

CITY OF BROOKSVILLE
REGULAR CITY COUNCIL MEETING
COUNCIL CHAMBERS
201 HOWELL AVENUE

MINUTES

June 15, 2009

7:00 P.M.

Brooksville City Council met in regular session with Mayor Joe Bernardini, Vice Mayor Lara Bradburn and Council Members Joseph E. Johnston, III, Richard E. Lewis and David Pugh present. Also present were Thomas S. Hogan, Jr. and Jennifer Rey, City Attorneys; T. Jennene Norman-Vacha, City Manager; Janice L. Peters, City Clerk; Mike Walker, Parks and Recreation Director; Bill Geiger, Director of Community Development; Emory Pierce, Director of Public Works; and Tim Mossgrove, Fire Chief. A member of the St. Pete Times was also present.

The meeting was called to order by Mayor Bernardini, followed by an invocation and Pledge of Allegiance.

CERTIFICATES, PROCLAMATIONS AND PRESENTATIONS

Juneteenth Proclamation

Presentation of proclamation commemorating June 19, 2009 as Juneteenth Day.

Mayor Bernardini read the proclamation in its entirety and presented it to Suzanne Touchton, who accepted on behalf of Just Us, Inc. She advised that the celebration this year will be from 10:00 a.m. to 3:00 p.m. on Saturday, June 20 at the Frederick B. Kelly Elks Lodge and everyone is invited to attend.

CONSENT AGENDA

Minutes

March 16, 2009	Regular Meeting
April 20, 2009	Regular Meeting

Conflict Waiver

Consideration of conflict waiver to allow the City Attorney to draft an Interlocal Agreement with Sumter County for use of the Sumter County's solid waste facility. The Hogan Law firm is also retained by Sumter County as counsel.

Contract for Sale of Jasmine Drive Tracts A&B Easements

Consideration of contract and proposed budget amendments.

Renewal of Interlocal Agreement for Creation of the Metropolitan Planning Organization (MPO)

Consideration of renewal of agreement between the Florida Department of Transportation, the City of Brooksville and Hernando County for creation of Hernando County MPO.

Motion:

Motion was made by Council Member Lewis and seconded by Council Member Johnston for approval of the consent agenda.

APPROVED BY BROOKSVILLE

CITY COUNCIL

ON 8/17/09 INITIALS JL

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Vice Mayor Bradburn requested discussion of items 3 and 4. Concerning item 3, the contract for sale of Jasmine Drive easements, she asked if the mitigation of the trees, especially the century old canopy of oaks, was discussed when the item was initially approved by previous Council. Council Member Johnston did not recall. She asked that staff review the item.

Mayor Bernardini pointed out that during the initial closing on the sale with Stewart Title Company it was determined there was a discrepancy between the legal description of Tract B and the actual survey. City Attorney Rey indicated both surveyors are standing by their surveys and have not agreed to amend. She further explained that there is a discrepancy between the survey that was used to convey the land to the City on the original purchase of the Good Neighbor Trail, through the Florida Communities Trust (FCT) Funds, and the survey provided to the City by the County to purchase the track for the Jasmine Drive expansion. Stewart Title indicated they made an attempt to contact both surveyors to identify the problem and negotiate a resolution but has not been able to do so.

City Attorney Rey further stated that this particular contract for sale contains provisions such that the City would not be responsible for the title deficiencies as a result of the discrepancies in the surveys. The railroad company that owned the property prior declined to amend their survey as well. The City has worked with FCT and the description the City is using for the purpose of the FCT grant that was used to purchase the land has been resolved. This particular Contract for Sale releases the City from having to be responsible for title deficiencies with respect to Tract B.

Vice Mayor Bradburn advised that she had met with the attorneys to ensure there are no private property owners that would be negatively impacted by the discrepancy.

Motion carried 5-0.

CITIZEN INPUT

Mayor Bernardini asked for citizen input; there was none.

REGULAR AGENDA

Mayor Bernardini indicated a request was made of Council to discuss Item 3, the Fair Association Agreement before Item 4, the Hernando County Enrichment Center agreement, because their attorney has a long drive after the meeting. Council consensus was to allow it.

Resolution No. 2009-07 Withlacoochee Regional Water Supply Authority (WRWSA) Grant Application

Consideration of approval to apply for grant funding to reduce costs to complete the overall Radio Read Meter Conversion Project.

Emory Pierce, Director of Public Works, reviewed the grant, which will help in the replacement of the City's old meters since the WRWSA grants focus on water conservation. Vice Mayor Bradburn indicated, confirmed by Director Pierce, that this will enhance the radio read program to the top 23 users who are either government or quasi-governmental users and affect the taxpayers' bottom line. She asked that Director Pierce stress in the application that it is taxpayers money and we want to make sure that the public at large benefits from it.

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Council Member Lewis asked if any of the money will be available to build the vaults needed by some of the meters. Director Pierce indicated the cost is included in the estimate.

Motion:

Motion was made by Council Member Lewis and seconded by Vice Mayor Bradburn for approval of Resolution No. 2009-07.

Mayor Bernardini asked for public input; there was none.

City Clerk Peters read Resolution No. 2007-22 by title, as follows:

A RESOLUTION OF THE CITY COUNCIL OF BROOKSVILLE, FLORIDA, REQUESTING A GRANT FROM THE WITHLACOOCHEE REGIONAL WATER SUPPLY AUTHORITY.

Motion carried 5-0 upon roll call vote as follows:

Council Member Johnston	Aye
Council Member Pugh	Aye
Council Member Lewis	Aye
Vice Mayor Bradburn	Aye
Mayor Bernardini	Aye

Great Brooksvillian of the Year

Appointment of screening committee members and approval of timelines for the celebration.

City Clerk Peters indicated that last year's committee members John Tucker and Ron Daniel were contacted and offered their services should Council desire to reappoint them. Mr. Tucker also recommended Sandra Sullivan and Rhonda Hancock for Council to consider as the third member.

Motion:

Motion was made by Vice Mayor Bradburn and seconded by Council Member Lewis for the reappointment of John Tucker and Ron Daniel and the appointment of Sandra Sullivan as the third committee member. Motion carried 5-0.

Hernando County Fair Association Zoning

Consideration of a request by the Hernando County Fair Association to authorize additional time to address zoning issues.

City Attorney Hogan reviewed the consideration of two (2) alternatives. The Fair Association has allowed participants of the fair to stay on RV sites located on the property and parking and maintaining of equipment pursuant to an agreement with North American Midway Entertainment, LLC (NAME). He is looking for guidance on whether this activity is in compliance with current city zoning of agricultural to allow for a one (1) year agreement with NAME which is in compliance with Florida Statute 616.256.

Attorney John Foster, counsel for the Hernando County Fair Association, indicated an amendment was made in 1993 to authorize Fair Associations to use their property for year

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round activities but receive no funding. He indicated the one (1) year agreement with NAME will allow for tractor-trailer maintenance and storage. This will allow the City time to review the zoning and will not set precedence for a future agreement. The license agreement states provisions such as wastewater handling in accordance with Health Department regulations, clean up of garbage in appropriate containers and authority to remove objectionable persons. NAME has agreed to all use restrictions in the agreement. The Hernando County Fair has contracts with other entities for this type of use as do many other fairs in Florida that he represents. Council Member Pugh indicated his concern with gray water and asked if the Department of Health and Human Services inspected the eighty-nine (89) RV sites to determine sufficient holding capacity. Attorney Foster replied they have not in the past but will do so under this agreement.

Council Member Johnston recommended the creation of an overlay district be written into the City's zoning code that is unique to a fair.

Vice Mayor Bradburn indicated she has historic knowledge of fair operations and is familiar with state law pertaining to fair operations and the attorney general's opinion of Attorney Foster's request. The RV hookups were established for events. The proposed sublease does not conform to the agreements already in place. She expressed her support of the fair as a vital element of the community's social and economic well being. However, this type of use was never intended for that property and her position is to not support the one (1) year extension.

Council Member Lewis indicated he is in favor of the agreement indicating the Fair Association receives no money from the County or City and felt this to be a good move. He encouraged the Fair to be a good neighbor to the community to the south by adding a buffer. He supports Council Member Johnston's idea of creating an overlay district and this one (1) year timeframe will give Council time to determine use of the fair property.

Council Member Pugh asked if NAME would have utilization of the property for the entire year. Attorney Foster replied it is a five (5) month period from November 1st to March with most of the crew leaving for a month in December but equipment will be left onsite during the year. He indicated there are a lot more safeguards in place this year as compared to last year. Council Member Pugh stated his concern is the vagueness of State Statute but appreciates the effort in working with the City to determine a favorable outcome for all. He is in favor of the one (1) year agreement to give the City time to seek the attorney general's opinion.

Discussion continued of the zoning designation of the property and the rights of the Fair Association under Florida Statutes.

Vice Mayor Bradburn indicated that there is already State designation of fair activities and asked why an overlay district was needed. Council Member Johnston stated that by the City setting its own allowances, it would put limits on the use of the fair should they agree to it.

Vice Mayor Bradburn stated that in pursuit of the City creating an overlay district the fair would have to provide more information in the form of records and receipts.

Council Member Lewis felt creating an overlay district would avoid litigation and will give both sides a working agreement.

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Council Member Johnston did not agree with approval of an agreement tonight but would agree to not pursue code enforcement issues for a year while staff works out the details.

City Attorney Hogan explained that counsel seeks direction from Council whether he should follow State Statute or the current zoning laws. Mr. Foster and the fair board have agreed to work with Council over the next few months to come up with a description of zoning they would be willing to comply with. City Attorney Hogan intends to avoid litigation and this would be resolution to the issue and would give direction to counsel and code enforcement staff on how to proceed.

Council Member Pugh reiterated that he does not want this to set a precedence, which Mayor Bernardini concurred with as well. City Attorney Hogan stated the Fair Association agreed it would eliminate the argument that precedence had been set by going forward tonight.

Joy Jackson, Fairgrounds Manager confirmed that NAME is not the organization that puts the fair on each year.

Mayor Bernardini had requested a breakdown from NAME of the revenue generated but has not received those figures as of yet. Attorney Foster stated that is the type of information you could be provided over the course of the year.

Mayor Bernardini asked has the Hernando County Board of County Commissioners been presented this for approval. Attorney Foster replied the county does not have any objection to the NAME use of the property. Vice Mayor Bradburn indicated the County has not yet officially made that determination. Mayor Bernardini would like it to be presented to the County to be aware of what is being proposed. Attorney Foster stated he would be glad to do that.

Council Member Lewis concurred with Council Member Pugh about the necessity of an agreement so that it does not set precedence and establishes guidelines agreed to by the fair.

Vice Mayor Bradburn stated agricultural land anywhere in the City or the County does not allow for heavy equipment operations, parking and maintenance and for the County to approve that activity would definitely set precedence. Parks and Recreation is a government entity the County once owned those fairgrounds in full. The use by AT&T is during an emergency operation only. This would not be a continual use of what has always occurred. This is a new use and she will not subject adjacent property owners to a constant RV park operation. She wants to work out all of these issues for the good of the community.

Attorney Foster stated in presenting this license agreement for Council review it is a testament to their good faith effort to work together. There are uses that occur on the fairgrounds today that have occurred for years which do not fit in the City's zoning code.

Vice Mayor Bradburn agreed with Council Member Johnston's suggestion of exploring a new zoning designation in and of itself. She would like to have discussions for a formal opinion from the Attorney General and definitely need strong buffering to be more esthetically pleasing and less impacting to adjacent neighbors. Documentation regarding financial, rental and use will have to be provided in a timely manner to further meaningful discussions. The City will have to reserve the right to act on any legitimate new violations affecting the public's health, safety and welfare. Attorney Foster stated that under the license

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agreement they are required to comply with all applicable laws, rules and regulations. A lot of Council's concerns are addressed in the license agreement and he wants to work with the City to make it a successful event.

Council Member Pugh stated the long term use of the RV's is what needs to be addressed and is in support of those efforts for a year. He would like to have the citizen complaint rectified. Attorney Foster indicated it would be taken care of.

Council Member Johnston suggested a report back to Council in December or January to monitor the situation since the actual license agreement begins in November.

Mayor Bernardini reiterated if there is a violation the City has to take action and not turn a blind eye to it.

Sandra Nicholson, President of the Fair Board indicated she has no problem planting as many trees as possible. However the complaint was cited from the golf course and this will not alleviate the view from there. Attorney Foster stated they will meet with the complainant and will try to resolve their concerns. Vice Mayor Bradburn indicated there were several complaints.

Vice Mayor Bradburn would like to include the items discussed for a motion such as: efforts to create a buffer that will reduce the esthetic impact to adjacent properties; the City to reserve the right to pursue any potential violations of health, safety and welfare; in good faith effort, provide documentation necessary to render an appropriate decision including financial, rental/lease records and other uses and pursue the Attorney General's opinion.

Council Member Johnston indicated the last two (2) items would be done by Council and not contingent upon them and could request the Fair Association address the buffer matter and have indicated that they would be willing to do that. Attorney Foster agreed and stated better esthetics may be achieved by simply relocating some trailers to the back of the property between the extension service and animal control.

Council Member Johnston stated it is on record that they would be willing to look into the buffer situation without having to include it in a motion. These could be addressed when setting up the zoning code and are able to be worked out in the agreement. This is not formalizing the agreement it is to authorize and proceed under Section 616 for a specified period of time while the issues are being worked out and to develop a code.

Mayor Bernardini would like to have, as part of the needed information, that the County is in agreement with the use of the property and a breakdown of revenue generated.

Council Member Pugh asked Mr. Foster to indicate on the map where the RV's were parked last year. Council Member Pugh stated that in between the golf course and the road there is a huge DRA and there seems to be adequate buffer where the RV's were parked. He has no problem supporting this for a year.

Vice Mayor Bradburn asked Ms. Nicholson and Ms. Jackson if they are in agreement with the conditions outlined.

Sandra Nicholson replied they are in agreement with planting trees and relocation of the trucks and NAME has agreed to fence and secure the area. She will supply previous rental

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records from NAME and a report in January. She will meet with the County Commissioners and have them put in writing that they agree with the lease. Mr. Foster stated he will get a letter from the County Administrator indicating that the NAME lease is not inconsistent with the memorandum of understanding.

Motion:

Motion was made by Council Member Johnston and seconded by Council Member Pugh to authorize and proceed under Section 616 for a specified period of time while the issues are being worked out and to develop a code. Motion carried 5-0.

Hernando County Enrichment Center Agreement

Consideration of agreement between the City of Brooksville and the Hernando County Enrichment Center. (ECI)

Mike Walker, Parks and Recreation Director reviewed areas of differences in the agreement and is looking to Council for direction. Council Members and attendees commented on each as indicated.

- Page 1 (first paragraph)

Attorney Mason wanted to be sure that in no way does it look like a partnership due to longevity of this agreement.

 - Attorney Mason stated, due to the liability issues, it is not in the best interest of either party to enter into a partnership. Parties signing an agreement do not make them partners. However, there are still some insurance liabilities that attach to landlord and tenant relationships such as a third party.
- Page 3 - #3 Term of the Agreement

The agreement states forty (40) years and the Enrichment Center is requesting ninety-nine (99) years. Per Attorney Mason, “executed by both parties” is stating that the agreement has to be renegotiated.

 - Council Member Lewis indicated Exhibit D Depreciation Schedule is based on a forty (40) year payout and he would like to see the lease time extended out to a sixty (60) year payout on an amortization schedule with the same option of renewing within six (6) months notice as previously stated. He feels sixty (60) years is a compromise to the ninety-nine (99) years requested by The Enrichment Center and feels that sixty (60) years is the life expectancy of the building. It decreases any liability of the City with a longer term for depreciation. The Interlocal with Hernando County Fire Service has the same type of amortization schedule and is prorated. He would also like the amortization schedule to reflect renewal after forty (40) years on the party that is leasing the building with the stipulation of a contribution after that time. In other words, prorating the first forty (40) years would increase the value more which would be over \$30,000 a year. Attorney Hogan stated if The Enrichment Center comes back to Council in the future with another 2,000 feet of space it would be negotiated according to what it is worth and giving credit for that. Attorney Mason indicated the amortization schedule should reflect the cash invested up front but the agreement should indicate modification of that amortization on a dollar for dollar basis of what is brought in by ECI in later grants.

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- Attorney Hogan recommended the forty (40) year term from the tax depreciation tables which is logical and comparable to the depreciation tables mandated by the IRS.
 - Council Member Pugh indicated the agreement is reasonable at forty (40) years being consistent with public lands but should have a renewal time period. The airport industrial park does lease agreements between thirty (30) and forty (40) years and that is all public land. Attorney Hogan asked would that be a mutual renewal or one sided. ECI will be making an initial investment as a lease payment which will be amortized over forty (40) years. They will essentially not be paying any rent after forty (40) years so a renewal period would be done without a fee. Attorney Mason stated he agrees with termination for cause and rejection of renewal for “cause”. Council Member Pugh indicated however Council works out the renewal is fine with him.
 - Attorney Mason stated the term of the agreement was originally ninety-nine (99) years with the amortization being over forty (40) years. City staff changed that to forty (40) plus forty (40) in the final draft that is before Council tonight. The renewal language in the draft needs to be clarified “*to be exercised in writing executed by both parties*”. ECI had always anticipated the agreement would be a discretionary renewal. This implies that it would be a negotiated renewal and contradicts prior discussions. All that needs to be done when there is an option to renew is the tenant writes a letter to the landlord stating their intention to renew.
 - Council Member Johnston stated forty (40) years is fine with him. He agrees with Attorney Mason and indicated that generally an option is not exercisable by the lessee without requiring the lessor to enter into it. However, there may need to be some nominal lease payment upon renewal of a forty (40) year agreement with no lease payments other than the contribution.
 - Mayor Bernardini indicated he has no problem with forty (40) years and “as executed by both parties” not knowing who will be here and what will be happening in forty (40) years. He does not want to tie the hands of future Council and The Enrichment Center. He feels the figures could be increased on the Amortization Schedule. Attorney Rey clarified the amortization schedule is based on \$600,000 State appropriation over the time frame. Attorney Mason stated they have \$100,000 from the County, a \$50,000 commitment from the Mining Association and an additional \$600,000 that may be coming from the Federal government. That all has to be factored into the amortization schedule.
 - Vice Mayor Bradburn believes forty (40) years is appropriate and would support a nominal fee or a balloon payment upon renewal stating that the City intends this to be a long term operation and The Enrichment Center should have confidence that there will be.
- Page 3 - #4 Environmental Matters

The Enrichment Center wants to make sure if anything comes up after the Phase I Environmental Study that the City of Brooksville is responsible for that cleanup.
 - Page 4 - #6 Programming Activities (last sentence)

The Enrichment Center feels that “*operate its programs within the building*” is too vague and would like it to read “*pro shop and museum after 4:00 p.m. Monday through Friday as provided below*”.

 - Council Member Pugh is in agreement with not specifically designating which two (2) rooms to operate its programs and with the six (6) programming activities and

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the posted hours of the pro shop. He asked Mike Walker of the intention for long term use of the building and housing golf carts in the future. Mike Walker replied the golf carts will be stored under the overhang of the structure.

- Council Member Johnston suggested “*The City shall simultaneously operate its programs within the building as described below*”. Attorney Mason agreed and stated there has to be some clarification. However, he does not agree with the last sentence of 6(a) which states the City has directive authority over the nature and timing of The Enrichment Center’s programming activities.
- Mayor Bernardini has no problem with the way this section is written. He likes the third party dispute resolution for long term. But on short term, the City Manager should be able to decide a dispute, including The Enrichment Center’s space.
- Council Member Lewis does not see a problem with this section because there will be good communications between both parties therefore eliminating scheduling conflicts. He indicated the Enrichment Center in Spring Hill takes good care of their property and it is something for them to be proud of.

- Page 4 - #6(a) Calendaring/Scheduling (halfway through paragraph)

Attorney Mason agrees to designate one (1) of the three (3) rooms to the City for recreational programs with children.

- Council Member Lewis commented on “*The City Manager shall have the sole and absolute discretion final authority*” referring to Attorney Mason’s memo dated June 11th under item 19 page 6. He is in favor of the verbiage under 19(a) “*If scheduling conflicts arise, the City Manager and ECI’s Executive Director or their respected designees shall have sole and absolute discretion and final authority to determine both the appropriateness and scheduling and the priority both of any event being held or to be held at and any other use of their respective space with due consideration being given by each to the scheduled and planned events of others*”. He stated this shows cooperation between the two (2) parties. The agreement lays out the space for the pro shop, the museum and also for ECI.

- Page 4 #6(a) Calendaring/Scheduling (last sentence)

The Enrichment Center feels that the City Manager should not have the final decision as stated “*the City’s Manager, shall have sole and absolute discretion and final authority to determine the appropriateness, scheduling and priority*”.

- Attorney Mason stated the calendaring and scheduling language is part of the Programming Activities section. Until 4:00 p.m., The Enrichment Center is going to be programming for the entire building excluding the pro shop and museum areas. The City could use one (1) of the classrooms, if it is not otherwise scheduled, during those hours. After 4:00 p.m. the City will have primary use of two (2) rooms. If the City does not have something scheduled for either of those rooms then The Enrichment Center could use them if need be. This is where one of the “absolute discretion” issues comes up and could be interpreted to mean that the City Manager has the sole authority under those two (2) scenarios. He feels the proper way to handle that would be that each party makes the decision on the use of their own space. He is concerned with the simultaneous language in paragraph 6. If the word “program” is deleted and pro shop and museum is substituted then the word “simultaneously” works because that is what will be happening. However, to the extent that there will be other City programs to operate simultaneously that would have to be qualified by stating “*after 4:00 p.m.*”. He indicated Paragraph 12, Dispute

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Resolution, has the same dispute such as scheduling which can be resolved by stating that “*during the hours before 4:00 p.m. ECI has scheduling authority in the entire building and the City has scheduling authority after 4:00 p.m.*” There are two (2) rooms that are on the upper floor that are adjacent to the rooms that hold the pro shop and mining museum. He would like to see written in the two-room paragraph that it is those two (2) specific rooms, to avoid a dispute in the future.

- Mike Walker commented that he would differ from that as far as the upstairs space for the classrooms because with the First Tee Program he envisions a golf simulator indoors to teach children how to swing a golf club and computers in the build out area for seniors and youth. Attorney Mason indicated there are three (3) spaces on the second floor; pro shop, mining museum and the area of those two (2) classrooms. The golf simulator and computers would not be in the same room with the mining museum.
- Debbie Druzbeck, Director of the Enrichment Center, stated that Mike Walker is referring to the addition and not the main house. In the addition, 2,000 square feet of the main floor will be divided four (4) ways. In the area where the golf simulator is going to go is where The Enrichment Center athletic programs will take place. She does not feel it necessary to state in the agreement which specific two (2) rooms are used as long as it is stated two (2) rooms. That is a management issue.
- Council Member Johnston does not have a problem with day to day operations being worked out between ECI and the City Manager. If it comes to bigger things there is a lead in time as discussed at one point and maybe having a third party picked by the two (2) parties to dispute an issue.
- Council Member Lewis cannot agree with absolute authority during an emergency situation should the City Manager be out of town. The decision should go back to each party over their own space. There has to be a collaborative effort of whose space and the decision being made on a major issue. If The Enrichment Center gets the additional \$600,000 that needs to come back to the City Manager and Council with the plans to show desired improvements. This would be out of courtesy and a good working relationship.
- Vice Mayor Bradburn feels the Sole Discretion Clause could be worked out if a reasonable time table is built into the clause. It is not meant to pre-empt programming or put undue burden upon The Enrichment Center but simply meant to give reasonable decision making ability to the City in the event of a short term conflict. Longer term conflicts will have time for a third party intervention. It is to alleviate Attorney Mason’s concerns and still ensure trivial matters are not put before the attorneys and judges.
- Nick Morana indicated in the event of an emergency The Enrichment Center will relinquish control of the building to the City to allow Emergency Management to move in.

- Page 5 - #7(c) Premises Maintenance Fund

The Enrichment Center’s draft agreement stated they would work hard to raise the funds to go into a special fund controlled by the City. However, it did not state an amount or a percent so City staff felt that it was necessary to put some type of dollar amount or percent to go into this fund. The Enrichment Center is in disagreement with this section. If there is no dollar amount or percent provided the City will have to budget 100% of the operating cost and have no way of knowing what would be their contribution.

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- Attorney Mason indicated they do not have \$10,000 unless an in-kind contribution is made. ECI is operating on a monthly stipend from Oak Hill Hospital with a ten (10) year agreement that expires February 2011. If the City can get that agreement extended then the funding could continue. ECI also has an agreement with Oak Hill Hospital to make contributions to their expenses by holding various limited fund raising events. Members are charged \$15 a year which goes towards operational expenses and does not cover what ECI provides to its members. ECI has no capacity to raise that amount of money.
 - Council Member Pugh understands the upfront cost of \$10,000 as being difficult to come up with. This is standard for maintenance of the building with other rental leases and is to avoid the City incurring all the cost. Perhaps a monthly fee could be worked out instead of the initial contribution.
 - Council Member Johnston agreed with Council Member Pugh that there has to be a compromise agreeable by all parties since it is standard procedure to pay monthly.
 - Mayor Bernardini indicated he does not have a problem with that since it is less than \$1,000 a month.
 - Council Member Lewis referred to 7(b) Repair and Maintenance. He indicated the City will be responsible for repair and maintenance of the building and if there is some damage done by ECI they will be responsible for that damage. As for taking the sign down at JBCC, he would rather they leave the sign and just paint over their advertisement.
 - Vice Mayor Bradburn stated that in the realm of government services when the economy gets tough the first elimination is recreation when you only have so much revenue to support city services. It is a luxury compared to fire, police, making sure the sewer operates and the water flows, even though recreational programs are economically needed to promote and foster city growth. This is a long term agreement so how do you build in protection that the facility does not just offer recreational services to older adults and not children or young adults. Attorney Mason did not agree and indicated recreational services are most needed during economical distress times when people need the distraction. Vice Mayor Bradburn, referring to the \$10,000 contribution indicated she is aware ECI operates on stipends and times will get tougher in the coming years, but the City will now have a contract that will come with obligations such as paying utility bills. There has to be some mechanism for budgeting purposes.
- Page 6 - #9(a) Insurance

The Enrichment Center is requesting that the City provide additional insurance to them due to the City's sovereign immunity but legal does not recommend this.

 - Council Member Lewis indicated both parties carry liability as indicated under section 9 Insurance. The City is requiring ECI to carry insurance.
 - City Attorney Hogan stated he feels this agreement provides the best protection for the City. City Council has to decide which protections to take or compromise. There are business decisions that have to be made to take on more risk than may be recommended. He recommends reasonable insurance coverage. The City is covered by its own insurance and sovereign immunity and he does not recommend going any further than that.
 - Council Member Johnston indicated insurance is to cover liability issues as mentioned by City Attorney Hogan and does not want to be put into a position that an activity cannot be held because the City Manager decides it could be a danger.

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Any program of ECI would be covered under Insurance held by ECI. Vice Mayor Bradburn stated that sentence does not refer to every day scheduling or types referred to Event Standards under paragraph 6(c). Attorney Mason stated as long as this language is clarified that it only applies to the City's spaces and not to ECI. Vice Mayor Bradburn stated she does not agree. Council Member Johnston agreed with reasonably requiring additional insurance.

- Council Member Pugh feels extra insurance is not unreasonable. Attorney Hogan stated he agrees with using the word "reasonable" which is commonly used but "reasonable" is the word you would litigate over and "absolute discretion" are words you do not litigate over.
- Attorney Mason indicated the City should provide some insurance for ECI benefit. The City has sovereign immunity up to \$100,000 as a member of the self insurance fund. However, there is potential for both parties to be sued. The City could provide an insurance policy for specific purposes over the \$100,000 exemption. Council Member Johnston indicated the City providing insurance would create a partnership which neither party intends on. Attorney Hogan indicated the City Code of Ordinances states "No contract entered into on behalf of the City shall contain any provision by which the City agrees to indemnify or to obtain insurance for the benefit of any other party to the contract". In order to do that the code would have to be amended. Attorney Rey clarified that is in the City Charter. Vice Mayor Bradburn indicated that was voted on years ago with overwhelming support.

- Page 6 - #9(b) Insurance

The Enrichment Center wants to delete "in the City's sole and absolute discretion"

- Attorney Mason referred to paragraph 9(b) and stated staff was going to change to "reasonably request additional insurance". Should additional coverage cost more than ECI can pay then that would be breach of contract but are willing to provide additional coverage within reason and not a standard of absolute and sole discretion.

- Page 6 - #12 Dispute Resolution (last sentence)

The Enrichment Center wants to delete "The City Manager shall have final authority to resolve any such matter except as otherwise provided herein".

- Council Member Lewis would like a joint effort on both parties to have consensus and input on problems that may arise. He stated two (2) important items for both parties are communication and scheduling. He is in favor of the project if a consensus can be reached. This is a project the City could never do by itself due to lack of funds during hard economic times. He does like the third party resolution but he does not feel it will ever come to that point. If Attorney Hogan could come up with "cause" if it has to be worded "just cause" maybe that clarifies it more. He does not want to make it difficult because there are many interpretations. Attorney Mason stated that generally an agreement that has a termination for cause provision in it recites that cause is a material breach of the agreement.
- Council Member Pugh suggested a review board similar to the State where both parties choose a third party mediator to sit on the board. He stated in the case of use of the entire facility would require one or the other to move an event.
- Vice Mayor Bradburn stated that would be for long term events and would not address the everyday events. There are guidelines set so there should not be a

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conflict. She stated there would have to be timeframes. It would be unreasonable for the need of a board for short term decisions.

- City Manager Norman-Vacha stated legal staff has recommended that language and advised that it be retained from the City's liability side.
- Attorney Hogan feels it appropriate to have a dispute resolution process in favor of the City allowing the City Manager to ultimately resolve disputes because that would avoid the possibility of litigation. Council could direct legal staff to establish an arbitration panel as recommended by Council Member Pugh.

- Page 7 - #15 Termination Payment

Referencing the depreciation schedule in the packet as Exhibit D, The Enrichment Center feels it is necessary that there is always a minimum of \$100,000 payout regardless of what year it is in. At thirty three (33) years it drops below \$100,000 and they are asking that those remaining years remain at \$100,000.

- Attorney Mason indicated the payment that would be made by the City applies only in two (2) instances; if the City terminates the agreement without cause in six (6) months then the termination payment applies and if The Enrichment Center leaves without good cause. He does not want to change the language but just wants to be sure it is understood how the termination payment is determined. If there were only two (2) years left on the agreement there is no defense to a very small payment obligated by the City. Attorney Hogan indicated there are no lease payments made over those terms of years there is just the initial investment by the Enrichment Center. Attorney Mason stated there is no issue if the six (6) months termination clause in paragraph 14 "Termination" is taken out. Attorney Hogan indicated with a forty (40) year lease should an automatic right of renewal be granted, then there is an eighty (80) year lease over which to amortize that investment period. Termination clause is in there for the City's benefit but it could be written in as only for "cause". Attorney Mason stated he would not have a problem with termination "with cause" but termination "without cause" troubles him. Attorney Hogan stated "cause" would have to be defined. Attorney Mason stated it should be the goal to make it difficult for either party to terminate the agreement. Further, Attorney Mason felt the need for the amortization payment could be done away with in the removal of the option of "termination without cause".
- Council Member indicated he does not have a problem with expecting to pay \$100,000 for the building after a certain amount of years.
- Council Member Johnston indicated he does not have a problem with saying for "cause" but to agree on the definition of cause could be an issue. It would seem better to not have to make an attachment defining "cause" and the wording is okay the way it is.
- Mayor Bernardini indicated he does not have a problem with the way it is and to add the extra figures. The only issue both parties disagree on is the dispute resolution.

Nick Morana, Chairman of the Board of the Enrichment Center, distributed a layout of the building. He stated the City owns the building and ECI is the tenant occupying the building. ECI Programs are planned a month in advance. Should the City need the building on a certain date ECI would have no problem with that but it would be unreasonable for the City to give a one (1) day notice.

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Attorney Mason stated the language in paragraph 5(c) regarding the kitchen needs to be expanded. ECI is installing an industrial kitchen and there has to be a limited access to the kitchen due to potential damage. Also, Meals-on-Wheels is a primary program of ECI. They set up as early as 8:00 a.m. for serving lunch. The delivery schedule varies from day to day. The kitchen needs to be available at this time until the program is completed between 2:00 and 3:00 p.m.

- Council Member Johnston indicated he has no problem with defining that more specifically in the agreement because Meals on Wheels is an important project. The City should have no objection to that.
- Mayor Bernardini indicated he agrees with making up some type of language change so that it is agreed upon between both parties as to how that kitchen is used.
- Vice Mayor Bradburn stated she does not want people walking in and disturbing The Enrichment Center's daily operation. There needs to be assurance the equipment is operational and no one has raided their supplies. The City needs to protect those assets. However, at the same time the City may request use of the kitchen for special occasions with reasonable expectation for approval.

Attorney Mason indicated under paragraph 5(i), Subsequent Improvements, about two-thirds of the way down "The ECI shall bear all cost and expenses incurred as a result of improvements to the premises of the building that are necessary to accommodate operational needs of the ECI" and assumes this refers to what will be done by ECI up front. ECI has \$750,000 in cash plus in-kind contributions. The kitchen will be contributed. The road leading into the building is in disrepair and ECI has a contractor who has agreed to pave the road. ECI is bringing in well over a million dollars of total value to the project.

Director Walker explained the language that was just stated is also in the Jerome Brown Center Agreement with The Enrichment Center. For instance, at JBCC a new Enrichment Center sign was installed and several poles were put into the building. When the sign comes down there will be damage to the exterior of the building. Attorney Mason replied he has no problem with it and would expect that but would like the language clarified so that the next person in his place will understand it.

- Council Member Pugh indicated he was in agreement with Attorney Mason.
- Mayor Bernardini indicated he understands that if you mess it up you fix it.

Attorney Mason stated The Enrichment Center had a HUD federal grant of \$600,000 of which the time schedule expired. He is hopeful the HUD appropriation for this year is going to include \$600,000 for this project which would also be invested along with \$750,000 for a total of \$1,350,000. That is all the more reason to include stringent protections. The amortization schedule is going to have to include that additional \$600,000. That money could build a second story onto the build out and a two-story additional build out. Attorney Mason read an email from Justin Grable in Washington, DC regarding the labor HHS bill which will hopefully contain the funding for the Enrichment Center and will have more news in a few weeks.

Vice Mayor Bradburn indicated clarification is needed on a few items prior to going through the document. She stated compromise can be made once it is understood that the parameters under this project involves taxpayers' money, public assets and limited expenses.

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Discussion ensued regarding an option of locating the Enrichment Center to a facility in The Grande.

- 5(f) – Mining Museum space

Vice Mayor Bradburn indicated she hopes to keep the Mining Association excited about the museum. There should be directions and displays of museum signs in the building including the common areas to be a greater part of the facility. This section would be a good place to clarify that goal. Attorney Mason agreed that the mining museum would be spread throughout the facility and every available space would have some part of the museum. The Mining Museum came to ECI with a request for some area where they could have meetings and this was in the first agreement. It can be written in that museum exhibits can be displayed around the building. Ms. Druzbeck stated other groups in Hernando County that need to have meeting space will be worked out by her and Mike Walker. No political or religious meetings can be held. But she feels it does not need to be in the agreement. The concrete structure, to the left of the building, is designated to the mining museum and they have a plan. Vice Mayor Bradburn indicated she is aware of the plan.

- 6(c) Event Standards

Vice Mayor Bradburn stated she is always mindful of the City's image and this section is too broad and should read "any event held by either the City or ECI in the space shall serve a public purpose". This would give a greater protection for the City's image. Her concern is with each generation socially accepted guidelines are weakened. She would like this section reviewed further between the attorneys.

Mayor Bernardini indicated staff will have to go back and interpret this entire discussion and get back to Council to come up with an agreement both parties will agree on.

Attorney Hogan indicated they will make a serious attempt at Council direction. He assured everyone including Attorney Mason that Mr. Walker, Ms. Rey and the City Manager have continually worked hard on this and we will get it done in short order.

Vice Mayor Bradburn stated she appreciates all the work and got updates regularly so she was aware it was constantly being worked on and never had any doubts. She thanked all for their hard work. She appreciates The Enrichment Center's efforts to get this done because this is a win-win project.

Attorney Mason indicated he will be out for the month of July and asked for a special meeting before the end of June. Attorney Hogan asked Attorney Mason to appear electronically for the meeting because he cannot promise to be able to adjust his schedule to get it done by the end of the month.

Council Member Pugh commented he realizes everyone has worked hard on this agreement but it appears the City and ECI are apart on some sections. He feels with City staff going back and forth negotiating would put Council in the same position at the July 6th meeting. There are six (6) or seven (7) issues that could be voted on tonight. Attorney Mason did not agree and feels the attorneys and staff should come back with a synthesis of what has been said to put before Council. Council Member Pugh feels there has been a consensus on a lot of the issues. Council Member Lewis would like some clarity as to what has been said tonight by what the majority of the board feels is acceptable and then Attorney Mason will

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know how to approach his board. Vice Mayor Bradburn stated she will not vote on something until she sees it in writing. Council Member Johnston agreed.

Mayor Bernardini indicated the Enrichment Center grant is for a special needs shelter and indicated his concern when it is no longer a special needs shelter. Attorney Mason stated if the terms for the federal grant are the same as they were last time it required both functions. The wording for the state grant is the same because it is a community service directed toward senior and elderly and that is part of what they liked about the grant. Attorney Mason did not agree with attending the meeting via teleconference.

CITIZEN INPUT

Mayor Bernardini asked for citizen input; there was none.

Joe Johnston, Council Member

He indicated that he would not be attending the next Council Meeting.

Lara Bradburn, Vice Mayor

She commended Public Works Utilities staff for their diligent work “uncovering what lies beneath the grounds of Brooksville” in the last few days and appreciates their efforts.

T. Jennene Norman-Vacha, City Manager

She reminded Council that the first budget workshop will be on June 29th at 6:00 p.m.

Richard E. Lewis, Council Member

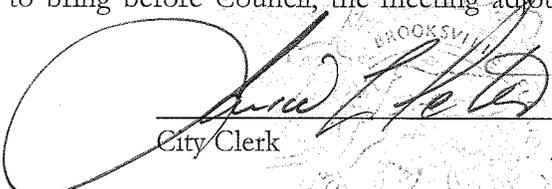
Customer Appreciation Day at Dairy Queen is on June 27th with everything at half price.

Joe Bernardini, Mayor

He thanked all the City employees that were able to attend the picnic last Saturday and indicated everyone had a real good time. He thanked sponsors; Mr. Robert Watts of Publix, Steve Smith of Walmart, Rooster's Café, Papa Joe's Restaurant, Joe and Donna Geratana of The Healing Waters Day Spa who gave gift certificates, A Touch of Quality Cleaners also gave a gift certificate. He also thanked the department heads, the City Manager and City Council for helping out in providing some financial aid.

ADJOURNMENT

There being no further business to bring before Council, the meeting adjourned at 11:10 p.m.



City Clerk

Attest:



Mayor