

REGULAR MEETING

APRIL 3, 2007

A Regular Meeting of the Arcadia City Council was held on April 3, 2007, at 6:00 p.m. in the Margaret Way Building at 23 North Polk Avenue. Council Members attending were Johnson, Goodman, Whitlock, Fazzone, and Heine. Also in attendance were Administrator Strube, Attorney Holloman, Captain Anderson, Special Projects Coordinator Hewitt, Ms. Way, and Recorder Baumann.

Mayor Johnson called the meeting to order.

The Invocation was given by Council Member Goodman.

Pledge of Allegiance to the Flag.

The Minutes of the Regular Meeting of March 20, 2007 were adopted on a motion by Whitlock; seconded by Fazzone and carried.

The Arcadia Police Department's Activity Report for March 2007 was presented.

Mayor Johnson inquired of Captain Anderson if City Marshall Lee had received a letter from a citizen regarding speed limits in a school zone. Captain Anderson replied that Marshall Lee had received a copy of the letter.

Attorney Holloman addressed the Council regarding the 180 day moratorium regulating sexually orientated businesses within the City. The current ordinance will expire on May 31, 2007. Attorney Holloman hopes to have an ordinance for first reading on April 17, 2007 which would allow the ordinance to become effective before the moratorium expires. Attorney Holloman is working with the County, as well as reviewing Manatee County's ordinances for the most feasible solution for regulating these businesses. He is working to determine if a countywide ordinance is feasible or if the City should adopt its own ordinance. He has advised the Council that the City can not prohibit these businesses without violating the U.S. Constitution. He then gave copies of a city map to the Council and suggested that the M-1 Manufacturing Zone could provide an area for these businesses to locate. This area is bordered on the North by Magnolia Street, on the East by the railroad, and South to Martin Luther King Boulevard. It was noted that none of the area in question fronts on U. S. 17 and that the M-1 zoning district has been in effect since the 1960's. Mayor Johnson and Council Member Goodman expressed concern that this area is very close to the southwest section of town. Attorney Holloman does not feel that this would impact residences in the southwest section any more than in any other area with residences. The state law requires that there is to be 2,500 feet from the nearest property line of a school to an adult entertainment business. He stated West Elementary and Memorial Elementary were within that 2,500 feet. Mayor Johnson asked if an actual measurement had been done to which Attorney Holloman responded no.

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Council Member Goodman is concerned that someone could request an exception for this type of business to be allowed in another area and asked what difference there would be with changing the ordinance after it was enacted as in the recent exception to the selling of liquor at a shopping center. Attorney Holloman stated that the people who wish to establish this type of business have a constitutional right. Administrator Strube stated most counties have tried to locate these businesses in an industrial area in order to limit any contact with children. Administrator Strube then stated we are trying to restrict these businesses as much as possible; however with Arcadia being only four (4) square miles it is very difficult to come up with a possible location. Council Member Heine asked how close the County was in having their ordinance complete to which Attorney Holloman replied that he did not know. Administrator Strube stated it would be easier to locate this type of business in the County because the County has more land; however he does not see how the County could come up with an ordinance that would keep the City from being challenged. Attorney Holloman cited a small city in California that provided nine (9) locations for this type of business and which was accepted by the Supreme Court. Mayor Johnson asked for a copy of the map in order to study the proposed sites. He then asked that an actual measurement from the M-1 District to the schools and churches be done, and an exact location of where these businesses would be allowed be shown on the map and presented at the next meeting. Special Coordinator Hewitt stated he will provide the measurements for the Council. Council Member Fazzone asked if the property had to be in the City to which Attorney Holloman replied that the Supreme Court has not made a decision on this. Council Member Heine asked if the Supreme Court had approved Manatee County's ordinance to which Attorney Holloman said it had not. The question was asked if a Day Care Center was considered a school. Attorney Holloman read from the Florida Statute 847.34 which does not consider a Day Care Center a school, therefore it is not protected by the 2,500 foot limit. The Statute does not have a required distance from churches; however the ordinance proposed by the City would require 500 feet. Mayor Johnson and Deputy Mayor Goodman voiced opposition of the proposed ordinance.

Reverend Ron York, president of the DeSoto County Ministerial Association addressed the Council speaking for the association noting that the Ministerial Association is unequivocally opposed to the proposed ordinance. Rev. York stated the association is opposed to having adult entertainment establishments anywhere in DeSoto County. Mayor Johnson asked Rev. York to do research as to how a City or County could avoid this type of business, and present his findings to the Council.

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Attorney Holloman stated that the City Council is charged with protecting the rights of all of it's citizens as well as the rights of all businesses; however if the Council finds a secondary effect this business might cause then they can put in regulations in the ordinance such as a distance requirement.

Ms. Alexander, a member of the public, addressed the Council in opposition to the ordinance. She stated this business would in no way benefit the City of Arcadia nor DeSoto County.

Attorney Holloman again stated that the U.S. Constitutional Rights must be protected, and the Council was bound by law and oath of office to uphold these rights. Council Member Goodman stated that she did not feel that she shed her "Constitutional Right" by being on the Council. She will vote no on the proposed ordinance even if she has to step down from the Council.

Council Member Whitlock stated that none of the five (5) Council Members were in favor of this ordinance or this type of business. He noted that to fight this type of ordinance in court would take a significant amount of money which the City does not have.

Several other members of the public spoke in opposition to the proposed ordinance.

Paul Hoover asked if the people could vote on this to which Attorney Holloman stated it would do no good. Attorney Holloman stated that he had spent a great amount of time reviewing Federal and Supreme Court rulings on behalf of the City. He noted that the City can regulate these businesses; however they can not prohibit them from being in the City or County as they have a legal right to exist. Mr. Hoover than asked the definition for a church. Mr. Hoover stated he had attended meetings in the home of a Pastor for two years and asked if this would be considered a church. Attorney Holloman replied a church is defined as a House of Worship, so this could probably be considered a church.

Attorney Holloman will continue to research this matter, and will return next council meeting with additional information.

Administrator Strube addressed the Council to report that the advertisement for restroom facilities at Louis Anderson Park had been placed and that the bids would be opened on April 27, 2007.

The Arcadia Golf Course Report for the month of March 2007 was presented. Total numbers of plays for 2007 exceeded 2006 by 879.

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Administrator Strube then addressed the Council noting that the City did advertised for sealed bids to construct a 250,000 gallon potable water ground storage tank and pump station to replace the West water tower damaged by Hurricane Charley. Eight (8) bids were received ranging from a low bid of \$769,000.00 to a high bid of \$1,097,790.00. Boyle Engineering evaluated the bids and have recommended that the City award a contract to CenState Contractors, Inc. of Winter Haven, Florida with a base bid of \$769,000.00. This bid is \$94,700.00 less than the second lowest bidder. Construction time is estimated at 240 days. Goodman moved to approve the contract be awarded to CenState Contractors, Inc. in the amount of \$769,000.00 and to authorize the mayor to sign the contract; seconded by Fazzone and carried.

An invitation from Heritage Baptist Church to the Council Members to attend the Church building dedication was presented. Mayor Johnson announced that he did attend the dedication on Monday.

Paul Hoover, owner of The Arbor, addressed Council to report on a recent event at the Arbor noting that it was very well attended. Mr. Hoover stated he felt the show had been a success for The Arbor as well as the City of Arcadia and DeSoto County and he plans to provide more of this type of performances with the hope of drawing more people to Arcadia from the surrounding areas. Council Member Whitlock complimented Mr. Hoover on the Theatre as well as the dinner served. Mr. Hoover then addressed Council regarding their previous approval to donate \$1,600.00 to Arcadia Main Street who were to be given forty (40) tickets to sell for the production. Main Street would keep the funds and an ad would be placed in the program for the show on the City's behalf. Mr. Hoover stated the money was to provide an ad for the City of Arcadia in the program given out at the Personality Theatre. Mr. Hoover stated that he had discussed this arrangement with the Main Street Committee prior to approaching the Council; however, Main Street later met with Administrator Strube and rejected the donation. By this time the ad had already been placed. Mr. Hoover asked that the Council donate the \$1,600.00 to the Historical Society instead of Main Street to help with the purchase of Mr. Howard Melton's historical records. Council Member Goodman stated she liked the ad very much but felt Mayor Johnson should have been recognized in the ad. Mr. Hoover acknowledged that mistakes were made and he apologized for the oversight indicating that this had been a learning experience. The Council also agreed that if the Historical Society wanted a donation, they should approach the Council themselves; in order to alleviate any confusion such as was the case with the Main Street Committee. Council Member Fazzone asked Mr. Hoover if he belonged to Main Street and the Chamber of Commerce to which Mr. Hoover replied that he was a member of both organizations. Mr. Hoover stated he was sorry Main Street chose to take the action they did.

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Sandy Woods, of the Guardian Ad Litem Program, presented a request to the Council for honoring National Child Protection Month in April. Ms. Woods asked permission to put blue ribbons on the light poles downtown and at the Tree of Knowledge. These ribbons are reminders of those children that have been abused. Ms. Wood stated she would be responsible for removing the ribbons at the end of the month. In addition, a Proclamation declaring April as National Child Protection Month will be prepared. Heine moved to approve the request to place blue ribbons on light poles and for a proclamation to be prepared; seconded by Whitlock and carried.

Council Member Goodman asked for clarification on who the City needs to pay for the ad placed in Mr. Hoovers program as she does not want to see Mr. Hoover take a loss. It appears since the ad was for both the City and Main Street that each would owe one half. She then stated that if the Historical Society needs the \$800 (1/2 the cost of the ad) that they need to come before the Council to request funding. She does not want the City funding money through Main Street. She then noted that she was in favor of Mr. Hoovers event.

Administrator Strube stated that Main Street got involved because there was some concern about the City supporting one business; however they have always supported Main Street.

Special Coordinator Hewitt thanked Mayor Johnson for attending the Rods and Wings event and for presenting the winners trophy. It was noted that the car named in the Mayor's honor won the trophy.

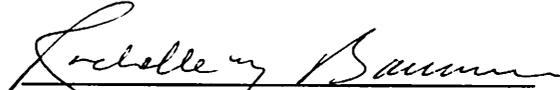
Recorder Baumann reported that the Water Department staff will be in a three (3) day utility training session next week.

Mayor Johnson reported phone calls he had received from citizens regarding people falling on City sidewalks or streets.

Council Member Fazzone noted that no department heads were in attendance.

Mayor Johnson noted that Special Projects Coordinator Hewitt was taking notes and he felt sure that Mr. Hewitt would give the information to the right individuals or departments for handling.

There being no further business the meeting was adjourned.


CITY RECORDER


PRESIDENT