

1 **MINUTES OF THE REGULAR MEETING** of the City Council of the City of Orange City, Florida,
2 held on Tuesday, April 28, 2009 at 7:00 p.m. in Council Chambers, 201 N. Holly Avenue, Orange City.

3
4 **CALL TO ORDER**

5
6 The Meeting was called to order at 7:00 p.m. by Mayor Strickland and roll call was taken.
7

8 **ROLL CALL**

9
10 **PRESENT:** Mayor Harley Strickland; Council Members; Tom Laputka, Tom Abraham, Don Sherrill,
11 Paul Rasch, Jim Mahoney, City Attorney William Reischmann; Interim City Manager Chester Murray;
12 City Clerk Deborah Renner

13
14 **ABSENT:** Vice Mayor Jeff Allebach
15

16 **INVOCATION**

17
18 The Invocation was given by Pastor Roberta Fish, Orange City Seventh Day Adventist Church, followed
19 by the Pledge of Allegiance.
20

21 **1. ABSENCES:** No absences to consider
22

23 Mayor Strickland noted Vice Mayor Allebach's absence would be addressed at the next Council
24 meeting.
25

26 **2. PRESENTATIONS:**

Robert Reid, Vice Chairman
Historic Preservation Board

27
28
29 Robert Reid, Vice Chair Historic Preservation Board came forward and updated Council on the
30 activities of the Historic Preservation Board (HPB). Mr. Reid said the HPB recently filed an application
31 to the City's local registry for Town Hall and Albertus Cottage. Copies of the application and minutes of
32 the 2008 meetings were included in the agenda packet. The HPB is also working on a historic marker
33 program that will provide a uniform method of identifying all historic locations in the City. He said the
34 boundaries of the historic district begin at the west side of U.S. 17-92, extend to the elementary school
35 and then continue north and south for three blocks. Mr. Reid apologized that Mr. Morin could not be
36 present this evening.
37

38 **3. CITIZEN COMMENTS:**

39
40 Kathy Salzano, 2893 Doe Run Trail, came forward and read a statement into the record (a copy of which
41 is attached and becomes a permanent part of these minutes). She spoke about the recent Goal Setting
42 workshops that she attended noting that one of the goals discussed was keeping Orange City as one big
43 community. Ms. Salzano talked about the services that the Orange City Police Department provides.
44 She said the City has an "outstanding Police Department", noting that the officers respond quickly and
45 efficiently to citizen complaints. However, Ms. Salzano stated that the community often feels that the
46 officers are "not very friendly." Ms. Salzano said she is a retired police officer and part of her
47 responsibilities had been to cultivate the public. She encouraged police officers to become more
48 friendly and familiar with the local residents.

1 **4. CONSENT AGENDA:**

- 2
- 3 **a. RESOLUTION NO. 543-09** A resolution of the City Council of the City of Orange
4 City, Florida, acknowledging and approving a 12-month extension to the Development
5 Order for the Sparkman Ridge preliminary subdivision plat and site plan, which will
6 divide a 50.72-acre parcel into 94 single family residential lots and 108 townhouse
7 residential lots, said parcel located on the northwest corner of West Rhode Island Avenue
8 and South Sparkman Avenue, Orange City, Florida; repealing all resolutions or parts of
9 resolutions in conflict herewith; and providing for an effective date.

10
11 Council Member Rasch read the title of Resolution No. 543-09 into the record.

12
13 **Council Member Laputka moved to approve Resolution No. 543-**
14 **09, seconded by Council Member Mahoney.**

15
16 As a point of order, Mr. Reichmann advised that discussion about items on the consent agenda is not
17 permitted. If a council member wants to discuss an item, a motion to remove the item from the consent
18 agenda is required.

19
20 **Motion passed by a 6/0 roll call vote of the Council.**

21
22 **5. ORDINANCES – FIRST READING:** None at this time.

23
24
25 **6. PUBLIC HEARING:**

- 26
27 **A. ORDINANCE NO. 379:** An ordinance of the City Council of the City of Orange City,
28 Florida, amending the Orange City Code of Ordinances, Appendix A, Land Development
29 Code, Chapter 5, Development Orders, Development Permits and Certificates of
30 Occupancy, Section 5.5, Extension of Expiration Date; to establish procedures for a
31 request for extension of a development order; containing a repealer provision, a
32 severability clause and providing for an effective date.

33
34 Council Member Rasch read the title of Ordinance No. 379 into the record.

35
36 Mayor Strickland opened the public hearing by asking if anyone wanted to speak for or against the
37 proposed ordinance.

38
39 Jim Kerr, City Planner came forward and advised there were no changes to this ordinance.

40
41 Council Member Abraham asked if this ordinance is a result of the current state of the economy. He
42 questioned whether other cities had taken similar actions. Mr. Kerr responded a number of projects are
43 on hold due to the state of the economy. This ordinance would allow Council to consider extending a
44 development order rather than allowing it to expire. Mr. Murray commented the legislature is
45 considering a bill that would mandate a three-year extension on all existing development orders.

46
47 The Mayor closed the public hearing.

48

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

- 2
3 **B. ORDINANCE NO. 382:** An ordinance of the City Council of the City of Orange City,
4 Florida; Amending Chapter 2, Administration, Article I, in general, Section 2-3, City
5 Manager- powers and duties, Subsection (d) to provide that the City Manager Shall attend
6 all meetings of the City Council, as required by the City Charter; to amend and simplify
7 Subsection (k); to repeal section 2-6, limitation on use of or access to fire station areas of
8 City Hall, in its entirety; providing for codification, conflicts, severability and effective
9 dated.

10
11 Council Member Rasch read the title of Ordinance No. 382 into the record.

12
13 **Council Member Sherrill moved to adopt Ordinance No. 382 on second**
14 **and final reading, seconded by Council Member Mahoney.**

15
16 Mayor Strickland opened the public hearing by asking if anyone wanted to speak for or against the
17 proposed ordinance, no one appeared. The mayor closed the public hearing.

18
19 **Motion passed by a 6/0 roll call vote of the Council.**

- 20
21 **C. ORDINANCE NO. 383** An ordinance of the City of Orange City, Florida, annexing the
22 Deborah Sauer Property into the corporate limits of the City of Orange City, Florida; said
23 property being generally located on the south side of Florida Avenue, approximately 100
24 feet east of Enterprise Road, containing approximately 0.56 acres; in accordance with the
25 voluntary annexation provisions of Florida Statute 171.044; redefining the boundaries of
26 the City of Orange City amending the appropriate sections of the code of Ordinances;
27 containing a repealer provision, a severability clause and providing for an effective date.

28
29 Council Member Rasch read the title of Ordinance No. 383 into the record.

30
31 **Council Member Mahoney moved to adopt Ordinance No. 383 on second**
32 **and final reading, seconded by Council Member Sherrill.**

33
34 Mayor Strickland opened the public hearing by asking if anyone wanted to speak for or against the
35 proposed ordinance, no one appeared.

36
37 Jim Kerr, City Planner came forward and stated there have been no changes to this ordinance. He said
38 the property is contiguous to city limits and does not create an enclave.

39
40 The Mayor closed the public hearing.

41
42 **Motion passed by a 6/0 roll call vote of the Council.**

- 43
44 **D. ORDINANCE NO. 384** An ordinance of the City of Orange City, Florida, annexing the
45 Mercado Property into the corporate limits of the City of Orange City, Florida; said
46 property being generally located on the south side of Florida Avenue, approximately 300
47 feet east of Enterprise Road, containing approximately 0.51 acres; in accordance with the
48 voluntary annexation provisions of Florida Statute 171.044; redefining the boundaries of

1 the City of Orange City amending the appropriate sections of the code of Ordinances;
2 containing a repealer provision, a severability clause and providing for an effective date.

3
4 Council Member Rasch read the title of Ordinance No. 384 into the record.

5
6 **Council Member Mahoney moved to adopt Ordinance No. 384 on second**
7 **and final reading, seconded by Council Member Laputka.**

8
9 Mayor Strickland opened the public hearing by asking if anyone wanted to speak for or against the
10 proposed ordinance, no one appeared.

11
12 Jim Kerr, City Planner came forward and stated there have been no changes. He said the property is
13 contiguous to city limits and does not create an enclave.

14
15 The Mayor closed the public hearing.

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

- 18
19 **E. ORDINANCE NO. 385** An ordinance of the City of Orange City, Florida, annexing the
20 Monroe Investments Property into the corporate limits of the City of Orange City,
21 Florida; said property being generally located on the east side of Veterans Memorial
22 Parkway, approximately 2,250 feet south of East Graves Avenue, containing
23 approximately 0.23 acres; in accordance with the voluntary annexation provisions of
24 Florida Statute 171.044; redefining the boundaries of the City of Orange City amending
25 the appropriate sections of the code of Ordinances; containing a repealer provision, a
26 severability clause and providing for an effective date.

27
28 Council Member Rasch read the title of Ordinance No. 385 into the record.

29
30 **Council Member Laputka moved to adopt Ordinance No. 385 on second**
31 **and final reading, seconded by Council Member Mahoney.**

32
33 Mayor Strickland opened the public hearing by asking if anyone wanted to speak for or against the
34 proposed ordinance, no one appeared.

35
36 Jim Kerr, City Planner came forward and stated there have been no changes since the first reading of
37 this ordinance. He noted the property is contiguous to city limits and does not create an enclave.

38
39 The Mayor closed the public hearing.

40
41 **Motion passed by a 6/0 roll call vote of the Council.**

- 42
43 **F. ORDINANCE NO. 386** An ordinance of the City of Orange City, Florida, annexing the
44 Monroe Investments Property into the corporate limits of the City of Orange City,
45 Florida; said property being generally located on the east side of Veterans Memorial
46 Parkway, approximately 2,350 feet south of East Graves Avenue, containing
47 approximately 0.60 acres; in accordance with the voluntary annexation provisions of
48 Florida Statute 171.044; redefining the boundaries of the City of Orange City amending

1 the appropriate sections of the code of Ordinances; containing a repealer provision, a
2 severability clause and providing for an effective date.

3
4 Council Member Rasch read the title of Ordinance No. 386 into the record.

5
6 **Council Member Mahoney moved to adopt Ordinance No. 386 on second**
7 **and final reading, seconded by Council Member Sherrill.**

8
9 Mayor Strickland opened the public hearing by asking if anyone wanted to speak for or against the
10 proposed ordinance, no one appeared.

11
12 Jim Kerr, City Planner came forward and stated there have been no changes. He said the property is
13 contiguous to city limits and does not create an enclave.

14
15 The Mayor closed the public hearing.

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

- 18
19 **G. ORDINANCE NO. 387** An ordinance of the City of Orange City, Florida, annexing the
20 James Property into the corporate limits of the City of Orange City, Florida; said property
21 being generally located on the north side of West Fern Drive, approximately 750 feet east
22 of Pecan Drive, containing approximately 2.30 acres; in accordance with the voluntary
23 annexation provisions of Florida Statute 171.044; redefining the boundaries of the City of
24 Orange City amending the appropriate sections of the code of Ordinances; containing a
25 repealer provision, a severability clause and providing for an effective date.

26
27 Council Member Rasch read the title of Ordinance No. 387 into the record.

28
29 **Council Member Sherrill moved to adopt Ordinance No. 387 on second**
30 **and final reading, seconded by Council Member Laputka.**

31
32 Mayor Strickland opened the public hearing by asking if anyone wanted to speak for or against the
33 proposed ordinance, no one appeared.

34
35 Jim Kerr, City Planner came forward and stated there have been no changes since the first reading. The
36 property is contiguous to city limits and does not create an enclave.

37
38 The Mayor closed the public hearing.

39
40 **Motion passed by a 6/0 roll call vote of the Council.**

41
42 **7. RESOLUTIONS:**

- 43
44 **A. RESOLUTION NO. 540-09** A resolution of the City Council of the City of Orange
45 City, Florida, adopting a revised miscellaneous fee schedule for water and wastewater
46 services provided by Orange City Utilities; providing for conflicts; providing for
47 severability; and providing an effective date.

48

1 Council Member Rasch read the title of Resolution No. 540-09 into the record.

2
3 **Council Member Laputka moved to approve Resolution No. 540-09,**
4 **seconded by Council Member Mahoney.**
5

6 Ron Saylor, 361 Dixon Street came forward and commented that originally he had concerns with the
7 options that were presented to Council with this agenda item. Mr. Saylor said he discussed the matter
8 with staff and received a satisfactory response. He said he explained the issue to his neighbors. Mr.
9 Saylor said that last month he and his neighbors saw an increase in their water bills. After a review of
10 last year's bills, he noticed that often the billing cycle was 40 days instead of the 30 days stipulated in
11 the Utility Code. He said the extra days in the billing cycle increase the rate and puts a burden on
12 individuals on fixed incomes. Mr. Saylor asked Council to consider revising the Code so that the meters
13 are read every 30 plus days.
14

15 Paul Johnson, Public Works Director, came forward and noted the purpose of this resolution is to update
16 the Utilities Miscellaneous Fees and Charges. Mr. Johnson reminded Council of the St. John's River
17 Water Management District (SJRWMD) mandate to find supplemental water sources. He said the City
18 must make a decision soon. Whatever program chosen will require changes to the City's infrastructure
19 and the funds raised from this fee increase would be used to fund those capital improvements. Mr.
20 Johnson pointed out that Exhibit A of this agenda item has various scenarios to consider, staff is
21 recommending option 1, a \$4.00 flat fee and a 15% usage fee.
22

23 Mayor Strickland questioned what other communities are doing. He noted that Deltona is charging a
24 flat fee for every user rather than charging the higher users more. Mr. Johnson said that was correct.
25 When staff originally brought forth the matter, a flat fee for each customer was considered. However,
26 staff realized that would place a heavier burden on residential customers and felt that a percentage fee,
27 with a smaller flat fee would put the burden on the high water users and may encourage conservation.
28

29 Mayor Strickland observed that whatever is decided, not everyone will be happy. He expressed
30 concerns the recommended fee is too low and does not address the current issues with the Utility's
31 antiquated infrastructure. Council Member Mahoney clarified the additional fees are to be used for
32 alternative water sources only and not to address the current issues with the Utility. He noted the Utility
33 has already implemented a program to address these issues. Mr. Murray said this fee is specifically for
34 the cost of providing an alternative water source.
35

36 In response to a question from Mayor Strickland, Mr. Johnson said staff is recommending option 1
37 which would raise approximately \$500,000 per year.
38

39 Council Member Laputka suggested a 25% usage charge. He pointed out usage may decrease due to
40 customer conservation and reduce the anticipated capital. With a slightly higher percentage, the target
41 goal may be realized and could encourage high water users to conserve.
42

43 Mayor Strickland and Council Member Sherrill agreed a higher percentage might be required. Mayor
44 Strickland expressed concerns a 25% user fee might not be high enough. Council Member Mahoney
45 said that he voted against this resolution last time. He said he still has objections, however, the City has
46 a mandate to find alternative water and capital funding is necessary to address the matter. Council

1 Member Mahoney said that he would support staff's original recommendation, a \$4.00 flat fee and 15%
2 usage fee. A lengthy discussion ensued about the appropriate fee increase.

3
4 Mayor Strickland pointed out the City would be subject to high fines if there were no response to the
5 SJRWMD mandate. Council Member Mahoney reiterated that a rate increase is necessary to fund an
6 alternate water source, however, he objects to granting a rate increase beyond what staff is
7 recommending because the costs are still unknown. Mr. Murray said the City must make a commitment
8 by October. Depending on the project chosen, it may cost \$1.4 million up front to participate and there
9 would be additional expenses. He said the estimates are four times what customers are paying now.

10
11 Council Member Rasch remarked conservation is important and the Utility must be proactive. He spoke
12 in favor of a rate increase.

13
14 In response to a question from Council Member Abraham, Mr. Johnson said October is the deadline to
15 commit to the Yankee Lake project. Mr. Murray advised a Memorandum of Understanding (MOU) and
16 a \$100,000 payment is required in June. Staff is reviewing the MOU provided and preparing a letter
17 outlining the City's concerns. He expressed his apprehension with providing so much money upfront
18 with no guarantees. If the City commits to this project and it goes into litigation the City's money would
19 be tied up until the matter is resolved.

20
21 Mayor Strickland agreed with Council Member Laputka's remarks, a higher water bill could force
22 conservation and decrease the Utility's income. He questioned whether that had been taken into
23 account. Mr. Johnson responded that it had. He said the Utility anticipates a reduction with heavy
24 residential users, but not the commercial customers. Eighty-five percent of water and 90% of irrigation
25 customers are from the commercial community. In response to a comment from Council Member
26 Mahoney, Mr. Johnson said the Utility currently has a tiered rate structure. As a result, water
27 consumption has decreased over the last few years even though new users were added to the system.

28
29 **Council Member Laputka moved to approve Resolution No. 540-09,**
30 **amending Exhibit A to reflect a \$4.00 flat fee and 25% water usage**
31 **charge per account, seconded by Council Member Sherrill.**

32
33 Council Member Abraham questioned whether this action would solve the problem. Mr. Johnson said
34 the matter will exist for the next four or five years. Once the City has its alternative water source, the
35 water rates will be adjusted to reflect the cost of that water. Mr. Murray said additional fee increases
36 would be assessed in phases.

37
38 As a point of order, Council Member Mahoney questioned whether the vote was for the amendment to
39 Exhibit A or the original motion on the floor. Mr. Reischmann responded the motion on the floor is to
40 approve the resolution with the amended exhibit. Council Member Mahoney asked the City Clerk to
41 read the original motion. The City Clerk said the original motion was to adopt the resolution. Mr.
42 Reischmann advised a motion to amend Exhibit A was required.

43
44 **Motion to amend Exhibit A, of Resolution 540-09 passed by a 5/1**
45 **roll call vote of the Council, with Council Member Mahoney voting**
46 **"no."**

47

1 **Main motion as amended passed by a 5/1 roll call vote of the**
2 **Council, with Mayor Strickland voting “no.”**

- 3
4 **B. RESOLUTION NO. 541-09** A resolution of the City of Orange City, Florida, adopting
5 a policy for responding to public records requests in accordance with the requirements of
6 chapter 119 of the Florida Statutes, repealing all resolutions in conflict herewith and
7 providing for an effective date.
8

9 Council Member Rasch read the title of Resolution No. 541-09 into the record.

10
11 **Council Member Mahoney moved to approve Resolution No. 541-09,**
12 **seconded by Council Member Laputka.**

13
14 Mr. Reischmann noted that as directed staff drafted a public records policy that is consistent with Florida
15 Statutes, Chapter 119.

16
17 Council Member Laputka questioned whether a requester is required to sign the form. Ms. Renner
18 responded staff is not allowed to require a requester to identify themselves. Council Member Laputka
19 suggested the form be revised to indicate signatures are optional. He asked what types of records are
20 exempt. Mr. Reischmann responded certain records are exempt because of safety and privacy issues,
21 police officer records, telephone numbers, and social security numbers are all examples of exempt
22 records according Florida Statutes, Chapter 119.
23

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

- 25
26 **C. RESOLUTION NO. 542-09** A resolution of the City Council of the City of Orange
27 City, Florida, authorizing the city to compensate the West Volusia Chamber of
28 Commerce for conveyance to the city of its interest, if any, in a building constructed on
29 city property by the West Volusia Chamber of Commerce; repealing all resolutions in
30 conflict herewith and providing for an effective date.
31

32 Council Member Rasch read the title of Resolution No. 542-09 into the record.

33
34 **Council Member Mahoney moved to approve Resolution No. 542-09,**
35 **seconded by Council Member Laputka.**

36
37 Mr. Murray said as directed by Council staff has obtained an appraisal on the building the West Volusia
38 Chamber of Commerce (The Chamber) built on City property. The appraised value is \$163,000. He
39 said the City offered to reimburse the Chamber in two installments totaling \$80,000, and the Chamber
40 has agreed.
41

42 Council Member Abraham said he had concerns with the proposed arrangements and did extensive
43 research. According to the City Council minutes, former Mayor Yebba made it clear the building
44 belongs to the City. He said the Chamber was a tenant and questioned why the City would buy a
45 building it owns.
46

47 Council Member Laputka said that he read the research provided to Council. He asked if there were
48 restrictions that would prevent the Council from taking this action. Council Member Laputka stated,

1 “We have no legal obligation, but we do have a moral obligation.” Mr. Reischmann said there are no
2 restrictions; this is a policy decision for the Council. Mr. Murray said at Council’s direction the City
3 will draw up documents that would release the Chamber from its obligations to the building and have
4 the matter recorded with the Clerk of the Court.

5
6 Council Member Mahoney pointed out the Chamber agreed to pay for the appraisal because Council
7 requested it.

8
9 **Motion passed by a 5/1 roll call vote of the Council, with Council**
10 **Member Abraham voting “no.”**

11
12 **8. DISCUSSION AND ACTION:**

13
14 **A. Discussion of Council Districts**

15
16 Ms. Renner noted that staff put together a sample population based map that identifies five districts as
17 required by the Charter. Staff is not proposing these districts for Council approval instead staff provided
18 the map to give a visual idea of where the population is in the City and where the district boundaries
19 may be drawn. The map is based strictly on population, as the law requires that each district must be
20 within 5% of each other in population. Noting the map may be difficult to follow because it does not
21 have street names, Ms. Renner said staff was able to locate a map with street names on it that would be
22 used in the next step of the district planning process. Ms. Renner suggested that Council consider
23 scheduling workshops to finalize the matter. The districts must be established by June 1 in order to have
24 the first reading of the ordinance at the first Council meeting in June.

25
26 **It was the consensus of the Council to schedule four workshops for May**
27 **13, May 18, May 19 and May 20.**

28
29 Ms. Renner noted that not all dates might be required, however; this is a starting point for the Council.
30 Council Member Laputka questioned if the map would be available for public review. Ms. Wendy
31 Hickey, Planning & Zoning Analyst came forward and said that it would be.

32
33 In response to a question from Council Member Mahoney, Ms. Wendy Hickey stated averages were
34 used in the population calculations. Residential complexes with persons 55+ without children were
35 calculated at an average of two per household instead of the 2.38 average used for single family
36 residents.

37
38 Mayor Strickland recessed the meeting at 8:13 p.m., reconvening at 8:22 p.m.

39
40 **B. Request for a Lien Reduction**

41
42 Sgt. Greg Lariscy came forward and stated that he was requesting that Council approve the Code
43 Enforcement Special Magistrate’s February 4, 2009 recommendation to reduce an \$11,800 lien against
44 Raymond Gallahan’s real property located at 521 N. Carpenter Avenue and at 365 Brooklyn Avenue,
45 Orange City, to the amount of \$1,500. Sgt. Lariscy said Mr. Gallahan testified before the Special Master
46 and based on the facts heard, the Special Master recommended the reduction. Sgt. Lariscy noted that
47 since compliance was gained in September 2008, there have been no issues with Mr. Gallahan or his

1 property. He recommended the reduction of the lien and noted that it is affecting the sale of the
2 property.

3
4 In response to a question from Council Member Laputka, Stg. Lariscy said that Mr. Gallahan is in
5 agreement with the recommendation. Mayor Strickland spoke in support of the Magistrate's
6 recommendation. Council Member Laputka concurred.

7
8 **Council Member Mahoney moved to approve the recommendation of the**
9 **Special Magistrate to release the lien against Mr. Gallahan upon a \$1,500**
10 **payment due to by August 31, 2009, seconded by Council Member Rasch and**
11 **passed by 6/0 voice vote of the Council.**

12
13 C. GEL Corporation Developer's Agreement

14
15 Mr. Murray reminded Council this agenda item was previously presented in February with the GEL
16 Corporation rezoning application. The developer agreement was not finalized at that time due to the
17 owner's issues with the language in proposed agreement. Council conditionally approved the rezoning
18 application and granted a 60-day extension to resolve the owner's issues with the developer agreement.
19 Mayor Strickland questioned what steps were taken to rectify the situation since that time. Mr. Murray
20 said the owner was travelling in March. However staff eventually received a completely revised
21 development agreement from GEL's attorney.

22
23 Mr. Reischmann provided a brief summary of events. He said as stipulated in the litigation between the
24 City and GEL Corporation, GEL submitted a rezoning application in February. Council reviewed and
25 approved the rezoning of the GEL property to an I-PUD which requires a developer agreement. Staff
26 submitted a proposed developer agreement to GEL, but the owner had some objections to it. The
27 rezoning was approved with the condition it would not become effective until an executed developer
28 agreement was in place. Council provided a 60 day extension for both parties to meet and resolve their
29 differences. City staff contacted GEL's attorney who provided a version of the developer agreement
30 that was completely different than the version Council reviewed. Staff compared the two agreements
31 and found various changes were made. The most significant change was the removal of the City's
32 oversight role. GEL is not willing to allow the City oversight or the ability to enforce violations.

33
34 Mayor Strickland asked Mr. Evans to come forward. Gene Evans Jr., owner of GEL Corporation 1200
35 S. Leavitt Avenue came forward and stated his concerns with the language in the agreement. He said
36 GEL would be governed by the both the DEP and the City and questioned whether City staff are
37 qualified to interpret DEP rules. Mr. Evans said he would be willing to allow City staff to accompany
38 DEP when conducting an inspection.

39
40 Council Member Mahoney commented that when he reviewed the revised version of the agreement he
41 noted areas that GEL might object to such as the placement of equipment. He stated, "I don't think it is
42 government's role to tell you how to run your business" and it is not the desire of the City to have to
43 enter an enforcement proceeding with GEL. However, it is important to be able to do it should the need
44 arise. Council Member Mahoney expressed his concerns about relying on the DEP to enforce their
45 code. He said that given the City's history with the DEP, he could not support that.

46
47 Mr. Evans pointed out he has allowed people from Orange City on the property, including Council
48 Member Mahoney. That is not the issue. He stated, "The issue is that nobody on the Council has the

1 capability to interpret DEP rules or to make sure that GEL is adhering to them.” Council Member
2 Mahoney agreed, he stated “...But in the unfortunate situation where we have to hire attorneys and
3 professional engineers because of nuisance issues, it would be a protection. This to me is a safe guard,
4 not nothing more.”

5
6 Mayor Strickland commented that he viewed a video about GEL’s recycling efforts and he supports
7 what they are trying to do. He expressed his desire that both parties are able to work through this matter.
8 Mayor Strickland said he supports Council Member Mahoney’s position. He stated, “We’ve got a
9 history to deal with... I like what you are trying to do. However, I cannot support this without GEL
10 agreeing to the development agreement.”

11
12 Council Member Laputka expressed his disbelief that no progress had been made since the last time this
13 matter was before Council. Mr. Murray said he agreed some of the language in the developer agreement
14 could be removed, but given the City’s history with GEL the City’s ability to access the property must
15 remain. He stated Council has the authority to remove that restriction but he does not recommend it. In
16 response to a question from Council Member Laputka, Mr. Murray said he recommends the version of
17 the agreement that was presented to Council in February. He reiterated access to the property is the only
18 change staff would not support. Mr. Evans argued the City already has access to the business under the
19 developer agreement that he provided. He stated, “You are asking me to let you back up or check the
20 DEP.” In response to a comment from Council Member Laputka, Mr. Reischmann explained that GEL
21 submitted a developer agreement that is very different from the agreement reviewed by Council. He
22 noted a copy is attached to the agenda item as Exhibit C. He detailed some of the changes.

23
24 Hugh Strickland, 420 May Street, came forward and said that he read these documents and felt this
25 matter was more about not trusting DEP, than Mr. Evans. However, the language is written in such a
26 way that it would penalize Mr. Evans. He suggested that the focus should be on having the City dispute
27 with DEP not with Mr. Evans. Mr. Reischmann remarked, “We’ve done that.” Council Member
28 Mahoney pointed out the DEP standards are incorporated in the development agreement. Mr.
29 Strickland, concluded by stating there has to be a middle ground that does not rob the City of its ability
30 to do something about the code violations. Council Member Mahoney noted the language Mr. Evans
31 objects to is designed to protect the public’s interest and not to harass a business.

32
33 Dennis Wells, Attorney for GEL Corporation, came forward to discuss his client’s issues with the
34 development agreement. Mr. Wells referenced a letter written by Mr. Allen Watts from Cobb Cole
35 attached as Exhibit C of this agenda item. He said Mr. Watts spoke about code enforcement being a
36 “relatively inexpensive” avenue of bringing GEL into compliance instead of depending on litigation
37 from understaffed state agencies. Mr. Wells suggested that a code enforcement officer might interpret
38 state laws differently than the DEP. He said that would mean his client has to respond to two sets of
39 rules and regulations from the DEP and the City. If these two agencies disagree, his client would be
40 caught in the middle. Mr. Wells said he did not have a solution to the problem but his client is more
41 than willing to meet to find a solution. Mr. Wells stated, “But if you ask GEL Corp to simply hand over
42 all of its rights to you and say that you can decide whether DEP is wrong that is essentially like handing
43 over his child and I don’t think even you would do that.”

44
45 Council Member Mahoney reiterated the terms that Mr. Evans objects to as an insurance policy. It is
46 designed to protect the public’s interest. The City does not want to utilize it but it provides the City
47 security if it were necessary to do so. Mr. Reischmann pointed out that the City’s code enforcement

1 process is before an attorney, a special master. It is not an immediate process, violators are given 30
2 days to comply and extensions may be granted to resolve the matter.

3
4 Mr. Wells said the DEP does not set structural regulations for the City, he questioned why the City feels
5 it has to tell DEP and GEL how to handle environmental matters. He stated, "That is the problem when
6 you serve two masters." GEL disagrees with the City's concerns with DEP's ability to monitor GEL's
7 activities and is concerned there may be problems if the City disagrees with DEP. He said the City's
8 area of expertise is land development regulations and when it comes to environmental issues like
9 recycling, DEP is the expert and GEL feels they should only have to answer to the DEP.

10
11 Mr. Wells concluded by stating that his client cannot accept the developer agreement as presented by
12 staff. He suggested that a public workshop be scheduled or another meeting with staff and a Council
13 Member present to work through the issues. Mr. Evans stated this is not just about the recycling
14 operation. Orange City has tried to include the closed landfill and the old Lake Marie landfill in this
15 matter. Mr. Murray pointed out recycling is not permitted under the City's land use laws at this time.
16 Steps have been taken to write the law to allow recycling operations. The State grants the City land use
17 authority in its home rule and that is the fundamental underlying basis of this issue.

18
19 Mr. Reischmann advised the litigation in circuit court is based upon the City's assertion that the
20 development order GEL received from DEP for recycling in 1994 was for residential recycling which is
21 more limited than what is really going on. He pointed out that if the rezoning application is approved
22 that issue would be resolved. Mr. Reischmann concurred with Mr. Murray, the City has amended its
23 land development code to allow recycling and the proposed developer agreement was designed to
24 incorporate regulations by reference. The landfill is closed but there are some remaining issues such as
25 the required grass cover for the mound. If the grass was to die or blow away, it could create a public
26 safety nuisance for the citizens of Orange City and the DEP may choose not to address the matter
27 timely. That is why staff felt it was important to have access to the GEL property. In addition, there is
28 evidence of ground water contamination from the closed landfill that is migrating. The DEP is doing
29 testing to determine the extent of the contamination and at the same time doing borings to determine the
30 location of the old Lake Marie Landfill. He disputed Mr. Evan's claim that the Lake Marie site is under
31 City property, he said it is definitely under the GEL property and possibly under nearby private property.

32
33 Council Member Sherrill spoke in favor of the original developer agreement allowing the City access to
34 the GEL site. He said all parties need to meet and work out a solution instead of the back and forth.
35 Council Member Sherrill said that it seems like everything that the City has tried to get done with GEL
36 has ended up in litigation. He stated, "I am all for going that route again if we can't sit down and work
37 out a decent compromise."

38
39 Council Member Rasch said he agreed with Mr. Mahoney's comment, the City does not want to tell
40 GEL how operate its business. However, the City needs to have oversight ability to enforce its rules and
41 regulations. He spoke in favor of a meeting with staff to resolve the matter. Council Member Rasch
42 stated, "I am not sure there is real good faith there...I think we need to stick to it."

43
44 Council Member Abraham commented that from his experience working in nuclear medicine often these
45 types of matters have to be addressed in a regulatory type commission. He stated, "They are telling
46 people they have to serve two masters" and that is an issue. He stated this is a misunderstanding and
47 questioned whether there was a way to convince GEL they are being treated the same as any other

1 recycling facility in Florida. He said the City needs to convince GEL the City is not “over enforcing”
2 them and move forward.

3
4 Mayor Strickland expressed his opinion that a workshop was not necessary and suggested that staff
5 again meet with GEL to resolve the matter. Mr. Wells suggested that a Council Member be present at
6 the meeting. A lengthy discussion ensued. Council Member Mahoney said that he has confidence that
7 the City Attorney and the City Manger understand the public need and could resolve the matter.

8
9 Mr. Reischmann summarized by stating staff will coordinate a meeting and try to reach a compromise
10 within the next 30 days. Mr. Murray advised the matter will be before the Council at the first meeting in
11 June.

12
13 **9. NEW BUSINESS:** None at this time.

14
15 **10. REPORTS**

16
17 **A. City Manager**

18
19 Mr. Murray reported that staff would be bringing forward a budget amendment shortly. He requested
20 authorization to use impact fees to purchase and equip a rescue truck for the Fire Department and an
21 animal control vehicle for Code Enforcement. Noting that impact fees can only be used for growth, he
22 said these items qualify. Mr. Murray said he needed Council’s approval to bring forth these documents.

23
24 **It was the consensus of Council that a budget amendment be brought forward to**
25 **the first meeting in June.**

26
27 **B. Mayor/City Council**

28
29 Mayor Strickland said he attended a Volusia Council of Governments (VCOG) meeting yesterday. Part
30 of the discussion centered on smart growth initiatives and the Environmental Core Overlay (formally
31 Map A). He said the presentation was very helpful. He suggested that the moderator come to a City
32 Council meeting and do a “reader’s digest” version of the presentation.

33
34 **C. City Clerk**

35
36 Ms. Renner reminded Council of the banquet fundraiser at the DeBary Country Club on May 7. Ms.
37 Renner also reminded Council the annual Florida League of Cities conference is scheduled for August.
38 She asked Council to let her know if they are interested in going.

39
40 **D. City Attorney**

41
42 The City Attorney had no further report.

43
44 Council Member Mahoney recalled that at a previous meeting, staff had mentioned that an ordinance
45 addressing the maintenance of foreclosed properties and code enforcement would be presented to
46 Council. He asked if the ordinance would include covenants and deed restrictions similar to home
47 owner associations and whether the City could legally implement such an ordinance. Mr. Reischmann
48 said the problem with foreclosed properties in disrepair is occurring throughout the State of Florida.

1 There are three ways to attempt to remedy the situation, through the covenants and deeds restrictions of
2 a home owner association; by local governments adopting ordinances that would place the burden of
3 maintenance of these properties on the mortgagee (banks, lenders, etc.) and by state legislation that
4 would apply statewide. Currently the Legislature is considering legislation that will address these issues
5 statewide. Mr. Reischmann said that the City could incorporate covenants and restrictions by reference,
6 however, adopting an ordinance that would seek to impose the obligation on the mortgagee is a more
7 direct solution. Mr. Murray pointed out that home owner associations must also enforce debt obligations
8 such as streetlights and the City is not seeking to do that. Mr. Reischmann said most cities are using
9 code enforcement to fix the violations and then creating special assessments or tax liens to pay for it.
10 Mr. Murray advised an ordinance would require the mortgage holder on a foreclosed property to notify
11 the City that they have acquired the property.

12
13 **11. APPROVAL OF MINTUES** April 14, 2009, Regular Meeting

14
15 **Council Member Laputka moved to approve the minutes of the April 14, 2009**
16 **Regular Meeting, seconded by Council Member Sherrill and passed by a**
17 **unanimous 6/0 voice vote of the Council.**

18
19 **12. COUNCIL COMMENTS:**

20
21 The Council had no further comments.

22
23 In response to a question from Mayor Strickland, Mr. Murray announced that a meeting with Mayors
24 and City Managers from the four "Partners" (the Utilities of Orange City, DeLand, Deltona and Volusia
25 County) had been scheduled for May 27th 4-6 p.m. in the County Building in DeLand. He explained the
26 "Partners" had been negotiating unsuccessfully with the SJRWMD and decided to move the negotiations
27 to a political level. It is a public meeting and Council may attend but will not be allowed to speak. Mr.
28 Murray stated "It would be a good time to ask some very penetrating questions."

29
30 **13. ADJOURN:**

31
32 There being no further business, Mayor Strickland adjourned the meeting at 9:42 p.m.

33
34 **RESPECTFULLY SUBMITTED:**

APPROVED ON:

35
36
37
38
39
40 Gloria Williams, CMC
41 Deputy City Clerk

May 26, 2009