

Palmetto City Commission  
March 17, 2008 4:00 p.m.

Elected Officials Present:

Larry Bustle, Mayor  
Eric Ball, Commissioner  
Tamara Cornwell, Commissioner  
Mary Lancaster, Commissioner  
Tambra Varnadore, Vice Mayor  
Brian Williams, Commissioner

Staff and Others Present:

James R. Freeman, City Clerk  
Chief Garry Lowe  
Chris Lukowiak, Public Works Director  
Tanya Lukowiak, CRA Executive Director  
Michele Hall, City Attorney  
Bob Schmitt, Planning Supervisor/Zoning Administrator  
Diane Ponder, Deputy Clerk-Administration

Mayor Bustle called the meeting to order at 4:00 p.m., followed by a moment of silence for overseas military personnel and the Pledge of Allegiance.

Chief Garry Lowe and Victim's Advocate Lorna White recognized a group of ladies from the Palm Bay Mobile Home Park who have personally sewn and donated dolls to the Giving Dolls Project, a program for children in crisis.

ORDER OF BUSINESS:

1. AGENDA APPROVAL

Mrs. Lancaster questioned if item #3 could lead to litigation, stating she would not approve the agenda if openly discussing the item before litigation could be held against the commission at a future date. Attorney Hall stated the item could go to litigation, but she planned on discussing only an explanation of the law.

**MOTION: Mrs. Lancaster moved to approve the March 17, 2008 4:00 agenda with the omission of item #3. Motion died for lack of a second.**

**MOTION: Mr. Ball moved to approve the March 17, 2008 4:00 agenda, limiting the discussion on item #3 to a report from the attorney as to general legal issues that may apply. Ms. Varnadore seconded the motion.**

Discussion: Mr. Williams discussed Commission's responsibility to try to resolve all issues before a potential litigation is filed, and inquired if there is a reason this item should go to litigation. Attorney Hall discussed the instances when a shade meeting would be permitted. In this instance, the property owner has retained counsel, but litigation has not yet been filed. Staff has researched the facts and Commission must now decide whether to enter into settlement with the potential claimant or stand on the facts and legal principals presented in an open meeting. She stated she is prepared to discuss the legal theories and the facts gathered by staff, without getting into legal theories that may be applicable at a future date. She suggested that if Commission wanted to discuss the issue in detail she is available for an individual conversation. Attorney Hall further stated the Commissioner that is a potential plaintiff is aware of the law and her right to participate in the discussion, as well as her voting conflict. Attorney Hall also

confirmed that the involved Commissioner can attend a shade meeting and receive public documents that are not exempt from public disclosure.

**Motion on the floor carried 3-1. Mrs. Lancaster voted no. Ms. Cornwell abstained from the vote.**

## 2. DISCUSSION: BACKGROUND CHECKS FOR EXISTING EMPLOYEES

Attorney Hall informed Commission that in response to their inquiry about requiring current employees to undergo a criminal background check as a condition of continuing employment with the City, she stated it is within Commission's authority to adopt an ordinance that requires that certain or all employees to be subjected to background screening as a condition of continuing employment. Mr. Freeman confirmed the City has always performed drug screening and physicals on new employees and began performing the background screening in October 2006.

Commission held a detailed discussion on the following topics relating to the background checks:

1. Positions to be subject to criminal background checks
2. Results of the checks
3. Authority to rule on prior convictions
4. Random drug testing
5. Determination of future screening timeline after hire date
6. Identification of records that will be exempt from public disclosure

Attorney Hall cautioned that if Commission determines it is in the City's best interest to perform the background screening for existing employees, rules and procedures must be developed that clearly articulate the above factors prior to implementation of the program.

Ms. Cornwell suggested that in anticipation of the program being implemented, all employment applications should be amended to clearly state to a potential employee that he/she will be subject to drug/background screening. She also stated it is very important to communicate to existing employees the process.

Staff was instructed to prepare the necessary rules and procedures, changes to the Personnel Policy and a draft ordinance for Commission's review prior to May 1, 2008.

## 3. DISCUSSION: BRUNNER STORMWATER DITCH

Attorney Hall stated that as requested by Commission, all correspondence regarding the stormwater ditch located at 1732 17<sup>th</sup> St. W. has been provided in the agenda packet. Attorney Hall summarized the facts to date:

The property owners acquired the property in 2004.

The 10' wide ditch running down the western side of the property accepts water from a subdivision across the street via a pipe under 17<sup>th</sup> Street.

1. Aerial photographs show the ditch has been in existence since at least the 1970's
2. Flagstone Acres was platted in 1986
3. The City has mowed the sides the ditch for at least 20 years; Manatee County sprays the ditch to keep vegetation down.
4. Research needs to be completed, but SWFWMD maps dating back to 1970 indicate the property may originally have been wetlands; when Lake Rowlett was filled some of the dredge material was placed on the property under discussion so it would be buildable.

5. SWFWMD reported it considered the ditch as having historical flow or natural flow; may also be termed a natural watercourse (if in existence more than 50 years it is regarded a natural watercourse by SWFWMD); FDEP would be the agency to permit the filling of this type of watercourse.

Attorney Hall explained the general theories of law that will apply if suit is filed by the property owner; prescriptive easement and inverse condemnation; torts; trespass. She stated there is no mandatory mediation process for this issue, but that could be an option.

She also advised Commission that she has listed this issue as a potential litigation that could exceed \$50,000 in her response to the auditor's inquiry (in connection with the completion of the audit of the City's financial records). Mr. Williams commented on the fact the property owner was requesting approximately \$21,000 for an easement of record vs. the actual cost of a potential litigation.

Attorney Hall stated she had researched back to 1980 to see if any other property owner has raised this issue, and found none. She informed Commission that if suit is filed the City could claim a prescriptive easement, but the City must prove that easement to prevail.

Discussion ensued on the possibility of the City winning and how the property would be affected. Mr. Lukowiak explained that an easement is not held against setbacks, which are set off the property line; the property owner is requested to not build on an easement.

Attorney Hall stated she has been unable to locate a City approved drainage plan for Flagstone Acres that diverted the water under 17<sup>th</sup> Street into the ditch under discussion. Mr. Lukowiak stated this issue may also involve Manatee County if the ditch is identified as a filtration system for Lake Rowlett, which is maintained by Manatee County.

Attorney Hall confirmed she does not have a recommendation from a legal perspective. She discussed the possibility of other similarly situated property owners that may come forward seeking compensation for the use of their land. Mr. Lukowiak commented the miles of ditches crossing private properties that are used in the City's drainage system and the potential financial impact the City could face from those property owners if the City agrees to Mr. Brunner's request.

Attorney Hall confirmed that when property owners come to the City with a development request, if applicable, the property owner is requested to provide an easement for drainage, utilities, etc.

Mr. Frank Brunner discussed the history of the property provided him at the time of his purchase of the property; all documents verified the ditch (canal) is his property, which, in his opinion, equates to a typical residential lot. He reports he maintains the ditch, not the City. He discussed his original request was to reduce the stormwater fees, pursuant to the report from the consultant furnishing the City's stormwater analysis. He reviewed his attempts to resolve the matter, and placed into the records material documenting his discussions with the City, which are attached hereto and made a part of these minutes. He stated he is open to resolving this issue with the City in a reasonable manner that is fair and equitable contribution for the use of his property. He confirmed he is still willing to grant an easement in exchange for the hookup to City sewer. Attorney Hall confirmed the property owner will still pay taxes and liability insurance on the property if an easement is granted. Mr. Brunner acknowledged that fact, but opined that with a formal easement of record, the City would assist in the maintenance of the property with City equipment.

4. DISCUSSION: ERIE ROAD LANDFILL

Mayor Bustle confirmed the joint meeting with Manatee County Commission is scheduled for April 7, 2007 at 7:00 at the Civic Center.

5. DISCUSSION: GRANT APPLICATION

Mrs. Lukowiak, Grants Coordinator, requested authorization to apply for an Office of Greenways and Trails Grant of \$15,000 to pave the linkage between Hydrant Park and the recreational trail and purchase picnic facilities and fitness stations for installation at the trailhead and along the trail. This is a matching grant; staff proposes in-kind services as the City's contribution. Staff also requests that the project be added to the City's CIP. Commission approved moving the item forward to the 7:00 agenda for action.

6. DISCUSSION: CITY OWNED PARKING LOT

Mrs. Lukowiak, CRA Executive Director, informed Commission the deed restriction limiting the property's use to a parking facility must be addressed if the City wishes to pursue development on the City's parking lot property.

If the City wishes to develop the property with a hotel or mixed use structure, Mr. Van der Noord, the property conveyor to the City, is amenable to lift the restriction provided he retains his ability to protect his economic interest in providing adequate parking for commercial endeavors in the area. He stated he would be happy to facilitate the City's development of the property, provided at least the same amount of parking is provided.

Attorney Hall confirmed the signature of any third party beneficiary of the restriction is not necessary to the deed restriction; their interest is limited only to parking. Mrs. Lukowiak acknowledged that boat trailer parking is an issue.

Attorney Hall suggested that the safest way to address the restriction is to obtain a release or to place in the public records an agreement stating the restriction has not been violated. Mayor Bustle suggested that Mr. Van der Noord could potentially veto any project. Mrs. Lukowiak opined that if the City wants to develop the property Mr. Van der Noord's participation and cooperation is necessary unless the structure is strictly a parking garage.

Meeting adjourned at 6:10 pm.

Minutes approved: April 7, 2008

James R. Freeman  
City Clerk