that DEP is
18 doing its job, and that the City would look to the Circuit Court for enforcement. Mr. Wells stated,
19 "Our concern is that that has stepped over the bounds and into the purview or into the area that DEP has
20 a right to still exert control." He said that this issue appears to be the biggest area of disagreement. Mr.
21 Wells said that he is trying to make sure that his client is not subject to "double enforcement" while
22 making sure that the City is comfortable with the type of enforcement. Mr. Wells advised that Mr.
23 Murray and Mr. Evans had met to negotiate on this issue, but were not able to reach agreement. He said
24 that he would meet with Mr. Reischmann to try to reach a compromise that is acceptable to both parties.
25 He conceded that there is a likelihood that will not be possible given the City's longstanding history
26 with GEL. He expressed his optimism that the parties are "closer than we have been in years."
27

28 Council Member Mahoney recalled that he told Mr. Wells nearly ten years ago that his feelings toward a
29 recycling center were much different than toward a landfill. He noted that the City's Land
30 Development Regulations (LDR) already incorporate the DEP regulations and asked, "So what's the
31 hang up?" Mr. Reischmann responded that the Developer's Agreement goes to a "more specific level of
32 enforcement." He said that it provides timeframes and specific parameters for how the enforcement
33 measures would be implemented at this particular development.
34

35 Mr. Wells acknowledged that the perception of a recycling center is much different than that of a
36 landfill. He stated, "What's contemplated in this Developer's Agreement is an additional layer of what
37 we perceive to be enforcement." He reiterated his belief that there is a greater sense of trust and
38 understanding on both sides and that the Agreement is meant to make clear what each party understands
39 it should have to do. Mr. Wells stated, "The unfortunate part is that we've tried to sit down and reach
40 that very point, but we just still have a few things that we can not reach an agreement on." He expressed
41 his confidence that if negotiations continue in a spirit of compromise, agreement can be reached.
42

43 Council Member Sherrill noted that many of the past problems were from lack of enforcement by DEP.
44 He stated, "They've let them get away with a lot of stuff...a lot of stuff, and you and I know that. You
45 might deny it, but that's been a lot of our problem. Now, you want to come in with this thing in here
46 and you don't want us to be able to use our authority over this operation." Council Member Sherrill
47 expressed his distrust of the DEP and their regulatory abilities. Mr. Wells stated that he understood
48 Council Member Sherrill's position about the DEP, but said that his client felt the opposite...that DEP

1 over-enforces their rules and that there's been a perception in the community that GEL has gotten away
2 with things in the past because DEP was being lax. He said that GEL has had the opposite perception
3 because of the additional rules that were imposed on the landfill. Mr. Wells said that his clients were
4 now involved in a recycling operation which is beneficial for the environment and that they want to be a
5 "good citizen of the community." He expressed his and his client's concern that additional regulation
6 will put GEL at a disadvantage such that they can no longer be competitive in the recycling market. Mr.
7 Wells stated that negotiations are reaching a point where an agreement can be reached. He stated, "We
8 think this may be a new day and a new opportunity and we just want to make sure we both have the
9 chance to sit down and hash this out." Council Member Sherrill expressed that he would like to see this
10 matter reach a positive conclusion.

11
12 Mr. Murray advised that there is another item on the agenda dealing with the GEL Corporation site plan
13 and Developer's Agreement. He advised that if Council passes this item contingent upon a signed
14 Agreement, that Agreement would not be executed before any changes were reviewed by Council.

15
16 Council Member Mahoney questioned the timeframe for the rezoning approval. Mr. Reischmann
17 reiterated that the Ordinance as amended will not take effect unless there is a fully-executed and
18 recorded Developer's Agreement. Mr. Murray advised that he wants the approval to take place no
19 longer than thirty days. Mr. Wells requested sixty days.

20
21 **Council Member Mahoney moved to amend the pending motion to**
22 **incorporate a sixty-day time frame for approval of the Developer's**
23 **Agreement, seconded by Council Member Laputka.**

24
25 Both the motion maker and seconder withdrew their motion and second.

26
27 **Mr. Reischmann restated the amendment as follows: This ordinance**
28 **will only become effective upon a fully executed and recorded**
29 **Developer's Agreement and should that not occur within sixty days**
30 **from tonight, then this Ordinance will not become effective.**

31
32 **So moved by Council Member Mahoney, seconded by Council**
33 **Member Sherrill and passed by unanimous 6/0 roll call vote of the**
34 **Council.**

35
36 **Main motion as amended passed by 5/1 roll call vote of the Council**
37 **with Vice Mayor Allebach voting, "no."**

38
39 Mayor Strickland closed the public hearing.

40
41 **B. ORDINANCE NO. 376:** An ordinance of the City of Orange City,
42 Florida, transmitting and adopting an administrative amendment to the
43 City of Orange City Comprehensive Plan for the purpose of amending the
44 Capital Improvements Element to update and revise the text including the
45 Five-Year Capital Improvement Program; providing for conflict and
46 severability and providing for an effective date.

47
48 Vice Mayor Allebach read the title of Ordinance No. 376 into the record.

Council Member Mahoney moved to approve Ordinance No. 376 on second and final reading, seconded by Council Member Sherrill.

Mayor Strickland opened the Public Hearing.

Mr. Murray noted that this change is required as a result of a mandate by the State to amend the Capital Improvements Element of the Comprehensive Plan. The amendment must be adopted annually. Mr. Murray explained that the reason for the change is so the State can be sure that all concurrency issues are being addressed. He said that the items in the plan generally consist of roads, sidewalks, water lines, etc.

Council Member Mahoney noted a \$1 million park expenditure in FY 11/12 from grant money and questioned what would happen if the money was not available. Mr. Murray responded that an amendment to the Comp Plan would be done reflecting the change. Council Member Mahoney asked if there were consequences associated with having items in the plan which turn out not to be funded. Mr. Murray explained that this change was tied to the "proportionate fair share" funding and that it is the DCA's method of tracking whether the City has properly spent the monies collected from developers under this Act.

Motion passed by unanimous 6/0 roll call vote.

The Mayor closed the public hearing.

- A. **ORDINANCE NO. 378:** An ordinance of the City of Orange City, Florida, transmitting and adopting an amendment to the City of Orange City Comprehensive Plan pursuant to the stipulated settlement agreement that provides for remedial amendments to Comprehensive Plan amendment Ordinance No. 315; providing for conflict and severability and providing for an effective date.

Vice Mayor Allebach read the title of Ordinance No. 378 into the record.

Council Member Mahoney moved to adopt Ordinance No. 378 on second reading, seconded by Council Member Laputka.

Mayor Strickland opened the public hearing.

Mr. Murray recalled that this amendment pertains to the "Water Element" of the comprehensive plan which had been previously disapproved by the DCA. This amendment brings the City into compliance with all of the DCA requirements.

Motion passed by unanimous 6/0 roll call vote of the Council.

Mayor Strickland closed the public hearing.

7. RESOLUTIONS:

- A. **RESOLUTION NO. 510-09:** A resolution of the City Council of the City of Orange

1 City, Florida, acknowledging and approving the Master Development Plan, Development
2 Agreement and Site Plan for the GEL Recycling Facility (I-PUD) Industrial Planned Unit
3 Development, to be constructed on a 15.97 acre parcel located in the northeast quadrant
4 of East Rhode Island Avenue and South Leavitt Avenue, Orange City, Florida; repealing
5 all resolutions or parts of resolutions in conflict herewith and providing for an effective
6 date.

7
8 Vice Mayor Allebach read the title of Resolution No. 510-09 into the record.

9
10 **Council Member Laputka moved to adopt Resolution No. 510-09,**
11 **seconded by Council Member Mahoney.**

12
13 Council Member Mahoney questioned how Council could approve this resolution as it simultaneously
14 approves the Developer's Agreement. Mr. Reischmann responded that the effective date could be
15 modified or Council could move to continue it to a time after the Agreement has been completed.

16
17 Mr. Murray said that Council could stipulate that the approval is subject to a Developer's Agreement
18 being signed. Council Member Mahoney noted that the Developer's Agreement would have to be
19 brought back to Council in any case and he suggested that it be approved under its own resolution
20 separate from the site plan.

21
22 Mr. Reischmann advised that any development action could only be taken after the rezoning takes place
23 and that will not happen until the Agreement has been executed and recorded. He stated, "None of these
24 can be approved and effective until after we have a completed and fully approved Ordinance 365." Mr.
25 Reischmann suggested that approval could be given tonight to the Master Development Plan and the
26 Site Plan and the Developer's Agreement could be approved later.

27
28 Mr. Murray reiterated that he would like to have the resolution approved conditional upon a satisfactory
29 Developer's Agreement. He noted that projects are passed all the time with stipulations and stated, "I
30 don't see this as any different than that." Council Member Mahoney responded, "Other than I always
31 read what I vote on." Mr. Murray said that Council Member Mahoney would get to review the
32 agreement and clarified that what was being approved tonight was the site plan. He again suggested that
33 the site plan be approved with the stipulation that it is subject to an approved Developer's Agreement.
34 Mr. Reischmann stated that the Resolution does specifically adopt and authorize the Development
35 Agreement, which has not been finalized as yet. Council Member Mahoney stated, "I don't see how we
36 can move forward on this when we say we're approving something that we've just acknowledged in
37 prior legislation that is outstanding. I don't see how we can do that." Mr. Murray responded, "You
38 can't approve the site plan without a Development Agreement if it's a PUD. So...you'll have to wait for
39 sixty days." Mr. Reischmann clarified the options currently available: (1) making the approval
40 conditional upon a fully executed and recorded Developer's Agreement. He stated, "When that
41 happens, you will have already approved it, the effect of that is you would not get a chance to come
42 back and take a look at it because you've already passed it tonight." Mr. Murray noted that Council
43 would review the Agreement under the rezoning ordinance.

44
45 Council Member Mahoney stated, "Help me out....we just approved the rezoning contingent, I'm sorry
46 I'm not trying to be difficult, we just approved the rezoning subject to a completed Developer's
47 Agreement." Mr. Reischmann stated, "Actually, I have to agree." He clarified that in the rezoning
48 ordinance that was just passed it was not specifically stipulated that the Agreement would come back to

1 Council before the rezoning becomes effective. He recommended that this item be continued until a
2 completed Development Agreement is prepared for Council approval. Mr. Reischmann explained that
3 when Resolution 510-09, including the Developer's Agreement, is approved by Council, it will provide
4 for automatic approval of Ordinance No. 365. He said that the Resolution should be continued until it is
5 brought back by Mr. Murray.

6
7 **Vice Mayor Allebach moved to continue Resolution No. 510-09 until**
8 **staff brings back an acceptable Development Agreement, seconded by**
9 **Council Member Laputka and passed by unanimous 6/0 roll call vote**
10 **of the Council.**

- 11
12 **B. RESOLUTION NO. 530-09:** A resolution of the City Council of the City of Orange
13 City, Florida, acknowledging and approving a 12-month extension to the site plan and
14 preliminary subdivision plat for Lansdowne Oaks subdivision, said parcels located on
15 East Lansdowne Avenue, Orange City Florida; repealing all resolutions or parts of
16 resolutions in conflict herewith; and providing for an effective date.

17
18 Vice Mayor Allebach read the title of Resolution No. 530-09 into the record.

19
20 **Council Member Mahoney moved to approve Resolution No. 530-09,**
21 **seconded by Vice Mayor Allebach.**

22
23 Jim Kerr, City Planner, came forward and stated that this request is to extend the preliminary
24 subdivision plat and site plan for Lansdowne Oaks for a period of twelve months. Mr. Kerr provided a
25 power point presentation (a copy of which is attached and becomes a permanent part of these minutes)
26 detailing the layout of the development. He said that staff recommends approval of this resolution. The
27 approval will include the same conditions as the original approval with one additional condition required
28 by a recently adopted ordinance.

29
30 Mayor Strickland advised that the purpose of the extension is to give the developer extra time in the
31 hope that market conditions will improve.

32
33 Mr. Murray noted that staff is presenting proposed new legislation which will be reviewed by the
34 Planning Commission next week that will allow annual extensions for site plans for up to seven years.
35 Currently, site plans are good for only one year with one extension allowed. Mr. Murray said that there
36 are eight other projects also in need of extensions.

37
38 **Motion passed by unanimous 6/0 roll call vote of the Council.**

- 39
40 **C. RESOLUTION NO. 532-09:** A resolution of the City Council of the City of Orange
41 City, Florida, certifying the results of the referendum election as certified by the Volusia
42 County Canvassing Board on February 17, 2009, repealing all resolutions or parts of
43 resolutions in conflict herewith and providing for an effective date.

44
45 Vice Mayor Allebach read the title of Resolution No. 532-09 into the record.

46
47 **Council Member Mahoney moved to approve Resolution No. 532-09,**
48 **seconded by Council Member Sherrill and passed by unanimous 6/0**

1 **roll call vote of the Council.**

- 2
- 3 **D. RESOLUTION NO. 533-09:** A resolution of the City Council of the City of Orange
4 City, Florida, accepting the resignation of Donald Sandford from the City Council and
5 declaring a vacancy in Seat #5, providing for appointment to fill said vacancy, repealing
6 all resolutions in conflict herewith and providing for an effective date.

7

8 **Council Member Sherrill moved to approve Resolution No. 533-09,**
9 **seconded by Vice Mayor Allebach.**

10

11 Mr. Reischmann suggested that the end of Section 1 be amended to add the language, “effective
12 2/25/09” so that it is consistent with the effective date of Mr. Sandford’s resignation.

13

14 **Motion passed by unanimous 6/0 roll call vote of the Council.**

15

16 **8. DISCUSSION AND ACTION:**

- 17
- 18 A. Contract with SPCA for animal services

19

20 Ron Saylor, 361 Dixson Street, came forward and recalled how animal control was handled when he
21 first moved to the City in 1965. He said that his concern is that he has called animal control three times
22 on the weekends in the past ten years and that he has never received what he would consider a
23 “satisfactory response.” Mr. Saylor stated, “When I look at this contract, the only thing I got is I want to
24 make sure that you have in your mind that you’re satisfied that we got some animal control on a
25 weekend in this City. Thank you.”

26

27 Jeff Baskoff, Police Chief, came forward and recalled that at the last meeting, Council voted to have the
28 Police Department start handling animal control. He said he negotiated with the SPCA to handle the
29 cleaning of the cages at the animal impound and that they will take control of an animal after 3-7 days
30 for placement in foster care or some other type of similar setting. The SPCA will be paid \$22 per day to
31 feed the animals in the impound twice a day. There will be no charge if there are no animals in the
32 impound. If the SPCA has to take possession of the animal there is a \$24 fee as opposed to \$80 with the
33 Humane Society. Chief Baskoff advised that the capacity at the City’s shelter is about 30 cats and 8
34 dogs. The Chief noted that compliance with the indemnification clause in the contract would be a
35 hardship for the SPCA. He said that the City could obtain the necessary insurance for \$1,000. Mr.
36 Murray spoke in support of this change. He spoke again of the uncertainty of the cost associated with
37 this service because of the difficulty in predicting how many animals the City may have to impound.
38 Chief Baskoff advised that the City has purchased 25 traps. Mayor Strickland stated that in the past, the
39 City was paying the SPCA to “provide the service of non-service” and now the City would provide the
40 service with the help of the SPCA. The Mayor stated, “So paying \$1,000 for insurance and beginning
41 this process sounds like a better deal.” The Chief noted that there have never been complaints about the
42 SPCA’s efforts to adopt animals that were captured.

43

44 Vice Mayor Allebach stated, “I think this moves the SPCA to do what they do best and that’s take care
45 of the animals, keep them alive, move them forward and, obviously, our Police Officers in essence can
46 do what they do best and catch criminals which unfortunately, the wild animals and feral cats are
47 considered criminals based on the phone calls we get.” He expressed his hope that the City follows
48 through on the spay/neuter program discussed previously. Mr. Murray responded that revised animal

1 control legislation would be forthcoming. He noted that when an animal is captured and put in the
2 impound, an announcement will be placed on the City's website along with a photograph of the animal.

3
4 Chief Baskoff recommended that Council approve the contract with the SPCA and authorize the
5 expenditure of \$1,000 for additional insurance coverage.

6
7 **Vice Mayor Allebach moved to authorize the Interim City Manager to**
8 **enter into a contract with the SPCA and authorize the expenditure of**
9 **up to \$1,000 to provide insurance at the City's kennel, seconded by**
10 **Council Member Sherrill.**

11
12 In response to a question from the Mayor, Chief Baskoff said that the City would begin responding to
13 calls for animal control on Tuesday.

14
15 **Motion passed by 6/0 roll call vote of the Council.**

16
17 B. Process for filling vacancies on the Council

18
19 The City Clerk advised that she had provided Council with information on the procedures used to fill
20 vacancies in the past. She noted that under the terms of the revised charter, the vacancy must be filled
21 within 45 days. Ms. Renner stated that if it is Council's intention to advertise the vacancy to solicit
22 applicants for appointment, the ad must be put in the paper soon. She noted that she had provided a
23 sample ad for Council's consideration and suggested that the ad could be published this Sunday. Ms.
24 Renner advised Council that if it was their intention to conduct interviews with applicants, a special
25 meeting could be scheduled for that purpose.

26
27 Council Member Laputka spoke in support of holding interviews.

28
29 Ms. Renner advised that she was proposing a deadline of March 15th for receipt of letters of interest.
30 She stated that in order to meet the 45 day requirement, the appointment must be made by April 11th.

31
32 Mayor Strickland questioned whether applicants would be required to submit a resume. Vice Mayor
33 Allebach suggested that applicants should state their reasons for requesting appointment to the Council.
34 Mayor Strickland suggested that the ad should request the applicants "skills and experience." Mr.
35 Reischmann suggested that the ad could be clarified by stating that applicants should state their
36 qualifications "consistent with the City Charter."

37
38 Paul Rasch, 2058 King Richard's Court, came forward and concurred that the revised Charter requires
39 that the seat be filled within 45 days, however, he expressed that it also requires that the appointment
40 comply with the new charter requirement for election by districts.

41
42 Council Member Mahoney disagreed, stating that a transition to districts is set forth in the Charter and
43 that it does not apply to this appointment because the transition takes effect with the fall elections in
44 2009.

45
46 Hugh Strickland rose and stated, "Read the language. The language exempts present Council holding
47 seats. If a present Council Member resigns, the qualifications stated in the new Charter's 2.09 Section
48 which includes residency seems to apply. It doesn't exempt it."

1

2 Mr. Reischmann stated, "Well, you've got a practical problem. The fact is that we don't have districts.
3 How would you select someone to fill this vacancy in 30 or 45 days?" Mr. Reischmann noted that the
4 one thing that is clear in the charter is that there is a deadline for filling the empty seat, while there is no
5 deadline for creating Council districts. He said that the districts must be created in time for qualifying
6 for the 2009 Council election, however, he questioned how the appointment could be made to a specific
7 district when districts do not exist at the present time.

8

9 Mayor Strickland suggested that at this point, Council approve the City Clerk to run the ads (with the
10 suggested changes) soliciting applicants for the appointment.

11

12 **Council Member Sherrill moved to place the ads for the vacancy with**
13 **the changes as suggested by Council, seconded by Vice Mayor**
14 **Allebach.**

15

16 In response to a question from Council Member Sherrill, Ms. Renner advised that the appointment must
17 be made by April 11. It was agreed that the March 15th deadline for receipt of letters was adequate.

18

19

20 **Motion passed by unanimous 6/0 roll call vote of the Council.**

21

22 Vice Mayor Allebach questioned what the procedure for handling the letters would be. The City Clerk
23 recommended that the letters be distributed to Council as they are received. Vice Mayor Allebach spoke
24 against conducting interviews with potential candidates for appointment to the Council.

25

26 **It was the consensus of Council that the letters be distributed to**
27 **Council as they are received.**

28

29 Mayor Strickland questioned whether a workshop or special meeting should be scheduled to discuss the
30 letters that have been received. Mr. Reischmann advised that the City of Palm Coast had recently
31 undertaken a similar process and they chose to review the applications and create a group of five that
32 they wanted to interview in individual interviews with each Council Member. After the interviews were
33 conducted, the Council scheduled a meeting to take a vote. Vice Mayor Allebach noted that it could
34 take some time between receipt of the letters and the scheduled meeting. Another factor to consider is
35 the number of applications received. The Vice Mayor suggested that Council will probably be familiar
36 with most of the people who will apply for the seat. Ms. Renner recalled that when former Council
37 Member Gary Blair was appointed, a process similar to this had been followed. She noted that when
38 Mr. Blair applied for the appointment, no one on the Council knew him. She said in that instance,
39 phone interviews were conducted by those current Council Members who desired more information. In
40 response to a question from Mayor Strickland, Ms. Renner advised that there would be ample time for
41 interviews following the March 15th deadline for the letters if Council desired to take that step.

42

43 Ms. Renner requested to revisit Mr. Strickland's concern that the suggested process does not meet the
44 requirements of the Charter. She noted that the procedures referenced in Section 4.02 of the Charter
45 apply to qualifying for the 2009 election. Mr. Reischmann concurred and read from Section 4.02 (a) of
46 the Charter as follows, "Upon the adoption of this Charter, Council seats 1 through 6 of the previous
47 Charter shall become the Council Members for Districts 1 through 5 and at-large Council Member
48 respectively until the aforementioned elections of 2009 and 2011. During this transitional period, no

1 distinct residency requirement shall apply for the Council serving at the time this Charter is adopted.”
2 Mr. Reischmann advised that it is important to read the Section in the context of the following passage.
3 He read further, “Beginning with the 2009 election, residency and all other requirements shall apply to
4 District 4, 5 and at-large Council Member.” Mr. Reischmann noted that the seat that will be vacant will
5 be District 5. He stated, “So if you read all that together, it’s my opinion that the only reasonable way to
6 read this is that the district residency requirement applies for qualifying beginning with the 2009
7 election.” Council Member Mahoney asked, “And not qualifying for an appointment?” Mr.
8 Reischmann responded, “Correct.”
9

10 Council Member Sherrill noted that someone could be appointed to fill the seat, but at the end of their
11 term, they may not be qualified to run again if they do not reside in District 5. Mr. Reischmann
12 concurred. Council Member Sherrill questioned the need to advertise the vacancy and suggested that
13 Council could just bring names of individuals that they would like to see appointed. Mr. Reischmann
14 responded that the new Charter requires that “notice shall be given of a vacancy requesting applicants
15 for consideration.” He noted that this requirement does not preclude consideration of someone who did
16 not specifically respond to the notice.
17

18 In response to a request for clarification from Mr. Reischmann, Ms. Renner said that it was agreed the
19 next steps would be decided after it was seen how many responses come in following the advertisement.
20 Mayor Strickland noted that it was agreed that the letters of interest would be copied and distributed to
21 Council as they are received. Depending on how many are received a plan would be developed
22 accordingly. Ms. Renner advised that an appointment could be made at the March 24th Council meeting
23 and the deadline could be met. She said that she would send an acknowledgement when the letters are
24 received and could make contact to confirm the individual’s qualifications.
25

26 **9. NEW BUSINESS:**

27
28 Vice Mayor Allebach noted that the next Council election will be in September 2009 and stated, “We
29 better figure out how to create those districts.” Mr. Reischmann responded that Section 4.02 (b) of the
30 Charter provides some guidance as to how the districts should be laid out and that it also provides
31 alternatives such as the appointment of a special commission or the contracting of a consulting firm
32 specializing in the process.
33

34 Council Member Laputka spoke in support of appointing a citizens commission to lay out the districts.
35 He suggested excluding people who had received previous committee appointments. Mr. Reischmann
36 said that assistance from staff would be needed. Council Member Mahoney discussed the fact that there
37 are legal requirements which must be followed.
38

39 Mr. Murray said that his office will begin inquiring tomorrow to find out what type of data is available
40 in the GIS system. He said that the first step is determining where the voters are and the population
41 resides. Mayor Strickland said that it must be done by population, but that it could include
42 consideration of registered voters as well. Council Member Mahoney questioned what “expertise
43 creating districts” a committee of citizens would bring. He suggested that the City Manager conduct an
44 investigation to see how other communities have established their districts. Vice Mayor Allebach said
45 that a number of layouts of the districts could all be legal. Council Member Mahoney said that a
46 citizens committee could be helpful to refine the districts once an overall plan has been developed.
47

1 Hugh Strickland, came forward and said that he called Gainesville and Daytona when he made the
2 suggestion for districts when he was on the Charter Review Committee. He said that he was told that
3 GIS has the capability of entering population data and voter data. Mr. Strickland said that the
4 Committee gave their criteria to the GIS people prior to the development of a map. He suggested
5 calling one of these other cities for tips on drawing the map. Mr. Strickland noted how quickly GIS
6 technology changes and said that current capabilities can even show the number of voters on any given
7 street. Ms. Renner advised that she had emailed a request for information from other Clerk's in her
8 District to see if any of them has had experience with creating districts. She said that she has received a
9 few responses, particularly one from the city of Altamonte Springs which is required to redistrict every
10 three years.

11
12 Mr. Murray said that he would provide a report at the next Council Meeting.

13 14 **10. REPORTS**

15 16 **A. City Manager**

17
18 Mr. Murray noted the ongoing work taking place around Mill Lake. He said that staff hoped to continue
19 the process throughout the winter. All of the dead trees and trash have been removed from the Feaser
20 property. Mr. Murray said that he hopes that the clearing will make the park visible from all sides. He
21 reported that the dirt that is being taken from the retention pond at Public Works is being moved to the
22 Feaser property to try to build it up. In response to a question from Council Member Laputka, Mr.
23 Murray said that he wasn't sure of the status of DOT's offer to convey ownership of Mill Lake to
24 Orange City. He said that DOT has also offered the use of prison labor to begin cleaning out the lake
25 which should begin within the next 30-45 days. Mayor Strickland complimented Mr. Murray for the
26 progress on the area behind the Mt. Zion Church.

27
28 Council Member Mahoney asked Mr. Murray when he would do the State of the City address. Mr.
29 Murray responded that it would be in March.

30 31 **B. Mayor/City Council**

32
33 Council Member Sherrill highlighted a number of things taking place at WAV. He said that WAV is
34 conducting a water audit/contract irrigation study. The purpose of the project is to try to identify ways
35 to reduce water consumption and they will monitor the homes in the study to see if the conservation
36 efforts are working. Council Member Sherrill discussed other conservation measures coming on the
37 market. He noted that there is some concern on the part of water providers as to the effect of decreasing
38 demand on the revenue stream that finances the water companies. WAV will again be giving out
39 rebates on washing machines and will continue the calendar program through the schools. Council
40 Member Sherrill said that WAV has put out a resolution outlining a "uniform water
41 conservation/irrigation program" (a copy of which was previously distributed to Council). There have
42 been some discussions about having WAV serve as the enforcement arm for violations of conservation
43 laws and WAV is working with the Water Management District for funding and development of an
44 enforcement program.

45
46 Council Member Mahoney asked, "How can elected officials stand up and say that we're going to solve
47 Florida's water problems when they're afraid of the ramifications of enforcing conservation?" He
48 stated, "Just a thought....."

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Council Member Sherrill said that water companies will monitor water usage and they can meet with those customers having a high consumption.

Mr. Murray noted that he received a letter today from Cindy Coto, Seminole County regarding the Yankee Lake Alternate Water Supply project. Sent along with the letter was a draft agreement for the City to enter into the project. They are asking for a commitment no later than May 14, 2009 and payment by October 1, 2009. The City's initial contribution to the project would be \$1.5 million. If the City ultimately draws its water from the alternative source, it will cost \$32 million which would be passed on to its water customers. Mr. Murray stated, "So, we've got some heavy, heavy decisions to make here in the next sixty days." He suggested that a workshop be scheduled in the near future to discuss this issue, perhaps jointly with the other southwest Volusia cities. Mr. Murray stated, "This is a one-shot deal." Mayor Strickland noted that it is also a project with a limited lifetime. Mr. Murray concurred and stated that it is a "25-year solution."

Council Member Mahoney questioned whether the amounts mentioned include legal fees to defend against parties who are opposed to this project. Mr. Murray expressed that he did not believe the project could withstand legal challenges. Mr. Murray expressed his fear that a legal battle could go on for years, during which time Seminole County would be "sitting on a million and a half of our borrowed dollars." He said that he wanted to hear what the other cities have to say about it. Mr. Murray related that water levels in Lake Monroe are already very low and the Yankee Lake project would pump 20 million gallons per day (mgd). Mr. Murray advised that if the City entered into the project, it would be irrevocable.

Mayor Strickland advised that there is a bill (No. 214) in process at the State level which addresses the formation of water authorities and their current lack of accountability. Mr. Reischmann said that he would try to follow up on the Bill.

Mr. Murray said that the initial \$1.5 million must come "out of our pocket." The remaining \$32 million will be paid through a bond issue that Seminole County is undertaking on behalf of all project partners. Seminole County will be repaid through usage fees. He said that it could increase water rates to \$10-\$12 per thousand gallons.

Council Member Sherrill referenced the model conservation ordinance for landscape irrigation which was drafted by the Water Management District. The City will be required to either adopt the ordinance as written or to draft its own version. He asked the City Manager to look at the ordinance, stating that he will need guidance from Council as to how to vote on the issue. Council Member Sherrill said that WAV is trying to develop uniform signs urging water conservation to be placed throughout the County. He passed around a sample of the text for the signage. Each City would be responsible for their own signs at a cost of \$97 per sign. Council Member Sherrill said that the City would need 8-10 signs to be placed throughout the City. Mr. Murray asked for a copy of the sign.

Mayor Strickland provided a report on yesterday's VCOG meeting. He said one of the issues was addressing concerns about the VGMC. The Mayor said there were concerns about the VGMC exceeding their authority and a number of recommendations were made. There were some people in Lake Helen who did not agree with the recommendations. He said that he would distribute information regarding this issue to Council. There appears to be a great deal of dissension in the community about the role and function of the VGMC.

1
2 Mr. Reischmann said that he attended a VCOG meeting 60-90 days ago at which a group of attorneys
3 were tasked with developing changes to the existing VGMC rules. He advised that the current rules
4 have allowed for some "excessive jurisdiction" with the VGMC beyond the scope of their original
5 intended purpose as written in the Volusia County Charter. Mr. Reischmann explained that the purpose
6 was to provide a forum between local governments in Volusia County should they have concerns about
7 a proposed comp plan amendment of another local government. What has happened is that the VGMC
8 is being proactive through its staff and that it has evolved into a "super planning agency" which steps in
9 now even when there is no dispute. Mr. Reischmann said that the VGMC's attorneys were directed by
10 staff to address some of those concerns. The proposals developed by the attorneys were "negligible"
11 and did not address the core issue. A new proposal has been prepared for consideration by any local
12 government in Volusia County which will adopt and recommend to Volusia County changes that are
13 more consistent with the original intent for the VGMC through the Volusia County Charter. Mr. Murray
14 advised that this resolution will be on the next agenda. Mayor Strickland noted that a number of cities
15 have already passed a resolution, while other cities are not doing anything. He spoke in support of
16 bringing back a resolution for Council's consideration.

17
18 Vice Mayor Allebach said that he did not attend the last MPO meeting as the City does not have a vote
19 this year. He said that the federal stimulus funds are being funneled through the MPO and that the one
20 project proposed is the Dunn Avenue extension in Daytona Beach. The money expected is not enough
21 to complete that project. Additional funding is expected through the Department of Transportation
22 (DOT) for beautification. The Vice Mayor encouraged everyone to attend the next League Dinner on
23 March 26th noting that the meetings have become more educational. The Congress of Municipal
24 Leaders will be making a presentation.

25
26 **C. City Clerk**

27
28 The City Clerk noted that Council had previously been provided with a copy of her evaluation form and
29 she requested that they be returned to her on Friday so that it can be placed on the next agenda.

30
31 Mayor Strickland advised that once the evaluations have all been turned in, Ms. Renner would complete
32 a summary of the evaluations. The Mayor said that he has been signing the City Clerk's time sheets and
33 leave slips as has been done traditionally. The Mayor said that he did not have any formal authorization
34 from the Council to do this and he requested feedback from Council on whether they would like him to
35 continue. Vice Mayor Allebach said that he did not see any problem with the way that it has been done
36 traditionally. Mayor Strickland stated, "We're just going to keep on doing what we're doing unless we
37 hear different, okay?" He said that he wanted to bring it to people's attention since it was brought to his
38 attention with concern.

39
40 **D. City Attorney**

41
42 Mr. Reischmann noted that Council had previously appointed Kelly Eger to oversee the activities at the
43 GEL facility regarding the continued inspections and monitoring of the site by DEP. He said that there
44 has been "substantial progress" made with regard to the compliance by GEL with the provisions of their
45 permit and their recycling facility. Mr. Reischmann stated that there was an inspection done last year
46 which found that the recycling facility is now operating consistent with the parameters in their permit.
47 There are some remaining issues with the landfill such as the vegetative cover over the mound. The
48 groundwater contamination issue remains. Mr. Reischmann referenced a recent newspaper article about

1 the contamination and stated that the article supported the efforts of Council to make sure that “we
2 continue to be the squeaky wheel.” He noted that considerable resources have been moved from south
3 Florida to this District to focus more efforts to determine the extent of the Lake Marie plume. Mr.
4 Reischmann said that this would be an ongoing process for some time. The next step is to sink
5 monitoring wells to determine the direction and extent of the flow. The DEP will then develop a plan
6 for remediation at which time there will be discussions regarding who should pay for the remediation.
7 Mr. Reischmann said that it is the City’s position that GEL should be the responsible party.

8
9 Mr. Murray advised that he is going to decrease his use of Ms. Eger’s services. He said that he would
10 ask her to focus on monitoring the quarterly reports and provide a year-end report to the City. He said
11 that the City has spent a great deal of money watching the situation at the landfill and that there is not
12 really anything more than monitoring that can be done at this time. Mr. Murray stated, “It is my distinct
13 impression that DEP resents the information that we furnish and they are not going to do anything until
14 they develop their own set of data.” Council Member Mahoney remarked that Mr. Murray’s comments
15 seem to have taken a 180° turn from past comments about the value of Ms. Eger’s services. Mr. Murray
16 responded, “We’re at that point where nothing is going to happen for another couple of years.” He
17 reiterated that test wells are going in now and until data has been assembled and analyzed nothing can
18 be done.

19
20 Mr. Reischmann said that Ms. Eger met with DEP in December during which she tried to get them to
21 understand her concerns regarding placing the C&D material on top of the old Lake Marie landfill. Ms.
22 Eger was concerned about the assumption that all of the contaminated groundwater was moving north
23 and west away from the City’s potable drinking wells. Mr. Reischmann said that Ms. Eger’s questions
24 were “dismissed” by the DEP. He said that the response to the City’s concerns over visible issues at the
25 site have been better received. Council Member Mahoney said that DEP was well aware of the issues
26 related to the Lake Marie landfill as well as the issues surrounding the permitting. He said that he
27 questioned the wisdom of backing off with DEP now. Mr. Murray said that until the borings are
28 complete and more test wells are in, DEP will not give any ground on their position.

29
30 Mr. Reischmann summarized stating, “What the DEP is currently doing, as Mr. Murray has indicted, is
31 they are out doing soil borings right now to try to determine how far the Lake Marie landfill went in an
32 effort to determine who will potentially be responsible for the cost of remediation.” In addition, DEP is
33 trying to determine how far the plume has gone. Mr. Murray noted that GEL is claiming that no matter
34 what is found in the tests, they are not the sole responsible party. He advised that GEL, of course, is
35 claiming that the City bears some responsibility, noting that the clean-up will be a multi-million dollar
36 process.

37
38 Vice Mayor Allebach noted that the discussion had gotten off track and that the hour was getting late.
39 He summarized that what Mr. Murray was suggesting was that Ms. Eger’s monitoring be changed from
40 monthly to quarterly. This would represent a 66% savings for the City. He reiterated that the City is not
41 giving up on its efforts with the DEP.

42
43 Mr. Murray said that no matter what the City finds, DEP is going to want to prove their own data. Vice
44 Mayor Allebach noted that the process will not speed up no matter how much money the City spends on
45 it. He suggested giving the quarterly reports some time to see what they show and also to see how much
46 money the City will save on consultant fees. Mayor Strickland said that he felt Mr. Murray’s suggestion
47 is a way to monitor that is less intense and less expensive, noting that it could always be increased if

1 needed. Mr. Murray advised that Ms. Eger's contract with the City has expired and that he would be
2 bringing it back for authorization in March.

3
4 **11. APPROVAL OF MINUTES:** February 10, 2009 Regular Meeting

5
6 **Council Member Mahoney moved to approve the minutes of the**
7 **February 10, 2009 meeting, seconded by Council Member Laputka**
8 **and passed by a unanimous 6/0 voice vote of the Council.**
9

10 **12. COUNCIL COMMENTS**

11
12 **13. ADJOURN**

13
14 There being no further business, Mayor Strickland adjourned the meeting at 10:00 p.m.

15
16 **RESPECTFULLY SUBMITTED:**

APPROVED ON:

17
18
19
20
21 Deborah J. Renner, CMC
22 City Clerk

March 10, 2009

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