

**MINUTES  
CITY COUNCIL  
CITY OF ARCADIA  
TUESDAY, OCTOBER 16, 2012  
6:00 PM**

*The following minutes reflect action items of the City Council of the City of Arcadia. For a verbatim copy of the minutes you may contact City Administration to obtain a copy of the recorded meeting.*

**CALL TO ORDER, INVOCATION PLEDGE OF ALLEGIANCE & ROLL CALL**

The meeting was called to order at approximately 6:00 p.m.

Deputy Mayor Heine gave the invocation which was followed by the Pledge of Allegiance.

**Arcadia City Council**

Councilman Keith Keene  
Councilman Robert Heine  
Councilman Robert R. Allen

Councilwoman Alice Frierson - Absent  
Councilman Joseph E. Fink

**Arcadia City Staff**

City Administrator Judi Jankosky  
Captain Matt Anderson  
Jerry Cordes, Public Works  
Carey Taylor, Golf Course  
Thomas Slaughter, Planner

City Recorder Virginia S. Haas  
City Attorney Thomas J. Wohl  
Fred Lewis, Systems  
AJ Berndt, WTP

**PRESENTATION**

Proclamation for City Government Week

The City Recorder read the Proclamation for City Government Week and the Proclamation for "Week of the Family". Mayor Keene presented the Proclamation for "Week of the Family" to Cynthia Siegal, Co-Chair, DeSoto County Week of the Family Committee.

DART Introduction: DeSoto – Arcadia Regional Transit – Mrs. Peggy Waters, Social Services Manager and Mr. Tim Banks, VEOLIA Transportation

Mrs. Peggy Waters introduced the new DeSoto-Arcadia Regional Transit (DART) bus service program implemented with a three-year grant from Florida Department of Transportation. There will be two buses available and service will begin November 14, 2012. She announced the ribbon cutting ceremony scheduled for November 14, 2012 at 11:00 a.m. at the Library. The first week of service is free and costs following that will be .50 cent fares. She introduced Mr. Tim Banks from Veolia Transportation.

Mayor Keene recognized Commissioner Elect Bob Miller.

**CONSENT AGENDA**

1. July 21, 2012 Visioning Workshop Minutes
2. August 14, 2012 Budget Workshop Minutes
3. October 2, 2012 Regular Meeting Minutes
4. Check Warrant Reports from 09/28/12, 10/05/12 and 10/09/12
5. September 2012 Air-Cadia Flowage and Hanger Report
6. Request for Certificate of Appropriateness – 127 North Polk, Applicant Peter Kent
7. Request for Certificate of Appropriateness – 222 East Oak, Applicant Mosaic

**A motion was made by Councilman Fink and seconded by Councilman Allen to approve consent agenda items 1, 2, 4, 5, 6 and 7 as presented. The motion carried 4-0.**

Councilman Fink requested changes to consent item number 3 on page 4 of 8 of the October 2, 2012 minutes stating that there was no notice of the discussion from former Administrator Ed Strube concerning Air-Cadia not paying the fire insurance and there was no reference to Councilwoman Frierson stating that Councilman Fink had filed an ethics complaint against her. Mr. Strube was noted previously on page 3 of 8 and Councilman Fink wondered why he wasn't included in the above section. It was an important discussion. Councilman Fink noted that he and several members of the Airport Committee were also mentioned in that discussion. Mayor Keene replied that he didn't disagree but he wondered how far we have to go with the details of the minutes and he thinks they need to be a reflection of what occurred in summary form but he does understand the concern about the items that were mentioned. Councilman Fink stated that since his name was mentioned specifically he would ask that be included in the minutes. He moved that the Recorder be sent back to provide in the minutes that Mr. Strube stated that he did not have a recollection of whether or not he agreed to forgo payments of insurance from Air-Cadia and the inclusion of what Councilwoman Frierson said. Mrs. Jankosky confirmed if that is what Council wanted to do; it would be completed.

**A motion was made by Councilman Fink to adopt the October 2, 2012 minutes with the requested changes. The motion was seconded by Mayor Keene. The motion failed 2-2 with Councilman Fink and Mayor Keene voting in the affirmative and Councilman Heine and Councilman Allen dissenting.**

Councilman Fink requested that his suggestions for changes to the minutes be added to the current set of minutes reflecting that Councilwoman Frierson stated Councilman Fink had specifically filed ethics charges against her and she said that at least three times at the October 2, 2012 meeting and that Councilwoman Frierson said that two members of the Airport Advisory Committee were telling tales to people in Tallahassee. Lastly to include that former Administrator Ed Strube stated that he did not recall that he had granted Air-Cadia the ability not to pay insurance however Mr. Strube did recall asking Florida League of Cities if the amounts could be broken down however the League said they could not break down such a miniscule amount.

Attorney Wohl reviewed Attorney General Opinion (AGO) 82-47 in regards to the definition of minutes. Mayor Keene stated that he hated to see the minutes a verbatim record every time. Attorney Wohl stated that he has never seen minutes this specific and these are quite long at 8 pages single spaced. He continued that the statute doesn't specify how much must be in the minutes but the AGO says a brief summary or series of brief notes or memorandum reflecting the events of the meeting and that is even more applicable in today's technology when it is recorded and the disc burned is an immediate public record. In his opinion the minutes are a bit lengthy and he's never seen them this long. He stated that the AGO only gives the minimum

required but it is up to Council as to how specific they prefer them. Attorney Wohl stated that the proper procedure was pulling the minutes and voting. Mayor Keene stated that he believes in the interest of efficiency and effectiveness, the meeting is recorded and is available to whoever requests. He doesn't want to dwell on having every word that was said but he agreed with what was done tonight. Councilman Fink replied that he was not suggesting verbatim, he believes considering this vote he found it selective enforcement and selective sanitation of the minutes. Attorney Wohl replied that there is nothing that impairs a Councilman's right to pull the minutes off the consent agenda.

Dr. Lorenzo Dixon stated that he was one of the concerned citizens that requested changes by contacting some of you and he was out of town for the meeting. He asked the City Attorney if the information he was sharing was a 1982 opinion. Attorney Wohl confirmed. Dr. Dixon replied that was 30 years ago and there are most likely a few new opinions since then. Attorney Wohl replied that there is a 2012 Sunshine Manual that the Attorney General (AG) put together and the manual includes the reference to that Attorney General Opinion, so it has not changed since 1982. If the Attorney General is issuing that handbook citing that opinion it seems they have adopted that opinion as well. Dr. Dixon questioned the opinion from 1982 because to his knowledge laws frequently change annually, and if that is exactly the opinion of this century he has concerns. Attorney Wohl responded that the AG opinion is more of a guideline to a particular statute and that is FS 286.011(2) that tells us the City needs to record the minutes of the meeting. Someone submitted a question from the City of Gulf Breeze on guidance as to what minutes mean under that statute and the Attorney General gave their opinion with cited case law. They only provide guidance and we are looking at the common sense definition of minutes. Dr. Dixon asked if it is fair to say it is at the Council's direction and discretion. Attorney Wohl confirmed.

Dr. Dixon stated that he was pointing this out because according to the Commission on Ethics any time there is a concern and an ethic complaint is filed, or laws violated....which you cannot advise them individually on correct, you only advise the City not the individual. Attorney Wohl replied that is correct they previously talked about that. Dr. Dixon continued that any time an ethic violation is filed an audio or video is not permissible. You have to have recorded approved minutes. That is why we wanted that into the minutes; State of Florida wants it in the minutes. He was under the impression there would be a correction to page 4, not verbatim, but at least show when he presented his case he would have something to back it up. It was brought up in a public meeting by a person that is another violation of law because any time there is ongoing litigation you are not supposed to discuss until it has been resolved. He asked Attorney Wohl if that was true. Attorney Wohl stated that is attorney/client privilege and he advises the City regarding that however there a number of ways that the attorney/client privilege can be waived. Dr. Dixon asked if there were similar rules for ethics charges, if there is not a written waiver submitted then no one should be talking about it. This was brought up in public meeting where ethics was filed by Councilman Fink and a specific statement was made by a person in the meeting. He would hope the correction to page 4 has been submitted in the approval of minutes to that extent that he was led to believe they would. Attorney Wohl clarified that the recording of the minutes is for the benefit of the City of Arcadia, not for the benefit of the ethics commission. Attorney Wohl agreed that the State doesn't like to take audio tapes, but they may in an investigation request the City Recorder issue a certified copy of the audio tape, they may not take the tape from a John Doe who is filing a complaint because they don't know if its been tampered, but they may contact the City Recorder, and if that's good enough for a Judge it is good for the ethics commission. Attorney Wohl explained another route can be to have a certified court reporter actually transcribe the tape and submit that with your complaint. The court reporter will certify that they listened to the tape on this day, transcribe and certify that it is accurate. He continued that the AGO is bare minimum and Council can do anything they feel

necessary and it was appropriate to pull and vote and if that passed it would be included in the minutes because the Council is the ultimate authority.

Dr. Dixon stated for the record that any member of this Council that expects our vote and support of citizens that don't want the public to have the truth or the facts unless you are trying to help cover up something or you don't want the proof to be in records, that is a serious concern unless you are part of breaking the sunshine law and ethics rules. If it was a simple request, not verbatim, just a point that comments were made one to another about filing ethics charges which we know we are not supposed to do. Mayor Keene replied that the Council got it in the record tonight. Mrs. Jankosky replied that she and the Attorney talked and they felt it was best to let the Council handle that matter.

Dr. Dixon explained that recently a young lady was shot in the head in another country for speaking out in a public meeting. He stated that he was speaking during a part in the agenda, so he felt he was not limited to five minutes. Mayor Keene replied that no one said anything about the five minutes except Dr. Dixon and he has been very liberal with allowing him to speak. Mayor Keene said he didn't think anyone could say that this Council has refused anyone the opportunity to speak and stated that his point is well taken. Mayor Keene continued that he appreciated what was brought forward, the item was pulled and voted on and he hopes that is satisfactory.

Dr. Dixon stated that the reason for pointing this out is due to a previous meeting and Mr. Hickson was no where in the meeting, it was Coach Bowers that was here but it was in the minutes that Eugene Hickson made certain statements. They both did not like it. We wanted to make sure the minutes were correct. Some have concerns whether we all look alike. We wanted to make sure when people look at the minutes 50 years from now as he was taught that is the purpose of records and you have to store and keep them in a safe place and be true as possible. That was totally not true that he came before you. I don't know how the mix-up happened because there is only about six of us that come before you that are dark complected. We didn't say anything and we hope that has been corrected so that no one would think Eugene Hickson was here when it was Coach Bowers. He wouldn't want anyone to think it was Barack Obama who was here when it was Lorenzo Dixon. He was appalled that no one wants facts, not verbatim.

Attorney Wohl explained that the reason these minutes come to Council is because they are drafts, which are subject to Council making the changes. He has been referred to as Bill Galvano sometimes, the minutes are merely drafts that revisions are made to, they are on the consent agenda and Council has the right to pull them. That's the democratic process. We're not just letting the City Recorder draft the final minutes, it's a proposal and the Council has final say.

Councilman Fink stated that they have not yet approved item number 3 because his motion was to approve with amendments and it failed 2-2. There needs to be a motion to approve or we may wait until Mrs. Frierson gets back. Mayor Keen stated that he guesses it will be approved at the next meeting. Mayor Keene stated to Dr. Dixon he voted the affirmative for the changes and that's the best he can do as he's been on the bottom of the vote several times, however he will continue to do the best he can. Attorney Wohl responded to Councilman Fink if there is a 2-2 vote we need to table the item to the next meeting. Mayor Keene asked if there was a motion to revote, hearing none; the item was tabled to the next regular meeting.

**DISCUSSION ITEMS**

8. Request for Special Event Permit and Waiver of Fees for Veteran's Day Parade – Mrs. Jackie Tucker, Arcadia Elks

**A motion was made by Deputy Mayor Heine and seconded by Councilman Fink to approve the request for special event permit and waiver of fees for the Veteran's Day Parade as submitted by Mrs. Jackie Tucker, Arcadia Elks. The motion carried 4-0.**

9. Request for Special Event Permit and Waiver of Fees for McSwain Park Playground Grand Opening – Mrs. Terry West, Hands of Angels

**A motion was made by Deputy Mayor Heine and seconded by Councilman Allen to approve the request for special event permit and waiver of fees for McSwain Park Playground Grand Opening – Mrs. Terry West, Hands of Angels. The motion carried 4-0.**

10. Airport Incident (Councilman Fink)

Councilman Fink stated he wanted to make Council aware of what occurred last Thursday. Mr. Greg Smith went to the Airport to see the inspection and when he was there it was his understanding Mr. Smith was accosted and told by one of the principals of Air-Cadia that if there was any last breath in his body he was going to ensure Mr. Smith was dead. Mr. Smith filed a police report stating same and he wanted the Council to be aware in case they weren't notified because Mr. Smith sits on our board as a member and our representative to the Arcadia Airport Advisory Committee and he has a right to be out there just as any citizen has the right to go out there. He found it shocking.

Mr. Greg Smith reported that they were having the annual inspection at the Airport and for months he was working on a set of standards for grass mowing and he wanted to go over that with the inspectors because that night there was an Airport meeting. He wanted the inspector to look at the plan and see if there was anything that needed to be tweaked as far as standards because the Council requested that a bid be put out as to the cost to mow the Airport. That is like calling a yard man asking for a price and him not seeing the yard or how you want it cut. So it gave us some standards of what we wanted on the runways, taxiways, ponds and gave acreage and that was the main reason he went out there, so when bringing that forward it would be appropriate. He was standing with Mike Moon, City consultant, when Mr. Minnear came out and went into this tirade and made the statement that he knew what he and George Chase were trying to do. Then later on he tried to turn it into something else. He stated that a lot on the board are trying to improve the Airport and get some kind of consistency where it is maintained and useful.

Mr. Gary Frierson stated he read the police report and what Councilman Fink read into record as to what was said he assumed Councilman Fink was there and heard that. Councilman Fink replied no, that he read the report. Mr. Frierson replied so you don't really know what was said. You read and said all those things but there is no verification of what was said. Councilman Fink replied except through the police report. Mr. Frierson stated also the second half of the report denied those things were said, is that true? Councilman Fink replied that he had no idea. Mr. Frierson asked Councilman Fink if he didn't read the second half to which Councilman Fink replied no that he read both. Mr. Frierson stated that Councilman Fink didn't know what was said but he knew what the first part said. Councilman Fink asked if Mr. Frierson was there. Mr. Frierson replied that he read the report also and he didn't know what was said. He stated that

Councilman Fink entered the first half into the record but not the second half into the record, and he found that as slightly slighted.

#### 11. Airport Land Leases (City Attorney)

Attorney Wohl reviewed the two tie-down leases and noted that he attached a memo in the packet with his legal interpretation. He stated there are significant differences in the two leases. He didn't know whether any of these leases would pass Federal Aviation Administration (FAA) muster due to the exclusivity reason. As far as transferability, Mr. Hilton's lease only applies to the signor and in Mr. Frierson's lease it is applicable to lineal descendants of the signor. Also in 1986 Council approved the transfer of rights to Mr. Gary Frierson. If someone has a lease and you have relatively positive evidence that they have intended to never come back or they have deserted the original use that could result in abandonment. If the use was storage of airplanes and now you are storing a hot rod then you have abandoned the original intended use. As to the termination in Mr. Hilton's lease, the City has the right to terminate after a 60 day notice; Mr. Frierson's does not include a termination clause. Regarding the FAA opinion he has not made a determination. He wanted to know if Council wants him to look into whether the FAA will frown upon the leases because of the perpetual leases at the Airport. Councilman Fink asked if under abandonment 2-b if it says that if you use the property for storage of aircraft it does make that it must be lineal descendant however does section b deal with the ability to transfer to other people in the storage of other aircraft other than one's personal aircraft. Attorney Wohl replied that he didn't believe that would apply. Councilman Fink asked what if he was using it for the storage of lumber. Attorney Wohl replied that the lease is clear, that the party shall use for the storage of aircraft and no other purpose. Councilman Fink stated that he believes Mr. Frierson is using it for the storage of lumber.

#### 12. Airport Marketing Plan (Mr. George Chase, AAAC Chair)

Mr. George Chase, AAAC Chair, reported that the marketing plan was placed in the packet for Council's consideration for a tool to use in the future. Mayor Keene requested a potential meeting with the County to discuss how to get utilities to the Airport from Highway 31. Mrs. Jankosky reported that in previous conversations, the County was receptive to the idea and utilities at the Airport could be addressed at the joint meeting.

#### 13. Tie – Downs (Mr. Rickey Hilton)

**A motion was made by Deputy Mayor Heine and seconded by Councilman Fink to waive any tie-down fees, refund any amounts paid and issue a termination agreement in regards to Mr. Rickey Hilton's lease. The motion carried 4-0.**

#### 14. DCAAA Lease – Arcadia Ballfields

Mrs. Jankosky reported that DCAAA would like to make many improvements to the Arcadia ball fields similar to Brewer Park. There was discussion regarding the lease and issues at the ball fields.

**A motion was made by Deputy Mayor Heine and seconded by Councilman Fink authorizing the City Manager to issue a 30-day notice of compliance and allow the City Administrator the authority to negotiate a new lease with DCAAA. The motion carried 4-0.**

**15. Conveyance of Utilities by Casa San Juan Bosco**

A motion was made by Deputy Mayor Heine and seconded by Councilman Fink to accept the conveyance of utilities by Casa San Juan Bosco upon receipt of an executed bill of sale. The motion carried 4-0. There was some discussion regarding the lift station which Casa San Juan Bosco has agreed to maintain for the time being.

**RESOLUTIONS****16. RESOLUTION NO. 2012-18; A RESOLUTION APPOINTING MAYOR, DEPUTY MAYOR AND PRESIDING OFFICERS; SETTING TERM OF OFFICE.**

Resolution No. 2012-18 was read by title only.

A motion was made by Councilman Fink and seconded by Councilman Allen to adopt Resolution No. 2012-18 as presented. The motion carried 4-0.

**ORDINANCES****17. ORDINANCE NO. 978; FIRST READING OF AN ORDINANCE OF THE CITY OF ARCADIA, FLORIDA, PROVIDING FOR THE AMENDMENT OF THE CITY OF ARCADIA'S COMPREHENSIVE PLAN, REVISING THE INFRASTRUCTURE, CONSERVATION, INTERGOVERNMENTAL COORDINATION, AND CAPITAL IMPROVEMENTS ELEMENTS; AND ADOPTING THE CITY OF ARCADIA'S TEN-YEAR WATER SUPPLY PLAN; PROVIDING FOR TRANSMISSION OF THIS ORDINANCE TO THE FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY FOR REVIEW AND A FINDING OF COMPLIANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICT; AND PROVIDING FOR AN EFFECTIVE DATE. (Jennifer Codo-Salisbury, CFRPC)**

Ordinance No. 978 was read by title only. A motion was made by Deputy Mayor Heine and seconded by Councilman Fink to approve Ordinance No. 978 at first reading. The motion carried 4-0.

**18. ORDINANCE NO. 979; FIRST READING OF AN ORDINANCE AMENDING CHAPTER 102, ARTICLE II, SECTION 102-31 OF THE CODE OF ORDINANCES OF THE CITY OF ARCADIA TO ESTABLISH CRITERIA REQUIRING CERTAIN WATER CONNECTIONS TO THE CITY WATER SYSTEM; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

Ordinance No. 979 was read by title only. A motion was made by Councilman Fink and seconded by Deputy Mayor Heine to approve Ordinance No. 979 at first reading. The motion carried 4-0.

**19. ORDINANCE NO. 980; FIRST READING OF AN ORDINANCE AMENDING CHAPTER 102, ARTICLE II, SECTION 102-42 OF THE CODE OF ORDINANCES OF THE CITY OF ARCADIA TO**

**ESTABLISH WATER USER RATE CHARGES FOR USERS OUTSIDE THE CITY; TO ESTABLISH WATER RATES TO BE ADOPTED BY RESOLUTION; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**Ordinance No. 980 was read by title only. A motion was made by Councilman Fink and seconded by Councilman Allen to approve Ordinance No. 980 at first reading. The motion carried 4-0.**

**COMMENTS FROM DEPARTMENTS**

**1. City Marshal**

Captain Anderson updated the Council on the Police Department's new vehicle.

**2. Attorney**

Attorney Wohl reported that there would be a joint meeting of the Historic Preservation Commission and Airport Board on October 24, 2012 at 5 p.m. and he will be meeting with the Charter Review Committee on October 24, 2012 at 6 p.m.

Attorney Wohl stated that his concern regarding volunteers at the Airport was liability however there is no legal prohibition. He reviewed the Florida Volunteer Protection Act. Mayor Keene asked how we can allow volunteers at the Airport and is there a mechanism to allow for a qualification determination for those using equipment. Mayor Keene asked the Attorney for language to allow volunteers at Airport events.

**3. City Administrator**

- Update on Joint Meeting with County on Fire Services Contract

Council agreed to change the meeting date and time with the County to November 5, 2012 at 5:30 p.m. and to include utilities at the Airport as an additional agenda item.

Mrs. Jankosky reported that the roof on Smith Brown Gym will be completed prior to November 6, 2012.

**Mrs. Jankosky reported on an eviction at the Mobile Home Park and requested a notice of 7-day termination to be issued. A motion was made by Deputy Mayor Heine and seconded by Councilman Fink to issue a 7-day notice of termination. The motion carried 4-0.**

**A motion was made by Councilman Fink and seconded by Deputy Mayor Heine to approve authorization 16 in the amount of \$25,000 for engineering services - Hazen and Sawyer. The motion carried 4-0.**

**PUBLIC (PLEASE LIMIT PRESENTATIONS TO FIVE MINUTES)**

Mr. Charles Conklin asked why his water was turned off on October 8, 2012 when he had until October 23, 2012 to pay the bill. Mrs. Jankosky will review and return to Council.

Mr. John Super asked for direction on the waiving of fees for special events as the Council had previously approved the waivers and he pays for his car show events.

Mr. Gary Frierson asked about the policy regarding where tie-downs are typically found at the Airport. Mr. Rickey Hilton replied that typically the area tie-downs have been in the area where he has been tying down and he asked permission from the City Administrator.

### MAYOR AND COUNCIL MATTERS

Mayor Keene reported on the Kid's Fishing Day Tournament at Lake Katherine Park and the satisfactory result of the water sample taken by Lee County Aquatic. He thanked all the volunteers and Mr. John Super for the event.

Mayor Keene announced that due to a conflict with his schedule he would no longer be able to serve as representative of the CFRPC. The meetings are held the 2<sup>nd</sup> Wednesday of the month at 9:30 a.m. in alternate locations.

### ADJOURN

There being no further business the meeting adjourned at 8:00 p.m.

APPROVED THIS 6<sup>th</sup> DAY OF Nov., 2012.

By:

  
\_\_\_\_\_  
Keith Keene, Mayor

ATTEST:

  
\_\_\_\_\_  
Virginia S. Haas, City Recorder