

1 **MINUTES OF THE SPECIAL MEETING** of the City Council of the City of Orange City, Florida, held on
2 Tuesday, August 15, 2006, at 8:00 a.m. in Council Chambers, 201 N. Holly Avenue, Orange City.

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4 **CALL TO ORDER**

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6 The Meeting was called to order at 8:00 a.m. by Mayor Erwin and roll call was taken.

7
8 **ROLL CALL**

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10 PRESENT: Mayor Albert T. Erwin; Vice Mayor Chuck Abell; Council Members Jim Mahoney, Tony
11 Yebba, Joelle R. DeVane, Donald C. Sherrill, and Jeff H. Allebach; City Manager John McCue;
12 City Clerk Deborah Renner; City Attorney William Reischmann

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14 **1. DISCUSS AND TAKE ACTION ON LAND USE AND CODE VIOLATIONS AT GEL CORP.**

15
16 Mayor Erwin acknowledged requests from the public to speak.

17
18 Charles Coker, 690B E. Rhode Island Avenue, came forward and stated, "When I have to shut down my
19 business and send my employees home, something needs to be done. It's not illegal to have a pit bull, but
20 when it terrorizes the neighborhood....kill the dog."

21
22 Terry Williams, 690 E. Rhode Island Avenue, came forward and stated that his business is located in the
23 same building as Mr. Coker's. He stated, "We have put up with this for a long time." Mr. Williams noted
24 that he developed a number of properties in the area in the hope that the landfill would close at some point in
25 time. He stated, "Folks, it's time."

26
27 Mr. McCue stated that the fires at the landfill this past weekend were similar to those about a year ago. He
28 noted that firefighters from Orange City, Deltona, DeLand, and Volusia County were all assisting. Mr.
29 McCue said that the use of these resources constitutes an "inordinate cost to the taxpayers for one corporate
30 citizen."

31
32 Mr. McCue provided a brief history of the City's efforts to impose enforcement activities on the GEL
33 facility. He noted that the City provided documentation to the Department of Environmental Protection
34 that the size of the mound at the landfill exceeds the permitted footprint. Mr. McCue advised that the height
35 and slope exceed permitted specifications as well. In addition, the facility has been storing large
36 accumulations of plastic and trash without any type of permit.

37
38 Mr. McCue said that the City was informed by the DEP within the last two weeks that GEL was supposed to
39 be moving the pile of mulch from their site because it was not part of their recycling permit. Instead, GEL
40 has been using it as a cover for the landfill. Mr. McCue advised that GEL had also been ordered by DEP to
41 remove the large pile of plastic that had accumulated.

42
43 Mr. McCue continued his presentation by noting longstanding allegations of groundwater contamination by
44 the landfill. The City conducted tests on water taken from a deep test well in the aquifer and it did show
45 levels of contamination. In light of this discovery, the City pursued legal action to have further restrictions
46 imposed on GEL's operating permit which would further limit the usable life of the operation at the landfill.

47 Mr. McCue noted that it is clear that GEL has violated their permit.

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2 Mr. McCue advised that Orange City received a request to place test wells on City right of way to monitor
3 groundwater contamination which has migrated off the site. He said in response to the confirmation of
4 groundwater contamination over six years ago, the City implemented new testing protocols for the City's
5 water utility. Thus far, the City's drinking water has not been affected.

6

7 Mr. McCue said that the City has had longstanding concerns regarding the GEL operation's fire suppression
8 systems. He noted that the most recent fire started in the mulch pile and jumped to the plastics being stored
9 there.

10

11 Herb Hoffman, Orange City Fire Chief, came forward and stated that Sunday's fire makes 179 calls the City
12 has responded to at the landfill in the last six years. Chief Hoffman has expressed his concern to the DEP
13 regarding fire hazards at the site and has requested that they be made to store materials in smaller piles.
14 Chief Hoffman noted that mulch is also being used to cover the debris pile on the mound which contributes
15 to the spread once a fire does start. Mr. McCue interjected that the City has informed the DEP and the
16 landfill owner of this request on numerous occasions. He said that the City recently discovered that the
17 recycling of mulch is not a permitted activity under their current permit from the DEP. Mr. McCue stated,
18 "They're operating with non-permitted operations out there."

19

20 Mr. McCue advised that GEL is applying to the DEP for a closure permit for the C&D landfill and a renewal
21 for their recycling permit. During this process, the DEP requested that GEL remove the large amount of
22 plastics currently being stored, as well as the mulch pile. The landfill operator told the DEP that they are
23 selling their mulch, however, Mr. McCue noted that the mulch pile was forty to fifty feet high before the
24 fire.

25

26 Mr. McCue stated that the landfill was permitted for thirteen acres. A survey performed by the City shows
27 the size currently at seventeen acres. He reiterated that the height and slope are also in violation of the
28 current permit. Mr. McCue said that he heard that in their application to the DEP for closure, GEL
29 requested that they not be required to scale the mound back to its permitted size. Mr. McCue said that as
30 part of their closure, DEP has requested that GEL provide an adequate fire suppression and fire control plan
31 of action. Mr. McCue stated, "Up until our last written correspondence, that had not been provided." Mr.
32 McCue said that he was going to recommend that the City take immediate legal action to stop operations at
33 the GEL facility, suggesting that there could have been unknown toxins in the smoke. Mr. McCue advised
34 that the City attempted unsuccessfully to have the Health Department come out to test the air for
35 contaminants. Mr. McCue commended the fire fighters for their work in putting the fire out.

36

37 Bill Reischmann, City Attorney, said that the meeting was called partially at his request so that his office,
38 working with special counsel, can proceed with legal proceedings regarding the matters just noted by the
39 City Manager. The Charter requires that direction to proceed with legal proceedings must be given to the
40 City Attorney in the form of a resolution. Mr. Reischmann advised that the City has been working with
41 Attorney Allen Watts from the firm of Cobb and Cole, noting that Mr. Watts was present.

42

43 Mr. Reischmann said that there are two issues relating to the matter, the first of which is the zoning issue.
44 He clarified that the landfill is supposed to comply with two levels of regulation imposed by first the State,
45 and then the City. While the State has exclusive authority over the operations at the landfill, the City has the
46 right to monitor and enforce its land development regulations. Mr. Reischmann emphasized that the landfill
47 is located in an Industrial zoned area in which a recycling facility is not a permitted use. He said that he and

1 Mr. Watts have drafted a complaint seeking injunctive relief against GEL that can be filed in the Circuit
2 Courts at the direction of Council. Secondly, Mr. Reischmann suggested that the GEL operation was
3 violating state and local public nuisance laws.
4

5 Mr. Reischmann listed the following adverse impacts that the facility has had on the City: odor, smoke, 179
6 fire reports, air pollution, stormwater runoff, groundwater pollution. He stated, "This is all documented, and
7 it is historical and it is ongoing."
8

9 Allen Watts, Chair of the Environmental and Land Use Section, Cobb and Cole, came forward. Mr. Watts
10 advised that a complaint has been drafted regarding the GEL matter. He reiterated that two levels of
11 regulation apply to GEL: the DEP regulates landfills if they are permitted by the host community under its
12 land use regulations. Mr. Watts noted that the previous sanitary landfill at the GEL site was in the
13 unincorporated area of Volusia County and was started before there were any zoning codes or strict
14 regulation by the DEP. That landfill was closed in 1983. The property carried a county zoning designation
15 at that time of R-4, Single Family Residential. While a landfill was not a permitted use in that zoning
16 district, the County grandfathered it in until it closed in 1983. In 1985, the property was purchased by GEL
17 Corporation and the site was approved by the DEP as a C&D landfill. No City permits were sought or
18 granted until 1994 at which time GEL entered into a contract with Volusia County to process some of their
19 recyclables. GEL applied for permission to build a 15,000 square foot building to be followed by a master
20 plan for the entire 40-acre site. The building was supposed to house four employees to sort seven to ten
21 trucks of recyclables which would then be disbursed at a rate of about one truckload per week. Mr. Watts
22 stated that is the only permit issued by the City which has been located. As a condition of the permit, by
23 February 1995, GEL agreed to submit the master plan for the entire 40-acre site. Mr. Watts stated, "That
24 never occurred. GEL simply went about its business operating under a DEP permit by which it increased
25 the landfill gradually to the size you now see and increased the size and the complexity of its recycling
26 operations. All without zoning approval from the City and apparently without any building or other
27 construction code permits." Mr. Watts advised that there are building code violations located at the facility,
28 however, the City has been prevented from entering the site to verify the extent and nature of the violations.
29 As part of the legal action, if approved, the City will request access to conduct an inspection.
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31 Mr. Watts explained that the complaint consists of two counts: (1) that the landfill has never been permitted
32 and (2) that the GEL recycling operation was permitted only to the degree and on the conditions established
33 by the Planning & Zoning Commission twelve years ago. Mr. Watts said that the conditions have never
34 been met and stated, "It's time to put an end to it."
35

36 Mr. Watts observed that the neighborhood around the landfill has changed dramatically over the past twelve
37 years. Veterans Memorial Parkway was opened, Rhode Island has been improved, housing developments
38 have been built in the area, and commercial developments have gone up on Rhode Island. Mr. Watts stated,
39 "If GEL were to come before you or before the Planning and Zoning Officials today and ask for a permit for
40 the activities that have been going on, it might well be possible to establish that they are totally incompatible
41 with the zoning, notwithstanding the I-2 zoning classification that's been assigned to the area."
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43 Mr. Watts recommended that the City file suit to block any further activities of GEL that are incompatible
44 with the zoning, unless and until they have sought any and all permits that the City codes require, and that
45 they cease all activities on the site other than the suppression of fire. The law suit will also contain a count
46 for public nuisance.

47 Mr. Watts explained that the petition will go before the circuit court where it will be determined whether a

1 temporary injunction will be issued to protect the health, safety and welfare of the community, and
2 subsequently, whether a permanent injunction will be issued permanently ending activity on the property.

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4 Mr. Watts said that legal counsel is recommending that the City Council authorize the filing of the proposed
5 law suit.

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7 Mr. McCue said that he received a call informing him that GEL was accepting recycling waste while the fire
8 was being fought. He also said that he called DEP regarding this and was told that they had no objections.
9 Mr. McCue noted that most landfills are started in rural areas and that he objected the DEP permitting the
10 GEL landfill because it is located right in the middle of the City. He advised that the DEP also allowed the
11 GEL operation to take place on top of the old Lake Marie landfill. Mr. McCue emphasized that the
12 firefighters had poured 1.2 million gallons of water on the fire at the landfill since early Sunday morning.
13 He then discussed possible groundwater contamination at the site and said that the City would be testing
14 some of the runoff for contamination.

15
16 Mr. McCue said that as part of their permitting process, DEP was requiring GEL to submit a stormwater
17 master plan and facility. Paul Johnson, Public Works Director, came forward and said that he discovered
18 that a permit was applied for in 2004 to construct stormwater facilities. Their permit was never approved
19 and they were cited for performance issues with the stormwater system such as ongoing maintenance issues.
20 Mr. McCue said that the City's Building Official was at GEL and condemned a building that had sustained
21 substantial damage and had the power turned off until the situation is corrected.

22
23 Mr. McCue said that GEL's permit from the DEP requires compliance with all local laws and ordinances.
24 He advised that the City requires GEL to have a stormwater permit from the Water Management District
25 prior to the commencement of any development at the site. He suggested that DEP should implement the
26 same requirement, stating, "That simple little change in the processing of a permit and the validation of the
27 steps taken by property owner could have prevented this from happening over ten years ago."

28
29 Mr. Watts concurred with Mr. McCue and said that he had questioned DEP about GEL's stormwater permit
30 and was told by DEP that they leave that issue up to the Water Management District. The Water
31 Management District, when contacted, said they thought it was handled by DEP. Mr. Watts advised that in
32 2004, GEL did apply for a construction permit for a partial drainage system for their operation.

33
34 BEGIN TAPE 1-B

35
36 In response to a question from Council Member Mahoney, Mr. Watts verified that the City's legal action
37 will not interfere with GEL's closure activities.

38
39 Vice Mayor Abell noted the length of time this issue has dragged on and questioned what effect that would
40 have on the City's law suit. Mr. Watts responded that he anticipated a lot of "bluster" from GEL regarding
41 the approval granted by the Planning Commission in 1995 to which he would respond that it was approved
42 on a condition that has not yet been fulfilled, i.e., no master plan has been produced and no permits obtained
43 from the City. Vice Mayor Abell noted that the City has not tried to shut GEL through code enforcement
44 actions and expressed his concern that this could result in a more favorable position for GEL. Mr. Watts
45 disagreed, noting that the operation at the landfill has been continually expanded over the years. He said
46 that GEL originally represented to the City that the recycling operation would consist of four employees
47 hand-sorting the material.

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2 Mr. Reischmann interjected that what was currently causing the fire is a mulch pile that has developed over
3 the past year and is now forty to fifty feet tall. Vice Mayor Abell concurred with the City Attorney and
4 expressed his support for the law suit.

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6 Mr. McCue stated that the reason the City has not pursued code enforcement action against GEL is because
7 they have no legal right to enter the property without the consent of the property owner. He advised that the
8 building code violations were discovered in the course of putting out the fire. Mr. McCue said that GEL's
9 application was approved by the Planning Commission even though they did not have the authority in city
10 code to grant that approval and that they approved a use that was not permitted. Mr. McCue stated, "That
11 does not make it right. The mistakes of the past does not make it right for them to continue." He said that
12 the City has been working to make GEL comply with its regulations, and that this is a new approach to that.

13

14 In response to continued concerns from Vice Mayor Abell, Mr. Watts stated, "There is no grandfathered
15 right, there is no vested property right, to carry on a public nuisance." Mayor Erwin noted that Mr. Watts
16 has been working with the City on this matter for nearly a year and stated, "The problem was going to be
17 addressed whether the fire happened or not."

18

19 Mr. Reischmann noted that the City spent "hundreds of thousands of dollars" to try to get the DEP to protect
20 the citizens of Orange City. That matter was concluded with some conditions that were imposed upon the
21 landfill. One of the conditions was that the landfill would not be expanded beyond the permitted footprint.
22 Mr. Reischmann stated that the permitted footprint is thirteen acres, however, the actual size now exceeds
23 seventeen acres. He suggested that the landfill could have been shut down in 2002 or 2003 if the size had
24 been analyzed accurately. Mr. Reischmann stated that the mulch that caused the fire did not exist in 2002.

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26 Council Member Sherrill said that he was "astounded" that the City does not have the right to enter private
27 property in an emergency situation. He said the City should have the right to enter the property to check for
28 code violations and suggested drafting an ordinance to give the City the authority if necessary. Mr.
29 Reischmann said that the City does have a right to enter the property during an emergency to deal with
30 public safety issues. State Statute prohibits a code enforcement officer from entering private property, but
31 (s)he can evaluate whether a violation exists from the perimeter of the property. Mr. Watts concurred with
32 Mr. Reischmann that the City can enter the property under the authority of the law suit and by order of the
33 Court if necessary. Council Member Sherrill stated, "This gentleman that owns GEL Corp. out there, Mr.
34 Evans, has flagrantly violated everything that Orange City's had to make him be a responsible citizen, to run
35 his operation like it should be according to the laws of not only the City of Orange City, but to the County,
36 the State and Federal government issues that are involved. I think we need to go on record and be adamant
37 about that situation. We just can't let things like that operate like that, just be flagrant. We have a lot of
38 other businesses in this City that are not flagrant in the way they run their operations and he shouldn't have a
39 carte blanche card to do so."

40

41 Council Member Mahoney referred to the earlier comments of Mr. Williams who stated that he developed
42 his property in the hope that one day the landfill would close and noted that the recycling facility has the
43 potential for being ongoing.

44

45 Council Member Allebach stated, "I don't know if I'm extremely angry at the fire or actually in a weird way
46 happy that we have this attention. For six years we have been trying to get the state of Florida, the
47 omnipotent state, that can tell everyone how to run their government and their community, to give us some

1 help to provide us relief to our environment being polluted.” He said that there is a solution to this and it
2 “looks like this is the beginning.”

3
4 Council Member Yebba noted that Council was going to consider a resolution to initiate legal proceedings
5 and stated, “I’m ready to pass this resolution to get our Attorneys working and stop this thing.”

6
7 Mayor Erwin read the title of Resolution No. 363-06 into the record as follows:

8
9 **RESOLUTION NO. 363-06: A resolution of the City Council of the City**
10 **of Orange City, Florida, pursuant to Section 3.01 of the City Charter,**
11 **directing the City Attorney and special Counsel to prosecute any and all**
12 **necessary and appropriate civil complaints and lawsuits involving land**
13 **use and/or code violations of the GEL facility; repealing all resolutions**
14 **in conflict herewith and providing for severability and providing an**
15 **effective date.**

16
17 **Council Member Sherrill moved to approve Resolution No. 363-06,**
18 **seconded by Vice Mayor Abell and passed by unanimous 7/0 roll call**
19 **vote of the Council.**

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22 **2. ADJOURNMENT**

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24 There being no further business, Mayor Erwin adjourned the meeting at 9:05 a.m.

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29 **RESPECTFULLY SUBMITTED:**

APPROVED ON

30
31
32 Deborah J. Renner, CMC
33 City Clerk

9/12/06