

1 **MINUTES OF THE REGULAR MEETING** of the City Council of the City of Orange City, Florida, held
2 on Tuesday, March 14, 2006, at 7:00 p.m. in Council Chambers, 201 N. Holly Avenue, Orange City.
3

4 **CALL TO ORDER**

5
6 Mayor Erwin called the meeting to order at 7:00 p.m. and roll call was taken.
7

8 **ROLL CALL**

9
10 **PRESENT:** Mayor Albert T. Erwin; Councilmembers Anthony R. Yebba, Donald C. Sherrill, Joelle R.
11 DeVane, Jim Mahoney, Jeff H. Allebach; City Manager John. J. McCue; City Attorney
12 William Reischmann; City Clerk Deborah Renner.
13

14 **ABSENT:** Vice Mayor Chuck Abell
15

16 The Invocation was given by Councilmember Sherrill, followed by the Pledge of Allegiance.
17

18 **1. PRESENTATIONS: "Hometown Hero" Award – by Riverside Bank**

19
20 Mayor Erwin noted that the Hometown Hero Award presentation was being postponed to the next Council
21 meeting due to the illness of the recipient.
22

23 **Presentation of Annual Financial Audit**

24
25 Finance Director Christine Davis came forward and introduced Tom Reilly, Holland & Reilly, and Rob
26 Kimelman, Greene, Dycus & Co., P.A. who will be presenting the Fiscal Year 2004/2005 Financial Audit
27 report (a copy of the visuals for the audit presentation is attached and becomes a permanent part of these
28 minutes).
29

30 Mr. Reilly noted that the Financial Statements are significantly different due to the implementation of the
31 GASB 34 conversion last year. He stated that the Opinion on the Audit is unqualified again this year;
32 meaning that the financial statements are presented in accordance with Generally Accepted Accounting
33 Principles (GAAP), with no exceptions noted. A single federal audit was performed because the City's
34 federal expenditures were in excess of \$500,000. Mr. Reilly stated that those expenditures primarily related
35 to the hurricane damage in 2004; however, the clean-up costs extended into the 2004/2005 fiscal year.
36

37 Mr. Reilly reported that several significant events took place during the fiscal year. One was the refunding of
38 \$4.6 million worth of water and sewer fund debt in order to reduce the overall debt service payment over the
39 next 16 years by about \$514,000; another was the Line of Credit for \$1.5 million for the West Volusia
40 Partnership Center. He stated that \$450,000 has been drawn down leaving a little over \$1 million to fund the
41 City's share of the joint venture.
42

43 Mr. Kimelman came forward and noted that the General Fund revenues and expenditures reflect a positive
44 trend over the last five years. Revenues and operating transfers in are exceeding expenditures. He reviewed
45 the General Fund Revenues by Source and noted that the intergovernmental revenue category was higher this
46 year because of several FEMA grants. The general government expenditures have increased, in part because
47 of the \$450,000 contribution for the partnership center. Mr. Kimelman referred to the General Fund

1 Unreserved/Undesignated Fund Balance and stated that the balance of \$2.9 million is “very healthy”.

2
3 Mr. Kimelman reported that there is \$4.2 million in the General Fund Cash and Investment accounts, an
4 increase from \$2.8 million last year. In total, including other funds, the City has \$7.7 million in cash; \$4
5 million in banks and \$3.7 in SBA funds. Due to increasing interest rates, the average return on investments in
6 cash was approximately 2.2% for all of the City’s assets, compared to 1.5% last year. He anticipated that the
7 average return would continue to increase.

8
9 Mr. Kimelman noted that over the last four years revenues, have exceeded expenses in the Enterprise Fund,
10 primarily due to several rate increases during that period. Currently there is a significant excess of revenues
11 over expenses, a portion of that due to capital contributions used for enhancements to the system. He
12 commended the City because the debt covenant ratio of 2.16 is the highest it has been in ten years. Mr.
13 Kimelman emphasized that the Enterprise Fund Net Assets have increased over the last four years and are
14 now at \$5.3 million. Mr. Kimelman concluded by stating that the financial statements are in accordance with
15 GAAP and that no significant findings or issues were noted. He commended the staff and management for
16 their assistance and for their due diligence and care in the way they are administering the fiscal policy of the
17 City.

18
19 Mayor Erwin noted that he had only received his copy of the Financial Audit yesterday so he had not had
20 time to review the document; therefore, he reserved his right to comment at a later date. Councilmember
21 Yebba said that it was obvious to him that it was good to be the “heart of southwest Volusia” and the
22 “commercial hub” of this area. Councilmember Allebach stated, “I guess from your explanation, you can say
23 that the books of Orange City are very transparent, there’s no secrets, it’s all above board.”

24
25 **Councilmember Allebach moved to accept the Audit for Fiscal Year**
26 **2004/2005 as presented, seconded by Councilmember Yebba, and**
27 **passed by unanimous 6/0 voice vote of the Council.**

28
29 **Presentation of “State of the City” Report**

30
31 Mr. McCue came forward and read from his written State of the City Report (a copy of which is attached
32 and becomes a permanent part of these minutes).

33
34 BEGIN TAPE 1-B

35
36 Mayor Erwin thanked Mr. McCue for his presentation and said he believed the City Manager had summed
37 up the past year quite well.

38
39 **2. CITIZENS COMMENTS:**

40
41 Ron Saylor, 361 Dixson Street, came forward and spoke on civic community pride; the symbol of which he
42 believed was the American flag. Mr. Saylor reviewed flag etiquette procedures. He also questioned why
43 Hollywood Cemetery was not allowed to annex into the City.

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

46
47 BEGIN TAPE 2-A

1 **4. ORDINANCES – FIRST READING:**

- 2
- 3 **A. ORDINANCE NO. 270:** An Ordinance of the City of Orange City, Florida,
4 amending Section 8.3 of the City's Land Development Code, said Section being the
5 Official Zoning Map of the City of Orange City, Florida; said amendment changing
6 the zoning classification of the Volusia County School Board property, consisting of
7 approximately 105.4 acres of property generally located within the southeast
8 quadrant of West Rhode Island Avenue and the Western Parkway; from its present
9 zoning classification of R-1 Low Density Residential to Residential Planned Unit
10 Development (R-PUD); containing a repealer provision, a severability clause and
11 providing for an effective date.

12

13 **Councilmember Sherrill moved to adopt Ordinance No. 270 on first**
14 **reading, seconded by Councilmember Allebach.**

15

16 James Kerr, Assistant Planner, stated that the City Council is being asked to consider a change of zoning from
17 R-1 Low Density Residential to R-PUD for the new high school. The subject property is located within the
18 southeast quadrant of the proposed West Rhode Island Avenue and the proposed Western Parkway and
19 consists of 105.4 acres, and is currently vacant. Mr. Kerr stated that staff has considered the requirements of
20 the Land Development Code, specifically Section 3.5.2.F, and finds that the application is consistent with the
21 City's Comprehensive Plan; is consistent with the surrounding zoning; it benefits the City and the applicant;
22 has few impacts on the environment; positively impacts the community economically and educationally; there
23 are no adverse impacts on the infrastructure; it does not adversely affect the area; and there is no adverse
24 impact on the value of the area nor on public health and safety.

25

26 Mr. Kerr noted that along with construction of the high school other improvements are planned for the area.
27 They include the extension of West Rhode Island Avenue, construction of the Western Parkway, water and
28 sewer infrastructure, and drainage retention areas. He stated that staff and the Planning Commission
29 recommend that the City Council adopt Ordinance No. 270 thereby rezoning the 105 acres from R-1 to R-
30 PUD. Mr. Kerr noted that Saralee Morrissey, Planner for the Volusia County School District, was available
31 for any questions the Council might have.

32

33 Mayor Erwin stated that he believed the new high school would contribute towards the enhancement of the
34 City. He noted that the City was participating in the roadway infrastructure by obtaining right of way along
35 Hwy 17-92 for the extension of West Rhode Island Avenue. Councilmember Sherrill commended staff and
36 the Planning Commission for their efforts.

37

38 **Ordinance No. 270 passed by unanimous 6/0 roll call vote of the Council.**

39

40 **5. PUBLIC HEARINGS – ORDINANCES – SECOND & FINAL READING:**

- 41
- 42 **A. ORDINANCE NO. 271:** An Ordinance of the City Council of the City of Orange
43 City, Florida, authorizing an additional Line of Credit with First Community Bank in
44 an aggregate principal amount not to exceed \$1.5 million; authorizing the execution
45 and delivery of a Loan Agreement; authorizing the execution and delivery of a Note
46 to Evidence the City's obligation under the Loan Agreement, such Note to be a
47 limited obligation of the City payable from legally available designated revenues as

1 pledged herein; providing for the rights and securities of the owner of the Note;
2 designating the Note as a bank qualified tax-exempt obligation within the meaning of
3 the Internal Revenue Code; ratifying and confirming the Council's authority to
4 execute the Letter of Credit with First Community Bank; making certain other
5 covenants and agreements in connection therewith; and providing for an effective
6 date.

7
8 Mayor Erwin opened the public hearing by asking if anyone wished to speak in favor of or in opposition to
9 the proposed ordinance. No one appeared. The Mayor closed the Public Hearing.

10
11 **Councilmember Sherrill moved to adopt Ordinance No. 271 on second**
12 **and final reading, seconded by Councilmember DeVane.**

13
14 Councilmember Mahoney noted that ordinances usually include a severability clause and questioned if that
15 was applicable to Section 16 of Ordinance No. 271. Mr. Reischmann replied that Section 16 provides for
16 exemption of personal liability for members of the Council whereas, a severability clause simply provides that
17 should any particular section be found to be invalid or void the balance of the ordinance would still be
18 preserved. He suggested that if any portion of an ordinance was removed by a court or otherwise found to be
19 invalid, that the purpose of the ordinance may be eliminated.

20
21 Councilmember Mahoney replied that he was mainly concerned about how the Councilmembers would be
22 affected should Section 16 be found to be invalid and noted that most ordinances do not usually include
23 personal liability clauses because they are not needed. Mr. Reischmann responded that if Section 16 was
24 found to be invalid and the rest of the ordinance was preserved then there would arguably be no codified
25 exemption from personal liability and there would be an additional risk on behalf of the members of the
26 Council. Mr. Reischmann stated, "In this case, we felt it would be appropriate to have Section 16 in there
27 because you, as individuals, are not borrowing \$1.5 million but rather the City of Orange City is. And,
28 furthermore, none of you, as far as I know, are going to be signing the Promissory Note and there is not going
29 to be a personal guarantee included on the Promissory Note. This further clarifies that there is exemption
30 from personal liability. Most importantly, and certainly more central to the question of personal liability,
31 would be whether the Promissory Note itself contains any language that could create personal liability and it
32 does not."

33
34 **Ordinance No. 271 passed by unanimous 6/0 roll call vote of the Council.**

35
36 **6. RESOLUTIONS:**

- 37
38 **A. RESOLUTION NO. 347-06:** A Resolution of the City Council of the City of
39 Orange City, Florida, authorizing acceptance of a proposal from Miller Legg to
40 monitor and assess the ongoing environmental and permit compliance issues at the
41 GEL Landfill to include review of a Groundwater Assessment and Remediation Plan
42 and the monitoring of the proper closure of the C&D Landfill; repealing all
43 resolutions in conflict herewith and providing for an effective date.

44
45 Mayor Erwin suggested that the motion include "services not to exceed \$15,000".

46
47 **Councilmember DeVane moved to adopt Resolution No. 347-06 with**

1 **services not to exceed \$15,000, seconded by Councilmember Sherrill.**

2 Mr. McCue noted that the contract with Miller Legg was previously approved by the City Council at their last
3 meeting; however, the Scope of Services relating to the contract had not been finalized at that time. Adoption
4 of Resolution No. 347-06 will allow Miller Legg to proceed with monitoring the closure of the GEL
5 Corporation C&D Landfill and to review the groundwater assessment and remediation plan imposed by the
6 Department of Environmental Protection (DEP).

7
8 Mayor Erwin noted that the reason he had wanted the motion to include “not to exceed \$15,000” was because
9 that is the estimate of the total cost for Miller Legg’s services. He stated that if the costs should exceed that
10 amount he believed it should come back to the Council for approval. Councilmember Allebach said that he
11 felt it was a “well-spent \$15,000” to make sure the landfill is closed properly. Mr. Reischmann advised that
12 based on the preliminary work done by Miller Legg, Ms. Eger has identified many issues and has shown
13 already how valuable her communications can be with DEP. He stated, “This is a very important time for the
14 City of Orange City to make sure that the DEP is doing its job. We’ve got very important closure issues and,
15 as we speak there is an issue as to whether or not GEL Landfill should be receiving any more materials, at all,
16 given the slope, height, and the footprint. And, just as important, there’s very important issues about
17 groundwater contamination and the amount of money that GEL should be placing in reserves should there be
18 a need for remediation of groundwater contamination in the future.”

19
20 Councilmember Yebba asked if there has been a noticeable drop in traffic at the GEL facility. Mr. McCue
21 replied that there has been; however, trucks are still coming in. He noted that the landfill would, under the
22 permitting process, be able to continue taking in waste until the closure was completed. However, Ms. Eger
23 has informed DEP officials that Miller Legg’s engineering report indicated that the landfill was full, so she
24 questioned why GEL should be able to continue taking in waste when they may have to remove it during the
25 closure process. DEP has agreed to review Miller Legg’s report.

26
27 **Resolution No. 347-06 passed by unanimous 6/0 roll call vote of the**
28 **Council.**

- 29
30 **B. RESOLUTION NO. 348-06:** A Resolution of the City Council of the City of
31 Orange City, Florida, authorizing the Mayor and City Manager to execute an
32 “Operating Agreement” for the partnership center; repealing all resolutions in
33 conflict herewith and providing for an effective date.

34
35 **Councilmember Allebach moved to adopt Resolution No. 348-06,**
36 **seconded by Councilmember Yebba.**

37
38 Mr. Reischmann stated that the proposed Operating Agreement is also in the process of being presented to the
39 other parties to the Agreement. He advised that the changes made from the first draft created by DBCC are
40 the result of three meetings by the attorneys for DBCC, the three cities involved, and also the Chamber of
41 Commerce. Those changes have been incorporated into the Agreement under consideration by the Council
42 tonight.

43
44 Mr. Reischmann noted that construction funding issues are discussed in Section IV of the Agreement and
45 emphasized that this is not going to be a one-time involvement for Orange City or the other two cities
46 involved in the project. Section I states that the Agreement shall be effective for not less than 40 years or the
47 life of the facility, whichever is longer. He stressed that during the course of that term there will be continuing

1 opportunities for the State of Florida to help fund the operating expenses, but, if those funds are not sufficient,
2 there will be an ongoing obligation for the parties to contribute towards the operation and management of the
3 facility. Management will be done by a Not For Profit Florida Corporation which could potentially become an
4 independent authority as set forth in Section II. Operational Funding is addressed in Section V. Mr.
5 Reischmann noted that Facility Ownership and Use is set forth in Section VI and pointed out that certain areas
6 of the facility will be used exclusively by DBCC. Other areas will be available for the public's use, including
7 the City and its residents.

8
9 Councilmember Mahoney referred to Section IV (G) and asked if there was any ambiguity because there was
10 no specific timeframe mentioned should DBCC be unable to obtain matching funds from the State. Mr.
11 Reischmann replied that it was his understanding that DBCC had already applied for funds. Mayor Erwin
12 advised that the request for State funds had to be in by the end of February to qualify for this year's funding.
13 Mr. Reischmann stated that the State of Florida makes its' final decision on funding by May 31st of this year.
14 Councilmember Mahoney asked if he was correct in assuming that if the State of Florida says "no", the
15 contract is terminated. Mr. Reischmann replied, "In the unlikely event that the State of Florida said no, then
16 what would happen is that this Agreement would end. Monies would be refunded, less the monies that have
17 been expended, which arguably are insignificant, relative to the total amount."

18
19 **Resolution No. 348-06 passed by unanimous 6/0 roll call vote of the**
20 **Council.**

21
22 **7. DISCUSSION AND ACTION:**

23
24 **A. Volusia County Schools Interlocal Agreement**

25
26 Mr. McCue stated that the City had received a request to participate in the development of an Interlocal
27 Agreement with Volusia County Schools and a public school facilities element establishing concurrency for
28 public schools. He said that staff recommends participating in the Agreement and the contribution of \$5,000
29 towards the cost of the consultant.

30
31 Councilmember Mahoney questioned exactly what the Council was being asked to support. Saralee
32 Morrissey, Planner for the Volusia County School District, came forward and stated that Senate Bill 360
33 requires each local government to adopt a public school facilities element and to ultimately implement a
34 school concurrency system. The School District is desirous of a unified approach throughout the County with
35 participation by all the cities and the County. Ms. Morrissey said that the School District would take the lead
36 in moving the process forward and provide the management of the contract. Each city is being asked to
37 contribute toward the cost of a consultant's contract in an amount which should not exceed \$5,000. The
38 consultant will develop the public school facilities element, which includes a level of service standard for
39 school concurrency. Each participating city will have a representative on the consultant selection committee.

40
41 **Councilmember Sherrill moved to adopt staff's recommendations and**
42 **the appropriation, not to exceed \$5,000, towards the development of an**
43 **Interlocal Agreement and a public school facilities element, seconded by**
44 **Councilmember DeVane, and passed by unanimous 6/0 voice vote of the**
45 **Council.**

46
47 **8. REPORTS:**

1
2 **A. City Manager**
3

4 Councilmember Mahoney noted that during the Audit presentation the financial health of the Enterprise Fund
5 was discussed as was the fact that the utility rates are lower than most competing providers. He pointed out
6 that the City Manager had stressed that the Enterprise Fund was not used as a source of revenue for the
7 General Fund. Councilmember Mahoney questioned why this was not done and stated, "One of the reasons I
8 would think we should at least consider it is, there are large users of water in this community who are exempt
9 from property taxes and it would be a way for these users to contribute to City coffers and potentially free up
10 the burden on residents."
11

12 Mr. McCue replied that it has been the policy of past Councils to not use the Enterprise Fund as an offset for
13 ad valorem taxes. He noted that revenues from the Fund have not been needed and pointed out that until
14 about two years ago there were not sufficient retained earnings and revenue streams coming into the Fund to
15 consider transferring funds out. Mr. McCue recommended that the Council not consider that option for at
16 least the next couple of years. Mayor Erwin provided an historical background on why reserves from the
17 Enterprise Fund have not been transferred to the General Fund. Councilmember Mahoney stated, "I'm not
18 advocating increased rates; I'm effectively advocating or observing that there is a potential subsidy and that
19 we're ignoring that." Mr. McCue replied, "I agree with the first component. There is a potential subsidy
20 there; we're not ignoring it, we're reserving it." He advised that within the next six months staff will be
21 presenting the Council with a rate structure modification recommendation.
22

23 Mayor Erwin noted that, historically, the City has depended on bond issues to improve the system itself. He
24 stated that in his opinion, the Enterprise Fund should be able to generate enough revenues within the system
25 itself, to enhance a modernization program. The Mayor said the City is just now getting in the position where
26 more of the income could be used for capital improvements. Councilmember Sherrill concurred with the
27 Mayor and noted that just about four years ago the Enterprise Fund was so low that the rates had to be raised
28 or lose the water company. He stated that the water infrastructure is in bad shape so the City needs to
29 accelerate revenue for that Fund. Councilmember Yebba concurred with the Mayor also. Councilmember
30 Mahoney reaffirmed his previous comments regarding the potential subsidy and his reasons for suggesting the
31 Enterprise Fund as a source of revenue for the General Fund.
32

33 **B. Mayor/City Council**
34

35 Mayor Erwin noted that Performance Review forms for the City Manager's evaluation would be distributed to
36 the Council within the next few days. He asked that the completed evaluations be returned to him by April 6th
37 so they can be compiled for the April 11th Council meeting.
38

39 Mayor Erwin reported that the Crime Stoppers organization is requesting a grant of \$1,000 from the City. No
40 action needs to be taken now as the request is for the next fiscal year.
41

42 The Mayor reported that the next WAV meeting is scheduled for tomorrow. He advised that he would not be
43 accepting reelection as Vice Chairman of the Board for the WAV organization and explained the reasons
44 behind his decision.
45

46 Mayor Erwin noted that the annual Freedom Festival, in which the City participates, is coming up. The City's
47 special events will be on Saturday, July 1st this year. He mentioned that last year's theme, Salute to Iraq

1 Veterans was well received and noted that the theme usually recognizes and honors those who have fought for
2 our freedom in the past and in the present. Mayor Erwin said he was looking for someone to work with staff
3 on planning the event.

4
5 BEGIN TAPE 2-B

6
7 **C. City Clerk**

8
9 Ms. Renner reported that Volusia Days in Tallahassee will be April 19th and 20th this year. She requested that
10 if anyone besides Councilmember Allebach and Vice Mayor Abell, planned on attending that they contact her
11 before March 17th. Ms. Renner asked for suggestions regarding what to place on display for the event.

12
13 **D. City Attorney**

14
15 In response to a question from Councilmember Allebach, Mr. Reischmann stated that he had responded to the
16 letter from Paul Chipok, Gray Robinson, and would provide a copy if desired. He stated, "One of the things
17 that we're struggling with right now is continued negotiations and work with the Department of Community
18 Affairs. We're going to have to get that straightened out if we are going to be able to proceed to VGMC.
19 Since we essentially became ready to proceed next Tuesday evening to present our case for a Certificate of
20 Consistency from the VGMC, we had been led to believe by our consultants, indirectly from DCA, that we
21 would be receiving confirmation of their approval. Just recently we've been advised that they are looking
22 potentially for some more information which would delay that determination from the DCA. Should that
23 happen, then it would be necessary for us to advise VGMC. We certainly do not want to continue through
24 this local level of approval until we have State level of approval."

25
26 **9. APPROVAL OF MINUTES:**

27
28 **Councilmember Sherrill moved to approve the minutes of the**
29 **February 28, 2006 Regular Council Meeting, seconded by**
30 **Councilmember DeVane, and passed by a unanimous 6/0 voice vote of**
31 **the Council.**

32
33 **10. COUNCIL COMMENTS:**

34
35 Councilmember Mahoney said Mr. McCue had given a nice presentation of the State of the City.

36
37 Councilmember Allebach concurred with Councilmember Mahoney regarding Mr. McCue's presentation.

38
39 Councilmember Sherrill commended the City Manager for a good address.

40
41 Councilmember DeVane agreed with the rest of the Council and that it was nice to have individual staff
42 accomplishments pointed out.

43
44 Mayor Erwin noted the increasing involvement of the City Council and staff in intergovernmental actions.
45 He acknowledged that he has appeared before the Volusia County Charter Review Committee twice and has
46 received numerous phone calls regarding items under discussion before the Committee. The City Manager
47 has also appeared before the Review Committee to talk about regionalization.

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11. ADJOURNMENT:

There being no further business, Mayor Erwin adjourned the meeting at 8:45 p.m.

RESPECTFULLY SUBMITTED:

APPROVED ON

Leslee Gustafson
Deputy City Clerk
