M I N U T E S
REGULAR COUNCIL MEETING
CITY OF HOLLY HILL, FLORIDA
OCTOBER 25, 1994

1. CALL TO ORDER

Mayor Virginia Wine called the meeting to order in Council Chambers at City Hall, 1065 Ridgewood Avenue.

Answering roll call were Mayor Wine, Councilman Arthur Byrnes, Councilman J. D. Mellette, Councilman Shirley Heyman and Councilman Jim Elliott.

Also attending were City Manager Ralph Hester, City Attorney Edward Simpson, Chief of Police Pat Finn and Deputy City Clerk Sue W. Blackwell.

2. INVOCATION

The Invocation was given by Bill Bethea, Administrative Assistant to the City Manager.

3. PLEDGE OF ALLEGIANCE TO THE FLAG

4. AUDIENCE PARTICIPATION

A. Ms. Zolla Wisniowski, Flomich Avenue, asked Council to do something about the drainage ditch in front of her home before someone is injured there. She was told the City plans to pipe the ditch and the request to purchase the pipe will be on the next agenda in two weeks.

B. Mrs. Phyllis Jean Kirk, 924 Flomich Avenue, addressed Council with the same request. She told Council she has a handicapped daughter who must catch the bus at home and has to wait by this ditch. She, too, asked that something be done about the ditch right away.

C. Mr. Dave Wisman, 211 12th Street, talked to Council regarding numerous code violations at 1138 Daytona Avenue (Jim Morgan property). He said he has complained about this problem numerous times to Mr. Symenski and when he didn't get the problem taken care of, he (Wisman) talked to Mr. Harbuck regarding the matter. Now, he said he cannot get anyone to return his calls. He first complained in June and the problem still exists today.

Mayor Wine assured him the matter would be handled by staff.

<u>5. CONSENT AGENDA</u>

A. Approval of Minutes - Regular Meeting - October 11, 1994
Special Meeting - August 16, 1994

Councilman Mellette moved to Approve the Consent Agenda being seconded by Councilman Elliott. The motion CARRIED 5-0 on roll call.

<u>6. ORDINANCE NO. 2381 - REZONES PROPERTY AT 1369 RIDGEWOOD AVENUE FROM B-4 (HIGHWAY BUSINESS DISTRICT) TO B-6 (RIDGEWOOD AVENUE BUSINESS DISTRICT)(SECOND READING)</u>

City Attorney Simpson read:

ORDINANCE NO. 2381

AN ORDINANCE AMENDING THE ZONING MAP BY REZONING PROPERTY LOCATED AT 1369 RIDGEWOOD AVENUE FROM R-3, SINGLE FAMILY RESIDENTIAL, AND B-4, HIGHWAY BUSINESS, TO B-6, RIDGEWOOD AVENUE BUSINESS DISTRICT; REPEALING ALL LAWS OR PARTS OF LAWS IN CONFLICT HEREWITH; PROVIDING FOR THE TERMS AND CONDITIONS THEREOF; AND PROVIDING WHEN THIS ORDINANCE SHALL TAKE EFFECT.

Councilman Mellette moved to ADOPT the ordinance on final reading being seconded by Councilman Heyman. The motion CARRIED 5-0 and the ordinance was ADOPTED on the following roll call:

Mellette, yes; Heyman, yes; Byrnes, yes; Elliott, yes; Wine, yes.

After the roll call, Mr. McElveem spoke at length on the request. He said he had opposed the rezoning but believed this was the best compromise he could expect.

<u>7. ORDINANCE NO. 2385 ADDING NEIGHBORHOOD OFFICE PARKS AS A SPECIAL EXCEPTION IN B-3 NEIGHBORHOOD BUSINESS DISTRICTS</u>

City Attorney Simpson read:

ORDINANCE NO. 2385

AN ORDINANCE OF THE CITY OF HOLLY HILL, FLORIDA, AMENDING ORDINANCE NO. 2352, THE LAND USE AND DEVELOPMENT REGULATIONS, AS AMENDED, BY ADDING NEIGHBORHOOD BUSINESS PARKS AS A SPECIAL EXCEPTION IN SECTION 5.5.15, B-3,

NEIGHBORHOOD COMMERCIAL DISTRICTS; ADDING A NEW PARAGRAPH AE IN SECTION 5.6.1, SPECIAL EXCEPTIONS, PROVIDING REQUIREMENTS FOR NEIGHBORHOOD BUSINESS PARKS; ADDING PARKING REQUIREMENTS FOR NEIGHBORHOOD BUSINESS PARKS IN SECTION 6.3.16, PARAGRAPH E; REPEALING ALL LAWS OR PARTS OF LAWS IN CONFLICT HEREWITH; PROVIDING FOR THE TERMS AND CONDITIONS THEREOF; AND PROVIDING WHEN THIS ORDINANCE SHALL TAKE EFFECT.

Councilman Heyman moved to ADOPT the ordinance on second and final reading being seconded by Councilman Mellette. The motion CARRIED 4-1 on the following roll call:

Heyman, yes; Mellette, yes; Elliott, yes; Byrnes, no; Wine, yes.

8. ORDINANCE NO. 2386 ADDING ADDITIONAL REQUIREMENTS FOR PARKING IN ZONING DISTRICTS NOT THE SAME AS THE PRINCIPLE USE

City Attorney Simpson read:

ORDINANCE NO. 2386

AN ORDINANCE OF THE CITY OF HOLLY HILL, FLORIDA, AMENDING SECTION 6.3.16 OF ORDINANCE NO. 2352, THE LAND USE AND DEVELOPMENT REGULATIONS, AS AMENDED; ALLOWING, AS A SPECIAL EXCEPTION, REQUIRED PARKING FOR AN EXISTING OR EXPANDING PERMITTED PRINCIPAL USE TO BE LOCATED IN A ZONING DISTRICT WHICH IS NOT THE SAME AS THE ZONING DISTRICT REQUIRED FOR SUCH USE; ADDING A NEW PARAGRAPH 5.6.1, AE, PROVIDING TERMS AND CONDITIONS THAT SHALL BE MET BEFORE SUCH PARKING MAY BE APPROVED; REPEALING ALL LAWS OR PARTS OF LAWS IN CONFLICT HEREWITH; PROVIDING FOR THE TERMS AND CONDITIONS THEREOF; AND PROVIDING WHEN THIS ORDINANCE SHALL TAKE EFFECT.

Councilman Heyman moved to ADOPT the ordinance on final reading being seconded by Councilman Mellette.

Councilman Byrnes asked if ingress and egress were addressed as requested and Mr. Keeth read the portion of the ordinance regarding residential neighborhoods and the fact that this is the compromise staff worked out at the request of Council. There were no further comments from the audience before roll call.

The motion CARRIED 5-0 on the following roll call:

Heyman, yes; Mellette, yes; Byrnes, yes; Elliott, yes; Wine, yes.

9. ORDINANCE NO. 2387 AMENDING CIVIL SERVICE ORDINANCE REGARDING DUTIES OF MEMBERS AND RETENTION REGISTERS

City Attorney Simpson read:

ORDINANCE NO. 2387

AN ORDINANCE OF THE CITY OF HOLLY HILL, FLORIDA AMENDING SECTION 2-119(K), (CIVIL SERVICE BOARD), OF THE CODE OF ORDINANCES RELATING TO THE CIVIL SERVICE BOARD MEMBERS' ATTENDANCE AND RESPONSIBILITIES DURING EXAMINATIONS; AMENDING SECTION 2-231(a), (RETENTION REGISTRY), OF THE CODE OF ORDINANCE PROVIDING THAT AN EMPLOYEE MUST QUALIFY FOR A POSITION PRIOR TO OBTAINING SAID POSITION THROUGH THE RETENTION REGISTRY; AND AMENDING ORDINANCE NO. 2353 TO PROVIDE FOR REINSTATEMENT PRIVILEGES WHEN A VACANCY EXISTS WITHIN THE CITY; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTING ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

Councilman Elliott moved to ADOPT the ordinance on final reading being seconded by Councilman Mellette. The motion CARRIED 5-0 on the following roll call:

Elliott, yes; Mellette, yes; Heyman, yes; Byrnes, yes; Wine, yes.

10. AWARD OF BID FOR MARLENE DRIVE WATER LINE AND SERVICES AND PAVING

City Manager Hester said there is a recommendation in front of Council based bids solicited by the City to take care of the water line and to pave same. He said Mr. Martin has recommended the bid be awarded to R. C. Johnston for Part 1 in the amount of $28,488 and Martin Paving Company be awarded the paving as low bidder for $14,325 for a total bid of $42,813 to complete the project. He said Mr. Gilbert and Mr. Martin are here to answer any technical questions from Council.

Mayor Wine recognized Thad Sizemore, owner of Thad Construction Company. He said he is the contractor currently on the drainage job for the City. He said he wanted to voice his objection to the acceptance of these apparent low bids on the grounds that his company's position was compromised by the fact that his bid for the same work was public knowledge at least two Council meetings prior to the bid. He then explained when he was initially awarded the project (drainage) as low bidder, his company was low by about $26,000 on the entire project. At that time he met with the project engineer from Upham, Inc. and with Public Works Director Marc Chattin and negotiated at that time in good faith for this same work. Also with this same work, which would have been an increase to the contract, there was a substantial amount of work taken away from his contract. The negotiations basically settled at a number for a change order which subsequently came before Council and the Council turned it down for reasons that he (Sizemore) is not aware of.

After Council turned down the change order which included this scope of work, Mr. Sizemore said he was never contacted with any re-negotiations with regard to the work. He said he just heard it was going out to bid. He said he was surprised and had no choice on the bid except to use the same bid numbers that he used when he initially negotiated this work with Roger Strucula from Upham, Inc. and Marc Chattin. He said he negotiated that pricing in good faith and the prices he used was the same exact price from his original bid. He said he could not reduce his unit prices just because this was going out to bid so he was locked in and everyone else who had any interest in the project could have had access to his bid numbers.

Mr. Sizemore said the very least he would like the Council to do is to renegotiate this project with his company on the basis Council will allow him to offer to the City some form of value engineering or in some means to change the scope of work to allow him to bring the project within the budget. Mr. Sizemore said he was trying to be brief but there are a lot of details which should be considered.

Councilman Byrnes asked Mr. Sizemore if he is saying the City asked him for a quote and received his numbers on the project. Mr. Sizemore answered that was correct after he was awarded the main project. Mr. Byrnes said all the other bidders got the same information but originally he was in favor of accepting the change order as presented but others on the Council thought it would be better to bid the project and maybe get a better price so what he is trying to determine is whether his new bid is a legal bid. Mr. Sizemore said the numbers he used were the same ones he used initially when asked for this scope of work. He said the engineer and Public Works Director came to him and said they wanted to change the scope of work by adding some things and taking away other things. Everyone agreed to use the bid numbers - the numbers in the original bid. He said at that point in time if his total bid was a good value at $26,000 less than the closest bidder, then why would those same numbers not continue to be a good value. If taken out of context, you can shop with his numbers being public knowledge, you will get a better price.

Mayor Wine said Mr. Sizemore has a point as his figures were already documented because the contract bid was let and the other people could see what the contract was so he had no alternative.

Councilman Mellette said you might have been given different numbers if the whole project was bid separately. Mr. Byrnes said he understand that and that is why he was in favor of the original change order. Now, he (Byrnes) said, Council must decide if there is a bidding irregularity and bid the whole project again which will not help Mr. Sizemore because all the bids are public.

Mr. Sizemore said he felt there is a significant irregularity in the bidding process and in the very least the City should renegotiate with his company to try to get within budget even if he has to change methods or means or possibly scope of work to achieve a particular budget number.

Mayor Wine asked Mr. Simpson if there is any reason the City couldn't renegotiate with Thad Construction since he already has the major $370,000 contract. Mr. Simpson said the City would have to determine to reject all the bids and then unless he is willing to make a commitment now to do the work for the lowest price the bids were, then you would negotiate with him and he (Simpson) did not know what those negotiations would yield. Mr. Simpson said the message he is hearing is that he (Sizemore) is willing to meet whatever the price is to get it to work.

Councilman Mellette said Thad's bid is roughly $3,900 higher. Mayor Wine said there is only a difference of approximately $3,800 and you don't have to necessarily take the low bidder. She asked if Council could determine it is for the good of the contract and go ahead and give it to the same contractor.

Mr. Simpson said if Council is going to use this bid, they will have to find a reason to accept the low bid. What he (Sizemore) is asking Council to do, is to throw out all the bids..reject the bids and then renegotiate with him for the change order which was originally submitted to Council. Mr. Sizemore said that would be acceptable to him. He said he could not in good consciousness, take dollars off his bid to match his competitor's number which he feels is erroneous anyway. He said he would enter into negotiations with the City to achieve a budget figure through minor adjustments in the techniques he would use or in the scope of work which would not compromise the finished product that much. He said if an agreement would not be reached, then he would not object to the City awarding the bid to the lowest bidder.

Mayor Wine said that seems to be fair.

Councilman Byrnes said it doesn't seem fair if you look at it from the point of another bidder. Mr. Byrnes said he is very sorry because he wanted to accept the original change order. He said he did not want to get personalities in this and if Council does this for Mr. Sizemore, what would keep the other bidders from saying their numbers were not erroneous and I'll do it for that number of a thousand dollars less what Mr. Sizemore will do it.

Mr. Sizemore said that is what has already happened. Councilman Heyman said there wasn't anything he could do about that. Mr. Byrnes said he could have put in a lower bid when the Council asked for bids. He said the best we could do tonight would be to say there were irregularities in the bids and throw them out and bid it again. But, to say we are going to throw these bids out because we think this guy is a nice guy and we want him to do the work and so we will negotiate with him.

Mayor Wine said that isn't what was said. What we are saying is that the man had the figures to begin with and these contractors had a chance to view the bid and then they would have been stupid not to bid lower. Councilman Mellette said if they wanted the job, they would definitely have bid lower than his figure.

Councilman Elliott said he wanted to go back to when it was brought to the Board before. He said there was confusion about it because when Mr. Chattin was asked why this project wasn't included with the major drainage project, there wasn't a very satisfactory answer. He said Council thought since there had been problems there for years, why wasn't this project put together when this project could have been lower by combining both of them. That is where the vote came apart and Council decided it should have been done this way. Mr. Sizemore said he understood and it does make sense to do this work with the drainage project especially with him as the contractor. He said the work he is going to do, another contractor will have to come in when he(Sizemore) has completed his work and tear up the same area he (Sizemore) is now restoring in order to run services. That doesn't make sense but it does make sense to let the contractor on site do the project for a budget the City can live with.

Councilman Byrnes asked if Mr. Sizemore was committing to do the job for the lowest price bid received and Mr. Sizemore said he could commit through value engineering, through changing some of the scope of work and techniques (taking a different approach) to do the work. He said he is asking for the opportunity.

Mayor Wine asked Mr. Simpson what is the next thing to do if we want to reject the bids. Mr. Simpson said you make a motion to reject the bids and vote on it. Councilman Mellette asked where you go from there? Mr. Simpson said you negotiate with the contractor on the job and if you can't do that, you go out for bids again.

Councilman Mellette moved to reject all the bids because he didn't think it was fair period. Councilman Heyman seconded the motion which CARRIED 5-0 on roll call.

Mayor Wine said Mr. Gilbert and Mr. Hester will negotiate a very good contract.

11. REQUEST FOR FLOATING HOLIDAY ON DECEMBER 23, 1994

City Manager Hester told Council the employees were surveyed as to their preference for the floating holiday and are requesting December 23, 1994.

Mr. Hester explained to Council the Police Department would be taking December 26, 1994 as their floating holiday. They take a different day because their actual holiday is on December 25 where other employees will have December for their Christmas holiday.

12. RESOLUTION RENAMING 11TH STREET TO LPGA BLVD.

City Attorney Simpson read:

RESOLUTION NO. 46

A RESOLUTION OF THE CITY OF HOLLY HILL, FLORIDA CHANGING THE NAME OF 11TH STREET TO LPGA BOULEVARD; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTING RESOLUTIONS; AND PROVIDING AN EFFECTIVE DATE.

Councilman Mellette moved to ADOPT the resolution being seconded by Councilman Byrnes. The motion CARRIED 5-0 on the following roll call:

Mellette, yes; Byrnes, yes; Elliott, yes; Heyman, yes; Wine, yes.

13. NOISE ORDINANCE REVIEW/REVISION

City Attorney Simpson read:

ORDINANCE NO. 2389

AN ORDINANCE OF THE CITY OF HOLLY HILL, FLORIDA, AMENDING CHAPTER 17 (NOISE), SECTION 17-4(a) (MAXIMUM PERMISSIBLE SOUND LEVELS BY USE OCCUPANCY) TO PROVIDE FOR GRANDFATHERED NONCONFORMING USES AND REGULATION OF NOISE PROJECTED INTO DIFFERENT USE OCCUPANCY CATEGORIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTING ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

Councilman Byrnes moved to APPROVE the ordinance on first reading being seconded by Councilman Elliott.

Mayor Wine said Mr. Harbuck stated there were only a couple of complaints during the past year. She wondered if this item could be held off until after the next budget session because of the expense involved. Mrs. Wine also suggested maybe something could be worked out with the City of South Daytona which would enable us to hire their operator on an as needed basis.

Ms. Wendy Clifton, 1620-D Espanola spoke to Council regarding the noise and pollution from Diversified Technology. Mr. Hester informed her the business will be leaving next year. Councilman Byrnes said this ordinance is not just for this one business. He said he gets complaints all the time about noise from businesses and this ordinance will establish a level on allowable noise.

The motion CARRIED 5-0 on the following roll call:

Byrnes, yes; Elliott, yes; Heyman, yes; Mellette, yes; Wine, yes.

Councilman Byrnes suggested the meter could be purchased with Law Enforcement Trust Fund monies. Mayor Wine said that is a good idea. Mr. Hester said he would have it on the next agenda for approval.

Mr. Dave Rowe, 900 May, asked if it is Council's intention to put him out of business because his business does make noise. He has routers and table saws. He said there was no clarification on whether this ordinance is citywide or is commercial exempt. He mentioned the trucks at Bass and Swaggerty running all night. He said the ordinance must be refined to allow for a certain amount of business related noise.

Ms. Carol Kay, 1620 Espanola said this ordinance should cover radios being played late at night.

Building Official Tim Harbuck told Council he had notified the Volusia County Health Department of this complaint on October 12, 1994.

14. RECOMMENDATION FROM CITY MANAGER ON AO/PSG REPORTS RE PRIVATIZATION OR THE CITY TO OPERATE PLANTS

Mr. Hester told Council he had brought both these firms to Council and each had given a presentation on their particular type of operation. The City Manager said it is up to Council to decide which way they prefer and when that decision is made, he will proceed as necessary to accomplish the chosen goal.

Council discussed the differences in privatization (PSG) and having a firm (AO) come in and tell the City how to run the plants. It was determined that neither of these firms are a sole source in their field so it was the consensus of Council for the City Manager to go out for RFPs for a firm to help the City run the plants and if the promised savings are not realized by the next budget, then the City would look at privatization.

15. ORDINANCE VACATING A PORTION OF KANSAS AVE.

City Attorney Simpson read:

ORDINANCE NO. 2388

AN ORDINANCE OF THE CITY OF HOLLY HILL, FLORIDA VACATING A PORTION OF A SIXTY (60) FOOT RIGHT-OF-WAY KNOWN AS KANSAS AVENUE LYING BETWEEN ANNISTON AVENUE AND SELMA AVENUE; RESERVING A FIVE (5) FOOT PORTION OF SAID VACATED RIGHT-OF-WAY AS AN EASEMENT FOR UTILITY PURPOSES, INCLUDING STORMWATER DRAINAGE; REQUIRING PROPERTY OWNER'S ADJACENT TO THE VACATED RIGHT-OF-WAY TO ENTER INTO AN AGREEMENT WITH THE CITY TO GRANT TO THE CITY A FIVE (5) FOOT EASEMENT FOR UTILITY PURPOSES, INCLUDING STORMWATER DRAINAGE, FOR THE SAME AREA BEING RETAINED BY THE CITY FOR THE SAME PURPOSE; PROVIDING FOR CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Councilman Byrnes moved to APPROVE the ordinance on first reading being seconded by Councilman Mellette. The motion CARRIED 5-0 on the following roll call:

Byrnes, yes; Mellette, yes; Heyman, yes; Elliott, yes; Wine, yes.

At this time a brief recess was called and then the meeting resumed.

16. RESOLUTION NO. 47 AUTHORIZES THE MAYOR TO SIGN THE SECOND AMENDED AGREEMENT CREATING THE WATER SUPPLY COOPERATIVE

City Attorney Simpson read:

RESOLUTION NO. 94-R-47

A RESOLUTION OF THE CITY OF HOLLY HILL, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE THE SECOND AMENDED AND RESTATED INTERLOCAL AGREEMENT CREATING THE VOLUSIA CITY-COUNTY WATER SUPPLY COOPERATIVE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTING RESOLUTIONS; PROVIDING AN EFFECTIVE DATE.

A brief discussion on funding and the merits of belonging to the Water Authority ensued. There may be a considerable savings down the road with joint monitoring of the wells.

Councilman Mellette moved to ADOPT the resolution being seconded by Councilman Heyman. The motion CARRIED 5-0 on the following roll call:

Mellette, yes; Heyman, yes; Elliott, yes; Byrnes, yes; Wine, yes.

17. REQUEST AWARD OF BID FOR REUSE WATER SYSTEM

The City Manager told Council this project was bid in July and the bids came in considerably higher than anticipated. Mr. Martin and Mr. Gilbert have been working on alternatives to phase in the program. Within the last week they have come up with some alternatives to allow us to put this on the agenda for Council action.

Mr. Gilbert said Mr. Martin has done a fantastic job of getting the prices down to where the City can meet its commitments to provide reuse water. There have been no deductions or changes that would compromise the integrity of the work. It is a matter of adjusting qualities and finding a different way to do some of the work. Mr. Gilbert said he and Mr. Martin both recommend award of the project.

Mayor Wine said for the benefit of the people in the audience the bid amount was quoted at $539,137.85 which includes $444,137.85 from Progressive Contractors, Inc. and the purchase of a reconditioned tank from Jack Ethridge Tank for $95,000. It was noted a deposit of $5,000 must be made to hold the tank until contracts can be formalized.

Mr. Gilbert said once the bid is awarded, the City will be meeting their commitment on the reuse water. More discussion ensued regarding consumptive use permits.

Mayor Wine said it is a good program if the funds are available and apparently available. Councilman Byrnes asked about deleting the line under US 1 to serve City Hall and the parks. It was noted this was done because of the cost. The possibility of using the tunnel to cross the highway. This was bid as a part of the package. More discussion centered around the size of the pipes proposed for this project as well as the size of the proposed tank.

Councilman Mellette moved to award the amended contract as recommended as well as the $5,000 deposit. Councilman Byrnes seconded the motion which CARRIED 5-0 on roll call.

18. COMMUNICATIONS FROM CITY MANAGER

A. Request to purchase additional garbage cans
Mr. Hester said he has a request from Mr. Gilbert to purchase an additional 100 cans for residential use. Council discussed this matter briefly and it was noted the men are still replacing the old Rand cans.

Councilman Byrnes moved to approve the request to purchase 100 cans being seconded by Councilman Elliott. The motion CARRIED 5-0 on roll call.

B. Proposal for a Water Rate Study from Ernst and Young

Council talked about the need for this study and asked the Finance Director why she couldn't do this. Mrs. Gubernator said it has been years since a study has been done and her department does not have the time or manpower to do the work. The cost of the study will not exceed $7,500. It was mentioned this study would reward conservation. In the past this has not been the case.

Councilman Mellette moved to approve the request being seconded by Councilman Elliott. The motion CARRIED 5-0 on roll call.

C. Report on Drainage Problems on Center Street

Mr. Hester reported the whole problem is on private property and his recommendation would be to have the City act as an intermediary with the residents and see if they can work out their problems rather than spend the taxpayer money on private property. He said the City could provided a topographic study so they could see how much fill they need in their yards.

Mr. Dubey is contacting his neighbors on Center and some have agreed to sit down and meet. The City Manager said we would try to help them solve their problems. He said he would report any progress on the meetings.

19. COMMUNICATIONS FROM CITY ATTORNEY

The City Attorney said he would like to enlighten the Council regarding a problem with the bathroom at Ross Point Park. It may be ten or twelve feet north. As the building was being constructed, the property owner on the west side of Riverside called the attorney's office and said they bought property from someone who sold the City part of Ross Point Park and there was a restriction in the deed back in 1944 which said you can use the property for a park and recreation purposes but you cannot put a building on it. The bathroom building is ten or twelve feet on the property conveyed to the City.

There are a number of ways to fix that. You can move the building a few feet south but Mr. Simpson said he had done some research and he isn't sure the covenant that was contained in the deed back in 1944 is an enforceable covenant. The people who own the property on the west side of Riverside have an attorney and the City Attorney has been in touch with the attorney and provided him with a case reference that he thinks indicates what has to be in a deed to enforce a covenant of that nature. Mr.

Simpson said he expects to hear from that attorney within the next week or so. At this point, Mr. Simpson said he thought it was safe to proceed with the construction and if we find out we have to move it, we will move it. If we don't have to move it then we will leave it where it is. Mr. Simpson said he thought Council should be aware of this matter.

Councilman Heyman asked how this happened and Mr. Simpson said he was unsure but that a lot of investigation is going on. He said there is some confusion about the understanding of the engineer as it related to the existence of the restriction. Half of the property is unrestricted and the initial design was to put the bathroom on the south side of the property. Because of concerns about where the playground area was going to be put on the property, when it was moved further away from the street for safety, the bathroom was moved about ten feet.

Mr. Simpson said he felt pretty confident the covenant was not enforceable at this time because the deed did not say the covenant ran to the benefit of the grantor or his successors or assigns. Mr. Simpson said that is based on a 1955 Supreme Court decision. It was the consensus of Council to continue on the project.

20. COMMUNICATIONS FROM MAYOR AND CITY COUNCIL

Councilman Byrnes asked to have someone come in and check the sound system and then he invited everyone to the Youth Center on Saturday to see the progress the kids have made. He noted all this work has been done with donated time and materials.

Mr. Mitch Wine, 104 15th Place, asked if it would have any bearing on the City getting the grant funds for Ross Point because of the problem with the bathroom. Mr. Simpson said he didn't think it would.

Councilman Heyman asked when we are going to finish the Police Department and questioned the difference in pay to Mr. Gilbert ($30 per hour), Mr. Chattin ($26.97 per hour) and Mr. Martin ($20 per hour).

Mr. Hester said he negotiated a part time rate with Mr. Gilbert for a short duration of thirty days to help him straighten out the operation at Public Works and get some of the projects in front of Council which had been on the back burner. The rate was based on his experience and the fact he is a professional engineer plus this is a short term agreement.

The City Manager said the next order of business on the remodeling is turning the back into another front and when that is done, the men will be sent back to the Police Department. They are currently working there as time and the weather dictate. It was noted the outside coquina work will be done by others than City workers. He said the Police Department should be pretty well wrapped up within the next sixty days.

Mayor Wine asked if it was the consensus of Council to cancel the second meeting in December. This item will be on the next agenda.

She encouraged members of Council to attend the VCOG Awards dinner. it is November 10, 1994 at Indigo at 7:00 p.m.

Mrs. Wine also said on Friday, October 28, Mr. Harbuck is to attend a meeting on the unified Building Code for Volusia County.

Mayor Wine is one of seven mayors appointed to review the Impact Fees. There were also seven from the Chamber of Commerce and seven members appointed by the County Council.

21. ADJOURNMENT

There was no further business to come before the Council so the meeting was adjourned at approximately 10:00 p.m.

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Mayor

ATTEST:

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City Clerk/Manager