



# City of Deltona

2345 Providence Blvd.  
Deltona, FL 32725

## Minutes

### City Commission

---

Monday, September 21, 2020

6:30 PM

Deltona Commission Chambers

---

- A. In an effort to reduce the possibility of exposure of residents to the COVID-19 (Coronavirus) we are allowing limited public access into the Commission Chambers and practicing social distancing with the City Commission, staff and residents.

1. CALL TO ORDER:

The meeting was called to order at 6:30 p.m.

2. ROLL CALL – CITY CLERK:

**Present:** 9 - Mayor Herzberg  
Vice Mayor Ramos  
Commissioner Avila-Vazquez  
Commissioner Bradford  
Commissioner King  
Commissioner McCool  
Commissioner Nabicht  
Interim City Manager Cooper  
City Attorney

3. INVOCATION AND PLEDGE TO THE FLAG:

A. Invocation Presented by the Mayor.

Mayor Herzberg led everyone in the invocation and the pledge to the flag.

4. APPROVAL OF MINUTES & AGENDA:

- A. Approval of minutes of the Regular Commission Meeting of September 10, 2020, as presented. - Joyce Raftery, City Clerk (386) 878-8502.

Motion by Vice Mayor Ramos, seconded by Commissioner Avila-Vazquez, to move to approve the minutes of the Regular Commission Meeting of September 10, 2020, as presented. The motion carried by the following vote:

**For:** 7 - Mayor Herzberg, Vice Mayor Ramos, Commissioner Avila-Vazquez, Commissioner Bradford, Commissioner King, Commissioner McCool, and Commissioner Nabicht

## **5. PRESENTATIONS/AWARDS/REPORTS:**

### **A. Presentation by Senator Tom Wright - Interim City Manager Dr. Cooper (386) 878-8850.**

Senator Tom Wright presented a check to the City of Deltona for the Governor approved funding of the Deltona Eastern Water Reclamation Facility Expansion project.

### **B. Proclamation - Hispanic Heritage Month September 15 - October 15, 2020.**

The Mayor and Commission presented a Proclamation to the owner of Unidos Supermarket located on Providence Blvd. in honor of Hispanic Heritage Month from September 15th - October 15th, 2020.

## **6. ORDINANCES AND PUBLIC HEARINGS:**

### **A. Public Hearing - Resolution No. 2020-45, Final Millage Rate for the levy of ad valorem taxes for Fiscal Year 2020/2021 - Camille Hooper, Finance Department (386) 878-8552.**

#### **Strategic Goal: Fiscal Issues**

Mayor Herzberg stated this is a public hearing to hear and consider comments and questions regarding the City's millage rate and proposed annual budget for the coming fiscal year 2020/2021. The City of Deltona hereby proposes a millage rate of 7.85. The millage rate reflects a 9.76% increase from the rolled-back rate of 7.1520 mills. The millage rate is higher than the rolled-back rate of 7.1520 in order to cover increased operating costs.

Mayor Herzberg stated the floor is now open to hear public comments and to take any questions from the public.

Elbert Bryan, 1625 Joyner Drive, Deltona, spoke about the millage, misinformation, revenue hike vs. millage increase, property values, infrastructure and bad reporting by newspapers.

Mayor Herzberg closed the public comments.

**Motion by Commissioner Avila-Vazquez, seconded by Commissioner Bradford, to approve Resolution No. 2020-45 adopting the Final Millage Rate for the levy of ad valorem taxes for Fiscal Year 2020/2021. Upon approval of this item authorizes any and all necessary actions, documents or budget transfers to facilitate Commission approval and**

**further authorizes the Interim City Manager to sign any documents necessary to further Commission approval of this item.**

The City Attorney read the title of Resolution No. 2020-45 for the record.

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELTONA, FLORIDA, ADOPTING AN AD VALOREM MILLAGE RATE FOR THE 2020-2021 FISCAL YEAR; PROVIDING FOR AN EFFECTIVE DATE.

**The motion carried by the following vote:**

**For:** 6 - Mayor Herzberg, Vice Mayor Ramos, Commissioner Avila-Vazquez, Commissioner Bradford, Commissioner McCool, and Commissioner Nabicht

**Against:** 1 - Commissioner King

Mayor Herzberg stated the City of Deltona has adopted a final ad-valorem millage rate of 7.85 mills for fiscal year 2020/2021. The final ad-valorem millage rate reflects a 9.76% increase from the rolled-back rate of 7.1520 mills.

Resolution No. 2020-45 was approved at 6:48 p.m.

**B. Public Hearing - Resolution No. 2020-46 Adopting the Final Annual Budget for FY 2020/2021 - Camille Hooper, Finance Department (386) 878-8552.**

**Strategic Goal: Fiscal Issues**

Mayor Herzberg stated the proposed annual budget is summarized as follows: General Fund \$77,924,097; Special Revenue Funds \$48,222,592; Enterprise Fund \$66,604,649; Capital Project Funds \$5,133,400 and a Total City-wide Budget \$197,884,738.

Mayor Herzberg stated the floor is now open to hear public comments and to take any questions from the public.

Elbert Bryan, 1625 Joyner Drive, Deltona, spoke about infrastructure, roads, parks, reserves, setting money aside, wages, the pandemic, unemployment, citizens, county roads, meetings and funding roads.

Mayor Herzberg closed the public comments.

Commissioner Nabicht stated 2% was put back in the budget for reserves. Once staff received the numbers from the State the budget was finalized and programs and other things that the Commission talked about during the budget meetings were put back in the budget. Volusia's gasoline revenue tax stopped coming in and the tax which is set by statute is maxed out. The gasoline revenue that the City gets does not even pay the City's transportation bonds which is the funding source that was originally pledged to repay those bonds. There is no easy answer to the problem, but there is a lot of alternatives such as the

half-cent sales tax and raising the millage. The Commission is going to have to address transportation and make it a priority in future budgets. Only 70% of Deltona's residents responded to the census which directly correlates to how much money comes in through the TPO (Transportation Planning Organization) back into the County and into the City to fund transportation projects, schools and many other things. The 30% not answering the census equates to not hundreds of thousands of dollars, it is millions of dollars that will not come into Volusia County. He encouraged everyone to fill out their census and for everyone to encourage others to do the same. He continued to talk about the cost of replacing versus repairing roads, the importance of the census, finding ways to fund transportation and why people are afraid to fill out the census. As the community and the Commission moves forward it needs to think about where to make cuts, raising the millage or other innovative ways to fund transportation projects. The community benefit from traffic control devices, road widenings and repaving of roads to accommodate new development.

Mayor Herzberg stated the State is going to be tapped out as well, everyone heard Senator Wright when he was here earlier that transportation is not going to be high on the agenda. A lot of money was spent on water projects and one of the reasons the City was able to get some funding is because that particular area that this funding is dedicated for is the location in the BMAP (Basin Management Action Plan). It will be some time before the State will be able to provide funding unless it is for like a bridge that is going to fail or something that is a traffic hazard.

Mayor Herzberg passed the gavel to Vice Mayor Ramos.

**Motion by Mayor Herzberg, seconded by Commissioner Bradford, to approve Resolution No. 2020-46 adopting the final Budget for Fiscal Year 2020/2021 and upon approval of this item authorizes any and all necessary actions, documents or budget transfers to facilitate Commission approval and further authorizes the Interim City Manager to sign any documents necessary to further Commission approval of this item.**

The City Attorney read the title of Resolution No. 2020-46 for the record.

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELTONA, FLORIDA, ADOPTING THE FINAL ANNUAL GENERAL FUND, SPECIAL REVENUE FUNDS, ENTERPRISE FUND, AND CAPITAL PROJECTS FUNDS BUDGETS FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2020, AND ENDING SEPTEMBER 30, 2021; PROVIDING FOR AN EFFECTIVE DATE.

**The motion carried by the following vote:**

**For:** 5 - Mayor Herzberg, Vice Mayor Ramos, Commissioner Avila-Vazquez, Commissioner Bradford, and Commissioner McCool

**Against:** 2 - Commissioner King, and Commissioner Nabicht

Resolution No. 2020-46 was approved at 7:03 p.m.

Mayor Herzberg stated the budget is not set in stone, there are always options throughout the next year to do budget amendments which is going to have to happen. Since the last compensation study was inadequate there is another compensation study going on now and the Commission will get the results of that compensation study. Depending on what this Commission decides there is going to be budget adjustments for that if needed among other things.

**C. Public Hearing - Ordinance No. 09-2020, rezoning request (RZ20-0002) for a +16 acre tract from Residential Estate One (RE-1) to Residential Planned Unit Development (RPUD), at second and final reading - Ron A. Paradise, Planning and Development Services (386) 878-8610.**

**Strategic Goal: Economic Development - Create more diversified & high-quality housing opportunities to provide for all market demands.**

Mayor Herzberg explained the process for a quasi-judicial hearing and she asked each Commissioner to declare any ex parte communication.

Commissioner Bradford stated she had prior contact with Attorney Mark Watts, she drove by the site and none of these actions will in any way reference how she votes.

Commissioner Nabicht stated he spoke with Attorney Mark Watts and part of the development team and he drove by the location.

Mayor Herzberg stated she has not spoken with anyone, but she drove by the site.

Vice Mayor Ramos stated he spoke with Attorney Mark Watts.

Commissioner Avila-Vazquez stated she spoke with Attorney Mark Watts and City staff.

Commissioner McCool stated she spoke to Attorney Mark Watts prior, she drove by the area, she spoke to neighbors over there and recently she stated her position that was previously mentioned, what her position was, on Facebook. She reiterated what her thoughts were on this particular project.

Commissioner King stated he had a meeting with Attorney Mark Watts, he spent two days since the last meeting to randomly canvass neighbors around the 16 acre, 61 home, perspective development including, but not limited to Lake Helen Osteen Road, south of Elkcarn Blvd. and North to Deltona City limits. He spoke with neighbors on Catalina Blvd., Parma Drive, Jay Court, Regent Drive, Chadwick Lane, Firestone, Haulover Lane, Collingswood Drive, Pine Tree Acres Lane, Jeanniton Lane, Flint Lane and Austin Avenue.

The City Attorney asked everyone who would be offering testimony on this item to please

stand and raise their right hand while he swore them in.

Mayor Herzberg stated the order of presentation is staff will present the case and recommendations, then Commission questions and then the applicant will present their case and may ask questions of City staff, witnesses or members of the public that speak. After that will be Commission questions and then public comments.

Planning and Development Services Director Ron Paradise gave a brief explanation of the item. He stated that nothing has changed since the first reading and that staff recommends approval.

Commissioner McCool asked if the projected population for the City this year is 94,000 and Mr. Paradise replied yes, the source of that data is the Shimberg Center for Housing, University of Florida. Commissioner McCool asked if the Shimberg study says that we protect the population here in Deltona of 105,000 total residents in the City and Mr. Paradise replied that is correct yes. Commissioner McCool asked if at three people per household means that the City needs just over 3,700 new homes to house the expected population growth and Mr. Paradise replied by 2030 that is correct. Commissioner McCool asked if the total number that staff has included in the report includes projects that have not yet been approved, the 3,700 new homes and Mr. Paradise replied yes, Enterprise Osteen East and West being a good example which is 550 units. Commissioner McCool asked if Enterprise Osteen East and West are the ones the Commission has already approved and Mr. Paradise replied the Commission has not approved and has not been presented to the City Commission. Commissioner McCool asked how many units are proposed in Enterprise Osteen East and West and Mr. Paradise replied 555 units total, that is tentative. Commissioner McCool asked if there were a little over 2,400 existing empty lots available that could support single family dwelling and Mr. Paradise replied yes, that is correct and staff did remove lots that staff felt were environmentally constrained or otherwise unsuitable for development. Commissioner McCool asked if that initial number higher than the 2,400 and then staff removed two 2,400, the initial was about 2,800 lots and Mr. Paradise replied it was 2,824 actually and staff did remove about 400 lots or so. Commissioner McCool stated so 2,444 lots and the City needs to build about 3,700 and Mr. Paradise replied by 2030 that is correct. Commissioner McCool asked does the number for existing inventory include the lots in Ferendina Place that has not been built and Mr. Paradise replied yes. Commissioner McCool asked if it includes Phase 2 and Mr. Paradise replied it includes all the property that has been platted and both phases have been platted. Commissioner McCool asked about the lots in Lake Gleason Reserve, 53 units and Mr. Paradise replied the 52 units in Lake Gleason are part of the charter under the total units of 2,180. Commissioner McCool asked if Lake Sydney Estates' 38 units were included and Mr. Paradise replied it is included under that table at 77 units. Commissioner McCool asked if Finland Reserves' 407 units were included and Mr. Paradise replied it is included in the 2,180 figure. Commissioner McCool asked if Hampton Oaks' 278 units were included and Mr. Paradise replied it is included as 259 units. Commissioner McCool stated all total with the 2,444 plus the 1,548 units that are included in all of these that would bring the City to about 3,992 units, does that sound right and Mr. Paradise replied with everything total there

would be a total of residential lots in units available at 4,624 units. Commissioner McCool stated the projection is for 3,700 new homes that the City needs so it would actually have over the amount without this development that the City needs based on these projections and numbers that have been established. Mr. Paradise replied only in a ten year time frame. The projections project out to 2035 which is a 15 year time frame. Commissioner McCool asked if staff has taken into account these numbers and looking at moving towards the future and future housing and has staff looked at the future foreclosure rates in quarter two of 2021. Does staff have any projections for that based on the residents, based on the needs of people that the City has service with mortgage assistance and Mr. Paradise replied no ma'am. Commissioner McCool asked how much the City will be investing in this project, what is the City's part of the infrastructure and Mr. Paradise replied he is not sure that the City would be investing anything other than paying staff to otherwise process the development and otherwise inspect the development that happens within it. Commissioner McCool asked if Mr. Paradise received any resident e-mails in support of this project and Mr. Paradise replied not that he recollects.

Commissioner McCool asked the manager if the City received e-mails from residents that were not in support of this and Interim City Manager Dr. Cooper replied he does believe the City received emails. Commissioner King stated to his knowledge the City received 20 e-mails all opposing this and the Commission has copies of those. In addition to that one resident who lives on the corner of Lake Helen Osteen Road and Chadwick Lane went to his neighbors and he knocked on his door with a petition signed by 50 more people saying that they are not in favor of this project. Commissioner McCool asked the Commission to look at the staff report versus the comprehensive plan. There are two policies cited, but when comparing FLU1-7.8 to the comprehensive plan they do not appear to be the same.

Commissioner King stated staff is saying that this area is not in any kind of a flood plain, however, the Eastern end of the property is all wetlands and the City is going to make that okay because the developer is going to put in a 25 foot buffer there. Sometimes available data is not the best or not quite good enough and the best source of information comes from the residents. As a resident who lives off of Lake Helen Osteen Road that area has been under water so to say that it does not flood or that it is going to be okay is a little remiss. He suggested asking the residents if the area floods, if the wetlands spread out and if water comes over the road. The report shows in 2019 the population is 91,520 and then it says that the projected population which is the number everyone uses is 94,000 for 2020 and the population growth through 2025 is going to be a 100,478. When staff tries to figure out how many houses or residents will be coming into the City, staff uses a 2019 figure which translates to an imaginary number of 9,000 people. When the truth is using the 94,000 number it is only 6,111 which brings the number of houses that the City needs down to 2,037 to get the City through 2025. Based on the chart provided the City is looking at 2,180 new homes which is 143 homes more than what the City needs in 2025 and that does not include the hundreds of homes that are being built right now. If he projects that out according to the numbers between 2025 and 2030 the City will have to build 1,670 new homes. Those 1,670 new homes will get the City to 2020 and cover the population that is projected at that time. He does not believe the City needs to build all of the homes today

that it is going to need in 2030. The City already has more than what it needs to get through the next five years. State law encourages the City, not mandates but encourages, "that local governments allot "extra land" for real estate markets and functions and there will be "ample choice" to support a range of living style expectations and locations". In his opinion rezoning the City's remaining six areas of RE-1 eliminate and or drastically diminish citizens choice to this type of living.

Commissioner Bradford asked for information on the flood zone which was a concern for her in the beginning because she thought years back the area had flooded, but she was told she was incorrect. Flooding is a concern to her because once the City has flooded properties it raises not just that areas' insurance, but it raises everybody's insurance in the City. She is for diversity, properties with different lot sizes and different size homes because she know not everybody wants that cookie cutter home. She asked if staff has evaluated the property as of the last few days and where does it stand right now. Mr. Paradise replied he has not been out to this site in a number of months, but with regards to the wetland area simply because it does not appear within the 100 year floodplain as mapped by FEMA does not in any way suggest that it is not flood prone. It is wetland and it is an area that does flood. That area which occupies about a half-acre of the area proposed for rezoning will not be impacted and will not be developed. All the development and all the infrastructure will be directed to the upland portion of the property which is characterized by excessively well drained sandy soils.

Commissioner McCool stated she wished that staff had provided foreclosure statistics, there are a lot of FLU's that are not in the report and she wants to understand why some of the elements of conservation, transportation and housing are not included. Mr. Paradise replied in the hierarchy of comprehensive plan elements the future land use element really is the main driver of the plan because it results in the future land use map which guides the City's growth for a 20 year planning horizon. Basically for internal consistency purposes within a comprehensive plan typically future land use element and other elements are consistent, that is the intent. The housing and conservation elements are both very important elements. He actually looked at the housing element again today and the same themes that resonate throughout the future land use element appear in the housing element and he gave some examples.

Commissioner Nabicht stated of course there is water out there today, there is water everywhere. The property has not been engineered or contoured yet. The documents indicate how that concern will be mitigated and how the water will be engineered away. That is what stormwater projects are for. The problem with the stormwater projects in the City which have vastly improved over the last 30 years is that the City does not have the funds to maintain them because the Commission wants to maintain the stormwater rates on people's tax bills.

Mayor Herzberg called for a five minute recess 7:46 p.m. and reconvened at 7:51 p.m.

Commissioner Nabicht stated going back to what he said at the last meeting, if the Commission expects development to continue to move forward in the City then the



Commission needs to allow the development community to know what the playbook is going to be and not change the playbook on them as they are midstream on projects. If it does not fit the City's development guidelines than the project should not be approved, but when they have done everything and followed the rules which in this case staff would not be recommending to the Commission to move the project forward if it was not in compliance with the City's development guidelines. If the Commission does not want to develop it and rezone it then do not have those rules that allow for the developers to do that.

Commissioner King stated there was discussion about the environmental impact, there is a four acre pond known as Lake Tiny and all of wetlands around it. The property supports an awful lot of wildlife and he knows that because he has wildlife on his property as well. He thinks this RPUD (Residential Planned Unit Development) is not compatible with the land use or the surrounding area and it will destroy the natural environment and the habitat for all the local wildlife in that area. The LDR (Low Density Residential) allows for a density range of zero to six dwellings per acre. The Commission is being asked to look at the 16 acres by the outside dimensions where only 61 houses will be built. In this particular development all but nine houses are built around the outside areas of the property. Subtract the roads, retention ponds, buffers, dog park, playground and guest parking and that 16 acres is down about 12.5 acres. The average lot is 4,800 square feet, a 40 foot by 120 foot area and an acre is 43,560 square feet. Start adding up those pieces of property at 40 by 120 square feet and there will be 9.1 houses built side by side on an acre property with ten feet in between the houses. There are nine houses to be built in the center of the development, five of them face the street and then the street makes a bend to the right and there is four more houses because there are larger lots on the corners. Fully two of the lots, a corner lot and the adjacent lot, and part of the third lot when they walk out the back door of their home they will be looking 15 feet away at nothing except the side of the house on the other side of the street. He would like to know what the Fire Department thinks about this kind of building.

Commissioner Avila-Vazquez asked if there is a report of how many flooding instances there have happened around that area prior to the last couple of days and Mr. Paradise replied not to his knowledge. Commissioner Avila-Vazquez asked if FEMA is the only organization that can declare a flood zone area and Mr. Paradise replied no, staff has discretion on our own accord based on local knowledge and other parameters to say an area is flood prone based on its wetland characteristics and it should not be impacted. It should be left alone or left natural which the design certainly respects that area as being unsuitable to support development. Commissioner Avila-Vazquez asked if staff keeps a record of how many new homes are built in a community versus individual homes and Mr. Paradise replied he is not sure if staff has that information readily available, but he does feel confident that it could be produced. Commissioner Avila-Vazquez asked if the projected numbers includes those single homes not in communities and Mr. Paradise replied yes. Commissioner Avila-Vazquez stated for the record she has only received two emails aside from what was distributed today to the Commission.

Attorney Mark Watts, Cobb Cole, 231 N. Woodland Blvd., DeLand, stated he is here on behalf of the landowner who is the applicant. There is a section of the comprehensive plan

cited in the staff report that addresses clustering of development to preserve environmentally sensitive lands. Some of the things discussed is the idea of density, different lot sizes and providing options for higher residential densities in appropriate areas. The comprehensive plan encourages diversification, but diversification does not mean incompatibility. The fact that there are residential units on smaller lots next to residential units that are on larger lot configurations does not mean those are incompatible uses. The staff report discusses compatibility, buffering and things of that nature and specifically cites compatibility as being something between residential areas, commercial and industrial development. So distinct types of uses being separated from one another with buffering and things of that nature to ensure compatibility, but it does not speak to buffering and having to have transition zones within different residential densities and intensities. In fact the comprehensive plan has a low density residential classification that goes from zero to six units an acre all within one classification and the City has higher classifications within its comprehensive plan. Keep in mind that different residential uses, different densities of residential uses are not per say incompatible based on the terms of the comprehensive plan. Staff has recommended approval based on the analysis that has been done. It is a recommendation to follow the policies that are in the comprehensive plan and provide diversification for the types of housing that is available in different parts of Deltona. He has talked before about the changing demographics and the changing preferences for smaller lots and how communities are adapting to that. The comprehensive plan is specifically designed to take into account and specifically designed to help steer future growth in Deltona so that the City preserves the things that are good here and provide diversity so people can continue to stay as they continue to age.

Attorney Watts asked with regard to the population projections, is there a policy in the comprehensive plan that caps the number of available residential units at the projections of population for the City of Deltona and Mr. Paradise replied no, the plan only mentions that the City will accommodate that population.

Attorney Watts stated staff cites to the BEBR (Bureau of Economic and Business Research) projections with regards to population projections and he asked if there was a reason staff cites that particular source. Mr. Paradise replied actually the source cited is the Shimberg Center for Housing, University of Florida, which is controlled by the BEBR projections. The reason why staff uses the Shimberg/BEBR numbers is because it is considered the best available data in the State of Florida and it is used by the State and the Florida Legislature.

Attorney Watts asked if in Mr. Paradise's opinion from a planning standpoint if it is a good thing to have the possibility of more housing units than are required to specifically meet that number and if so why. Mr. Paradise replied yes for various reasons, it provides for some sort of stability for the housing market, it creates a condition where a local government can allocate appropriately its capital planning to ensure that infrastructure is afforded accordingly and sometimes actually having an extra allocation as indicated by State law does act as a market cushion to ensure that the housing supply is not artificially constrained thus creating artificial affordable housing issues.

Attorney Watts asked if Mr. Paradise as part of the review in preparation of the staff report look at the FEMA maps and Mr. Paradise replied yes. Attorney Watts asked in looking at and reviewing the FEMA maps with regards to the location of this property did he recall what the map showed. Mr. Paradise replied actually none of this property appears within the FEMA 100 year floodplain.

Attorney Watts introduced Dave Holden with Quigg Engineering Inc. who stated they are the engineering firm that laid out the layout for the project. Attorney Watts stated Engineer Holden brought a map with him this evening and he asked him to identify what it is. Engineer Holden replied it is a copy of the FEMA map that is online and it is the latest map they have which again shows the property is outside the flood zone.

Attorney Watts stated Mr. Paradise made allusions to local knowledge being something that goes into the overall design of stormwater and he asked Engineer Holden to talk a little bit about the stormwater facility design. Engineer Holden replied on this project because there is the wetland which is considered the landlocked wetland they would be designing the onsite retention to 100 year storm so basically they would hold a 100 year storm back and under the precondition whatever is flowing off site, lets say 5 CFS (cubic feet per second), in the precondition, before development, flows into that wetlands when they design they are going to flow that same 5% into the wetlands because they cannot deplete it of the water which would kill the wetlands. All this has to go through the Saint John River Water Management District (SJRWMD) for review. Another thing that they looked at was on the section of the road that fronts as wetland, on that elevation if that road floods or if that wetland area floods it would get out into that road and to his knowledge that road has not been under water. When looking at the 25 foot buffer that is going to be about the 132 elevation and the houses are going to be probably two to three feet higher than that. So they would be outside of any flooding possibilities and it would not be creating any additional impacts to that wetland for flooding because it will be holding it back.

Attorney Watts asked if the design and the approach that Engineer Holden referenced meets or exceeds all local State and federal regulations and Engineer Holden replied yes, that would meet all the State and local requirements because that is the SJRWMD's requirements.

Attorney Watts stated he wanted to make those couple of points because there was discussion about flooding issues. The comprehensive plan specifically says the protection of the flood zones needs to be based on the best available data and specifically says such as the FEMA maps. With regards to the wetland area they are required to continue the flow of water into that wetland at the rate that it goes into now. They cannot increase or decrease that, it has to continue so that it maintains the health of the wetlands system, but also maintain the 25 foot setback which is the City's code standard so they are meeting the requirements of the City's design standards and the City's rules. He stated Commissioner King raised the manner of calculating density and he wanted to point out that it is not how the City's code measures density or how density is measured in the comprehensive plan.

So again what staff has done is reviewed the rules and how this can fit into the context of those rules which came out to 3.84 or 3.82 units an acre is the density as it is calculated under the rules that the Commission has adopted as a City. The City's code does not require the developer to hold neighborhood meetings, but in this case they did hold one of those neighborhood meetings. Certified mailing notices were sent out to all of the same people that are required to get notice under the City's code for a public hearing for a rezoning. A Zoom meeting was held, staff was invited and there were three people who attended that zoom meeting. As a result of the discussions during that meeting the project was changed by increasing the buffer on the southern boundary to be an additional ten feet on the north side of the unimproved right-of-way for Combulla Drive. A fence was added to that entire side as well and there was substantial buffering from the six lots that front down on to Howland Blvd. and on to the South. Even though it is a relatively small neighborhood it is about choice and it is about providing that variety so people can stay in the community or move into it as a new family. The trade off to that is that more green space is provided, more common areas, throughout the project so that there is community space like the dog parks that have been provided or the central green space that is in the center of the roadway. There was a suggestion to change the configuration of some of the extra guest parking and provide parallel parking around that central area so that it is more accessible to the guests, more centralized and people could walk to the rest of the neighborhood from that location. The developer has listened and incorporated those changes as they have gone through this process. The developer has been engaged for ten months with staff, the community, the Planning & Zoning Board and the Commission at first reading. He hopes the Commission will continue as it did at first reading to support the project and approve it on second reading this evening.

Commissioner King stated the staff report mentions the impact of necessary government services, it sounds like the developer is still waiting for letters of confirmation from Volusia County to approve water and sewer out there. Commissioner King asked if the letters have come in and Attorney Watts replied not yet. He asked what if the county changes their mind or is not in favor. Attorney Watts replied from the standpoint of capacity, there is capacity available to serve the site from either the county or the City. From the standpoint of proximity the city's lines are much closer to where the property is than the county's lines. Commissioner King asked where the county lines are and Attorney Watts replied right now that area is within the county's service area that is why the letter consenting to the shift of the area is relative. Engineer Holden stated the county line is at Lake Helen Osteen Road and water serving the church which is directly across the street from the property is the City's line, so the property is adjacent to the City's service area. Mr. Paradise stated the nearest county line is located at the intersection of Catalina and Howland Blvds. Attorney Watts stated the City's lines have capacity and it is a question of extending the lines to the site. He has been coordinating with the county's Director of Utilities with regard to a letter allowing the property to be served by Deltona's sewer system which is important to expand the City's customer base. The only thing that has kept that letter from being finalized is the county also serves a number of citizens in the South part of the City. There is a small private utility that serves about a 100 customers that the county has been appointed as a receiver to and the county would like for those residents of the City to also be made customers of the City's

utility system at the same time that this is done which is the only thing that has delayed that.

Commissioner King asked who requests the transportation study and Attorney Watts replied in every project that they have the City participates with the county and with the TPO and there is a unified set of standards when Traffic Impact Analysis (TIA) are required and how they are performed and he gave an example. The project is not required to do a TIA, but staff asked for one because they wanted to pay particular attention to the issues of traffic. So staff requested and required that a traffic analysis be provide as part of the application materials and he explained the steps in the process for the TIA. Commissioner King asked the 9,000 vehicle TRIPS per day mentioned in the staff report is way more than the 1,000 mentioned earlier and Attorney Watts replied correct. Commissioner King stated it also says there is capacity for 4,000 TRIPS more, but he lives in the area and he thinks the study is a joke because it only includes from Haulover Blvd. to Elkcam Blvd. Attorney Watts stated Commissioner King cited what the TIA does not take into account and he asked if he was basing that off of the staff report and Commissioner King replied "on what it says right here". Attorney Watts stated what is here is a citation to one of the segments that was included in the study which is the segment that is immediately adjacent to the site. That is a county road and the county has an adopted level of service for that roadway , level of services "E", which means that certain times there is going to be congestion on it. Deltona has the opportunity and the option of adopting a higher level of service, but then the City has to fund the increased capacity that would be necessary for that and here it is not necessary. The actual TIA looks at set segments and intersections within a three to five mile radius of the site and includes the whole network that surrounds the site. The recommendations for approval here are based on that TIA that did look at a larger area.

Mayor Herzberg stated in looking at the map of the property she does not see that there is any housing around the area at this point other than the church. Attorney Watts replied the church is directly across from the property and to the North and to the East there are sections of the Deltona Lakes platted property. There are the typical 80 by 120 foot lots to the North and East and then further to the East and to the South there are approximately six larger lots. Mayor Herzberg asked if any portion of Lake Tiny is in the property and Attorney Watts replied it is not, there is a wetland area that comes in to the far eastern portion of the property, but other than that there are no bodies of water.

Mayor Herzberg asked when talking about drainage around the property, Paola fine sand is most of it and then there is Basinger fine sand in the pink. Mr. Holden replied the majority of the property is Paola fine sand (soil 41) and then there is Orsino fine sand (soil 37) and then (soil 8) wetlands. Mayor Herzberg asked how well the Paola fine sand percs and is it similar to the RIB (Rapid Infiltration Basin) ponds on Veterans Memorial Parkway. Engineer Holden replied it should be percing with no problem. The thing he looks at is before they do the engineering design we put up a boring right in the ponds to make sure there is no confining layer underneath that soil like a clay liner and it tells him whether he is designing for a wet pond or a dry pond. So even if he has a clay liner say three feet deep there is a clay base so what they do then is look at it as a wet pond and design it for that which still store the 100 year dry or wet so there is no impact to the surrounding area.

Mayor Herzberg stated on the staff report it says "The property is designated on the Future Land Use Map as Low Density Residential (LDR)" and she asked if that was correct. Mr. Paradise replied yes, that is correct. Mayor Herzberg asked what LDR (Low Density Residential) is and Mr. Paradise replied Low Density Residential which has a density range from zero to 6 dwelling units per acre and it is the most widely applied land use designation within the City, the majority of the City is LDR. Mayor Herzberg asked if that is what is listed on the future land use map and when was it created. Mr. Paradise replied that is correct and it was created 1999. Mayor Herzberg asked what the standard Deltona lot is and Mr. Paradise replied about 80 by 120 which is about 10,000 square feet or a little under a quarter acre. Mayor Herzberg asked how many standard lots would fit into an acre and Mr. Paradise replied four. Mayor Herzberg stated this has an even denser ratio and Mr. Paradise replied this is denser than the Deltona Lakes Plat. Mayor Herzberg asked what is the standard side setback on a standard Deltona lot and Mr. Paradise replied six feet and this is a difference of two feet here. It is a 12 foot distance in the 80 by 120 scenario in Deltona Lakes and in the Three Islands Lake South project it would be a 10 foot separation.

Commissioner King stated under the existing zoning in the staff report it states this land has been developed as rural area with dwellings on acreage lots access from Lake Helen Osteen Road and he asked when that took place. Mr. Paradise replied that portion of the staff report refers to the area in the City in general and the property was subdivided in the 70's or 80's.

Mayor Herzberg asked when this portion of the property was purchased and Attorney Watts replied his client has been under contract for a little over a year. This is a property that his client are under contract to acquire and this is frequent in almost every development that happens in

**Motion by Commissioner Nabicht, seconded by Commissioner Avila-Vazquez, to adopt Ordinance No. 09-2020 to rezone a +/-16 acre property from the Residential Estate One classification to Residential Planned Unit Development at second and final reading. Upon approval of this item authorizes any and all necessary actions, documents or budget transfers to facilitate Commission approval and further authorizes the Interim City Manager to sign any documents necessary to further Commission approval of this item.**

Mayor Herzberg stated there were comments about the staff report being subjective and it seems like the staff report is subjective if Commissioners do not like what it says, but if the Commissioners like what it says then they are fine with it. Concerning the infrastructure, there is enough capacity at the schools, there is enough capacity whether it is the county water system or the City's water system, there is enough fire and public safety capacity and there is enough road capacity according to the formula that is used by the entire County. She asked Mr. Neff if any of the three one acre lots or any of the seven other lots in that area which are for sale had been sold and Mr. Neff replied no. The demand for housing all across Volusia County is very tight right now and there are very few rental homes, the need

is there. She stated Commissioner McCool mentioned that instead of these tiny lots the City needs more apartments or multifamily and she asked Commissioner McCool if she would be okay with apartments or multifamily in this same location. Looking at what is going to be coming down the road, there is a finite amount of land, but there is also a finite amount of money that the City can take in without any new development. When there is a Planned Unit Development (PUD) the key word is "planned". The Commission has heard a lot tonight about flooding and the impact of roads, but everyone one probably has a home being built on their street or in their area and how many of those lots this weekend caused flooding problems. The organization that give builders the right to build in a certain location is the Health Department and the septic tank because if they approve it there is nothing the City can do. In a planned unit development such as Lake Gleason, the retention pond is in place, the roads held up and there was no washout. Planned developments pay for their own infrastructure and this project is paying for the sewer, the water lines, street, curbs, gutters, street lighting, and parks which are all paid by the developer.

The City Attorney read the title of Ordinance No. 09-2020 for the record.

AN ORDINANCE OF THE CITY OF DELTONA, FLORIDA, AMENDING THE OFFICIAL ZONING MAP TO REZONE +/-16 ACRES OF LAND LOCATED SOUTH SIDE OF LAKE HELEN OSTEEN ROAD FROM CITY OF DELTONA RESIDENTIAL ESTATE ONE CLASSIFICATION (RE-1) TO RESIDENTIAL PLANNED UNIT DEVELOPMENT (RPUD); PROVIDING FOR CONFLICTS, PROVIDING FOR SEVERABILITY, AND PROVIDING FOR AN EFFECTIVE DATE.

Commissioner Avila-Vazquez voted yes, they have met all the requirements that are required by the City of Deltona.

Commissioner Bradford voted yes, it meets the comprehensive plan.

Commissioner King voted no, it does not meet all elements of the comprehensive plan, the citizens in the area have made it clear this evening by 70 emails, a petition and all the folks that have been here this evening, not one person has been for this project and he is listening to the residents.

Commissioner McCool voted no, according to Florida Statute and Deltona Ordinances it does not meet all requirements to the comprehensive plan, all requirements to the comprehensive plan.

Commissioner Nabicht voted yes, based upon the facts and testimony provided at the hearing tonight.

Vice Mayor Ramos voted yes, based on staff and the comprehensive plan.

Mayor Herzberg voted yes, based on testimony this evening and the comprehensive plan.

**The motion carried by the following vote:**

**For:** 5 - Mayor Herzberg, Vice Mayor Ramos, Commissioner Avila-Vazquez, Commissioner Bradford, and Commissioner Nabicht

**Against:** 2 - Commissioner King, and Commissioner McCool

Ordinance No. 09-2020 was adopted at 9:54 p.m.

**7. OLD BUSINESS:**

None.

**8. NEW BUSINESS:**

None.

**9. PUBLIC FORUM: Citizen comments are limited to issues and concerns not on the agenda and comments on items listed on the agenda will take place after discussion of each item. Please be courteous and respectful of the views of others. Personal attacks on Commission members, City staff or members of the public are not allowed, and will be ruled out of order by the Mayor.**

Kurt Sniffin, 1333 Ferendina Drive, Deltona, spoke about his time in Deltona ending, his wife worked with the Mayor's mom, good and bad times, make Deltona better, constituents, the people in the City, whether more homes are needed, new homes, wishing Commissioner Nabicht success and thanking him for taking care of the firefighters, Interim City Manager Dr. Cooper, and it has been a pleasure.

Elbert Bryan, 1625 Joyner Drive, Deltona, spoke about Hispanic Heritage Month, Hobbit Day, tonight's discussion, the developer, RBG's (Ruth Bader Ginsburg) passing, the budget and infrastructure and other cities around the county.

Jennifer Coen, 2255 River Ridge Road, DeLand, spoke about being a first time candidate for the West Volusia Hospital Authority (WVHA), campaigning with Judy Craig, preserving WVHA, the value of WVHA, what WVHA does, the boards focus, the boards survival, critical times, access to health care, stripping away health care, keeping the community healthy and she encouraged everyone to vote.

Yorelis Navas, 1237 Sacramento Street, Deltona, read from Deltona's TNR (Trap Neuter Release) webpage. She spoke about feral cats destroying medical boxes and a wheelchair in her garage and being able to fill out an affidavit right now.

Commissioner King left the meeting 10:07 p.m.

Ms. Navas continued to read City Code Chapter 14. She spoke about filing with the Health Department and she asked several questions like Who is the volunteer area manager? How residents can contact that person? Where are records kept and how residents can find them?



Brandy White, 2689 Chalmer Street, Deltona, thanked Elbert Bryan, suicide awareness, census participation and residents involvement in government.

Commissioner King returned to the meeting at 10:10 p.m.

Ms. White continued speaking about the residents being ignored, lack of resident involvement, believing in signs and observing instead of speaking.

Vice Mayor Ramos left the meeting at 10:11 p.m.

Richard Bellach, 1665 South Acadian Drive, Deltona, spoke about sticking to his guns, he thanked Commissioners King and McCool and developers paying off officials.

Vice Mayor Ramos returned to the meeting at 10:12 p.m.

Commissioner McCool left the meeting at 10:12 p.m.

Mr. Bellach continued speaking about President Trump, Commissioners fighting for the last item and the money developer spending, roads, people having hearts, Amazon, meeting, the last vote, campaign contributors, the Mayor's time on the dais and Commissioners McCool and King doing the right thing.

Commissioner McCool returned to the meeting at 10:14 p.m.

Mr. Bellach continued speaking about Commissioner Bradford started out doing the right thing, how Vice Mayor Ramos votes, the former City Manager, ethics and Deltona residents.

Roy Isler, 3040 Jollett Court, Deltona spoke about Catalina Blvd., an old saying, the developer, making allowances, comments made, contacting a realtor, leaving the City, affordable housing and listing all his properties.

Albert Neff, Deltona, spoke about roads, Commissioners being for certain areas, seeing the property, professionals, infrastructure, paving projects, talking to Council Member Lowry, lawsuits, catching bass, Lake Tiny, the City's growth, solving problems, retiring, making the City better, glad Commissioner McCool is on the Commission, abiding by the law, doing what is right and the affects of development.

**Motion by Commissioner King, seconded by Commissioner Bradford, to extend the meeting an additional 10 to 15 minutes. The motion carried by the following vote:**

**For:** 7 - Mayor Herzberg, Vice Mayor Ramos, Commissioner Avila-Vazquez, Commissioner Bradford, Commissioner King, Commissioner McCool, and Commissioner Nabicht

**CONSENT AGENDA:** The consent agenda contains items that have been determined to be routine and non-controversial. If anyone in the audience wishes to address a particular item on the consent agenda, now is the opportunity for you to do so. Additionally, if staff or members of the City Commission wish to speak on a consent item, they have the same opportunity.

**10. CONSENT AGENDA:**

Commissioner Bradford asked to pull Item 10-A.

**Motion by Commissioner Nabicht, seconded by Vice Mayor Ramos, to approved Consent Agenda Item 10-B. The motion carried by the following vote:**

**For:** 7 - Mayor Herzberg, Vice Mayor Ramos, Commissioner Avila-Vazquez, Commissioner Bradford, Commissioner King, Commissioner McCool, and Commissioner Nabicht

**A. Request for approval of Resolution No. 2020-54, declaring certain tangible personal property owned by the City as surplus and authorizing the City Manager to dispose of them. - Camille Hooper, Finance Department (386) 8788552.**

**Strategic Goal: Fiscal issues - Maintain current fiscal stability, maximize alternative funding sources, and promote and effective system of checks and balances.**

Commissioner Bradford stated there are items on the surplus list that the City cannot use, but there are non-profits, charities, groups and other organizations that could utilize those items. She asked if it is possible to offer the lawn equipment to whoever is now taking care of the community gardens and have those items available to them. Interim City Manager Dr. Cooper replied technically the City cannot give the equipment away and if the group needs equipment all they have to do is contact the Parks & Recreation Department who can help them do whatever it is that is needed. When the City has disposable equipment, once the Commission votes to dispose of the items they are placed on a government auction site and anyone can bid on the items. The things that cannot be used any more get disposed of, go in the trash.

Commissioner King asked if there was something on the list that Commissioner Bradford sees that the group could use and if there is could the Commission make a motion to dispose of all the items with the exception of those that the group can use.

Commissioner Bradford stated she would have hoped that the City would have reached out to the organization that took over the community gardens, Deltona Strong, to see if they could use any of the equipment. Commissioner McCool replied she was told that Deltona Strong could buy items at a reduced rate, but due to government procurement the items cannot be given away. Commissioner Bradford asked if Commissioner McCool saw anything on the list that Deltona Strong could use and Commissioner McCool stated she has step down from the organization.

Commissioner King asked if the item should be tabled until the next meeting to give Deltona Strong time to get with City staff to discuss what items the organization can use and work out a price. Commissioner Nabicht replied that is what Deltona Strong would do at the auction. Commissioner King stated it would go to the highest bidder at auction and Interim City Manager Dr. Cooper replied the City could not just sell the items to a specific organization for a reduced rate. The items have to go to auction for everyone to bid on because the items were purchased with taxpayer dollars.

Commissioner Bradford stated the community garden is part of the community and Interim City Manager Dr. Cooper stated if Deltona Strong needs to cut the grass they can contact Parks & Recreation to do that if there is capacity to do it.

Mayor Herzberg asked if all the computer and printer items on the list have had their hard drives removed, have they been stripped, and is there some sort of a record of that and Interim City Manager Dr. Cooper replied yes, ma'am.

**Motion by Commissioner Nabicht, seconded by Mayor Herzberg, to adopt Resolution No. 2020-54, declaring certain property of the City as surplus and authorizing the sale or disposal of such property. Upon approval of this item authorizes any and all necessary actions, documents or budget transfers to facilitate Commission approval and further authorizes the Interim City Manager to sign any documents necessary to further Commission approval of this item. The motion carried by the following vote:**

**For: 7 - Mayor Herzberg, Vice Mayor Ramos, Commissioner Avila-Vazquez, Commissioner Bradford, Commissioner King, Commissioner McCool, and Commissioner Nabicht**

Resolution No. 2020-54 was adopted at 10:32 p.m.

- B. Request for approval of Resolution No. 2020-58 Endorsement of Two Referenda on the General Election Ballot that extend Volusia Forever and Volusia Echo programs, urging support from the citizens of the City of Deltona. - Dr. Marc-Antonie Cooper, Interim City Manager, (386) 878-8850.**

**Strategic Goals: Internal/External Communications**

**Approved by Consent Agenda – to approve Resolution 2020-58 endorsing two referenda on the general election ballot that extend the Volusia Forever and Volusia Echo programs, urging support from the citizens of the City of Deltona, and providing for an effective date. Upon approval of this item authorizes any and all necessary actions, documents or budget transfers to facilitate Commission approval and further authorizes the Interim City Manager to sign any documents necessary to further Commission approval of this item.**

**11. CITY COMMISSION SPECIAL REPORTS AND REQUESTS:**

Commissioner Bradford stated she has heard over and over again that if the Commission does not like something then change it and she would like a workshop to review the City's Comprehensive Plan.

**Motion by Commissioner Bradford, to please get a workshop scheduled to review and make changes to the Comprehensive Plan. Motion died for lack of a second.**

**Amended motion by Commissioner King, to the Comprehensive Plan and the LDR (Low Density Residential). Amended motion died for lack of a second.**

Vice Mayor Ramos asked if Commissioner Bradford would be opposed to scheduling the workshop after the election and Commissioner Bradford replied no she would not.

**Amendment to the amended motion by Commissioner McCool, that the Commission put a moratorium on any rezonings until the Comprehensive Plan has been gone over after the election, just rezoning of anything that is not currently in action before the Commission. Amendment to the amended motion died for lack of a second.**

Commissioner Nabicht stated the process is going to take a couple of years and it is not something that is going to happen at one workshop and Mayor Herzberg stated there is a huge cost associated with it.

Mayor Herzberg asked Public Works/Deltona Water Director John Peters if Debarry is

currently going through their development code changes and Mr. Peters replied they are. Mayor Herzberg asked if he knew the approximate cost for that and Mr. Peters replied he did not ask that question, but he can find out. Planning & Development Services Director Ron Paradise stated the city's Comprehensive Plan was adopted in 1989 has been revised twice through what is known as a state mandated Evaluation and Appraisal Report (EAR). The Land Development Code (LDC) has gone through several revisions back in the teens here. The City paid for the first EAR and the City had a contract with The Corradino Group that was about \$130,000 which was back around 2007-2008. The group got paid, but they did about half the work on that then the rest was done in-house. For a major revision to the LDC the City had under contract an outfit by the name of Duncan Associates and that contract was about \$350,000 of which got canceled and that was ultimately done in-house. The second revision EAR to the Comprehensive Plan was done internally by staff.

Commissioner Bradford stated the City was a senior predominant bedroom community and maybe the Comprehensive Plan and LDC were great when they were put together, but the City is not that community any more. This has to be done and she thinks the Commission has to have a workshop to go over the history, the cost, the options and other things that staff mentioned tonight. Interim City Manager Dr. Cooper stated staff will look at that and bring it back to the Commission at the Regular Commission Meeting on October 19th.

Commissioner McCool asked that until the Commission gets clarification to "pump the brakes" on any rezonings until the Commission has a workshop. Mayor Herzberg stated she is extremely opposed to that because nobody knows what is going to come up commercially and everything else. She is not in favor of doing this in-house and is absolutely in favor of bringing in an outside firm to do this. If it is going to be done it needs to be done from top to bottom, by an outside firm and the funds need to be budgeted. This will take approximately four to six months just to get the process started.

Commissioner McCool asked when a workshop could be scheduled and Mayor Herzberg replied after the first of the year, after the election.

Mayor Herzberg suggested the Commission give the manager direction, if the Commission agrees by consensus, to go ahead and do the groundwork, find out what is a reasonable time frame and bring the Commission some realistic numbers and a time frame at either the Regular Commission Meeting on October 5th or 19th as a discussion item. Interim City Manager Dr. Cooper replied he will get the information if not for October 5th then October 19th and he will let the Commission know in advance.

Vice Mayor Ramos asked for an update on the business Cigar Hustler which went to DRC (Development Review Committee) and there has been a lot of back and forth. Planning & Development Services Director Ron Paradise replied right now staff has proposed several options for Greg with Cigar Hustler to contemplate, but he is not sure what his disposition is on some of those options. Right now the proposal of building a deck within the landscape island on the end there has been looked at by the DRC membership and the conclusion is that it is unsafe. It has various conflict potentials with traffic and so forth.

Interim City Manager Dr. Cooper stated when there are small businesses such as that where the building was built back in the 70's there were certain codes at that time that have since changed and the building would need to be brought up to 2020 codes. When staff met with the business owner staff told him this could be worked out.

Commissioner Nabicht called point of order, there is not a policy decision before this Commission regarding this item. This is a staff issue to be taken up with the manager, this is not a vote able issue and the Commission is getting involved in staff issues which is a violation of the charter.

Mayor Herzberg asked since this went to the DRC once or twice, does the gentleman have the right to petition this in front of the Commission and Commissioner Nabicht replied absolutely, that is the process and the Commission is jeopardizing what that applicant's outcome may be by prematurely having a discussion about it tonight.

Mayor Herzberg suggested Vice Mayor Ramos speak with the manager and find out what the next part of the process is so the applicant can be advised.

## **12. CITY ATTORNEY COMMENTS:**

None.

## **13. CITY MANAGER COMMENTS:**

Interim City Manager Dr. Cooper stated he wanted to give a huge kudos to the Public Works and Deltona Water staff for this past weekend. They were out there in the pouring rain trying to mitigate some of the issues that the City had. He just wanted to publicly state that he really appreciates everything that they did this past weekend and big kudos to the Deltona Water staff, Public Works staff and stormwater staff. Thank you, thank you.

## **14. CITY COMMISSION COMMENTS:**

Commissioner King reminded everybody that the American Legion is doing their fundraiser for Wreaths Across America this weekend. They will be in front of the Winn Dixie Shopping Plaza on Providence Blvd. Monday from 10:30 a.m. in the morning until 6:00 p.m. in the evening. They need to raise enough money, \$17,000, for 1,007 wreaths and he encouraged everyone to come out and support the cause.

Commissioner McCool stated it was in her comments to talk about RBG (Ruth Bader Ginsburg) "thank you very much for everything you did for us and will continue to do in the ground work that you lay." She would like some kind of finality for the City and she does not know what that is regarding Ms. Brandy White. She does not know legally what goes on, she has consulted about what she can and cannot say about this. She personally issued a public apology to Ms. White for what happened to her, but she will always think Ms. White is confrontational and loud, however, she is necessary and she thinks that Ms. White's feelings should be validated.

Commissioner McCool asked the Commission for is a consensus on the City's situation with Keith Lawhun. Mr. Lawhun has had a situation with his property that has been going on for a couple of years. It has been in and out of court and she understands it to be out again. She spoke to the Interim City Manager and the City Attorney regarding this and she would ask for a consensus that by the next Commission meeting the Interim City Manager and the City Attorney meet with Mr. Lawhun and figure out some resolution on the disposition of his property, whatever those options are. Mr. Lawhun's health is suffering greatly from the distress that he has been under and he has had a chronic noise problem. She was told that she could make this request, she does not know where the process leads, but if the Commission could go ahead about the business of settling that issue because it has drug on and she asked for advice of the Commission.

Mayor Herzberg stated as she recalls the City has been through this in court multiple times. She asked if the City won or lost those court cases and City Attorney Fowler replied Mr. Lawhun's appeal was denied last Friday. Mayor Herzberg asked what happened the first time around and City Attorney Fowler replied the City prevailed and the appeal was denied. She understands Commissioner McCool's emotional involvement in this and wanting to do what is right for people, but this is a municipality and there is a legal process. At what point when the City is involved in a lawsuit are the Commissioners committing the City to something that has to go through a process or has gone through a process twice. The City prevailed, the appeal was denied and now Commissioner McCool is asking that the Commission revisit this.

Commissioner McCool stated she is asking since circumstances have changed and Mayor Herzberg asked what circumstances have changed from Friday to now or is that something that has to be under a lawsuit situation. Mayor Herzberg asked the Interim City Manager and City Attorney if the Commission is opening themselves up to any liability here or opening themselves up to another lawsuit or is this a discussion. City Attorney Fowler replied it is his understanding that it would be a discussion. Mayor Herzberg asked what the end result is for the discussion. City Attorney Fowler replied he is not positive because there has not been a discussion, but if there is something that the City might do that would profit both Mr. Lawhun and the City, then he guesses the City could explore it.

Mayor Herzberg stated if there is something that could be done that could profit Mr. Lawhun and the City, that sounds like some sort of a land deal to her and City Attorney Fowler replied that is the option. Interim City Manager Dr. Cooper replied in his opinion it is a slippery slope and City Attorney Fowler stated it is.

Commissioner McCool stated she is not asking for a determination, but a dialogue which is what she asked the Interim City Manager and the City Attorney.

Commissioner Nabicht stated he is not going to direct the Interim City Manager and the City Attorney to meet or not meet with Mr. Lawhun because they have the power to make that decision. Multiple City Managers, City Attorneys and Commissioners have met with Mr. Lawhun at his property over the years and came to no agreement so it wound up in court.

The court rendered a decision and he thinks the City should always be, in a case like this, willing to listen, but again that is going to be up to the manager and the City Attorney as to how much time they afford to him and spending the citizens tax dollars to continue with this. If there is something that Mr. Lawhun feels the City has wronged him then he can take that additional item to court, but his understanding is the City has been through all of that, the court ruled on all of that and the court ruled in favor of the City.

Vice Mayor Ramos stated he agrees in the sense that he does not think the Commission needs to direct the City Attorney and the Interim City Manager. Mr. Lawhun has the option to reach out to them and they can decide whether to have that discussion with him.

Commissioner Bradford stated Mr. Lawhun has come before the Commission and spoke before. She has mixed feelings because the City has been in a lawsuit and she wonders if it is coming to this because Mr. Lawhun lost the appeal. She questioned whether the property would benefit the City.

Commissioner McCool stated she needed to make a correction, she has been talking with Mr. Lawhun for two and a half years and the decision was just made on Friday to deny the appeal. It could have gone either way, but Mr. Lawhun wanted to sit down and there had been no determination made when this request was made. It has just taken this long because there has not been a Commission meeting where she could bring it up.

Commissioner Bradford stated the problem is that Commissioner McCool could sit down and talk to Mr. Lawhun over the past two years because she was not a Commissioner then, but as a Commissioner once there is a lawsuit the Commission is not allowed to sit down and talk to him. She thinks there was a short period of time where the City was in between cases and Mr. Lawhun did come to appeal to the Commission, but then it went back into court again. Now the Commission is back here again and she asked how much taxpayer dollars is the City going to spend going back and forth.

Commissioner McCool stated as a resident, she would encourage Mr. Lawhun to sit down and talk to the Interim City Manager and City Attorney as any other resident would. From what she has deduced and from what she was told that was going to happen and perhaps she interpreted her conversations incorrectly, but she does not think so. She understands what the Commission's responsibilities are as a City and she understands it was a lawsuit, but again she is asking.

Commissioner Avila-Vazquez asked if the decision can be left up to the Interim City Manager and the City Attorney to decide whether they want to meet with Mr. Lawhun. Mayor Herzberg stated Commissioner McCool asked for a consensus that the Commission direct the Interim City Manager and the City Attorney to speak with Mr. Lawhun.

Commissioner McCool stated to be crystal clear, the ask was made before the decision came down denying the appeal. She talked about this a couple of weeks ago before the decision came down and she is new to this which is why she is asking. If a consensus



cannot be made she is at least going by what she was told that Mr. Lawhun would be afforded time to sit down with the Interim City Manager and the City Attorney. She is willing to be wrong and corrected in this, but she is telling the Commission that the ask was made a couple weeks ago. She is up for direction, that is what she is asking the Commission's guidance on.

Vice Mayor Ramos asked to see if there is consensus.

**Mayor Herzberg asked if the Commission was in favor of directing the Interim City Manager and the City Attorney to meet with Mr. Lawhun and the majority of the Commission, with the exception of Commissioner McCool and Commissioner King, were not in favor.**

Mayor Herzberg stated it is up to the Interim City Manager and the City Attorney if they want to have a discussion with Mr. Lawhun to see if there is anything mutually beneficial to come out of that discussion.

Commissioner McCool stated she wants to see future discussions about what the City can do to clean up its exits. The City has contacted FDOT (Florida Department of Transportation) who will cut the grass at some point. She just cannot believe the amount of time it has taking to try to get trash picked up on an exit. She cannot do it because then the City is not liable if she gets run over and City staff is not dedicated because it is FDOT. The City needs to move forward with that and clean up its exit.

Mayor Herzberg stated that exit is not the only one and she suggested talking to Public Works, Parks & Recreation or the Interim City Manager to try and look into doing a contract for those things. It has already been said there will be budget amendments in this budget no matter what, but City staff cannot take any more on. Departments are under staffed and overloaded, contract out the beautification like the Commission talked about years ago. She suggested to bring a contract forward to the Commission for maintaining the City's exits.

Commissioner Nabicht stated on something like picking up trash and doing constant mowing the City could probably look at a contract with the Tomoka State Prison and using the prisoners. Interim City Manager Dr. Cooper stated he just had that discussion earlier and he mentioned he would bring it up to the Commission.

Commissioner Avila-Vazquez stated she wanted to give a shout out to City staff for their response to the issues that the City was facing yesterday. She was out there around her district and she saw these people soaking wet pulling out whatever was in the middle of the street trying to help residents. The City definitely needs to get more staff with better pay. She also wanted to thank the Interim City Manager and Deputy Public Works Director Phyllis Wallace for reaching out to the builders and having them come out to survey the area to see what was going on. She apologized to her District 3 residents because she was without a phone since Thursday which has since been replaced. On October 3rd the Pink

Bra Walk event will take place to recognize breast cancer awareness and information is on Facebook through Thriving Queens of Volusia which is a new non-profit organization that is supporting battered women, survivors, cancer survivors, and survivors of sexual abuse. RBG was on her list and she posted on her Facebook one of RBG's favorite comments. She gave a shout out for Hispanic Heritage Month which goes from September 15th to October 15th. She thanked everybody who went out and got wet with her yesterday.

Commissioner Bradford stated she wanted to answer the question why. She provided the difference why then and not now and the difference is a school zone. That is why she was questioning the other subdivision the Commission dealt with. Yes it backed up traffic as well, but it also dealt with students in a school zone. There is a little bit of a difference than just traffic backing up which it is in that area down there. In fact, she drove down there again last week and she was just complaining to the manager that the traffic even without a new subdivision is horrendous down there by Pine Ridge before and after school. So that is the difference, but the big difference between that one and this one was the school's own data at Pine Ridge. That is what made her vote no on the last one. Again the Comprehensive Plan needs to be changed and the Commission has guidelines that they have to go by. She cannot go by hearsay and unfortunately there was proof such as the TIA (Traffic Impact Analysis) to back it up. As much as she would have loved to say yes she cannot listen to hearsay and she compared it to a judge receiving testimony. As much as her heart bleeds for the residents and as much as she would love to say no she cannot without proper documentation and proof, so that is her why.

Commissioner Avila-Vazquez stated the reason she voted against the item was because of the entry and exit of roads, that is what she had written down.

Commissioner Bradford stated there was an appeal for the TNR (Trap Neuter Release) from Ms. Navas who asked several questions. The City Clerk has the questions and she would love if staff could get back with the resident. There are certain areas that the City has a nuisance problem with feral cats. She has had feral cats at her office, Commissioner Nabicht has had them and a few other people also have the same situation. The City has a program and there are people who want to help the volunteers. She asked if there is a way that staff can get back with Ms. Navas. Mayor Herzberg stated Ms. Navas' area is being worked on, but the manager needs to address her points. Commissioner Bradford stated she would appreciate if that could happen.

Commissioner Bradford stated the issue Vice Mayor brought up tonight, this is not to direct staff, this is a problem that she has heard since before she became a Commissioner. Obviously there are policies and procedures, but sometimes staff says no too fast instead of providing options. Like the Cigar Hustler, maybe instead of being told no offer an option to go before the Commission. There has been a lot of people go to her and say they would have loved to bring their business here, but when they went to staff they said no the City does not want that here so it never got to the Commission, she has a problem with that. Then everyone wonders why the City does not have commercial development. She thinks a lot of it comes down to not many people knowing the policies and procedures to get

something through. So she does not know what can be done to fix it, but that is something that the City is going to have to deal with. This is not the first time she has heard this, in fact the realtor that sold her building to her told her that day that she had lost buyers of the building because every one of them had an idea put before staff and staff said no they could not do that. Not once did staff say, but this can be done.

Vice Mayor Ramos stated just a quick shout out and thank you to Public Works and the Interim City Manager for keeping the Commission informed in the midst of his steak dinner. He also had it in his notes to say rest in peace just as notorious RBG.

Mayor Herzberg stated she will say the same, she thinks that the entire Commission wanted to say that, most of them anyway. The goal in life is to try to make positive change sometimes and she thinks RBG did that whether you agreed or not. Like Elbert Bryan said she really was a trailblazer. She reminded everyone that the Commission Workshop is next Monday at 5:30 p.m. and Commissioner Nabicht stated he would not be able to attend the meeting.

#### **15. ADJOURNMENT:**

There being no further business, the meeting adjourned at 11:17 p.m.

---

Heidi K. Herzberg, MAYOR

ATTEST:

---

Joyce Raftery, CMC, MMC, CITY CLERK