

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

April 18, 2011

6:00 P.M.

Brooksville City Council met in regular session with Mayor Frankie Burnett, Vice Mayor Joseph E. Johnston, III, Council Members, Joe Bernardini, Lara Bradburn and Emory Pierce present. Also present were Thomas S. Hogan, Jr., City Attorney; T. Jennene Norman-Vacha, City Manager; Janice L. Peters, City Clerk; Steve Baumgartner, Finance Director; Mike Walker, Parks and Recreation Director; Bill Geiger, Community Development Director; Richard Radacky, Interim Director of Public Works; George Turner, Police Chief and Tim Mossgrove, Fire Chief.

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

Mayor Burnett adjourned the regular Council Meeting to convene the Executive Session, reading the following into the record:

**EXECUTIVE SESSION PURSUANT TO F.S. CHAPTER 286.011(8)**

The purpose of the Executive Session is to discuss settlement options and litigation strategy for pending City actions. The persons attending the meeting will be Council Members Joe Bernardini, Lara Bradburn, Frankie Burnett, Joe Johnston and Emory Pierce; Attorneys for the City of Brooksville, Thomas S. Hogan, Jr., Debbie Hogan and Jennifer Rey; City Manager, T. Jennene Norman-Vacha; and court reporter C. Gail Donato of Carolyn F. Engle & Associates. The meeting is expected to last approximately thirty (30) minutes.

The Executive Session was adjourned at 6:50 p.m. and a break was taken for the 2010 Volunteer Appreciation Reception.

The regular Council Meeting reconvened at 7:12 p.m.

Mayor Burnett asked, with Council consensus to move Item G-3 Energy Systems Group Contract to Item G-1. Council concurred.

**CERTIFICATES, PROCLAMATIONS AND PRESENTATIONS**

**Volunteer Appreciation Week April 10 – 16, 2011**

Presentation of proclamation declaring April 10<sup>th</sup> – 16<sup>th</sup> as National Volunteer Week and honoring our citizens that volunteer their valuable time and make a difference in the City of Brooksville.

Mayor Burnett read the proclamation in its entirety and volunteers were presented with tokens of appreciation as well as Certificates of Appreciation for 5, 10, 15 and 20 years of service.

City Manager Norman-Vacha also recognized volunteers with a special appreciation who have contributed a large part of hours served; Joe Johansen, Dennis Wilfong, Jamielove Miller and Michael Heard. She presented the Spirit Award to James Brooks and Volunteer of the Year Award to Jamielove Miller.

Council Member Bradburn commended Jamielove Miller for her volunteerism at the Brooksville Cemetery and her efforts in recycling of plant clippings.

APPROVED BY BROOKSVILLE  
CITY COUNCIL

ON 8/1/11 INITIALS JL

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## Arbor Day Proclamation

Presentation of proclamation supporting Arbor Day in our community, which will be recognized at a Beautification Board event to be held on April 29, 2011, 10:00 a.m. at Russell Street Park by the Good Neighbor Trail.

Mayor Burnett read the proclamation in its entirety and presented it to Beautification Board Chair Scott Renz. Council Member Bradburn suggested planting a tree to enhance the canopy on one of the City's historic streets.

## **CITIZEN INPUT**

Mayor Burnett asked for public input.

Jay Tinkham of Lizzie T's Coffee House indicated Code Enforcement has told him he cannot have feather flags on the streets advertising his business but other businesses have flags that have not been fined. He indicated his business has decreased by 35% since he took the flags down and he has had to lay off employees. He asked that Council consider other options, such as allowing them during business hours.

Council Member Bradburn supported feather flags for new businesses to attract customers. She recommended City staff re-examine issues pertaining to sign regulations brought forward by Mr. Tinkham for Council consideration and she felt they could come to a compromise.

Mayor Burnett agreed with Council Member Bradburn and asked City Manager Norman-Vacha look into the matter and report back to Council. He informed Mr. Tinkham a telephone call and a letter will be sent to him on Council's decision.

Council Member Bernardini stated the ordinance in place needs to be enforced to eliminate clutter of flags throughout the City and his opinion was flags do not promote business.

Pierre Desjardins commented on the issue. He agreed that there has to be regulations but the idea is to keep businesses in tough economic times.

## **CONSENT AGENDA**

### Minutes

November 1, 2010 Regular Meeting  
January 25, 2011 Workshop  
February 9, 2011 Workshop

### Surplus Equipment

Consideration to surplus obsolete/inoperable equipment.

### Florida Junior Golf Council/First Tee National School Program Agreements

Consideration of approval of a Grant through the Florida Junior Golf Council with the hopes of securing funds to implement the First Tee National School Program in the remaining five (5) elementary schools in Hernando County. Approval of Agreement allowing use of the funds to implement said programs.

### July 4<sup>th</sup> Fireworks Event by Friends of the Children

Consideration of request to allow alcohol sales at the event scheduled for Saturday, July 2<sup>nd</sup> in Tom Varn Park.

### FY2010/11 Budget Amendment

Consideration of budget amendment incorporating \$20,000 held in trust pursuant to the terms of

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the Settlement Agreement dated October 28, 2010, between the City of Brooksville, bond Safeguard Insurance and CaSHP 1, LLC.

### **Motion:**

Motion was made by Council Member Bradburn and seconded by Vice Mayor Johnston for approval of Consent Agenda. Motion carried 5-0.

## REGULAR AGENDA

### **Energy Systems Group Contract**

Consideration of Guaranteed Energy Savings Performance Contract with Financing Agreement and Surety Bond.

Chris Summers of Energy Systems Group reviewed the contract, financing agreement and surety bond. He asked for approval of the performance based contract and reminded Council that the contract will be paid for over a period of time with the savings.

Council Member Pierce asked that the pages be numbered in the final document. Referencing Schedule C, he expressed concern that one or two of the conservation measures would be carrying the others and asked that the breakdown be attached to the contract.

Mr. Summers reviewed the process after the signing of the contract takes place. He advised an annual audit of the contract will take place.

Referencing Schedule D, Council Member Pierce recommended the same person who does the report each year sign off that the savings are being realized. He felt an independent audit should be in place. Mr. Summers advised the information is what is needed to form the report. The City can have anyone review internally or a third party review. He strongly recommended a city employee be involved in gathering of the information.

In Schedule F, Sections 3.3 and 3.7, Council Member Pierce indicated additional savings changes the contract. Mr. Summers indicated Section 3.3 references that anytime there are other savings possibilities, they can bring it to the City's attention and it would be at the City's discretion as to implementation. Mr. Summers next referenced Section 3.7 and indicated this references change the City needs to make which will affect the functionality of the structure and will need to be addressed.

Referencing 4.0 Table A, Guaranteed Savings, Council Member Pierce asked for clarification. Mr. Summers indicated it is strictly referencing dollar savings.

Council Member Pierce would like irrelevant information deleted under Section 10. He stated since the City is a public entity, no income tax is paid and asked if it is relevant. Mr. Summers advised the Energy Policy Act of 2005 allows governments to enter into the agreement and the design firm to collect tax credits. Council Member Pierce requested a 50/50 share be considered. Mr. Summers indicated a 50/50 share will be looked at.

Schedule H Baseline; Council Member Pierce asked that references to the Cobb Road Treatment Plant be removed as well as Appendix C which refers to the Police Department. Mr. Summers confirmed he will remove the Cobb Road Treatment Plant. City Manager Norman-Vacha indicated the Police Department is part of the original Investment Grade Audit and not slated as a project here.

Council Member Bernardini indicated he is concerned with the Surety Bond provisions, which should be removed, and that the company stands to make \$3.3 million dollars by providing this service largely due to the automated water meters, which could have been implemented by the City without Energy Systems Group.

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Vice Mayor Johnston agreed with Council Member Bernardini about the bond worth but pointed out benefits of the proposal such as an opportunity for financing of water meters installation while paying for itself over time as well as other cost and energy savings.

Council Member Bradburn asked would new and improved technology be brought forward to the City in the future and revision of the agreement to implement those changes. Mr. Summers confirmed he would advise City Council on changing opportunities as long as it is a great fit for the City and is cost effective.

Council Member Pierce referenced the compensation schedule and asked if there is less than anticipated radio read meters replaced would the City pay less. Mr. Summers confirmed the City would pay less and pointed out there is a detailed list as part of the Investment Grade Audit where the price will be adjusted accordingly.

Attorney Jennifer Rey indicated the agreement has been reviewed and there have been modifications regarding terms of the bond forms incorporated into the agreement as well as a provision that the City retains final approval of any final form bond that is provided but without guarantee of performance bond litigation occurring. She indicated Schedule L, the financing agreement with SunTrust Bank, is not complete at this time. In addition, there is further negotiation on schedule for completion and prioritization of conservation measures. Also, there is contemplation of a payment bond which is the energy savings guarantee bond in the event that Energy Systems Group is not in a financial position to satisfy their guarantee for any unrealized energy savings. The bond is intended to be the full face value of the contemplated savings over the life of the agreement. As the years pass and those obligations are met that bond would be released on a prorated basis. A comprehensive agreement has interworking parts, including the Investment Grade Audit Report which establishes the basis for the project savings, and increased revenues in the water meters and baseline adjustments as Mr. Summers represented. There are some contemplated potential changes in this agreement if the energy savings are not realized. Based on the assumptions, there is an opportunity for reassessment which will come back to City Council for approval.

City Attorney Rey said review of a lengthy document recently provided by SunTrust delayed the final financing agreement coming to Council until the next meeting.

City Manager Norman-Vacha clarified that approval of the contract is being sought in all schedules with the exception of Schedule L; the financing agreement.

Attorney Hogan referenced paragraph 3.3, additional savings, and clarified that whatever savings can be achieved will be included in the annual energy savings guarantee report and will be a credit towards Energy System Group's obligation to produce savings for the City. Mr. Summers pointed out the intent in this paragraph is for no additional cost to the City. Attorney Hogan advised it is optional for the company to include other energy saving measures that may not be contemplated tonight. Vice Mayor Johnston suggested "will" be changed to "may" and Council Member Pierce agreed. Council Member Bradburn stated she would encourage Energy Systems Group to seek other energy saving measures.

Attorney Hogan stated the government encourages energy savings through a tax incentive and asked could a tax exempt government transfer the tax credits. Mr. Summers clarified it is a tax deduction. Attorney Hogan asked Mary Beth Gary how the City would get back the value of a tax deduction.

Mary Beth Gary of Oliver and Company stated that when the company is able to claim a deduction it is not considered savings but less of income and is taxed at the company's marginal rate. She further indicated 50% back to the City by agreement would have to be by reduced cost to the City or cash refund.

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Attorney Hogan indicated that with a tax deduction under Section 179-D the City would be able to designate the company as the beneficiary of that deduction then calculate the dollar value giving the City 50% of the value of the deduction to Energy Systems Group.

Mr. Summers explained calculating the value of the deduction is based on efficiency standards set by the Federal government and must exceed 25% of that standard before qualifying for a tax deduction.

Attorney Hogan referenced the bond section that states “Whenever companies shall be and declared by the owner to be in default under the contract the owner having performed owner’s obligations thereunder” he would like to add “...not withstanding any City of Brooksville Ordinance to the contrary.”

Council Member Bradburn asked Mary Beth Gary her opinion of the program. Ms. Gary stated without having read all the details of the contract she advised it is a very positive step if the City has the ability to obtain financing for a project using a master lease agreement and has a way of quantifying the savings with a guarantee that is equivalent to or greater than the cost of the project.

Attorney Hogan pointed out that the contract will be contingent upon the financing agreement with SunTrust.

Council Member Bradburn asked should savings be earmarked. Council consensus was to wait until the savings are realized.

### **Motion:**

Motion was made by Council Member Bradburn and seconded by Vice Mayor Johnston for approval as verbally amended below, excluding Schedule L and subject to financing. City Manager Norman-Vacha reviewed the five items for changes:

1. *Schedule F Section 3.3* – Changing the terms “will be” to “may be included at the agency’s approval”.
2. *Schedule F Section 4.0* – The note at the bottom of Table A to include removal of the words “fuel type”.
3. *Schedule F Section 10* – Documentation of 179-D Tax Deduction to reflect the calculation value of the deduction to be shared with the City of Brooksville at 50% dollar value in cash.
4. *Schedule H* – Changing the base line eliminating the section referring to Cobb Road.
5. *Schedule M Bond Section* – To add verbiage “not withstanding any City Code, Ordinance or Policy”.

Motion carried 4-1 with Council Member Bernardini voting in opposition.

### **Audited Financial Statements**

Review and acceptance of Annual Audit for Fiscal Year ended 09/30/10 prepared by Oliver & Joseph Auditors, P.A.

Mary Beth Gary of Oliver & Joseph reviewed the annual audit. She stated the audit was completed and accepted by management. All the reports are dated March 28<sup>th</sup> and finalized to the State as required. The opinion letter was unqualified and the overall financial statements were also positive with no material weaknesses or significant deficiencies as summarized in the report. This year’s grant funding required single audit procedures focusing on controls and compliance with respect to the City’s expenditures of federal and/or state funds. A major program, the Clean Water State revolving fund, had no reportable findings or issues. Overall, the audit took longer than past years but it went extremely well.

Council Member Bradburn stated last year internal inefficiencies and inconsistencies were cited and asked if there has been improvement. Ms. Gary clarified it is not a finding but an auditor’s

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preference to have certain types of systems in place for the recording of payables and is recommended annually due to changes of Council Members. She further stated there have not been any findings of problems as a result and these efficiency procedures continue to improve over the years and commended staff. She pointed out a finding that continues to be in the report from last year regarding a centralized purchasing system. However, City management has determined it is not cost effective at this point. Council Member Bradburn agreed but pointed out there are risks associated with not having a centralized purchasing system.

Council Member Bradburn thanked Ms. Gary and stated there will be further discussions. She predicted the most challenging budget this year not because of decrease in revenues but citizens are requesting certain levels of service in areas that she is not sure can be provided. She stated Ms. Gary's insight will be invaluable.

Mary Beth Gary encouraged Council Members to contact her with questions after review of the report.

### **Motion:**

Motion was made by Vice Mayor Johnston and seconded by Council Member Pierce for approval. Motion carried 4-1 with Council Member Bernardini voting in opposition as he had not been able to review the report.

Council Member Bradburn indicated she based her vote on the City's auditor being in agreement with staff recommendation.

Mayor Burnett thanked the City Manager and Finance Department for their diligence in trying to improve and do better.

### **Ordinance No. 817 - Pain Clinic Moratorium**

Consideration of proposed Ordinance with submission to the Planning and Zoning Advisory Board for review and recommendation.

Director of Community Development Bill Geiger briefly reviewed the history of the ordinance.

Planner Steve Gouldman reviewed requirements proposed by the ordinance. The Planning and Zoning Commission reviewed on April 13<sup>th</sup> and concurred with staff recommendation.

Council Member Bradburn stated there has been significant activity recently in the legislature regarding pain clinics and illicit prescription drugs. She indicated the House Bill has been set aside but the Senate's drug monitoring Bill is moving forward to greatly restrict distribution. City Planner Steve Gouldman indicated if the Senate Bill passes there will be no changes required to this proposal.

Council Member Bernardini indicated there are often staging areas at these clinics to avoid large groups gathering. Some have also changed names to "Wellness Management Clinics" and advised due diligence in reviewing applications. City Attorney Rey clarified the definition of a pain management clinic will be the basis during application review for permitting these types of clinics.

Vice Mayor Johnston pointed out the ordinance head note needs to be changed from Ordinance Number 818 to Ordinance Number 817. City Clerk Peters confirmed she will make the change accordingly.

### **Motion:**

Motion was made by Council Member Bernardini and seconded by Council Member Pierce for approval.

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City Clerk Peters read Ordinance No. 817 by title, as follows:

**AN ORDINANCE OF THE CITY OF BROOKSVILLE, FLORIDA, PROVIDING AUTHORITY, LEGISLATIVE FINDINGS OF FACT AND ESTABLISHING INTENT AND PURPOSE FOR PERMITTING CERTAIN PAIN MANAGEMENT CLINICS; AMENDING THE CODE OF ORDINANCES OF THE CITY OF BROOKSVILLE, FLORIDA, CHAPTER 137, “LAND USE AND ZONING,” ARTICLE I, SECTION 137-2, “DEFINITIONS” AND SECTION 137-9, “SPECIFIC USE REGULATIONS;” AMENDING ARTICLE II, SECTION 137-46, “ADMINISTRATIVE FEES AND COST OF PUBLIC NOTICE;” PROVIDING FOR CONFLICT AND SERVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.**

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

Council Member Bradburn	Aye
Council Member Bernardini	Aye
Council Member Pierce	Aye
Vice Mayor Johnston	Aye
Mayor Burnett	Aye

Mayor Burnett stated the second reading of the ordinance is scheduled for May 2, 2011.

## CITIZEN INPUT

Mayor Burnett asked for public input.

Kojak Burnett referenced the Energy Systems Group Contract and stated it was a good plan. He next referenced the Audited Financial Statements and commended Ms. Gary, City Manager Norman-Vacha and the Finance Department staff on the report.

## ITEMS BY COUNCIL

### City Attorney Rey

#### Executive Session

City Attorney Rey, with concurrence of Council, asked for an Executive Session on May 2<sup>nd</sup> at 6:00 p.m. prior to the next Regular City Council Meeting.

### T. Jennene Norman-Vacha, City Manager

#### Next Regular City Council Meeting

City Manager Norman-Vacha stated the next meeting is scheduled on May 2<sup>nd</sup> at 6:00 p.m.

#### Art in the Park Event

She announced Art in the Park event on Saturday, April 30<sup>th</sup> and Sunday, May 1<sup>st</sup>.

### Joe Bernardini, Council Member

#### Recycling Pick-up on Wednesdays

Council Member Bernardini asked for an update on his recycling request from January 25<sup>th</sup>. City Manager Norman-Vacha indicated staff is seeking a sorting source with a potential provider as a viable alternative in hopes of increasing the level of recyclables. Vice Mayor Johnston suggested

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different color bags or labeling bags to separate recyclables. City Manager Norman-Vacha pointed out the City does not have a recyclable truck to sort the items during collection. She expects to present an alternative to Council soon and encouraged other ideas to make it work such as purchasing a recycling vehicle or a provider that takes mixed recyclables.

### Council Mail Box

He requested nothing be put in his box unless contacted by staff. Mayor Burnett requested City Manager Norman-Vacha have staff leave Council correspondence in her office for pick-up.

### Emory Pierce, Council Member

#### Recycling

Council Member Pierce stated recycling was intended to be a minimal cost program and this change will be costly.

### Lara Bradburn, Council Member

#### Rain Barrel Event/Water Conservation Month

Council Member Bradburn stated she and Vice Mayor Johnston attended the event and she thanked Jeanne Griffin-Moore and her husband for their hard work getting materials and making the barrels.

#### Quarry Project Workshop

She clarified a recent newspaper article surrogated an impression that the City guaranteed support for three (3) years up to \$300,000. She stated rather each project would be reviewed individually by Council with no guarantee for the future.

### Joe Johnston, Vice Mayor

#### Red Light Runners

Vice Mayor Johnston stated there were two (2) red-light runners in front of him since he last reported. He stated the majority of infractions are at Martin Luther King Boulevard and Broad Street but also occurred on Mildred Avenue.

### Frankie Burnett, Mayor

#### Happy Easter

Mayor Burnett wished everyone a Happy Easter.

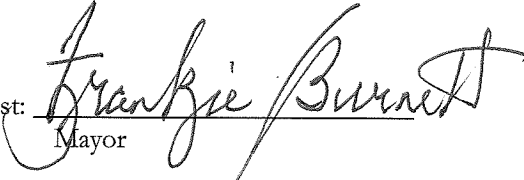
#### Staff Appreciation

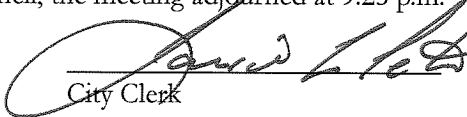
He personally thanked department heads and staff for what they do and thanked City Manager Norman-Vacha for her part in leading the way.

## ADJOURNMENT

There being no further business to bring before Council, the meeting adjourned at 9:25 p.m.

Attest:

  
Mayor

  
City Clerk