

1 **MINUTES OF THE REGULAR MEETING** of the City Council of the City of Orange City, Florida, held on
2 Tuesday, June 27, 2006, 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 Erwin and roll call was taken.

7
8 **ROLL CALL**

9
10 **PRESENT:** Mayor Albert T. Erwin; Vice Mayor Chuck Abell; Council Members Jim Mahoney, Don
11 Sherrill, Joelle R. DeVane, and Jeff H. Allebach (Late – Arrived at 7:05); City Manager John
12 McCue; City Attorney William E. Reischmann; City Clerk Deborah Renner.

13
14 **ABSENT:** Council Member Tony Yebba

15
16 The Invocation was given by Council Member Sherrill, followed by the Pledge of Allegiance.

17
18 Mayor Erwin acknowledged John Masiarczyk and Andy Kelly who were present in the audience. Both men
19 are candidates for the County Council .

20
21 **1. PRESENTATIONS:** None at this time

22
23 **2. CITIZENS COMMENTS:**

24
25 Jerry and Darlene Bowers, 1515 S. Volusia Avenue, came forward and stated that they own a non-profit
26 business located on Volusia Avenue. Mr. Bowers said that the location of their store is somewhat hidden, so
27 they have been putting items outside to attract attention to the location and that this has significantly increased
28 their business. However, Mr. Bowers stated that they were notified by the Code Enforcement Officer that this
29 practice was not allowed. He further stated that their landlord received a letter from the City stating that if they
30 continued with this code violation, he would be liable for any fines imposed as a result. Mr. Bowers stated that
31 there are 30 to 40 businesses in the City that place items outside for sale. He asked whether he could apply for
32 a variance to display his items, stating, “we don’t have any other way to be noticed.” Mayor Erwin responded
33 that Mr. Bowers should have been aware of the limitations in City’s codes when he opened his business. The
34 Mayor noted that many businesses on Volusia Avenue are outside the City limits, and therefore, not under its
35 jurisdiction. He reiterated that the City’s code prohibits outside display of merchandise.

36
37 **3. CONSENT AGENDA:** None at this time

38
39 **4. ORDINANCES – FIRST READING:**

40
41 **SPECIAL PUBLIC HEARING**

42
43 **A. ORDINANCE NO. 274:** An ordinance of the City of Orange City, Florida amending Section
44 8.3 of the City’s Land Development Code, said Section being the Official Zoning Map of the
45 City of Orange City, Florida; said amendment changing the zoning classification of certain
46 properties located within the city limits of the City of Orange City, Florida; providing a
47 conflicts clause and severability clause and providing for an effective date.

1
2 Mayor Erwin opened the public hearing by asking if anyone wished to speak on favor of or in opposition to the
3 proposed ordinance. No one appeared. The Mayor closed the public hearing.

4
5 **Council Member Sherrill moved to adopt Ordinance No. 274 on first**
6 **reading, seconded by Vice Mayor Abell.**

7
8 Mr. Reischmann, City Attorney, noted that a revised Page 2 to Ordinance 274 containing a new effective date
9 had been distributed to the Council.

10
11 Jim Kerr, Assistant City Planner, came forward and advised that the purpose of the proposed ordinance is to
12 change the City's Zoning Map to be consistent with the newly adopted Future Land Use Map. Mr. Kerr noted
13 that the proposed Zoning Map will be considered by the Planning Commission on July 12th and a
14 recommendation will be made by them to the Council. Mr. Kerr said that staff recommends approval of
15 Ordinance No. 274.

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

18
19 **5. PUBLIC HEARINGS – ORDINANCES – SECOND & FINAL READING:**

- 20
21 **A. ORDINANCE NO. 267:** An ordinance of the City of Orange City, Florida, amending
22 ordinance 90-05-08, as amended, said ordinance being Orange City's Comprehensive Plan;
23 amending the Future Land Use Map of the City of Orange City; in accordance with the
24 requirements set forth in Chapter 163, Florida Statutes; providing for transmittal to the State
25 Land Planning Agency; providing a conflicts clause and severability clause and providing for an
26 effective date.

27
28 Mayor Erwin read the title of Ordinance No. 267 into the record and opened the public hearing by asking if
29 anyone wished to speak in favor of or in opposition to this Ordinance. No one appeared. The Mayor closed the
30 public hearing.

31
32 **Vice Mayor Abell moved to adopt Ordinance No. 267 on second and**
33 **final reading, seconded by Council Member Sherrill.**

34
35 Mayor Erwin noted that he had received a letter regarding this matter from Thomas Schmelzer from the law
36 firm of Schmelzer & Caterino with a request that it be read into the record. Mr. Reischmann advised that the
37 Mayor could either read the letter or submit it to the Clerk to be made part of the record. The Mayor submitted
38 the letter to the Clerk (a copy of which is attached and becomes a permanent part of these minutes).

39
40 Mr. McCue began his presentation by stating that the City has been attempting to modify its comprehensive
41 plan since March 2004. He advised that there have been numerous meetings since that time with the Volusia
42 Growth Management Commission (VGMC) regarding the amendment. He stated that the recommendation
43 from the VGMC has been for denial. The amendment will be considered by the VGMC tomorrow and Mr.
44 McCue advised that he anticipated yet another denial. He stated, "The bottom line is that the actions we are
45 going to take tonight in what we believe is going to be the conclusion at tomorrow night's public hearing in
46 front of the VGMC staff, is we're going to be denied this comprehensive plan amendment. In that case, the
47 City Council is going to be asked at some certain point tonight, we want to make it clear, that for us to

1 implement it, we're going to have to go to court. There's just no option at this stage of the game." Mr.
2 McCue stated that he was asking for Council's approval of the comprehensive plan amendment prior to making
3 a presentation at the VGMC meeting tomorrow and then Council would be advised as to the details of the
4 litigation that will arise from that meeting. Mr. McCue stated, "The real big picture here tonight is, it's not just
5 a simple, normal comprehensive plan amendment, it is a comprehensive plan amendment that, if approved, will
6 more than likely or almost one hundred percent end up in some form of litigation or official mandated
7 mediation."

8
9 Mr. Reischmann noted that the rezoning approved on first reading tonight is dependent on the approval of
10 Ordinance No. 267. He said that the proposed amendment involves 400 acres of parcels of property within the
11 City. He advised that over 300 acres of the subject property is developed. The proposed land use change is to
12 create a MX or Mixed Use designation. Mr. Reischmann explained the approval process for a comprehensive
13 plan amendment, noting that Volusia County has an additional layer of approval required by the VGMC in the
14 form of a "certificate of consistency." He advised that if the certificate of consistency is not granted, the
15 VGMC can challenge any development orders, such as the proposed rezoning, that are issued based upon the
16 comprehensive plan amendment. He stated that if the plan amendment is not approved by the VGMC
17 tomorrow, the City can challenge that decision with an appeal to the circuit court.

18
19 Mr. McCue said that the VGMC could also deny the staff recommendation to deny the City's application and
20 impose certain constraints and restrictions on the adoption and implementation of the comp plan amendment.

21
22 Mr. Reischmann advised that in spite of the potential consequences of moving forward with the comp plan
23 amendment now, it may be the only chance the City will have to implement it. He said that staff is looking for
24 guidance from the Council as to whether to move forward and fight for the amendment or not.

25
26 Mr. McCue provided background on the issues that have not reached resolution with the VGMC regarding the
27 approval process for this comp plan amendment. He said that the single biggest issue regarding the
28 development of the vacant 100 acres has been traffic and the impact development would have on County roads.
29 Mr. McCue advised that the City has retained a Traffic Engineer, however, the County has not been willing to
30 accept the findings of the study. Mr. McCue said that the roads the County has requested further study on are
31 the roads they are using for reserved capacity for the development of the DRI (Development of Regional
32 Impact). He said that the County is now requiring that the City study the impact that the development of the
33 100 acres will have on the area in a 3.08 mile radius from the DRI area, noting that this encompasses roads
34 situated in Deltona, DeLand and the County. Mr. McCue further noted that none of the cities involved had any
35 issues with the proposed plan amendment. He stated, "From my perspective, we're being held hostage by the
36 County's intervention in this process and it's singularly over roads." Mr. McCue advised that the City's
37 analysis included roads within a one-mile radius which the County is now wanting to extend to the 3.08 miles.
38 Mr. McCue summarized, stating, "So in other words, they've got this capacity on the road systems out here for
39 another 40,000 trips before they have to start really adding new infrastructure, new County road systems, that
40 are not being used and that are reserved in their mind for the DRI, the development of the DRI. And we can't
41 develop in our community because of the constraints they're putting on us in the traffic study." Mr. McCue
42 noted that the State did not object to the City's traffic study. He said that the County has indicated that they
43 would be willing to compromise if the City agrees to a fair share of the improvements and construction of new
44 roads. He said that while the City will eventually have to do that, it should be done under an Interlocal
45 Agreement as directed by the legislature.

46
47 Mr. McCue said that the County is required to follow "concurrency management concepts" which dictate that if

1 a development has an impact that exceeds the current limitations of a governmental infrastructure, the County
2 is responsible for either providing the infrastructure or denying the development. He advised that while this
3 procedure is mandated by the State, it is not generally followed by local jurisdictions. Instead, they are
4 accomplishing it via agreements as the property is developed. He said that developers are required to get
5 approval from the County to access their roads and that this has not created problems thus far.

6
7 Chester Murray, Development Services Director, came forward and stated that the City had accounted for a ten
8 percent build-out of the DRI area in its traffic study, even though development in the DRI has not yet begun.
9 Mr. McCue noted that because of the County's request to do the traffic analysis at the most extreme level, it is
10 based on intensities far in excess of what could be accomplished under the City's code.

11
12 Mr. McCue stated, "Here's my problem, what we are doing with this comprehensive plan amendment and what
13 we're doing with the Orange City development schemata is exactly the direction the City Council has stated
14 they want to go in their strategic planning concept." He said that Mixed Use development is the direction that
15 the smart growth initiative dictates.

16
17 Mayor Erwin expressed his belief that the City should "stand its ground" on the transportation issue at this time
18 as it will become a part of all decisions to be made in the future. The Mayor advised that the issue that bothers
19 him is the objection to mixed use (MX) zoning designation. He noted that the City has been using MX since
20 1994. He said that all studies have shown that MX helps to eliminate sprawl. The Mayor noted that Orange
21 City was the first City in Volusia County to adopt MX zoning and advised that it is one of the basic concepts of
22 smart growth. He said that he has received positive comments on the City's use of MX zoning from many
23 different fronts. Mayor Erwin stated, "I think it's time we stood our ground and move forward on this. If the
24 climate changes on this somewhere down the road, we can always back off. At the present time, with what
25 they're trying to do to us, I just can't stomach it and my recommendation to the Council is to pass this
26 ordinance and let's move on."

27
28 Mr. McCue expressed his belief that the VGMC was overstepping its bounds and cited examples of recent
29 decisions in other cities as well as Orange City. He stated that the VGMC is trying to make the City commit to
30 things that should be decided at the time a development is applied for.

31
32 Mr. Reischmann stated that when the City sent its request to the VGMC for a certificate of consistency, the
33 County submitted a request for more information. He stated that there is a set of rules by which the VGMC
34 must operate. In order to participate in the public hearing on the City's proposed amendment, the interested
35 party is required to file a written request within twenty-one days after submittal of the original application
36 which was November 22nd. The County did not do that. They also had an opportunity to ask to intervene in
37 the public hearing tomorrow night by submitting a request in writing five days prior to the hearing. The
38 County has not done that. Therefore, it will be the City's position at the hearing tomorrow that the County
39 does not have a right to participate in the hearing. Mr. Reischmann reiterated that the County is the only entity
40 that has objected to the City's comp plan amendment. He said that it is not possible to predict what the
41 outcome will be, but that staff wanted to inform the Council of the City's legal position. He advised that there
42 are a number of land owners who have a vested interest in the development of the subject 100 acres of
43 property.

44
45 Mr. Reischmann explained that if the VGMC rules against the City at the hearing tomorrow, the City then has
46 thirty days to file an appeal. If the ordinance under consideration tonight is submitted to the Department of
47 Community Affairs (DCA) without the approval of the VGMC, they must take the VGMC's position into

1 consideration when ruling on the amendment.

2
3 Mayor Erwin noted that if the proposed amendment is not passed, it will have a ripple effect on future
4 developments to come. Mr. McCue said that the County is not only requesting that the City not use MX zoning
5 on the proposed amendment, but that it go back and rezone other properties to eliminate other MX zonings
6 because they don't like it. Mr. Reischmann explained that the County advised that the reason they don't like
7 MX zoning is because when a new MX development is proposed, they must go back and review how all other
8 MX zoned properties are being used.

9
10 Council Member DeVane noted that her employer does work for Mercedes Homes, who is involved in the
11 development of the property under consideration in the proposed amendment, and questioned whether that
12 would represent a conflict of interest which would prevent her from voting on the matter. The City Attorney
13 advised that it would not.

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

16
17 **6. RESOLUTIONS:** None at this time

18
19 BEGIN TAPE 1-B

20
21 **7. DISCUSSION AND ACTION:**

22
23 **A. Frequency Reconfiguration Agreement W/Nextel**

24
25 Mr. McCue stated that the Federal Communications Commission has designated the 800 MHz frequency as a
26 public safety channel. Chief Baskoff stated that when the Police Department initially received its 800 MHz
27 frequencies, one was issued for public safety and one was a commercial band. The commercial band is used
28 by Nextel. The Chief said that the FCC ruled that since Nextel was allotted space on the 800 MHz band, public
29 safety would have to move. The FCC ruled that Nextel would have to pay for public safety's reconfiguration to
30 another frequency. Mayor Erwin clarified that the 800 MHz system the City utilizes with Volusia County is
31 separate from the Nextel frequency. Mr. McCue stated, "This action tonight will then, when this is all
32 completed, we'll have our identified frequencies and at that stage of the game, what we're going to do is get a
33 professional in this arena to value it so that we'll know what value it has on a monetary basis."

34
35 **Vice Mayor Abell moved to recommend that the City Council approve**
36 **John McCue, City Manager, to enter into the agreement with Nextel,**
37 **seconded by Council Member Sherrill and passed by unanimous 6/0**
38 **voice vote of the Council.**

39
40 **B. Selection of Voting Delegate at the Florida League of Cities Conference**

41
42 Mayor Erwin noted that any of the four Council Members attending the conference can be nominated as the
43 voting delegate. He advised that he will not be going and suggested that the Vice Mayor be the voting
44 delegate.

45
46 **Council Member Sherrill moved that Vice Mayor Chuck Abell be the**
47 **voting delegate at the Florida League of Cities conference in**

1 **Jacksonville, seconded by Vice Mayor Abell and passed by unanimous**
2 **6/0 voice vote of the Council.**

3
4 **C. Revised Operations Agreement for Partnership Center**

5 Mr. McCue said that Mr. Reischmann has been working with the City Attorney for Deltona and representatives
6 from DBCC. He advised that the proposed Agreement removes references to the City of DeBary as a partner in
7 the operations of the Partnership Center. Mayor Erwin said that at the last meeting, Council agreed that unless
8 the architects for the Center began negotiations on the façade of the building, the City would not execute the
9 operating agreement. He asked, "Where do we stand?" Mr. McCue responded that the initial design was a
10 "chrome and glass" building. Following discussions with the Development Services Department, that design
11 has been modified and will be revealed at a meeting on Thursday. He said that he has not seen renderings as
12 yet, but that they have been very clear that they will do everything they can to comply with the City's wishes
13 even though they are not required to do so. He said that the City's code requires that a new development blend
14 with surrounding properties and that anything less by the partnership center would set a precedent for future
15 development in the area. Mr. McCue expressed his confidence that the architects have given significant
16 consideration to the City and recommended that the Council rely on those commitments and approve the
17 operations agreement.

18
19 **Vice Mayor Abell moved to go forward with the City Manager's**
20 **recommendation and approve the operations agreement for the**
21 **Partnership Center, seconded by Council Member Allebach.**

22
23 Council Member Mahoney questioned whether there should be a provision in the agreement regarding surplus
24 rental revenues over and above the Non-OCNF expenses. Mr. McCue responded that the OCNF funds would
25 not be mixed with the funds from sales and services and products in the facility. He said that any excess funds
26 would be put into a reserve fund. Revenues generated from operation of the venue will be deposited into a
27 separate bank account and any excess revenue after OCNF expenses will be paid out of that fund and that
28 DBCC has no control over those funds as they are controlled by the operations committee. Council Member
29 Mahoney stated, "Where there is risk, there should be reward. We are on the risk for the Non-OCNF expenses.
30 To the extent that the rental revenues exceed those, to the extent that the facility generates a profit, we who
31 have taken this risk, is the reward ours and should that be specified in here?" Mr. McCue responded that he did
32 not believe it had to be specified because the partners would maintain control over the funds and therefore,
33 decide what money goes where. Mr. Reischmann concurred with Vice Mayor Abell's previous observation
34 that Section 2 of the Agreement references the authority of the Board to make policy decisions in matters such
35 as those under discussion in Section 5, therefore, the Board is being given the power to create a policy on
36 where the funds will go in the event of a surplus. Mr. Reischmann noted that with the withdrawal of DeBary
37 from the partnership, the City's representation grows along with the other remaining partners.

38
39 **Motion passed by unanimous 6/0 voice vote of the Council.**

40
41 **8. REPORTS:**

42
43 **A. City Manager**

44
45 Mr. McCue said that he has been providing Council with correspondence between Orange City and Volusia
46 County regarding the Interlocal Agreement for Fire Services. He said that Chief Hoffman is working with the
47 County to complete the City's application for a COPCN which allows the City to provide Advanced Life

1 Support (ALS) services. He said that he would like to have some one-on-one discussions regarding the role of
2 Fire Services in the Interlocal Agreement. He asked Council to make an appointment if there were additional
3 issues they would like to address. Mr. McCue said that his goal for the Interlocal is that it not detract from the
4 City's ability to provide an adequate level of Fire and EMS responses for the City and that it not cost any more
5 to provide response to the unincorporated area of the County.

6
7 Mr. McCue said that staff has begun initial discussions regarding service provision in the event the proposed
8 annexation agreement with the County moves forward.

9
10 Mr. McCue noted that progress is being made on the renovations to the Utilities building. A landscaping plan
11 is being developed. Work is progressing on the Town Hall project. He asked Council to stop by and view the
12 sample areas of mortar to decide what color will be used. He said that staff favors the color at the bottom of the
13 building and asked whether Council concurs.

14
15 Council Member Sherrill noted that there were some trees down in Country Village following recent storms
16 and asked whether an inspection team could go through the City to identify dead trees near the roadways and
17 make the property owners take them down before they fall down in a storm. Mr. McCue responded that he was
18 not sure that the City has the legal authority to go on private property and tell owners that they must remove
19 trees. He said that it would require that the City have an arborist on staff to identify dead trees that may create
20 a hazard. Mr. McCue requested that Mr. Reischmann research the legalities regarding this matter. Mr. McCue
21 said that he foresaw instances where the property owner may not have the financial resources to pay for tree
22 removal and questioned how these situations would be handled.

23
24 Council Member Allebach asked for a status report on the streetscape project on 17-92 with DOT. Mr. McCue
25 said that funding was supposed to be available in July. Paul Johnson, Public Works Director, came forward and
26 said that the layout for the project was to be completed by DOT by the first part of July. Mr. McCue clarified
27 that DOT is very satisfied with the City's maintenance on 17-92 thus far and expressed his optimism that the
28 City will have an opportunity for input on the project. Mr. McCue advised that the City is also working with
29 DOT about the possibility of putting in medians and eliminating the "suicide lanes" along 17-92. He said that
30 he is proposing that the City do the construction of the medians. Mr. Johnson said that DOT seems favorable in
31 initial discussions. Mr. McCue said that there probably would not be completion of the landscaping before
32 early next year and that the medians could be a year or two away.

33
34 Council Member Mahoney asked for an update as to the status of the contract with Waste Management. Mr.
35 McCue responded that he is meeting with them on Friday morning.

36 37 **B. Mayor/City Council**

38
39 Mayor Erwin reported that everything is in place for the picnic on Saturday. He said that the program will
40 begin at 11:00 a.m. followed by a hot dog lunch. He encouraged all of the Council Members to attend. There
41 will be a parade in Lake Helen on Tuesday and the City is having a float. There will be further music and
42 fireworks on Tuesday evening at the Fairgrounds.

43
44 Mayor Erwin reported that he was unable to attend the WAV meeting last week, but heard that there was a
45 motion made to terminate the organization. However, it requires a vote of all members to carry out such an
46 action and Orange City was not present. A motion was made to amend the interlocal agreement to require a ¾
47 vote to disband the organization. That motion requires a sixty-day waiting period prior to a vote. Mayor Erwin

1 said that his opinion is that WAV will be replaced by another organization eventually. He expressed his hope
2 that it will be replaced by another organization that has more authority than WAV. Mayor Erwin advised that
3 the County Charter Review Commission is also discussing water issues. He said that he met with Chairman
4 Bruno last week and discussed some of the issues surrounding WAV and that they both believe that the
5 organization will not succeed. Mayor Erwin suggested that what is needed is an independent board that has
6 taxing authority such as the Hospital Authority. The Mayor stated, "Right now, I don't know what's going to
7 happen, but it doesn't look good for WAV."

8
9 Mayor Erwin said that he also discussed the annexation issue with the Chairman and he indicated that he would
10 like to see it completed by November of next year.

11
12 Vice Mayor Abell reported that the July meeting of the MPO has been cancelled. At the June meeting there
13 was a lengthy discussion on Congressman Mica's proposal regarding the connector road. The Vice Mayor said
14 that the County has a GPS system with cameras mounted on a vehicle and were going around photographing an
15 inventory of County property and right-of-ways. He said that it was noted that this would be helpful in filing
16 insurance claims in the event of a natural disaster. The Vice Mayor said that the County would like to make a
17 presentation on the system to the City as they would like to make it available to the City for a fee. In addition,
18 the system can be used to identify intersections that are not handicapped compliant to bring them up to date.
19 Vice Mayor Abell said that he would leave information with the City Clerk if anyone has further interest.

20
21 **C. City Clerk**

22
23 The City Clerk had no report.

24
25 **D. City Attorney**

26
27 Mr. Reischmann said that Elaine Wilson, Planning & Zoning Analyst, has been working diligently with Blue
28 Springs Villas to enforce the City's code. There are a substantial number of trees in the community that have
29 died and a demand has been sent to the developer to comply with the regulations in the code and that a demand
30 will be made on their bond if they do not.

31
32 BEGIN TAPE 2-A

33
34 The Homeowners Association for the development has begun functioning and the City will be working with
35 them to deal with the issue of trees that have died on private property. Mr. McCue noted that there are
36 additional issues with the development that are being addressed. Mr. Reischmann said the number of trees
37 involved is in the hundreds. In addition, a letter was sent to the developer informing them that no more CO's
38 would be issued until the problem is resolved.

39
40 **9. APPROVAL OF MINUTES:**

41
42 **Vice Mayor Abell moved to approve the minutes of the June 13, 2006**
43 **Regular Meeting and the June 13, 2006 Workshop Meeting, seconded by**
44 **Council Member Allebach, and passed by unanimous 6/0 voice vote of**
45 **the Council.**

46
47 **10. COUNCIL COMMENTS**

1
2 Council Member Mahoney wished staff “good luck” at the VGMC meeting tomorrow.
3 Council Member Sherrill commended Sgt. Melvin and staff for their work at Country Village the night the trees
4 fell during the storm. He said that the biggest holdup was getting Progress Energy to ground the wires around
5 the fallen trees so removal could begin.
6
7 Council Member DeVane wished everyone a good 4th of July.
8
9 Vice Mayor Abell invited everyone to Volusia County Baptist Church’s “God and Country Day” on Sunday at
10 10:00 a.m.
11
12 Mayor Erwin said “We hope to see you all on Saturday. We hope to see you all Monday, and in the meanwhile
13 pray for good weather for those two days.”
14

15 **11. ADJOURNMENT**

16
17 There being no further business, Mayor Erwin adjourned the meeting at 8:45 p.m.
18
19
20
21

22 **RESPECTFULLY SUBMITTED:**

APPROVED ON

23
24
25 Deborah J. Renner, CMC
26 City Clerk
