

1 **MINUTES OF THE REGULAR MEETING** of the City Council of the City of Orange City, Florida,
2 held on Tuesday, June 22, 2010 at 4:30 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 4:30 p.m. by Mayor Strickland and roll call was taken.

7
8 **PRESENT:** Mayor Harley Strickland; Vice Mayor Tom Laputka; Council Members Jeff Allebach, Tom
9 Abraham, Anthony J. Pupello, Gary A. Blair, O. William (Bill) Crippen; City Attorney William
10 Reischmann; City Manager Jamie Croteau; City Clerk Deborah Renner

11
12 The Invocation was given by Rabbi Paul Faulk, Ariel Congregation, followed by the Pledge of Allegiance.

13
14 **1. ABSENCES:**

15
16 Shall the absence of Mayor Strickland on June 08, 2010 be excused?

17
18 **Council Member Allebach moved to excuse the absence of Mayor**
19 **Strickland from the June 08, 2010 meeting, seconded by Council**
20 **Member Blair and passed with a unanimous 7/0 voice vote of the**
21 **Council.**

22
23 **2. PRESENTATIONS/PROCLAMATIONS:** None at this time

24
25 **3. CITIZEN COMMENTS:**

26
27 **4. CONSENT AGENDA:**

- 28
- 29 a) Disaster Contracts
- 30
- 31 b) June 8, 2010 Regular Meeting Minutes
- 32

33 **Council Member Allebach moved to approve the consent agenda,**
34 **seconded by Council Member Blair and passed by a unanimous 7/0**
35 **roll call vote of the Council.**

36
37 **5. ORDINANCES - FIRST READING:**

- 38
- 39 **A. ORDINANCE NO. 421:** An ordinance of the City of Orange City, Florida,
40 amending Orange City Code Appendix A, the City’s Land Development Code,
41 as adopted by Ordinance No. 157; amending Chapter 8, Section 8.6.1 Schedule
42 of Zoning District Permitted and Conditional Uses; modifying compliance
43 requirements for recycling activities; providing for conflicting provisions;
44 providing for severability; providing an effective date.
- 45

46 Council Member Allebach read the title of Ordinance No. 421 into the record.

47

1 **Vice Mayor Laputka moved to adopt Ordinance No. 421 on first**
2 **reading, seconded by Council Member Blair.**

3
4 Jim Kerr, City Planner came forward and advised Ordinance No. 421 is an amendment to the Land
5 Development Code adding “recycling” activities to the Zoning Matrix and is a requirement of the City’s
6 settlement with G.E.L Corp. Referring to a PowerPoint presentation (a copy of which is attached and
7 becomes a permanent part of these minutes) he discussed the revisions, noting it is the footnotes to the
8 code sections that are being changed to provide clarity. Mr. Kerr said the Planning Commission and staff
9 have considered the matter and found that the changes are consistent and meet the intent of the Land
10 Development Code.

11
12 **Motion passed by a 7/0 roll call vote of the Council.**

- 13
14 **B. ORDINANCE NO. 425:** An ordinance of the City of Orange City,
15 Florida, imposing a temporary moratorium for 180 days on the issuance of
16 any business tax license, permit, conditional use approval, site plan
17 approval and any other official action of the City of Orange City having the
18 effect of permitting or allowing the construction and/or operation of certain
19 businesses within the City of Orange City, related to game rooms, arcades,
20 internet cafes, sweepstakes redemption centers, establishments using slot
21 machines or slot machine like equipment and similar indoor entertainment
22 and amusement activities as more specifically described in this ordinance,
23 excluding approvals and permits for the continuance of an existing
24 business; the temporary moratorium shall apply to all real property located
25 within the corporate limits of the City of Orange City; providing a
26 procedure for extraordinary hardship; providing for severability, conflicts,
27 and an effective date.

28
29 Council Member Allebach read the title of Ordinance No. 425 into the record.

30
31 **Vice Mayor Laputka moved to adopt Ordinance No. 425 on first**
32 **reading, seconded by Council Member Crippen.**

33
34 Mr. Reischmann advised Ordinance No. 425 was brought forward to address concerns with electronic
35 game promotion businesses, such as “internet cafes” “adult arcades” or “promotional sweepstakes”
36 opening in the City. He noted a “dramatic” increase in inquiries about these types of businesses and
37 staff’s concern that these businesses may be deemed to be gambling. He said Chapter 849 of the Florida
38 Statutes defines gambling as “games of chance” with no skill involved that are illegal and enforceable by
39 local municipalities. Mr. Reischmann recalled that some time ago, the City attempted to enforce the
40 Statute and was not able to because the State Attorney would not prosecute. He discussed the difficulty in
41 discerning which of the games are legal and which are not noting that many other local governments are
42 experiencing the same thing. Mr. Reischmann concluded by stating that he is recommending a
43 moratorium for 180 days during which time the matter will be studied and a recommendation made that
44 will be in the best interest of the citizens of Orange City.

45
46 Council Member Blair said that originally he was against this action however he is now willing to support
47 it. He expressed his interpretation of these types of establishments as places where children go to play
48 video games or adults go to have internet access. He questioned whether this moratorium would prevent

1 businesses that do not have “games of chance” from opening in the City. Mr. Reischmann responded in
2 the negative noting the ordinance targets uses and activities that deal with gambling as defined by Statute,
3 not specific establishments. Council Member Blair expressed his concern the State Attorney will not
4 make a ruling as to the legality or illegality of these types of establishments and provide guidance for local
5 municipalities. Mr. Reischmann agreed. He said the former Police Chief was advised by the Volusia
6 County State Attorney’s office that they were unwilling to prosecute these cases. However, the Attorney
7 General’s office is currently initiating criminal enforcement actions in Seminole and Volusia Counties and
8 staff felt it would be appropriate to consider a moratorium at this time. A lengthy discussion ensued about
9 the moratorium. It was the consensus of Council to support this action.

10
11 **Motion passed by a 7/0 roll call vote of the Council.**

12
13 **6. PUBLIC HEARINGS:** None at this time

14
15 **7. RESOLUTIONS:** None at this time

16
17 **8. DISCUSSION AND ACTION:**

18
19 **A. DAV Appeal**

20
21 City Attorney Bill Reischmann began discussion by noting that the appeal under consideration is a quasi-
22 judicial matter. Mr. Reischmann explained that the Disabled American Veterans (DAV) has filed an
23 application for a conditional use permit to conduct certain activities on the property which require the
24 granting of such a permit by the Planning Commission. This matter was considered by the Planning
25 Commission and the conditional use request was approved with conditions. Mr. Reischmann noted that
26 the DAV is working with an organization named “Gamco” to conduct these uses on the property. A
27 development order was issued which detailed the granting of the conditional use and the conditions
28 imposed by the Commission. The DAV, acting in accordance with the provisions of the code, filed an
29 appeal of some of the conditions included in the conditional use.

30
31 Mr. Reischmann reiterated that this is a quasi-judicial matter in which the Council is not making new
32 rules, but rather is applying existing rules to a specific property. He noted that it is necessary to establish
33 that due process has been followed. Mr. Reischmann advised that Council is required to disclose whether
34 they have had any “ex-parte communication” regarding this matter. He explained that this is
35 communication that Council may have had with another party outside of the meeting about the DAV
36 matter.

37
38 Mayor Strickland disclosed that he did have ex-parte communications with several members of the DAV
39 who were unhappy with the outcome of the Planning Commission meeting. They indicated that they
40 would close the facility and move out of the City. The Mayor said that his response was that they should
41 “do whatever you need to do that’s in your interest.”

42
43 No further ex-parte communications were disclosed.

44
45 Mr. Reischmann suggested that the applicant come forward and make a presentation.

46
47 Council Member Abraham asked Mr. Reischmann to define “ex-parte communication.” He questioned
48 whether visiting a DAV facility elsewhere would require disclosure. Mr. Reischmann responded that it

1 should be disclosed if discussions with other DAV members took place. Mr. Abraham stated that he “had
2 done his homework” and had visited a DAV facility in Holly Hill.

3
4 Al Linden, DAV Executive Director, 10344 SW 51st Lane, Gainesville, came forward. Mr. Reischmann
5 administered an oath to those who would be giving evidence in this matter. Mr. Linden stated that he was
6 here because this chapter of the DAV needs funds to support disabled veterans and their families. He
7 advised that “bingo is no longer profitable at this installation.” Mr. Linden said that parking was one of
8 the issues that arose during the meeting with the Planning Commission. He said that the DAV is no
9 longer requesting to operate a lounge at this facility because the request was not approved by the DAV at
10 the state level. He said that the DAV’s lounges do not raise funds. Mr. Linden said that there has never
11 been any “trouble” at any of the other gaming locations in the State. He said that the establishments fall
12 under the “Chuck E. Cheese” law. He advised that the games operated by the DAV are “games of skill.”
13 Mr. Linden said that the IRS has approved the business activity under non-profit laws. He noted that the
14 Orange City facility has operated at its present location for over twenty-five years without a noise
15 problem. He stated that more people attended bingo than would patronize the proposed gaming facility.
16 Mr. Linden said that the DAV is requesting that the parking space requirements be lowered because a
17 lounge is not part of the proposed operation. He advised that the code requires one parking space for
18 every 250 square feet of area in the building which equates to 37 spaces. Mr. Linden stated that in excess
19 of 50 paved spaces currently exist.

20
21 Mr. Linden stated that the DAV is further requesting that service work be conducted while the arcade is in
22 operation. Finally, Mr. Linden stated that the DAV is requesting that the closing time be extended until
23 12:00 midnight. He said that this facility and one in Daytona are providing transportation to the Orlando
24 VAMC in coordination with the Orange City clinic. He asked that Council consider easing the
25 requirements of the conditional use in these three areas.

26
27 Mr. Reischmann clarified that Mr. Linden was referencing items 3, 4, and 6 of the conditional use granted
28 by the Planning Commission.

29
30 Frank Mirabella, 111 Dawn Laurel Lane, Tallahassee, came forward and stated that he is a “life member”
31 of the DAV. He stated that he is a principle in a lobbying firm in Tallahassee called Mirabella, Smith and
32 McKinnon. He advised that he has been in the lobbying business since 1987 and that the Disabled
33 American Veterans Department of Florida is a client of his firm. Mr. Mirabella said that he is a principle
34 in Florida Gamco which partners exclusively with Title 36 U.S. Code Veterans’ Service organizations.
35 He disagreed with the characterization that the DAV is a “private club,” stating that they are “one of
36 America’s finest.” He said that the DAV has a mission to take care of veterans. Because of the legal
37 constraints on the DAV, Florida Gamco hires their members to operate the arcade. Mr. Mirabella said that
38 the arcade in Orange City would employ fifteen DAV members with a bi-weekly payroll of about
39 \$10,000. He said that they would like to operate from 9:00 a.m. until midnight daily like the other
40 arcades in the state.

41
42 Mr. Mirabella continued, stating that DAV organizations come to Florida Gamco when all other options
43 have failed. He stated that the Orange City Chapter is in receivership and that the City would have no
44 services for its veterans and no ability to have their health care needs met. He stated, “Bingo has failed.”
45 Mr. Mirabella expressed his confidence that the DAV could become a viable community center for seniors
46 where they could have a penny arcade with free lunch and free dinner and free beverages. He said patrons
47 could play for as little as 8¢ per spin. He said the facility would be a “community center, a place that’s
48 safe and secure that seniors can gather and be proud of.”

1 In regard to the “legalities,” Mr. Mirabella said that this issue is argued in the legislature every year. He
2 said that the pari-mutuals and slot machine gambling interests hate the arcades. He said that the governing
3 statute has been on the books since 1984. Six items have been set forth and if they are complied with, the
4 activity is not considered gambling. He stated that they comply with all six of them. The issue of whether
5 the game meets the requirement for an application of skill has been tested in the courts many times and it
6 has never failed. Mr. Mirabella noted that the State task force is investigating sweepstakes, not arcades.

7
8 Council Member Blair asked what types of games are found in the arcade. Mr. Mirabella responded that
9 the game looks like any video game. He said there is a broad list of themes. Mr. Mirabella stated that the
10 games do have “spinning wheels” which to the untrained person might appear to be slot machines. He
11 noted the difference that “slot machines are a game of chance and they stop themselves.” He said that his
12 games are equipped with a “skill stop mechanism.” He said that the machines award points which are
13 calculated electronically and won’t pay off more than 75¢ in order to comply with the law. The points can
14 be used to play more games or can be exchanged for merchandise other than cash or alcohol. Mr.
15 Mirabella said that points from their machines can be exchanged for gift cards to Publix, Wal-Mart, or
16 Visa gift cards. He reiterated that there has never been a case where the skill stop mechanism has not met
17 the test of the law.

18
19 Jon Kindell, DAV Chapter 92, 21 Valencia Cir., DeBary, came forward and stated that he is the current
20 Commander of the DAV in Orange City. Mr. Kindell indicated that they have no problem with following
21 Condition 1, following the laws of the State of Florida. Mr. Kindell said that they had “a little problem”
22 with Condition 2, noting that the back of the property abuts a vacant lot. He questioned the need for a six-
23 foot fence in this location. Mr. Kindell stated his understanding of State Law to be that once a patron
24 begins to play a game, they have the right to “run the card out.” He observed that the DAV would be
25 breaking the law by ordering everyone to leave at 11:00 p.m. Therefore, the DAV is requesting that the
26 closing time be extended to “at least 11:00.”

27
28 Council Member Blair asked how long it takes to play a game on a machine. Mr. Mirabella responded
29 that the points on the machine are downloaded onto the card. The machines are programmed so that
30 unless the sufficient number of games have been played, the points will not be downloaded. This creates a
31 situation where players “play for a long time on the machine.”

32
33 Council Member Crippen asked if it was possible to give warning that play was to stop at a certain time in
34 order to get the people out at a designated time. He asked for clarification again as to how the time limit
35 affects game play. Mr. Mirabella responded that the machine withholds credits until the required number
36 of games has been played and if the player stops too soon, they lose their winnings. He said that some
37 people come back and finish the next day. He advised that points are redeemed at one penny per point as
38 required by state law.

39
40 Council Member Blair provided a hypothetical situation stating, “I want to play ten games, so I give you
41 \$7.50.” Mr. Mirabella responded, “No....No” He explained that the player goes to the machine and puts
42 their money into the machine. If \$1 is put into the machine, the player has 100 points. If the player spins
43 and wins \$10 worth of points, the player now has \$11 worth of points. Mr. Mirabella advised that 12 or
44 13 games would be required in order to download all of the accumulated points. He said that the players
45 understand the rules of the game and that “they love it.” Council Member Blair asked whether there were
46 a lot of retirees playing between 11 and 12 at night. Mr. Mirabella responded, “Yes, yes.” He said as a
47 general rule, the facilities close at 12, but when busy they stay open as late as 2:00 a.m.

1 Mr. Kindell said that they tried to comply with all of the conditions, but that there is no way that they can
2 create the number of parking spaces required. He said that the DAV feels they have adequate parking now
3 to accommodate their plans.
4

5 Vice Mayor Laputka asked what hours Bingo was operated. Mr. Kindell responded that it was on
6 Saturday and Wednesday and usually went from 4:30 p.m. until 10:30 or 11:00 p.m. The Vice Mayor
7 noted a significant difference in the hours of operation for the gaming as opposed to Bingo.
8

9 Council Member Pupello asked how many machines would be housed in the building. Mr. Kindell
10 responded that it was 55 machines which would be serviced by 10-15 employees.
11

12 Roger Schultz, 318 W. Blue Springs Avenue, came forward and stated that he lives across the street from
13 the DAV. Mr. Schultz said that he is opposed to having this type of establishment in his neighborhood.
14 He noted that he has enough property to park thirteen cars and suggested that if the DAV is granted
15 permission for their gaming activities, his zoning should be changed so that he can have an auto supply
16 store there. Mr. Schultz asked, "Who wants to live next to this?" He noted the late hours being
17 requested by the DAV and suggested that if permission is granted to operate until 11 p.m., it will stretch
18 on to 2 a.m. in the future. He urged the Council to keep the requirement for a fence. Mr. Schultz noted
19 that the quality of life in Orange City would not improve because of the DAV's requested activities. He
20 discussed the addictive qualities of games such as those proposed and the negative effects this addiction
21 has on people's lives. He urged Council to "keep this out of our community" by whatever means
22 available. Vice Mayor Laputka noted that Mr. Schultz also spoke in opposition to this request when it was
23 being considered by the Planning Commission. Mr. Schultz said that he could provide evidence to
24 support his position if Council so desired.
25

26 Henry Durica, 1310 E. Lansdowne came forward. Mr. Durica noted that he is a member of the Orange
27 City Planning Commission. He stated, "There is a bar on the property is there not?" Several members of
28 the DAV responded, "No." Mr. Durica said that he was told that there was a bar. Discourse between
29 members of the DAV in the back of the room and Mr. Durica began and Mr. Reischmann intervened and
30 advised that it is important for speakers to come forward and identify themselves and speak to the Chair
31 (Mayor) in order to create an accurate record of the meeting. Mr. Durica proposed that because the
32 building is in a residential neighborhood, activities should be stopped at a set time each evening and that
33 the building evacuated. He noted that Bingo was held two nights per week until 9:30 p.m. Mr. Durica
34 noted that the payroll to operate the gaming activities would be \$10,000 every other week. He questioned
35 how many of the businesses along 17-92 had similar payrolls. He noted that Gamco only makes a 6%
36 return on the operation and suggested that the remaining proceeds should be adequate to fund any
37 improvements needed on the property. In conclusion, Mr. Durica noted that the partnership between the
38 DAV and Gamco would mean that the DAV was no longer private. Ms. Hickey responded that at the time
39 this conditional use request was heard by the Planning Commission, a building permit was in process for a
40 lounge at the DAV. Since then, the request for a permit has been pulled.
41

42 Mr. Reischmann said that any final closing comments should be made at this time.
43

44 Al Linden, 10344 SW 51st Lane, Gainesville, came forward and said that 23 years ago, the DAV had 133
45 chapters. That number is 70 today. He said the DAV operates about 30 homes. Mr. Linden noted that the
46 DAV employs local people to work. He stated that he "took exception" to the parking requirements
47 imposed by the Planning Commission. He reiterated that the requirements were due to plans for a lounge
48 at the DAV, however, those plans have been changed. Mr. Linden stated, "There isn't going to be a

1 lounge there for quite a while.” He noted that there hasn’t been a lounge at the facility in 20 years. He
2 said that the DAV runs 52 vans in the state every day, including one that comes from a facility “up the
3 road” to provide rides. Mr. Linden concluded by stating, “We would request your favorable consideration
4 of especially the parking, and also if possible the extension of the time.”
5

6 Mr. Reischmann summarized stating that the DAV is asking Council to consider (1) a reduction in the
7 required conditional number of parking spaces, (2) to extend the condition on the closing time from 11
8 p.m. to 12 p.m., and (3) a change to condition number 6 regarding the closure of the facility when
9 activities are taking place in the assembly area.
10

11 Vice Mayor Laputka noted that in addition to removing conditions, Council also has the ability to add
12 additional conditions. Mr. Reischmann clarified that during tonight’s hearing, Council has the opportunity
13 to review the decision of the Planning Commission. He discussed the documents and information entered
14 into the record thus far.
15

16 In response to a question from Council Member Crippen, Mr. Mirabella said that the DAV would have 55
17 machines on the premises. He noted that the law requires a minimum of 50. Council Member Crippen
18 noted that the lounge would require twenty additional parking spaces, however, that point in moot now.
19 He further noted that the meeting hall requires 85 additional parking spaces. He asked how often
20 meetings are held in the hall and how many people attend. Mr. Kindell responded that meetings are held
21 on Tuesday and Saturday mornings and one general membership meeting each month. Attendance is
22 usually about 10 people. He said that as the code applies, there would be a requirement for about 32
23 parking spaces for the meeting hall.
24

25 Council Member Crippen asked for clarification on the parking requirements. Ms. Hickey responded that
26 the initial parking calculations were done treating the hall as a private club. She noted that the code
27 requirements were also different at that time. She observed that the current requirements are based on
28 today’s code.
29

30 Council Member Abraham asked Mr. Schultz if the neighborhood experienced any problems from the
31 Bingo activities held at the club previously. Mr. Schultz responded, “Absolutely none.” Council Member
32 Abraham questioned why problems were anticipated from the arcade participants. Mr. Schultz responded
33 that Bingo involved small amounts of money. He noted that the DAV would have to make much more in
34 order to be successful because they must make payroll and pay Gamco their share. Mr. Schultz stated that
35 when Bingo was held, the entire property was covered with cars two days per week. He observed that the
36 proposed operation would be every day. He suggested that the grass parking area would break down if it
37 is parked on every day. He stated, “That’s why anybody with good common sense would demand, if this
38 is approved and please, don’t approve it, please add stipulations.”
39

40 Vice Mayor Laputka advised that the extended operating hours would adversely affect the neighborhood.
41 He stated, “I don’t think this is a good thing for that particular neighborhood to be doing.” Mayor
42 Strickland asked if the Vice Mayor wanted to change the hours of operation. The Vice Mayor suggested
43 reducing the hours of operation to reduce the impact on the neighborhood.
44

45 Council Member Crippen questioned whether there had been an increase in traffic at the DAV in Holly
46 Hill since the arcade opened up. Richard Tolfa, Senior Vice Commander for the Department of Florida,
47 came forward. He said that there have been “no problems whatsoever” since the arcade opened in Holly
48 Hill last November. He said that the amount of traffic has not increased at all because Bingo has been

1 reduced to one night per week. Bingo draws about 100 people. He said that they run the arcade and
2 Bingo at the same time. Mr. Tolfa reiterated that there have been no problems with traffic. He said that
3 the returns from Bingo are diminishing as the number of players declines. He said that the payout on any
4 given night for Bingo is \$3,000. He said that when the arcade is operating without Bingo, there are 12 to
5 15 cars with a maximum of 20 cars in the lot. Mr. Tolfa said that they have 55 machines.

6
7 Council Member Blair asked whether the Holly Hill facility borders a residential area. Mr. Tolfa
8 responded, "absolutely."

9
10 Council Member Abraham stated that what he saw in Holly Hill was "a very peaceful place." He said that
11 he spoke with two employees there who said that so far, they have not had any problems. Council
12 Member Abraham referenced an article (a copy of which is attached and becomes a permanent part of
13 these minutes) which stated that arcade games do not link to crime or any social ills. He said that
14 regulations should be made with a scientific basis.

15
16 Vice Mayor Laputka asked what affect Ordinance No. 425 has on the proposed conditional use. Mr.
17 Reischmann responded that it doesn't affect it at all. He said that the moratorium will not take effect until
18 after second reading. He advised that "the doctrine of pending legislation" can be applied to those
19 applying to open an establishment from this point forward. However, the DAV's request was submitted in
20 February 2010, long before a moratorium was considered. He reiterated that it does not prevent Council
21 from making a decision tonight on the appeal of the Planning Commission's decision.

22
23 Vice Mayor Laputka clarified that the Council could either let the decision of the Planning Commission
24 stand or alter that approval with additional conditions. Mr. Reischmann advised that the decision of the
25 Planning Commission would have been final after a fifteen-day waiting period. However, because of the
26 appeal, Council has the power to review the decision of the Planning Commission to include changing the
27 conditions to meet the standards in the Land Development Code.

28
29 Mayor Strickland stated, "Although I support and think the DAV is important, I don't know that this is
30 good for Orange City. But these folks, under our present rules, are entitled to do this. But what we're
31 entitled to do, as I understand it, is to set the conditions for them to do that."

32
33 Mr. Reischmann noted Condition No. 1 which was imposed by the Planning Commission noted that if the
34 use is ever deemed to be illegal in the future, the conditional use permit will be automatically revoked.

35
36 Mayor Strickland stated that he would like to uphold the conditions of the Planning Commission. He said
37 that his only concern is that 9 a.m. to 11 p.m. for hours of operation "is a lot of time." He said that he
38 would like to see that reduced to 10 a.m. to 10 p.m.

39
40 Council Member Blair said that he did not believe any changes were necessary. He stressed that it is
41 important to preserve the quality of life for the residents in the area. He said that he would not vote in
42 favor of the appeal.

43
44 Council Member Crippen said that he agreed with the conditions as set by the Planning Commission. The
45 only one that he took exception to was the required number of paved parking spaces. Council Member
46 Crippen cited the report from Holly Hill regarding the volume of patrons at the arcade at any given time.
47 He questioned whether paving could be delayed until there was enough time to assess the impact after
48 opening.

1 Ms. Hickey stated that the code requires that if there is parking used on a regular basis, it must be paved.
2 She noted the hours of operation and the fact that it will be open seven days per week and said that it must
3 be considered based on maximum occupancy. Ms. Hickey stated that the paving must be completed
4 before a business tax receipt could be issued.
5

6 Council Member Pupello stated that the conditions imposed by the Planning Commission were “a good
7 start.” He asked whether staff had any further conditions they wanted to impose. Ms. Hickey distributed
8 a list of additional conditions staff is requesting Council to consider (a copy of which is attached and
9 becomes a permanent part of these minutes). Ms. Hickey read the list.
10

11 Mr. Reischmann advised that “due process” requires that the applicant be given an opportunity to respond
12 to the list of proposed additional conditions.
13

14 In response to a question from the Mayor, Ms. Hickey advised that while some of the issues were touched
15 on, none of the additional conditions were considered by the Planning Commission.
16

17 Mayor Strickland asked the City Manager to comment. Ms. Croteau commended the Planning
18 Commission’s review of the application and stated that she fully supports the limitations placed by the
19 Commission. She stated that she felt it would be acceptable to place further restrictions on the hours of
20 operation. She said that she did have concerns about these types of venues being in the City which is why
21 the moratorium ordinance was developed. She said that the City needs to adopt the stance that they are
22 not legal or that they should be zoned into I-1 or I-2. Ms. Croteau spoke in support of the age restriction.
23

24 Council Member Allebach said that he has not had any previous conversation regarding this matter. He
25 said that parking considerations in the “historic district” should be different than for the large stores like
26 Target and Wal-Mart because there is no room for huge parking lots. He noted that he passes by Target
27 every day and the parking lot is never full. Council Member Allebach stated that while he does not feel
28 this is the best thing for the City, he is not convinced that it will have a terrible impact either. He noted
29 that the legislature will not take a stand on the issue. He noted that the fence is required by the code in all
30 developments. He said that 11:00 p.m. is a sufficient closing time. Council Member Allebach noted that
31 there are several businesses in the area which are closed at night that may be willing to accommodate
32 overflow parking. He said that he felt it would be unfair to impose a requirement for a traffic study when
33 none of the new schools was required to fund road improvements. He said that he did not feel the
34 additional traffic generated by the few meetings to be held at the facility would have enough impact to
35 require any additional provisions. Council Member Allebach reiterated that every business in the historic
36 district would have to be given some relief for parking or they will not be able to exist. He concluded by
37 stating, “To me, I would leave everything the same, drop the parking to about fifty total spaces and see
38 what happens.”
39

40 Council Member Crippen noted that it would not be fair to impose a requirement for significant
41 improvements to the property while the moratorium is pending and the establishment could be ruled
42 illegal. He suggested approval with the existing facilities and reassessing the situation after a couple of
43 months. He reiterated that the DAV in Holly Hill did not have excessive increases in patronage of the
44 facility once the gaming was started.
45

46 Ms. Croteau suggested that the application could be approved with the current parking with a condition
47 that it be reviewed by staff in six months and any needed adjustments could be made at that time.
48

1 Vice Mayor Laputka stated that there are several additional conditions which should be considered such as
2 the age restrictions and hours of operation. He suggested that the hours should be 9 a.m. to 9 p.m. Mayor
3 Strickland concurred.

4
5 Ms. Hickey clarified that registration of the machines would help with inspection by code enforcement
6 and tracking of the gaming activities. Mr. Reischmann suggested that this requirement could be
7 incorporated into Condition No. 1.

8
9 Vice Mayor Laputka stated that he agreed with most of the additional conditions proposed by staff.

10
11 Mr. Schultz came forward and suggested that the fence requirement be to the west side of the property
12 from the building to the end of the property. He said that it isn't the back of the property, it is the back
13 side of the property which requires screening. He also said that an eight foot fence would be preferred.
14 The Mayor concurred that it "makes more sense" to require the fence on the west side of the property as
15 opposed to the rear.

16
17 In order to facilitate the development of a motion to cover all of the changes, Mr. Reischmann suggested
18 that Council vote on each of the conditions recommended by the Planning Commission and then consider
19 the additional conditions suggested by staff.

20
21 Mayor Strickland asked whether the DAV would like to have the matter continued until the next Council
22 meeting so that they have an opportunity to consider the additional conditions suggested by staff. Mr.
23 Mirabella stated that the DAV was ready to proceed with the hearing.

24
25 Mayor Strickland suggested that Council begin by considering the seven conditions imposed by the
26 Planning Commission.

27
28 **Condition #1:** The conditional use shall be automatically revoked if it is determined that the use is in
29 violation of Chapter 849, Florida Statutes or is otherwise determined to be an illegal use. The applicant
30 recognizes that approval makes no statement as to the lawfulness of the actual activities conducted at 301
31 West Blue Springs Ave. This approval relates solely as to whether the proposed business activities are a
32 use allowed in the CG-1 Zoning District. Applicant recognizes that the Planning Commission makes no
33 guarantees, promises or comments relating the legality of the business operations. Applicant recognizes
34 that this approval does not prevent the City of Orange City or law enforcement from fully enforcing codes
35 and statutes against the Applicant and those associated with the proposed business.

36
37 **It was the consensus of Council that Condition #1 as imposed by the**
38 **Planning Commission in the attached document be upheld.**

39
40 **Condition #2:** A six foot opaque fence is required along the rear property line.

41
42 Council Member Crippen suggested that it should be the west property line rather than the rear property
43 line. Ms. Croteau noted that it would be to the rear of the building. Council Member Allebach restated
44 that the fence should be on the west side of the property from the rear of the building to the rear property
45 line. Ms. Hickey confirmed that when commercial property abuts residential either a wall or a fence is
46 required. The Mayor observed that would require a fence on both the west and north sides. Council
47 Member Crippen suggested that a fence across the entire west side may not be needed. Mr. Schultz
48 concurred stating there were no windows. He said the fence just needs to be from the building to the back

1 property line. Discussion continued regarding the purpose of the fence and where it should be placed.
2 Council Member Blair suggested that the requirements of the code should be followed.

3
4 **Council Member Allebach moved to require a six foot opaque fence**
5 **from the west side of the property from the rear of the building to the**
6 **rear property line at the north across the north side of the property to**
7 **the east portion of the property, seconded by Council Member Crippen**
8 **and passed by 5/2 roll call vote of the Council with Council Member**
9 **Blair and Mayor Strickland voting “no.”**

10
11 **Condition #3:** The hours of operation of the use are limited to 9 a.m. to 11 p.m. in order to minimize the
12 impact to the surrounding residential properties.

13
14 **Council Member Allebach moved to set the hours of operation at 9 a.m.**
15 **to 11 p.m. as recommended by the Planning Commission, seconded by**
16 **Council Member Abraham. Motion failed by 2/5 roll call vote of the**
17 **Council with Council Members Crippen, Pupello, Laputka, and Blair**
18 **and Mayor Strickland voting “no.”**

19
20 **Council Member Laputka moved to set the hours of operation at 9 a.m.**
21 **to 9 p.m., seconded by Council Member Pupello.**

22
23 Mr. Mirabella came forward and stated for the record that limiting the operation to these hours will “kill
24 the arcade.” He advised that the arcade can’t function on those hours.

25
26 **Motion passed by 5/2 roll call vote of the Council with Council**
27 **Members Abraham and Allebach voting “no.”**

28
29 **Condition #4:** Applicant shall have 100 total paved parking spaces which is not inclusive of any non-
30 paved temporary or occasional use parking.

31
32 **Council Member Allebach moved to allow operation with existing**
33 **parking with a review by staff in six months with possible additional**
34 **parking required at that time, seconded by Vice Mayor Laputka and**
35 **passed by 5/2 roll call vote of the Council with Council Member Blair**
36 **and Mayor Strickland voting “no.”**

37
38 **Condition #5:** Applicant acknowledges that temporary non-paved occasional parking shall not be used
39 more than two days per week for a maximum of ten hours per week. In the event that the maximum use is
40 violated, the property shall be subject to code enforcement action and the Conditional Use shall be
41 revoked.

42
43 **Council Member Allebach moved to apply Condition #5 as imposed by**
44 **the Planning Commission, seconded by Council Member Laputka.**

45
46 Ms. Hickey clarified that when non-paved parking becomes over used, issues develop related to pollution
47 of the ground from oil drippage onto the soil. This can also adversely affect stormwater runoff.

1 **Motion passed by unanimous roll call vote of the Council.**

2
3 **Condition #6:** During times when activities are taking place in the assembly areas, the remainder of the
4 facility, including but not limited to the arcade will be closed.

5
6 Council Member Blair stated that he did not feel that this condition was needed since plans for the Lounge
7 were dropped. Ms. Hickey stated that staff's concern was that there would be simultaneous activities
8 going on without knowing how many people would attend and if there would be adequate parking. Ms.
9 Hickey suggested deleting the current requirements of Condition #6 and replacing it with a new condition
10 that if a lounge opens, the DAV would be required to undergo a new review of the parking requirement
11 based on the entire use of the facility.

12
13 **Council Member Laputka moved to delete the requirements of**
14 **Condition 6 as imposed by the Planning Commission and replace them**
15 **with a new requirement that if a lounge is ever opened, the DAV would**
16 **be required to undergo a new review of the parking requirements based**
17 **on the entire use of the facility, seconded by Council Member Crippen**
18 **and passed by 6/1 roll call vote of the Council with Council Member**
19 **Allebach voting "no."**

20
21 **Condition #7:** The applicant will obtain all applicable permits before this Conditional Use shall be
22 effective.

23
24 **Council Member Allebach moved to imposed Condition #7 as written,**
25 **seconded by Council Member Crippen and passed by unanimous 7/0**
26 **roll call vote of the Council.**

27
28 Mayor Strickland asked Mr. Mirabella to come forward to address the additional conditions proposed by
29 staff tonight.

30
31 Mr. Mirabella came forward and stated that there was no way for the DAV to make the arcade work with
32 the hours of 9 a.m. to 9 p.m. He stated, "If you intended to make sure that the arcade would not be at
33 DAV 92, that's been accomplished by that action." He asked Council to reconsider this condition. He
34 noted that the machines cost over \$200,000. He advised that when a new arcade is opened, there is a loss
35 of \$12,000 to \$20,000 per month for the first six months. He reiterated that this condition is the
36 equivalent of a denial.

37
38 Mayor Strickland polled the Council, asking if each would like to reconsider. Council Member Blair
39 responded, "absolutely not." Council Member Crippen noted that the arcade in Holly Hill is open from 9
40 to 12.

41
42 Mr. Mirabella reiterated that the reason there are fifty machines is that the Legislature "didn't want the
43 machines on the street corners, they didn't want them in the 7-11's." He said that just because there are
44 50 machines, it doesn't mean there will be fifty people playing. He advised that most often there are 12 to
45 20 people in the arcade.

46
47 Mayor Strickland returned to the poll of the Council regarding a reconsideration of the hours of operation.
48 Council Member Crippen stated that he would like to reconsider. Council Member Pupello stated, "no."

1 Council Member Allebach stated, “yes.” Council Member Laputka stated, “no.” Council Member
2 Abraham stated that he already agreed with Council Member Allebach that it should be 11:00. The Mayor
3 said that he did not wish to reconsider. The majority of the Council (4 members) were not in favor of
4 reconsideration.

5
6 **Remaining Additional Conditions**

7
8 **Condition #8:** Implement age restrictions of the clientele to no one under the age of 21 allowed.

9
10 Mr. Mirabella remarked that the arcade was for seniors and that young people did not wish to attend.

11
12 **Council Member Laputka moved to impose an age restriction condition**
13 **of 21 years of age to attend the arcade, seconded by Council Member**
14 **Allebach and passed by 5/2 vote with Council Member Allebach and**
15 **Mayor Strickland voting “no.”**

16
17 **Condition #9:** Requiring the registration for each amusement device, to include machine specifications
18 however operated, at the time of application for a business tax receipt.

19
20 Mr. Mirabella advised that every amusement machine is licensed by the Florida Department of Revenue
21 every year. He said that they are registered and licensed by the State and could provide a copy of their
22 license to the City.

23
24 Council Member Allebach suggested that since the State already provides regulation, the City should not
25 have to. He said that would apply to each of the next three additional conditions. Mr. Reischmann
26 clarified the conditions by stating that the second condition ensures that the City can make sure that the
27 first condition imposed by the Planning Commission is fulfilled.

28
29 Mr. Mirabella responded that the arcade has a “point of sale” system that “keeps track of everything that
30 happens on every machine every minute of every day.” He said they would be happy to provide computer
31 access to any official designated by the City. He said that subsequent to the Indian Compact signed last
32 year, the only type of machines that remained legal under 849.16 F.S. are the arcade games proposed by
33 the DAV.

34
35 **Condition #10:** Requiring the applicant to keep the registered machines, specifications, records or
36 acquisition, location and disposition of machines and records of prize awards open to law/code
37 enforcement.

38
39 **Condition #11:** Any machine on premises shall not violate the state laws against slot machines and shall
40 be in full compliance with Section 849.16 Florida Statutes.

41
42 **Council Member Allebach moved to include Conditions 9 and 10,**
43 **seconded by Council Member Blair and passed by unanimous 7/0 roll**
44 **call vote of the Council.**

45
46 **Condition #12:** Prohibit any signage referring to gambling or games of chance.

47

1 Mr. Mirabella said that the main problem experienced by the DAV is that the public is under the
2 impression that the games are not open to the public. He said that generally they have a sign that reads
3 “Arcade – Public Welcome.”
4

5 **It was the consensus of Council not to include Condition #12.**

6
7 **Condition #13:** Require a Traffic Study
8

9 **It was the consensus of Council not to include Condition #13.**

10
11 **Condition #14:** Any additional lighting added to the sign shall comply with current regulations.
12

13 **It was the consensus of Council not to include Condition #14 because it**
14 **is already required by code.**
15

16 **Condition #15:** No alcoholic beverages including beer & wine shall be consumed on premises.
17

18 **It was the consensus of Council not to include Condition #15 because**
19 **plans for a lounge had been abandoned by the DAV.**
20

21 **Condition #16:** Prohibit the use of gift certificates, gift cards, credit cards or other cash substitute.
22

23 Mr. Mirabella said that these are the types of prizes given away because they can't store items such as
24 appliances.
25

26 **It was the consensus of Council not to include Condition #16.**

27
28 **Condition #17:** Prizes to be limited to \$5.00 retail value and be kept on premises.
29

30 **It was the consensus of Council not to include Condition #17.**
31

32 Mr. Reischmann suggested that a formal motion be made and seconded to ratify the changes that were
33 made to the seven conditions recommended by the Planning Commission and the adoption of the new
34 conditions recommended by staff.
35

36 **Council Member Allebach moved to codify all of the stipulations from**
37 **the Planning Commission that were agreed upon plus the new**
38 **conditions brought forward seconded by Vice Mayor Laputka and**
39 **passed by 6/1 roll call vote of the Council with Council Member Blair**
40 **voting “no.”**
41

42 **B.** Discuss Meeting Start Time
43

44 Ms. Croteau discussed the “trial” period for the meeting start time. She said some citizens feel the 4:30
45 p.m. start time is too early. In addition, several of the people who attend the earlier meetings are not
46 coming to the 7:00 p.m. meetings. She suggested extending the “trial” period and changing the earlier
47 start time to 5:30 p.m. during the summer and returning to a 4:30 p.m. start time during the winter months
48 and daylight savings time.

1 Mayor Strickland polled the Council and a lengthy discussion ensued with each Council Member stating
2 their concerns. Mayor Strickland and Council Allebach agreed the trial period was too short to properly
3 evaluate its effectiveness and suggested an extension. Council Member Pupello agreed with extending the
4 trial period. However, he felt a 4:30 p.m. start time did not take people who are working into
5 consideration. He suggested going back to a 7:00 p.m. start time now and to reconsider an earlier start
6 time when daylight savings time ends. Council Member Blair felt the trial period was good as many of
7 the elderly people from his district have been able to attend the earlier meetings that normally would not.
8 He suggested keeping the 4:30 p.m. start time for another 6 months. Vice Mayor Laputka and Council
9 Member Abraham felt the start time should be 7:00 p.m.

10
11 Henry Durica, 1310 East Lansdowne came forward and suggested that keeping the 4:30 p.m. start time
12 could prevent people who work from 9 a.m. to 5:00 p.m. from running for office as they could not make
13 the earlier meetings. He observed that most of the citizens that come to the earlier meetings attend the
14 later one as well. Mr. Durica said the Planning Commission discussed the matter and felt that 7 p.m. was
15 an appropriate start time.

16
17 Mr. Reischmann advised this matter was adopted by resolution, he said if no action was taken tonight the
18 meeting start time would automatically revert back to 7:00 p.m.

19
20 **Council Member Blair moved to extend the trial period for 3**
21 **additional months at the 7:00 p.m. and 4:30 p.m. meeting start times,**
22 **seconded by Council Member Allebach.**
23

24 Council Member Blair said he has been talking to citizens in his district about the meeting times and felt
25 that attendance would improve with an extended time study. He noted that whatever is decided there will
26 be one group or another that will feel slighted. Mayor Strickland agreed. He pointed out that most people
27 come only when they are unhappy about an issue and it is a fairly small group of citizens that come
28 consistently. He expressed his concern that the trial period was not long enough to fully evaluate the
29 situation. Council Member Allebach recalled a situation where a citizen wanted to talk to Council about
30 an issue and was not able to make the 4:30 p.m. meeting. However, he said that he too agrees that not
31 enough time was allotted for the study.

32
33 **Motion failed by a 3/4 roll call vote with Council Members Abraham,**
34 **Laputka, Pupello and Crippen voting “no.”**
35

36 **9. NEW BUSINESS:**
37

38 Council Member Pupello asked that an agenda item regarding establishing a Farmer’s Market in the City
39 be brought forward.
40

41 **10. REPORTS:**
42

43 **A. City Manager**
44

45 Ms. Croteau stated that staff would like to consider purchasing property across the alley behind the Senior
46 Center. She said that a very small house was located on the property, but it is not in good shape. She
47 advised that the property runs from Oak Street along the alley back to the City’s parking lot. Ms. Croteau
48 stated that the property is listed for \$49,900, although it is staff’s opinion that the house has no value at all.

1 She asked whether Council would support staff negotiating with the owner to purchase the property for a
2 “reasonable” price based strictly on the land value. Ms. Croteau advised that the property appraiser has
3 set the land value at \$20,820. Council Member Allebach noted that purchasing the lot would be in
4 keeping with the City’s stated goal of “squaring off” the area for a government compound.

5
6 **It was the consensus of the Council for staff to further explore the matter.**

7
8 **B. Mayor/City Council**

9
10 Council Member Allebach reported that he attended a University of Central Florida workshop on the
11 economic impact of the Florida Model and Simulation Training Industry. He said it was “quite”
12 informative he learned that Central Florida is the most mature market in the country for simulation with
13 150 companies from Central Florida participating. Currently, there are plans to expand the simulation
14 industry into health care. Council Member Allebach said Orange City is a “health care hub” and could
15 benefit from participating in the health simulation industry as it would bring jobs and federal dollars to the
16 City. He said he will be attending a medical simulation practice on July 20th and will keep Council
17 informed of any developments.

18
19 Council Member Allebach reported that he attended a cook-out hosted by Fish Memorial Hospital at the
20 Kohl’s Shopping Plaza yesterday, celebrating the first day of spring. It was well attended, 300 people
21 came. The hospital executives cooked burgers and distributed give away bags to participants. Council
22 Member Allebach gave “kudos” to Orange City Fire Fighters Nichole Hogan and Scott DeVito for their
23 patience and diligence in discussing their professions with the children present. Overall, he said it was a
24 “very good event.”

25
26 Council Member Allebach reported he attended a Metropolitan Planning Organization (MPO) meeting
27 today. He said the MPO received grant funding to synchronize the timing of the traffic lights along U.S.
28 17-92. He warned that changes may have been made to the left turn signals as well. Council Member
29 Allebach advised the MPO has changed its name to the Transportation Planning Organization (TPO)
30 effective July 1st. Various projects were discussed. This year the MPO Long Range Plan included more
31 funding for mass transportation than road projects. Council Member Allebach noted that a transit tax is
32 being considered and will be on a future MPO agenda.

33
34 Mayor Strickland reported that he attended a meeting regarding changing the medians on Saxon
35 Boulevard. He said he was pleased with the number of Council Members who attended. Many of the
36 people present were upset about the proposed plan as the installation of the new median system will affect
37 most of the businesses along Saxon Boulevard.

38
39 Mayor Strickland reported that he and the City Manager attended a Volusia County Mayor’s luncheon.
40 The discussion centered on economic development and incubator programs and the County’s response to
41 these matters. He noted that County Council Member Pat Northey is conducting a meeting tonight and
42 that the City had no representation due to the Council meeting. However, he said he spoke with the
43 County Council Chairman about the meeting and was advised some of the issues being addressed are the
44 County’s plans to lower the mileage rate for next year; plans to promote fishing in Volusia County as the
45 waters on the West side of the State become unavailable for fishing; the County’s plans to distribute
46 ECHO funds to start incubator programs and various others matters. Mayor Strickland said a lot of things
47 are happening, but most of the plans are too “flexible” and “indefinite.” He felt that more information is
48 needed and suggested that these issues may not affect the City in a positive way.

1 Council Member Allebach noted the MPO has voted to extend the River of Lakes Corridor along
2 Maytown Road from Osteen to Oakhill Road. Council Member Crippen pointed out that Sanford has also
3 applied to become a part of the River of Lakes Corridor. Council Member Allebach noted that River of
4 Lakes Corridor was established in 1996 has improved tourism by ten percent.

5
6 **C. City Clerk**

7
8 No further report.

9
10 **D. City Attorney**

11
12 No further report.

13
14 **11. APPROVAL OF MINUTES:** *(Moved to consent agenda)*

15
16 **12. COUNCIL COMMENTS**

17
18 Mayor Strickland announced the West Volusia Summit is scheduled for Saturday June 26th. He invited
19 everyone to attend.

20
21 Council Member Allebach said he was pleased the discussion of the DAV matter was civil and productive.
22 He said it is a contentious issue and the Council was able to share and hear different opinions. He
23 remarked, "That is part of being a productive Council, thank you."

24
25 Vice Mayor Laputka said that he wanted to thank Bob Storke for the CAC reports that he provides to
26 Council. He stated, "The reports are "absolutely" outstanding."

27
28 Council Member Abraham agreed with Council Member Allebach's comments. He said the discussion
29 went well with the DAV, but it is unfortunate that cities have to spend money researching these types of
30 matters during these financially troubling times. He stated, "Between today's decisions making process
31 there is a loser, the taxpayer."

32
33 **13. ADJOURNMENT**

34
35 There being no further business, Mayor Strickland adjourned the meeting at 7:55 p.m.

36
37 **RESPECTFULLY SUBMITTED:**

APPROVED ON:

38
39
40
41 Gloria Thomas, CMC
42 Deputy City Clerk

July 13, 2010