



**A G E N D A**  
**ORMOND BEACH PLANNING BOARD**  
**Regular Meeting**

**October 14, 2010**

**7:00 PM**

**City Commission Chambers**  
22 South Beach Street  
Ormond Beach, FL

PURSUANT TO SECTION 286.0105, FLORIDA STATUTES, IF ANY PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE PLANNING BOARD WITH RESPECT TO ANY MATTER CONSIDERED AT THIS PUBLIC MEETING, THAT PERSON WILL NEED A RECORD OF THE PROCEEDINGS AND FOR SUCH PURPOSE, SAID PERSON MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDING IS MADE, INCLUDING THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.

PERSONS WITH A DISABILITY, SUCH AS A VISION, HEARING OR SPEECH IMPAIRMENT, OR PERSONS NEEDING OTHER TYPES OF ASSISTANCE, AND WHO WISH TO ATTEND CITY COMMISSION MEETINGS OR ANY OTHER BOARD OR COMMITTEE MEETING MAY CONTACT THE CITY CLERK IN WRITING, OR MAY CALL 677-0311 FOR INFORMATION REGARDING AVAILABLE AIDS AND SERVICES.

**I. ROLL CALL**

**II. INVOCATION**

**III. PLEDGE OF ALLEGIANCE**

**IV. NOTICE REGARDING ADJOURNMENT**

THE PLANNING BOARD WILL NOT HEAR NEW ITEMS AFTER 10:00 PM UNLESS AUTHORIZED BY A MAJORITY VOTE OF THE BOARD MEMBERS PRESENT. ITEMS WHICH HAVE NOT BEEN HEARD BEFORE 10:00 PM MAY BE CONTINUED TO THE FOLLOWING THURSDAY OR TO THE NEXT REGULAR MEETING, AS DETERMINED BY AFFIRMATIVE VOTE OF THE MAJORITY OF THE BOARD MEMBERS PRESENT (PER PLANNING BOARD RULES OF PROCEDURE, SECTION 2.7).

**V. APPROVAL OF THE MINUTES**

- A. August 23, 2010 Workshop

**VI. PLANNING DIRECTOR'S REPORT**

**VII. PUBLIC HEARINGS**

- A. **LDC 10-114: Electronic Changeable Copy (ECC) Signage – Land Development Code Amendment**

An administrative request to amend Chapter 1: General Administration, Article III-Definitions, Section 1-22, Definitions of Terms and Words and Chapter 3: Performance Standards, Article IV-Sign Regulations, Section 3-47, Site Identification Signs of the Land Development Code to allow electronic changeable copy (ECC) signage under certain conditions.

**VIII. OTHER BUSINESS:**

**IX. MEMBER COMMENTS**

**X. ADJOURNMENT**

**M I N U T E S**  
**ORMOND BEACH PLANNING BOARD**  
**WORKSHOP**

August 23, 2010

7:00 PM

**City Commission Chambers**

22 South Beach Street  
Ormond Beach, FL 32174

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Members Present

John Adams  
Patricia Behnke  
Al Jorzak  
Patrick Opalewski  
Rita Press  
Doug Thomas  
Doug Wigley

Staff Present

Randal Hayes, City Attorney  
Ric Goss, AICP, Planning Director  
Steven S. Spraker, AICP, Senior Planner  
Chris Jarrell, Recording Technician

**Workshop Item - Electronic Changeable Copy Signage**

Chair Thomas asked the city attorney to initiate the discussion.

City Attorney Hayes recalled that at the last Board meeting, they had discussed the legal standards applicable to signs and the challenges faced by local governments when trying to develop sign standards, since the law recognized signage to be protected speech. He said that the Legal Department had drafted a sample ordinance for use by the Board members as a guide in discussing and developing standards for electronic signage, while also recognizing the legal danger zones. He pointed out that the draft was not an endorsement of a particular position and that the numbers utilized in the draft were arbitrary, simply to be used as a starting point.

Mr. Hayes explained that staff had taken a very conservative approach in order to avoid the legal pitfalls that had caused problems for other jurisdictions and that staff had attempted to create standards that applied equally to everyone within the zoning districts in which signs might be allowed. He said that the

draft was as generic possible and created no exceptions for local government, hospitals, educational facilities, classes or sub-classes of business. He summarized the standards that the Board could discuss (1B through 12), which dealt with time, place, manner, and types of restrictions:

- 1) **Location by Roadway.** The draft would permit signs along Granada Boulevard, US 1, Nova Road and/or SR A1A. Mr. Hayes explained that labeling businesses by uses would create potential legal problems; allowing the signs in certain zoning districts on the roadway from which they would be seen was a more appropriate basis that would not create any class distinctions or labels.
- 2) **Location by Parcels.** The draft would allow signs on sites consisting of five contiguous acres or having 200 linear feet of frontage on the designated roadways. An operational/locational standard, Mr. Hayes reiterated that the numbers were arbitrary and something the Board might want to either change or exclude.
- 3) **Number Allowed.** The draft would not allow more than one electronic sign per site.
- 4) **Setback.** The draft would require that the signs be set back a minimum of 10 feet. He said that the distance separation criteria could be regulated and was simply an arbitrary number.
- 5) **Distance.** The draft would allow no sign within 1,000 linear feet of a single-family residence. Although the planning director thought that the requirement was restrictive, he said, the Board could increase or reduce the arbitrary distance requirement.
- 6) **Sign Type.** The draft would require the electronic signs to be constructed as monument signs. A dimensional criterion, the requirement was consistent with the city's policy of encouraging monument signage with landscaping within the applicable zoning district, Mr. Hayes said.
- 7) **Timing.** The draft would preclude the copy from changing more than once per hour. City Attorney Hayes said that the rule would apply to everyone equally with no exceptions. He said that whether or not the Board chose to change the timing, there could be no distinctions made between classes or groups so as to not favor the speech of some over the speech of others.
- 8) **Text.** The draft would allow electronic changeable copy signs to display only text. City Attorney Hayes said that this was an operational standard and that it was within the purview of the Board to allow images or blinking (etc.) if they so desired
- 9) **Copy Color.** The draft would allow only a dark background with white letters. Mr. Hayes stated the intent of the draft ordinance was to establish the most conservative approach from which the Board could work, but reminded the members that it was within their purview to allow colors.
- 10) **Brightness Monitoring.** The draft would require ambient light monitors to allow the brightness level to automatically adjust for daytime and nighttime copy, Mr. Hayes advised.
- 11) **Maximum Brightness.** The draft established the brightness levels for electronic signs to not exceed 5,000 nits for daylight hours or 500 nits between dusk and dawn. Mr. Hayes stated that the Board was free to establish other levels if they thought them more appropriate.

- 12) **ECC Application Review.** The draft would require the applicant to submit the operating manual for the particular sign during the site plan review so that it could be compared to the established criteria. City Attorney Hayes said that the Site Plan Review Committee (SPRC) would have 45 days to render a final decision, a number deemed by the courts to be reasonable. He said that unless a time limit was established, the courts would determine the regulation to be a prior restraint on speech and give government officials unfettered discretion to either accept, not accept or approve a permit application.

The draft ordinance also established an appeal process for applicants who believed they were unjustly denied a permit, Mr. Hayes stated. He said that an applicant could appeal to the Planning Director within 15 days of a denial; if unsuccessful, they could then appeal to the Special Master. He said the Special Master route operated with attorneys and retired judges who are current with the law and was chosen because of the complicated legal issues; he said that route also operated outside the political realm and the legislative appeal processes. The third level of appeal would be to the circuit court, he stated.

City Attorney Hayes thought that the operational standards would be of most interest to the Board and pointed out that the Planning staff had compiled a matrix that might complement the draft ordinance. In response to Chair Thomas, he stated that the meeting had been advertised as a workshop only. He said that in addition to being a work session, it was also a public meeting and open for public participation at the discretion of the Planning Board chairman. He explained that because it was a workshop, the Board could not take final action, i.e., vote [on a recommendation], but that the public could provide the city staff direction by letting them know what they liked and did not like; conversely, he said that staff would do their best to answer any questions. He said that if staff might have to do additional research if they were unsure of an answer to a question, but would later provide the needed information so that they could make an informed decision.

Chair Thomas stated that the Board members would first be given three minutes in which to ask any questions or guidance of the city attorney related to the draft ordinance, but asked that they limit the discussion to legal issues only. The floor would then be opened to public comment, also limited to three minutes per speaker, he said, but reminded those present that the discussion was not related to a particular sign or place of business, but rather whether or not to allow electronic changeable copy signs. He explained having the Board members speak first allowed the public to get a sense of the members' positions from the beginning.

Chair Thomas asked the Board members if they had questions of the city attorney.

Mr. Opalewski replied that the city attorney had provided sufficient legal advice.

Mr. Adams asked City Attorney Hayes if the regulations would apply to existing signage, e.g., at The Trails.

City Attorney Hayes that it would not. He said that staff would create a grandfather clause for properties with existing signs. He pointed out that some properties with existing signs were allowed those signs through the land development process, with different regulations than existed at present.

Mr. Adams asked if the Community Redevelopment Agency (the Downtown) area was excluded.

Mr. Hayes said that the matrix had been created prior to, and separately, from the ordinance. He explained that legal staff had simply drafted a conservative ordinance based, on their knowledge of the legal standards, and without creating any distinctions. He thought that there might a way to exclude the CRA, but thought that creating standards based on lot sizes might be a better way to address exclusions in the Downtown. He acknowledged that he did not know if there were any 5-acre lots in the downtown.

Mr. Adams remarked that Granada Plaza at Granada Boulevard and A1A was probably the largest site.

City Attorney Hayes was unsure whether the draft ordinance and matrix provided by planning staff would be totally consistent, but thought there would be some commonalities that could be discussed as the material was reviewed. He deferred to planning staff regarding the operational sign standards. He responded to Mr. Jorzak that he did not know how the PAC sign compared to the proposed light levels.

Mr. Jorzak explained that he wanted to compare what people had already seen with what was proposed.

City Attorney Hayes said that in trying to establish the numbers, staff had reviewed standards utilized by other jurisdictions; he did not know how they compared with the PAC sign. He reminded the Board that the ordinance would create a legal standard by which to allow the existing sign to be grandfathered. He said that if it was instead rendered nonconforming, it could remain as a perpetual use (unless not used for a period of six months or more). He clarified that the same rule would apply to electronic signs that had been permitted by a County development order prior to annexing into the city.

In response to Mrs. Behnke's inquiry, Mr. Hayes said that a sign destroyed by a natural disaster might be able to be reestablished, but it would depend on the degree of destruction suffered and the particular circumstances at the time. He added that he did not know if the light standards as defined in the draft ordinance (in nits) had ever been litigated; he said those standards were used in ordinances by other jurisdictions and were included in the draft simply to serve as a benchmark for the discussion.

Chair Thomas reminded the Board members to delay any discussion of the detailed standards until after the discussion of the legal issues was concluded.

Mrs. Press questioned that the standards presented would withstand court challenges, such as the replacing of three monument signs with only one electronic sign per property or requiring that all electronic signs be monument signs, even if replacing a pole sign.

City Attorney Hayes reiterated that anyone could, at any time, find a lawyer to file a lawsuit over anything. He reminded the Board that the best defense was not to allow electronic signs for anyone and that if they decided to allow the signs, to create non-discriminatory, content-neutral standards. He said that although he could not assure Mrs. Press that it would not be challenged, based on his review of the case law he was confident that the city would have a very good defense since the ordinance did not create any class distinctions and treated everybody equally; he said it applied the same standards across the board and was designed to regulate in terms of time, place and manner.

Mr. Hayes further explained that the draft ordinance did not take anything away, but was instead giving something not currently allowed. He said that the ordinance did not take away other forms of signage and that there were alternative means of communications (signage); the regulation provided standards for anyone who wanted electronic signage. He explained that although the current draft did not address

allowing only one electronic changeable copy sign in lieu of two existing signs, he was confident that it would be defensible, since there were other means of communication available. He opined that the draft ordinance, as presented, met legal standards.

Mr. Wigley questioned the extent of possible legal appeals.

City Attorney Hayes said that an appeal to circuit court by a writ of certiorari entitled an applicant to an appellate review of the record from the lower tribunal (the review of the Special Master, who was a practicing attorney or retired judge). The circuit court judge, he explained, would evaluate the testimony and evidence previously developed to determine whether or not it met the requirements of law (whether or not it met, complied with, or did not comply with the standards in the Code). He pointed out that it was a difficult standard to meet, but that it assured the appellant that the application would be treated fairly. He said further review would be to the 5<sup>th</sup> District Court of Appeal.

Mr. Wigley said that he did not know if the city could write an electronic changeable sign code that would not be challenged and asked Mr. Hayes how comfortable staff was that the city could survive any such challenges.

City Attorney Hayes explained that policy questions were not the purview of the Board, but instead, they could define for the City Commission the legal parameters and where they thought there might be inherent risks associated with adopting the ordinance, as well as the likelihood of success on a court challenge. He pointed out that as city attorney, he conducted a very conservative practice as reflected in the very conservative draft ordinance; he thought the ordinance treated everybody fairly without creating any discrimination. He responded that the language in the draft was developed using a hybrid approach, taking into consideration the needs of the city of Ormond Beach and that the Board needed to concentrate on the objective standards, rather than on policy issues.

Chair Thomas said that he had nothing to add, having already met with the city attorney. He opened the discussion to the Board, allowing each member three minutes for comments. He reminded the public that the Board comments would be followed by time during which they could speak, but cautioned that they would have only one three-minute opportunity.

Mr. Wigley opined that was no need to draft something that could be expected to become a legal quagmire, but did not feel that the Board should function in a defensive position either. He agreed that the major thoroughfares previously mentioned were predominately commercial and that locating the signs along Granada Boulevard, US1, Nova Road or SR A1A would be the least visually intrusive, but did not think that the majority of the citizens wanted the signs. He expressed concern with the cost of litigation if the law was later challenged and overturned and said that their only way to prevent that was not to allow the electronic signs.

Mrs. Behnke said she still needed more information in order to make a qualified decision. She worried that the stipulations would not be properly monitored and controlled; she said the data provided indicated that there were plenty of businesses that could be expected to erect electronic signs regardless of the cost, particularly if a competitor had one. She thought it would not be attractive if a property that was allowed to have three signs had one electronic sign and two monument signs.

City Attorney Hayes stated that although the draft ordinance did not address that scenario, he thought that the city might want to require the removal of the standard monument signs in exchange for an electronic sign. He reminded the Board that they were not limiting or taking away a right that did not exist and were leaving open alternative channels of communication. He commented that the current Code encouraged the replacement of nonconforming signs with ground monument signs as an incentive to eliminate certain other signs; he said that could be included as a standard.

Mrs. Behnke commended the city staff for all their work and for the information provided. She reported that the city of Orlando sign regulations required an applicant to remove four board signs in order to erect one electronic sign.

Mr. Jorzak said that most of the people with whom he had spoken were not in favor of the signs. He said that when the City Commission first directed staff to provide them with proposals to evaluate, it was because of trying to accommodate a couple of requests for electronic signs; he pointed out that they did not have the benefit of all the research at that time and wondered if the City Commission would still want to move forward with the regulations. He reported that in talking with the city attorney he learned that once enacted, the regulations would be difficult to remove if it was later decided that the signs were not a good idea; he said it would involve several issues and would consume a tremendous amount of the city's time. He felt that if anything was done, it should be very limited in scope in order to determine if the result was acceptable. He thought that the city would regret allowing the electronic signs.

Mr. Adams also thanked city staff for all the information, agreed with the comments of the other members, and agreed that it might result in something no one in the city wanted. He looked forward to the public comments.

Mr. Opalewski echoed the sentiments of the other Board members, but thought they had an obligation to provide the City Commission with an ordinance, as requested.

Mr. Jorzak responded to Chair Thomas that initially, his impression was that the City Commission request was more for informational purposes, rather than as a directive because they thought it was a good idea and wanted an ordinance for electronic signage. He thought that the City Commission probably was unaware of all the issues that the research had uncovered since that time.

Chair Thomas said he had been under the impression that the City Commission had referred it to the Planning Board for a recommendation.

Mr. Wigley thought it had been referred back to the Board for further review.

In response to Chair Thomas, City Attorney Hayes explained that any regulation to be added to the Land Development Code (LDC) required a recommendation from the Planning Board prior to being heard by the City Commission and before the Commission could take action. He said that their options were to 1) recommend that a conservative ordinance be forwarded to the City Commission, 2) recommend denial, or 3) simply table it indefinitely (noting however, that the City Commission was interested in receiving the information). He said that regardless, the LDC needed to be clear as to whether or not electronic signs were allowed in the city, since both the legal staff and planning staff needed some standards with which to work.

Mr. Hayes also responded that whether or not to make a recommendation was not within his purview to advise, but reiterated that there were areas in the LDC that needed to be addressed and that the only way to do so was to move the issue forward. He said that if they chose to allow the signs on only one roadway, e.g., it would be defensible, because it was a distinction based on zoning (place) and would not disallow other means of signage communication.

Mrs. Press acknowledged that while there might be a few businesses and a church who wanted the electronic signage, there was not much enthusiasm from the Board or the community for allowing them. She felt that allowing the signs only on Granada Boulevard would be challengeable, since it was neither something easily understood, nor fair. She suggested that if the Board created standards severely restricting the use of the signage, it would inhibit their use.

Chair Thomas pointed out that the Board would be starting over using the draft provided to establish acceptable standards for the signage.

City Attorney Hayes agreed and said that some of the questions on the matrix would complement the standards in the draft ordinance. He reminded everyone that any recommendation of the Planning Board was only advisory, but would serve to move the item forward; he said the City Commission might endorse it or might decide to do something totally different. He said that the Board might also opt to recommend to the City Commission that they were not in favor of the signs, but were presenting a very conservative ordinance to them in order to move the matter forward.

Mr. Goss reminded the Board that the standards shown in the draft ordinance were arbitrary and for discussion purposes only; he said that the matrix listed the issues that needed to be addressed by the Board and for which the Board could establish standards.

Mr. Jorczak agreed and felt that would give the City Commission a much better understanding of the ramifications as a result of the legal review. He said that the Board first needed to decide what, if anything, they would allow with regard to the electronic signage and convey their rationale for that.

Mr. Hayes said that if it was the consensus of the Board at a public meeting not to allow the signs, their recommendation would proceed to the City Commission. He pointed out that the work of staff would not be over, however, because they would need to go through the same education process with the City Commission in trying to get them to develop standards without the Board's input.

Chair Thomas opened the workshop to public comment. He asked that they limit their comments of whether or not to allow electronic signage to a maximum of three minutes.

Mr. Matt Reardon, 1687 West Granada Boulevard, spoke on behalf of Calvary Christian Center. He recalled that staff had done a wonderful job of writing a sign ordinance for the City that had included electronic changeable copy signs and which had been unanimously recommended for approval by the Planning Board. He said that because there were people present at the City Commission meeting who wanted electronic copy signs not permitted by the ordinance, the Commission had pulled that part of the sign ordinance for further discussion. He recalled that the mayor and two other commissioners had then built a consensus and directed the Planning Board to present an electronic changeable copy sign ordinance that they could consider. He said that the City Commission had given a clear directive to the Planning Board to identify some specific criteria by which they could or could not abide.

Mr. Reardon said he did not know how much more information they thought they needed and felt that it was time to move the issue forward. He wanted the Board to act regardless of whether or not the ordinance was conservative. He disagreed with the Board assessment that no one in the community wanted electronic copy signs, saying that they were the wave of the future. He said that the signs were more environmentally friendly, used less electricity than fluorescent bulbs, and opined that the signs with channel letters currently in use in the city were hideous. He thought that that the city might end up with a legal challenge anyway, since the city's code did not currently allow electronic signage anywhere in the city, yet noted that there was an electronic sign at the Performing Arts Center (PAC). He said that the Calvary Christian Church on West Granada Boulevard wanted an electronic sign and had offered several suggestions for allowing for such a sign, such as designating an interchange corridor to allow the signs within a certain distance from I-95, perhaps with different restrictions west of the interchange.

Mr. Reardon disagreed with Mrs. Press, saying that allowing the signage in certain zones or areas of the city would withstand a legal challenge and was appropriate, as was allowing them by sign plan, building square footage or acreage size. He thanked the Board for their efforts and urged them to forward something for the city commission to consider.

Mr. Adams asked Mr. Reardon why he and his client thought that the electronic signage would make such a difference to them. He advised that most of the people with whom he had spoken were opposed to the electronic signs, but agreed that it was time to take action.

Mr. Reardon agreed that some were opposed, but noted that few had appeared at any of the meetings to voice that opposition. He said that the new technology had not been available when they moved their 1970's sign to the current site. Although grandfathered, they felt the electronic copy sign would be more aesthetically pleasing and would better serve the needs of Calvary Christian Center by allowing for the display of service times as well as the ability to advertise upcoming events.

Mrs. Behnke asked city staff if government-owned buildings were currently entitled to electronic changeable signs.

City Attorney Hayes stated that they were not.

Mr. Spraker said that prior to the change in the LDC in March, 2010, electronic signs were allowed for planned business developments (PBD's) that exceeded 120,000 square feet and for governmental signage, which had permitted both The Trails sign and the sign at the Performing Arts Center. He said that those signs were now nonconforming because there are no standards in place. He agreed with Chair Thomas that the signage had gone before the City Commission for approval, but only for the funding not for the development approval.

There were no further audience remarks and Chair Thomas opened the meeting to Board comment.

Mr. Wigley stated that it was time to move forward on the issue, since people were awaiting some resolution. He noted that the city could invite legal action if the sign issue was tabled indefinitely. He felt that it was better for the City Commission not to pass an ordinance that they knew would be challenged.

City Attorney Hayes suggested that if the Board indeed wanted to move the item forward, they could begin by evaluating the standards in Paragraph B, Items 1-12. He thought that by discussing the pros and cons of each standard, they would provide staff with the needed information to refine the ordinance.

Chair Thomas agreed and asked if anyone wanted to add or delete anything from the list.

### **1) - Location by Roadway**

Mr. Adams thought the list was too expansive. He agreed with having the signs near the interstate interchanges, but thought they were inappropriate in the historic areas and downtown.

Mr. Jorczak agreed but noted that overall, the Board members did not like the signs and would prefer not to have them. If they were to be allowed, however, he thought the both the number and location should initially be limited (within legal limits) as a test case.

City Attorney Hayes responded that he thought that it would be legally acceptable to have staff determine the number of signs that could be allowed in a given area.

Mrs. Behnke stated that once a business spent thousands of dollars for a sign, they would not take it down. She pointed out that businesses such as Granada Plaza (in the CRA\* district) would also want electronic signage, but agreed that allowing them at the interstate area would be a better place to start.  
\*Community Redevelopment Agency

In response to Chair Thomas, Mr. Hayes thought that planning staff could later help define the interchange area without being arbitrary by identifying the surrounding properties

Mr. Jorczak thought those properties preferred pole signage because of visibility from the interstate.

Mrs. Behnke disagreed with the comment that the North US1 businesses did not help the city, but did not want to see an excess of electronic signs in that area.

Mr. Wigley pointed out that once the signs were allowed, they could not be removed. He also noted that the price of the signs could be expected to come down substantially over time.

Mr. Adams said he had suggested the interchange areas first mentioned by Mr. Reardon, because there had been two requests at those locations: one on North US1 and the other west on SR 40.

Chair Thomas said that the property on North US1 was a considerable distance from the interchange and that although Calvary Christian was close to the interchange on SR40, the Baptist church was not. He thought that setting a distance parameter would be very difficult. He suggested that they instead look at using US 1 and only sections of Granada Boulevard, such as west of Nova Road.

Mr. Adams suggested the areas of Pearl Drive to Tymber Creek Road on SR 40 and north of Hull Road on US 1, which would include both interchange areas.

Mrs. Behnke noted those locations were not close to residential uses.

City Attorney Hayes responded to Chair Thomas, saying his staff could study whether or not they could legally defend that as the definition of an interchange.

Chair Thomas thought that defining the area US 1 north of Granada, and SR 40 west of Nova Road could be easily defined and justified and would include businesses such as the Playtex/Hawaiian Tropic facility. He did not think that using geographic lines made sense.

Mrs. Press reiterated her desire to start with something on which they could all agree.

Chair Thomas explained that the method of proceeding had been recommended by the City Attorney and staff, but would follow the consensus of the Board.

Mrs. Behnke said that they would ultimately have to deal with them all. She did not want to define distance parameters that would include residential areas, but thought that from Hull Road north was fine.

Chair Thomas thought that using Hull Road would be too restrictive, and instead suggested using Wilmette Avenue. He concurred with Mr. Opalewski that there was already a city sign at that location.

Mr. Adams agreed that not much could be built between there and Airport Road. He suggested using the river as the southern parameter and did not think that having the sign at the PAC, south of the river, was of any consequence.

Mr. Jorczak agreed.

Chair Thomas agreed that they could not vote on the issue, but could develop a consensus that they wanted to limit where the signs could go.

Mr. Goss said that they were discussing the signs because there were businesses that could not get their message out. He said that limiting the signs to parcels of a certain size would limit the number of properties that would be eligible for an electronic sign. He referenced the matrix and pointed out that limiting the signs to parcels of 30,000 square feet or more would result in the potential for less than 20 signs in the entire city of Ormond Beach. He responded to Chair Thomas' concern that they would be spread throughout the city by noting that such (shopping center) parcels tended to be located in certain zoning districts (such as the B-6 and B-7).

Chair Thomas suggested they try to develop consensus by using Mrs. Press' suggestion.

### **3) - Number Allowed**

Mrs. Behnke asked if a property with an electronic sign could also have other signage.

City Attorney Hayes said that the ordinance would include a provision that would preclude any additional signage for properties with an electronic sign.

No one was opposed to the location of electronic changeable signs at least 10 feet from a right-of-way.

Mr. Adams asked if corner lots would also lose their monument sign on the second frontage if allowed an electronic sign. He cited the case of the plaza at Granada and Williamson Boulevards, noting that passersby on Williamson would not be able to see the signage facing Granada.

City Attorney Hayes said that the location and setback requirements would have to be consistent with the requirements within the applicable zoning district. He said that was a planning question, but suggested that the double frontage signage could perhaps be addressed through the PBD process. He thought that they could look at that as a separate issue at a later time.

Mr. Wigley clarified that the question was whether or not such a property could have an electronic sign on one frontage and retain their traditional monument sign on the other.

City Attorney Hayes reiterated that a provision for that circumstance could be included in the ordinance.

Mr. Adams and Mrs. Behnke thought it was a good idea.

**Mr. Adams thought they could agree that no more than one electronic changeable copy sign shall be allowed for each property and that a second [traditional] monument sign be allowed for properties fronting on corner lots.**

**The Board members agreed.**

#### **4) - Setback**

Chair Thomas and Mrs. Behnke thought that not allowing an electronic changeable copy sign within 1,000 feet of a single-family residence was too restrictive. Chair Thomas wanted to include language that would exclude nonconforming residences.

Mr. Opalewski questioned the distance from residential uses for the existing electronic signs, to which Mr. Spraker responded that The Trails sign was about 400 to 550 feet from residential.

Mr. Opalewski thought 500 feet might be a better distance, since it appeared to be working.

Mr. Thomas clarified with the city attorney that the distance was measured as the crow flies from the residences to the leading edge of the sign, even if it was a different street. He did not think it made sense, because 1,000 feet was behind The Trails shopping center, e.g., and the residents could not see it.

City Attorney Hayes said that they could measure it any way they wanted, as long as they understood that the criteria would have to address all properties, not just The Trails. He reminded the Board that the stated criterion was arbitrary and had been included only as a starting point; he said it could be changed and that the nonconforming residence exception could also be included.

Mrs. Press commented that visibility was the issue, not distance; Chair Thomas agreed.

Mr. Opalewski pointed out that there already were illuminated signs in the city and that if the electronic signs were static, the lighting would not be much different.

Mr. Hayes agreed that the same standard, if reasonable, could be applied since it would be consistent. Following discussion regarding the 300-foot distance for legal notification, **Mr. Hayes said that staff would test the distance for reasonableness and bring it back to the Board.**

Mr. Spraker replied to Mrs. Behnke that the maximum height for a monument sign is seven feet above the crown of the road, with the top two feet for the sign. He cautioned that the language for ground monument signs was included in the pole sign districts, and noted that a ground monument sign could be 20 feet in height. He said that they should instead use the term "monument sign" if that was the goal.

**City Attorney Hayes thought the terminology needed work to make sure that the definition for monument signs was consistent with what the Board was trying to accomplish and would provide the Board with that information as well.**

Chair Thomas said that the consensus was for a distance of 300 to 500 feet.

Mr. Spraker also pointed out that by enacting the legislation they could be mandating going from pole signs to ground signs in certain zoning districts, such as along SR A1A.

#### **6) - Sign Type**

**The Board was in agreement with this criterion.**

#### **7) - Timing**

The Board decided to skip the criterion, since it would not be a simple discussion.

#### **8) - Text**

**The Board members agreed that the criterion was a good one, but wanted the word "scrolling" added to the restrictions.**

#### **9) - Copy Color**

**The Board consensus was for a one-color dark background and one-color lettering.**

#### **10) - Brightness Monitoring**

Mrs. Behnke asked how the lighting could be monitored.

Mr. Goss explained to Mrs. Behnke that the signs came with built-in automatic dimmers to control the lighting intensity.

**The Board members agreed with the criterion and said that the automatic dimmers should be required.**

### **11) – Maximum Brightness**

Mr. Adams thought that the maximum light emanation from the electronic signs should be by foot-candle measurement of no greater than 4.3, rather than nits, and should be measured 200' from the sign.

Chair Thomas questioned the industry standard, but had no problem with Mr. Adam's statement.

Mr. Opalewski thought they could use the standard used by existing signs for the sake of consistency.

Mr. Goss had established a maximum foot-candle property line threshold (0.03), and said that the city had neither the equipment nor the training to measure the effect in nits.

**Mr. Adams suggested the standard be measured by use of a foot-candle meter and that it conform to the city's current signage standards.**

Mr. Spraker explained that staff had talked with four different sign contractors in doing research, who had stated that there were disadvantages in using nits, whereas the foot-candles and the foot-candle meter were relatively inexpensive; thus, the measurement 0.03 foot-candles at a distance of 200 feet. He said that the illumination did not change from daytime to nighttime, but rather, dimmed automatically. He agreed with Mr. Jorczak that the wave length of the light from an LED was different from that of an incandescent or halogen bulb, but noted that they were different technologies.

Mr. Jorczak pointed out that they had to measure the light output with the instrument appropriate for the particular technology in order to get an accurate reading.

**The Board consensus was for the criterion with the changes as recommended by Mr. Adams.**

### **12) - ECC Application Review**

**The Board concurred with the Items 12 -17, as provided by the city attorney.**

### **8) - Text, Revisited**

Mrs. Press pointed out that Criterion 8 did not include language to prohibit the use of graphics.

**The Board agreed that they did not want pictures and in response to Mr. Adams inquiry regarding logos, agreed that they wanted to limit the signs to text only.**

Mrs. Press again expressed concern with the size of the font and the percentage of a sign that could be used for text.

In response to Chair Thomas, who said he needed visual examples, City Attorney Hayes said that those things could be included in a re-draft.

Mrs. Press referenced the PAC sign, saying that it was not readable when first established. She said it was constantly moving and the letters were too large to allow more than one or two words. She opined that if applying now, The Trails would most likely want a larger sign.

Chair Thomas recalled a conversation with Robert Carolin (Leisure Services Director) who said that the initial setup took some time, but pointed out that the problems had been corrected since that time. He agreed with Mrs. Press that the sign at The Trails was much smaller than the sign at the PAC, but pointed out that it had been the first, part electronic copy sign and part monument sign. He thought the sign at the PAC was more attractive.

### **7) - Timing**

Chair Thomas pointed out that in the recent past, the planned business development (PBD) had been utilized to allow multiple businesses in one development. He said that if the electronic signage allowed at these locations were limited to only one change per hour, some businesses could conceivably be without advertising during business hours.

Mrs. Behnke said that The Trails shopping center was managing with changing their sign only once every 12 hours.

Chair Thomas thought if they had it to do again, they might not agree to that condition. He said that if the city was going to allow electronic signs, they would be doing it to help the business community generate more business and added that he did not think one change per hour was reasonable.

Mr. Wigley thought that the owners might rotate the advertising slots for their businesses so that everyone got maximum exposure and thought that other Board members would agree that once per hour was too much. He said that was an issue between the owner and the lessees and did not think the Board should be involved in that aspect.

Chair Thomas felt the Board was already regulating it by limiting the change to once per hour. He strongly disagreed that once per house was too much and said that anyone owning a business knew it was not enough. He reminded the Board that the applicant on North US 1 had already lost one tenant as a result of the lack of signage.

Mr. Wigley pointed out that some owners only allowed their tenants to advertise on the property signage if that right had been included in their lease.

Mrs. Behnke added that the right to advertise sometimes had to be purchased.

**The Board consensus was to limit the text change to once per hour.**

### **2) – Location by Parcels**

Mr. Wigley asked how many commercially-zoned parcels were five acres or greater.

Mrs. Behnke thought that separation by linear footage would keep the signs from being right on top of one another.

Chair Thomas agreed and pointed out that a 5-acre parcel might have only 200 feet of frontage. He said that limiting the signs by parcel size would exclude smaller churches.

Mrs. Press said that it was a difficult question and one for which she had no answer.

Mr. Opalewski concurred. He thought the language “per property owner” was only fair.

City Attorney Hayes responded to Mr. Opalewski that ultimately it was a question of how restrictive or how broad they wanted the standards; he restated that the intent [of the draft ordinance] was to avoid the pitfalls of labeling, classifications and class distinctions. He said that therefore, the designation of roadways and lots by size was employed because they were typically enforceable regulations. He said that they could, if they so desired, allow the standards on any property along the designated roadways.

Mr. Opalewski thought that the linear front footage made more sense.

Mr. Adams agreed that a limitation of one per 200 linear feet would prevent electronic signs from being stacked and would eliminate the need for the 5-acre restriction.

Mrs. Behnke pointed out that the matrix identified 241 lots with a lot frontage of 200 or more feet.

Mr. Spraker answered Chair Thomas that parcels shown on the matrix as having 100+ feet of frontage would include any lots having frontage up to 200+ feet of frontage. He reminded the Board that the matrix had been developed independently of the ordinance and did not account for the roadways along which the Board might want to locate the signs. He said that it could be re-analyzed to show the maximum potential sites under the revised draft ordinance.

Chair Thomas acknowledged the Board’s concern with having many electronic signs next to each other, but said that it would not happen, since the properties were in different zoning categories. He felt that the Board would not recommend the electronic signs on each of the streets listed.

Mr. Wigley noted that there were eight houses of worship between Nova and I-95, as well as the South Forty Shopping Center, Ormond Towne Square, Lowe’s and several banks.

City Attorney Hayes suggested that the city staff take another look at this criterion, since the Board seemed to feel it was too restrictive, but was not sure what was appropriate. He said if they want to use roadways as the basis, they could present the re-draft in relationship to that.

Chair Thomas agreed that the consensus was to eliminate the 5-acre standard, but said that they were unsure whether or not the 200-foot threshold was too much or too little.

Mr. Jorczak said that they needed to recognize that if they employed roadways to set the standards, the Board would likely be concentrating the signs in one area. Although the density was increased, he said, it would also be isolated to those areas of the city. Mr. Jorczak agreed with Chair Thomas that the effect would be lessened if spread out, but thought that they should isolate the signs in one area as a method of control and could then decide whether to utilize linear feet of frontage or property square footage. He noted that electronic signs were becoming more prevalent in the surrounding areas.

Chair Thomas thought that the signs should be limited to the commercial areas of North US 1 (north of Wilmette, for example) or along Granada Boulevard (west of Nova Road or Clyde Morris Boulevard). He responded to Mrs. Behnke that limiting the location would inundate the area, but pointed out that they did not want the electronic signs along Atlantic Avenue. He likened the situation to the NIMBY

(Not In My Backyard) approach. He thought that the City Commission would adopt some regulations and said that he did not believe that they would prohibit houses of worship from having electronic signs.

Mr. Opalewski said that perhaps they needed to think about who the end users might be.

Mr. Hayes cautioned the Board to refrain from creating distinctions, which could be troublesome.

Mrs. Press said that the Planning Board represented the people of Ormond Beach and were not a rubber stamp. She felt that the people in the community did not want the signs and that the Board action should reflect that. She recalled that the city commission directive had not been unanimous and that the Board should make it clear that the regulations were restrictive and that the ordinance they recommended was the best they could come up with, even though they were not in favor of the signs. She reported that she had received telephone calls from everyone in her zone and that only two had been in favor of the signs.

Mr. Thomas thought that the people with whom Mrs. Press was acquainted might not like the signs, but that the people in the business community with whom he was acquainted did want the electronic signs. He said that he had not received any phone calls about the signs. He agreed with Mrs. Press that because the issue would go to public hearings, the public would have an opportunity to attend and make their wishes known and that anyone strongly opposed to the signs would attend.

Mr. Jorczak said that they should proceed cautiously, not only because it would be a long-term program and would be hard to rein in once established, but also because the technology would continue to improve and could be expected to be quite different in ten years.

Mrs. Press agreed and said she was afraid that the City Commission had been moving too quickly and without all the necessary information. She thought that the issue was complicated and that the repercussions could be considerable; therefore the Board should proceed very slowly, she said.

Chair Thomas recalled that since they began dealing with electronic signage in December, 2008, there had been no public outcry against the signs. He said people would have attended the past meetings *en masse* if there had been a lot of opposition to the electronic signage.

Mrs. Press responded that people had not attended in the past because they had not known about the meetings regarding electronic signage. She added that people were generally busy with their own lives and expected their elected and appointed officials to look out for their best interests.

Mr. Jorczak stated that the Board should take as much time as was needed to address the issue because of the implications and the difficulty in getting rid of the regulations if they made the wrong decision.

Mr. Opalewski felt that the Board needed to move something forward to the City Commission, since it was their decision to make.

**City Attorney Hayes summarized that staff would provide more information for Criteria #2 in the re-drafted ordinance.**

### **#1) – Location by Roadway**

Mr. Jorczak thought that Criteria #1 was a matter of density; Mr. Adams disagreed.

City Attorney Hayes suggested looking at the criteria in terms of property owners in order to avoid classification. He said the signage was not for businesses or for houses of worship, but was for property owners within certain zoning districts or along certain roadways. He asked them to focus on the which roadways they wanted to exclude, if any, and/or distance criteria in order to be able to address the remaining two categories.

In response to the city attorney's inquiry, several Board members expressed opposition to electronic signs along certain sections of Granada Boulevard. **After discussion of the characteristics of the different segments of Granada Boulevard, the Board agreed to limit the signs to the commercial areas of SR40 from Clyde Morris Boulevard west.**

**The Board also discussed the North US 1 corridor and decided upon the commercial area north of the intersection with North Nova Road.**

City Attorney Hayes questioned the parameters, if any, for Granada Boulevard, west of the I-95 interchange. The initial consensus was for the area to terminate at the intersection with Tymber Creek Road.

(In response to Mr. Jorczak's inquiry, Mr. Spraker said that Daytona Beach planned some commercial property on west SR 40, but that it would include a 50-foot scenic setback.)

Mr. Adams pointed out that there were at least three churches located west of Tymber Creek Road.

Mr. Hayes asked if there was a reason that they needed to establish a limit on West Granada. He pointed out that the city would have no control over what the commercial uses in Daytona might do.

Mr. Spraker agreed that there were some scattered commercially-zoned properties on West Granada, and reminded the Board that staff could do an analysis based on lot frontage and/or acreage along West Granada from Tymber Creek Road, giving them a basis for their decision.

Mr. Spraker responded to Mr. Wigley by recalling that the issue began as a discussion item before the Planning Board and that standards had been included in an LDC amendment to the city's sign standards. The Planning Board had recommended approval and the item was forwarded to the City Commission for action, he said. He remembered that during the City Commission meeting, the representative of a house of worship indicated their desire to be included and the electronic sign standards were then extracted from the amendment for further review and analysis.

Mr. Wigley stated that he was not opposed to churches, but pointed out there were at least 12 churches along West Granada, all of whom would potentially want electronic signs, not including the businesses along that route.

Mr. Spraker advised that staff would return with analysis that would help the Board identify and define the standards they wished to use.

Chair Thomas asked that the analysis include the distance measurements in mileage from a) from Nova to the interstate in the North US1 corridor, and b) from Clyde Morris Boulevard to the interstate along West Granada. He pointed out that there were two houses of worship east of the intersection with Clyde Morris Boulevard.

In reply to Mr. Wigley's concern that houses of worship were sometimes located in shopping centers, Chair Thomas noted that the center would be allowed only the signage allowed by their approval.

Following discussion regarding commercial uses along North US 1, City Attorney Hayes again asked the Board to focus not on uses, but on the linear footage and parcel size standards. He acknowledged that it was difficult to separate the uses from the points of reference, but reminded the members that the transcription of the meeting would be a part of the public record. He agreed with Chair Thomas that secondary impacts to residential were an important factor and an appropriate consideration, but stated that he did not want the Board members to discuss business classifications.

In discussing the distance parameter as it related to residential uses off of North US1, Mr. Spraker explained that the measurement was intended for the single-family lot, not to the areas under the ownership of the homeowners' associations.

**The Board consensus was stated to exclude SR A1A (Atlantic Avenue) from eligibility and decided to postpone a decision regarding Nova Road until staff was able to analyze the properties along that roadway.**

Mr. Jorzak and Mr. Wigley were not in favor of allowing the signs along Nova Road.

Mr. Spraker, in response to Chair Thomas, explained that the cemetery on Nova Road was zoned as B-1; he noted that it had tremendous frontage and depth.

Chair Thomas pointed out that there were already two electronic message boards on Nova Road: The Trails sign and billboard. He added that there was another electronic sign on Nova Road, just south of the city limits, and said he did not have as much as a problem with including Nova Road as did Mr. Jorzak.

Mrs. Press wanted the additional information regarding Nova Road properties that had been offered by staff before making a decision.

Chair Thomas stated that he was also not opposed, as were others, to allowing the signs along Atlantic Avenue. He thought the signs should be spread out around the city.

Mr. Wigley questioned whether any thought had been given to allowing electronic signs along the commercial areas of Hand Avenue.

Mr. Spraker said that the businesses along Hand Avenue were primarily office development, with a smaller percentage (20%) of retail. He confirmed for Mr. Wigley that the largest undeveloped parcel was owned by Tomoka Christian Church and had been approved for a house of worship.

Chair Thomas said he wanted staff to look at that area also, because he considered most of the development along Hand Avenue to be commercial.

Mr. Wigley thought that since part of the Board's role was to help business, they should reconsider allowing electronic signs along SR A1A. He said some of the hotels were hurting financially.

City Attorney Hayes advised that there had to be a basis for allowing a different standard of measurement for signs along SR A1A, which meant additional study in that area.

Chair Thomas stated that if they were going to consider including Nova Road, they should consider Atlantic Avenue as well, but pointed out that did not mean they were going to add those thoroughfares.

Mr. Spraker explained that SR A1A was zoned B-6, which allowed both transient lodging and single-family homes; he thought that would be an issue in assigning standards.

Chair Thomas opined that the electronic monument signs would be nicer than the existing pole signs. He felt that the single-family homes used as rentals should be considered as commercial.

### **Public Comment**

Mr. Antonio Amaral, representing Amaral Plaza, 1360-1370 North US1, stated that font size would be dictated by the size of the sign, a problem that would solve itself. He said that by limiting the electronic signs to fixed text, the signs would not be as distracting; therefore, the need to limit the text change to one time per hour was moot. He thought the actions of the Board at the meeting showed progress and hoped that it continued, since he felt some resolution of the issue was needed.

Mr. John Bandorf, 18 Village Drive, expressed concern with the appeal process and thought that the City would be abdicating their responsibility to judges and lawyers. He said that the courts did not represent the public; the elected city officials did.

Mr. Wigley explained that the Special Master would review the city's order by means of an appeal.

Mr. Bandorf questioned the process for the appeal of regular sign issues and asked if that process was different. He felt that the regulation would circumvent the job the Board was appointed to do and was, by nature, a change in the process for appeals.

Chair Thomas explained that the Planning Board was only advisory and only made recommendations to the City Commission, the elected body that made the decisions and established city regulations.

Mr. Bandorf apologized if the appeal being established for electronic signs was the same for traditional signs, but stated that if it was different, they were in the wrong.

City Attorney Hayes stated that city staff would look at the appeal process for other signs and other appeal routes, but said he liked to use that route for those procedural issues that related to project applications. He said he liked to use lawyers and judges for the review of local legislation, since they are trained to apply the law as written. Although he did not know whether his review would change the process in the draft ordinance, he would see if there was a distinction to be made and would advise the Board.

Chair Thomas asked how the Planning Board could recommend denial of an electronic sign that met all the guidelines, given the proposed language in the ordinance that would allow property owner appeals.

Mr. Hayes explained that the signage would be reviewed by the SPRC (Site Plan Review Committee), who was charged with applying the criteria in the ordinance to the sign application. He said they would be obligated to approve the application if it met all the standards; if not, the SPRC could deny the permit. He clarified that some things had appeal routes that were different; e.g., some would go first to the Chief Building Official, then on to circuit court. He added that if an application met the criteria and was turned down, it would then go before the Special Master, who could look at the standards and order staff to issue the permit if the denial was in error. He explained that the judicial appeal route de-politicized the process.

Chair Thomas questioned how the SPRC could turn down something that the City Commission would eventually approve.

Mr. Wigley gave an example of an application that was denied by the SPRC because of a slight shortcoming in a requirement; an applicant could then appeal the decision. He thought that every denial of an electronic changeable sign would most likely be appealed.

City Attorney Hayes further explained that government officials had to apply the standards in the adopted Code regulations. He said that if they did not, for whatever reason, the property owner had to have an avenue of relief, which in this instance, was the due process route called an appeal. He said that since the judicial system was the ultimate protector of citizens' rights, they were the last body that one would expect to be prejudiced. Elected officials, he continued, were the most vulnerable because they were the ones most apt to be pressured politically. **He reiterated that staff would compare the appeal route with other appeal standards in the LDC.**

Ms. Kimberly Bandorf, 18 Village Drive, thought that the city attorney's comments were hogwash. She opined that the lawyers were just as political as was the Board. She stated that they needed electronic signs, which she called the wave of the future. She thanked the Board for their efforts, but said she thought that they had a long way to go.

Ms. Bandorf said that the electronic signs on North US1 were more aesthetically pleasing than most of the existing signage near the interchange. She thought the residents in the area would be pleased to see the signs upgraded and also thought it would be a good thing for the businesses in the area. She stated that she did not understand the problem, particularly since not everyone could afford such an expensive sign. She pointed out that the signs could also be commandeered to disseminate information in emergency situations, a benefit to the city that the city would neither have to pay for nor maintain.

The Planning Board recessed for five minutes.

Mr. Jorczak suggested that if Planning staff was prepared to do so, the Board could discuss the issue further at the next meeting or at a workshop.

Mr. Goss said he preferred a workshop session that could be devoted solely to electronic signage.

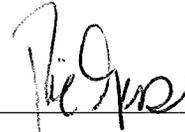
The Board decided to wait until the September meeting of the Board to set a date.

In response to Mr. Jorczak, Mr. Goss confirmed that the Form Based Code would be heard by the Planning Board, following another meeting with Ormond MainStreet on August 31<sup>st</sup>.

**I. ADJOURNMENT**

The meeting was adjourned 9:05 p.m.

Respectfully submitted,



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Ric Goss, AICP, Planning Director

ATTEST:

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Doug Thomas, Chair

*Minutes transcribed by Betty Ruger*

# STAFF REPORT

## City of Ormond Beach Department of Planning

**DATE:** October 8, 2010

**SUBJECT:** Land Development Code Amendment:  
Electronic Changeable Copy (ECC) Signage, Section 1-22,  
Definitions of Terms and Words, and Section 3-47, Site  
Identification Signs

**APPLICANT:** Administrative

**NUMBER:** LDC 01-114

**PROJECT PLANNER:** Steven Spraker, AICP, Senior Planner

### **INTRODUCTION:**

This is a request to amend Chapter 1: General Administration, Article III-Definitions, Section 1-22, Definitions of Terms and Words and Chapter 3: Performance Standards, Article IV-Sign Regulations, Section 3-47, Site Identification Signs of the Land Development Code to allow electronic changeable copy (ECC) signage under certain conditions.

### **BACKGROUND:**

The issue of electronic changeable copy signage began in 2008, as business and property owners sought alternative signage to what was allowed under the Land Development Code. There were amendments to the Land Development Code sign article that were approved in March 16, 2010; however, the section regarding ECC signs was pulled for discussion and analysis. The purpose of the amendments, as expressed in previous meetings, is as follows:

1. To provide signage for multi-tenant or multi-use buildings that cannot locate all the tenant names on the tenant panel signs.
2. To provide signage for buildings that are set back a considerable distance from the right-of-way, have limited signage, or have substantial landscape plantings in front of the building(s).
3. To provide a better aesthetic look for businesses other than multiple tenant panels that can be hard to read because of their small size.

Staff has provided the minutes of the previous Planning Board and City Commission meetings in Exhibit D. The following meetings or actions have occurred regarding ECC signage:

#### **1. December 11, 2008: Planning Board discussion item:**

Mr. Raymond Webb, of KENKO signs, along with representatives from Watchfire, a leading manufacturer of electronic signage from Danville, Illinois,

provided a demonstration of electronic signage and the potential capabilities. The Board direction was to take things one step further and have staff start acquiring data to try to establish standards. The Board felt there was enough interest to start exploring further.

**2. December 2, 2009: Meeting with business owners and sign companies:**

City staff met with various sign companies, members of the Ormond Beach Chamber of Commerce, the Volusia County Association for Responsible Development (VCARD), and property and business owners to gather initial input on the signage amendments.

**3. December 10, 2009: Planning Board Discussion Item:**

Planning staff presented draft revisions to the City's sign article including ECC signs. The draft allowed electronic changeable copy signs in the primarily commercial areas of SR A1A, Nova Road, US 1 and excluding them along Granada Blvd., Hand Avenue, in the B-1, B-9 and B-10 zoning districts and within the Downtown Redevelopment Area.

**4. January 14, 2010: Planning Board**

The Planning Board recommended approval of revisions to the signage article that included the use of electronic changeable copy signage. The version approved by the Planning Board allowed electronic changeable copy signage in traditionally commercial areas such as SR A1A, Nova Road, US1, and Williamson Boulevard. The professional and office areas (Granada Boulevard, Hand Avenue, B-1, B-9, and B-10 zoned properties, and the Downtown Community Redevelopment Area) were prohibited from having electronic changeable copy signage.

**5. March 16, 2010: City Commission**

When the signage amendments went before the City Commission, staff received a request from a house of worship along Granada Boulevard to be permitted to utilize ECC signs. At the March 16, 2010 City Commission meeting, the Commission deleted the Section of the signage amendments regarding ECC signs and approved the remainder of the sign article amendments. They then requested that staff provide additional information regarding ECC signs.

**6. May 18, 2010, City Commission Discussion Item**

Daktronics provided a demonstration and a PowerPoint discussion to the City Commission regarding ECC signs. The City Commission discussed electronic signage and provided city staff the following direction:

- a. ECC signs shall be all text only – no other animation or movement shall be allowed.
- b. The screen resolution will require a pixel spacing of 20 millimeters or less.

- c. ECC sign text shall not change more than once every hour for churches and no more than every 12 hours for all other uses.
- d. ECC signs shall not be allowed in the Downtown Community Redevelopment Area, within 200' of residential uses, or in office zoning corridors, except for churches on Granada Boulevard.
- e. ECC signs shall be allowed for businesses in commercial zoning areas such as on US1, A1A and Nova Road.
- f. The spacing and number of ECC signs are to be as currently allowed for signage.
- g. The copy area for ECC signs shall be limited to 50% of sign size for all uses except for governmental, which may have a 100% ECC sign area.
- h. The measurement of light for code enforcement purposes should be measured by specific light 0.3 light candles above ambient light, not NITS.
- i. All ECC should be required to include auto dimmers to control sign brightness.

## **7. June 10, 2010: Planning Board, Land Development Code amendment**

### Highlights

- Mrs. Behnke voiced her concern with enforcement of the ECC sign regulations. She acknowledged that the city's code enforcement was complaint driven, but felt it was basically ineffective; she pointed out that violations occurred in the evening and on weekends and that if code enforcement staff did not see a violation, they could not pursue a remedy. She said that once purchased, the buyer had the software to effect the change in sign display and copy and said there would be no one to ensure that operation of the signs remained as permitted.
- Mr. Jorczak said that there were simply too many unanswered questions that needed to be addressed. He clarified that he was not opposed to electronic signs *per se*, since they served a very real public need in communicating public safety issues/information for the benefit of the community. He thought that perhaps any regulation could differentiate between what could be done by a governmental entity vs. what could be done by others. He restated that the Board was not ready to make a recommendation regarding electronic changeable copy signage.
- Mrs. Press stated that the subject of signs always evoked strong emotional reactions. She thought that many business owners, if left to their own devices, would do whatever they could to call attention to their businesses and products, even if it meant painting their buildings in all kinds of eye-catching colors, using pole signs, etc. She said that without the city's regulations, all the main roadways in Ormond would look like SR436 in Altamonte Springs.

- Mr. Opalewski agreed that it was a difficult issue. He said that he did not find the electronic sign at The Trails to be offensive and thought that the signs made sense as a way for government (such as Leisure Services) to disseminate information to the public.
- City Attorney Hayes said that signage issues were always challenging, but that the issue of electronic signage was a bit more complicated because it was a new technology for which there was not yet much regulation history and each community was struggling to adequately address the needs and concerns of their residents. He stated that the easiest way to regulate the ECC signs was not to allow them.
- The Board continued the issue until the next Planning Board meeting to allow the City Attorney's office additional review time.

## **8. August 12, 2010: Planning Board, discussion item**

### Highlights

- The Board was provided the memorandum from Randal A. Hayes, City Attorney, dated August 3, 2010, and discussed the memorandum (see Exhibit C).
- There were seven members of the public that spoke regarding ECC signs, 6 for ECC signs and 1 against.
- The Board agreed to conduct a workshop on ECC signs.

## **9. August 23, 2010: Planning Board Workshop**

### Highlights

- The City Attorney provided a sample ordinance for a beginning point of discussion.
- Several members of the Board stated that they were not necessarily in favor of ECC signs but did believe that an ordinance needed to be presented to the City Commission for a final decision.
- Mr. Wigley opined that there was no need to draft something that could be expected to become a legal quagmire, but did not feel that the Board should function in a defensive position either. He agreed that the major thoroughfares previously mentioned were predominately commercial and that locating the signs along Granada Boulevard, US1, Nova Road or SR A1A would be the least visually intrusive, but did not think that the majority of the citizens wanted the signs. He expressed concern with the cost of litigation if the law was later challenged and overturned and said that they only way to prevent that was not to allow the electronic signs.

### Policy Direction

- No more than one electronic changeable copy sign shall be allowed for each property and that a second [traditional] monument sign be allowed for properties fronting on corner lots.
- Electronic signs to be constructed as monument signs.
- Staff to provide additional research on the appropriate distance of electronic signs for residential lots, using 300' and 500' as the starting point.
- Agreed that electronic signs should have no form of movement or animation and added the word “scroll” to the list of prohibited actions of ECC signs.
- ECC signs would be required to have one-color dark background and one-color lettering.
- Agreed that the automatic dimmers should be required.
- That the brightness of ECC signs be measured by use of a foot-candle meter and that it conform to the city’s current signage standards in Section 3-44 of the LDC.
- Did not want pictures in response to an inquiry regarding logos, and agreed that they wanted to limit the signs to text only.
- Limit the text change of ECC signs to once per hour.
- Directed staff to provide additional information on a minimum lot frontage and parcel size as criteria for ECC signs.
- Directed staff to analyze the following roadways for ECC signs:
  1. Granada Boulevard, from Clyde Morris Blvd. to Breakaway Trails.
  2. US1, from Nova Road to Flagler County line.
  3. South Atlantic Avenue, from Granada Blvd. to south City limits.
  4. Nova Road, from North US1 to south City limits.
- Agreed with the requirement for a manufacturer’s operating manual.
- Agreed with the requirement of a certificate from the owner or operator of the sign stating that the sign shall at all times be operated in accordance with the Land Development Code (LDC).
- Agreed to the proposed appeal process with the appeals going to the Special Master with further appeal to the Circuit Court of Volusia County. Staff agreed to look at the appeal process for other signs and other appeal routes.

## 5. September 28, 2010: Planning Board Workshop

### Policy Direction

- The Board provided direction that ECC signs should be limited along North US1 Corridor, from Wilmette Avenue to north City limits. The corridors of Granada Boulevard, Nova Road, and SR A1A were rejected. Requested additional information for the Hand Avenue and US1, from Wilmette Avenue to Nova Road, corridors.
- Recommended a minimum parcel size of three (3) acres and a minimum lot frontage of 200’.
- Recommended that ECC signs be restricted to multi-tenant structures.
- Recommended no ECC sign shall be within 300’ of a conforming single family residential lot line. The measurement would be a radius around the single family lot.
- The resolution of ECC signs would be required to have a pixel spacing of 20 millimeter or less. Directed staff to provide additional information on the resolution of ECC signs.
- ECC sign area not to exceed 50% of total sign area.
- Utilize the existing 5’ setback required of all signs rather than creating a 10’ setback requirement.
- Appeals of the ECC sign determinations will follow the appeal process of Section 1-19 of the Land Development Code.

### ANALYSIS:

The staff analysis is included in Exhibit B (resolution and pixel size), Exhibit C (City Attorney memorandum and Exhibit E (site analysis). There are many variations to a potential ECC sign ordinance. One option is to prohibit them, as stated in the City Attorney’s memorandum that said, the most effective way to eliminate the problems raised by electronic signs containing commercial advertising is to prohibit them. The proposed ordinance has been drafted to establish content-neutral regulations that regulate only time, place, and manner of signage. The attached ordinance has been prepared based on the policy direction from the Planning Board workshops of August 23, 2010, and September 28, 2010.

At the September 28, 2010 Planning Board Workshop, the Board requested the following additional information:

#### 1. **Provide an analysis of allowing ECC signs along US1 from Wilmette Avenue to Nova Road;**

The area between Wilmette Avenue and Nova Road is dominated by mosquito control canals and wetlands. There are a total of 21 properties in this corridor. Nine of the 21 properties have 200’ or more of frontage on US1 and are greater than 300’ from residential lot lines. Of these 9 properties, 6 have a parcel size of

3 acres or more. There are no properties that meet the multi-tenant criteria of the proposed Ordinance.

Major properties in this corridor include:

- a. The Performing Arts Center at 399 North US1: This property is greater than 3 acres, but is not a multi-tenant building.
- b. Total Comfort at 400 North US1 –This property is multi-tenant, but is less than 3 acres.
- c. Shopping Center at 401 North US1 – This property is within 300' of residential lots.

**Table 1: US1 from Wilmette Avenue to Nova Road**

	Total number of lots/parcels:			<b>21</b>
<b>Criteria 1</b>	Number of lots/parcel with a minimum lot width of 200':			<b>10</b>
<b>Criteria 2</b>	Number of lots/parcels that are or have a portion of the lot further than 300' from a residential use – any part of the lot line, as measured by a radius:			<b>9</b>
<b>Criteria 3</b>	Size of the lots/parcels that meet criteria 2			
	Less than 1 acre:			<b>0</b>
	1 acre to 1.99 acres:			<b>0</b>
	2 to 2.99 acres:			<b>3</b>
	3 or more acres:			<b>6</b>
<b>Criteria 4</b>	A: Building over 10,000 square feet. B: Multi Tenant or Multi Use.	<b>A Only</b>	<b>B Only</b>	<b>A &amp; B</b>
	Less than 1 acre:	<b>0</b>	<b>1</b>	<b>0</b>
	1 acre to 1.99 acres:	<b>0</b>	<b>1</b>	<b>0</b>
	2 to 2.99 acres:	<b>0</b>	<b>1</b>	<b>0</b>
	3 or more acres:	<b>1</b>	<b>0</b>	<b>0</b>
	Total:	<b>1</b>	<b>3</b>	<b>0</b>

**2. Provide an analysis of the Hand Avenue corridor;**

Staff reviewed the segment of Hand Avenue from Nova Road west to Williamson Boulevard. Staff only reviewed the properties in the City of Ormond Beach. There are a total of 11 properties within this corridor. There are 9 of the 11 properties that are more than 200' in lot frontage and over 3 acres. There are 6 properties that would meet the criteria established in Exhibit A which would include:

- a. Root Office complex, 295 Clyde Morris Boulevard
- b. Medical offices, 290 Clyde Morris Boulevard
- c. Kohen and Rubin offices, 154 Hand Avenue
- d. Hand Avenue Centre, 1400 Hand Avenue
- e. Medical offices, 325 Clyde Morris Boulevard
- f. Florida Urology, 300 Clyde Morris Boulevard

**Table 2: Hand Avenue, from Nova Road to Williamson Boulevard**

	Total number of lots/parcels:				<b>11</b>
<b>Criteria 1</b>	Number of lots/parcel with a minimum lot width of 200':				<b>11</b>
<b>Criteria 2</b>	Number of lots/parcels that are or have a portion of the lot further than 300' from a residential use – any part of the lot line, as measured by a radius:				<b>10</b>
<b>Criteria 3</b>	Size of the lots/parcels that meet criteria 2				
	Less than 1 acre:				<b>0</b>
	1 acre to 1.99 acres:				<b>0</b>
	2 to 2.99 acres:				<b>1</b>
	3 or more acres:				<b>9</b>
<b>Criteria 4</b>	A: Building over 10,000 square feet. B: Multi Tenant or Multi Use.	<b>A Only</b>	<b>B Only</b>	<b>A &amp; B</b>	
	Less than 1 acre:	<b>0</b>	<b>0</b>	<b>0</b>	
	1 acre to 1.99 acres:	<b>0</b>	<b>0</b>	<b>0</b>	
	2 to 2.99 acres:	<b>0</b>	<b>0</b>	<b>0</b>	
	3 or more acres:	<b>7</b>	<b>6</b>	<b>6</b>	
	Total:	<b>7</b>	<b>6</b>	<b>6</b>	

3. Provide examples of differing ECC sign resolutions.

Exhibit B provides examples of the resolution of ECC signs. In summary, the lower the pixel spacing, the higher the resolution or sharpness of the electronic sign. Based on discussions with several sign contractors, staff is recommending a pixel spacing of 20 millimeters or less.

Based upon the criteria proposed in Exhibit A, staff’s research shows the blow properties would be eligible for ECC signage. Please note, each application would need to demonstrate compliance to the Ordinance if approved. This list is as of the date of this report and it should be noted that there are additional vacant properties that may be developed in the future that could meet the proposed criteria.

### **North US1: Wilmette Avenue to Nova Road**

None.

### **North US1: Nova Road to Airport Road**

1. Tomoka Business Center – 906 N. US1.
2. Action Golf and RV Storage – 930 N. US1.
3. Bull Run – 1024 N. US1.

### **North US1: Airport Road to Hull Road**

4. Ormond Beach Comm Properties (County) 1201 N. US1.

### **North US1: Hull Road to I-95**

5. Ormond Commerce Park – 1293 N. US1.
6. Hull Pointe -1230 N. US1.
7. Amaral Plaza – 1360 N. US1.
8. MBA Business Center – (County) 1439 N. US1.
9. Gardens Business Center – (County) – 1459 N. US1.

### **North US1: I-95 to Flagler County**

10. Hotel – 1614 N. US1.
11. Destination Daytona – (County) – 1637 N. US1.

### **CONCLUSION:**

There are certain criteria that must be evaluated before adoption of an amendment. According to the LDC, the Planning Board must consider the following criteria when making their recommendation.

- 1. The proposed development conforms to the standards and requirements of this Code and will not create undue crowding beyond the conditions normally permitted in the zoning district, or adversely affect the public health, safety, welfare or quality of life.**

The proposed Land Development Code amendment will not create undue crowding beyond the conditions normally permitted in the zoning district, or adversely affect the public health, safety, welfare or quality of life. The purpose of the amendments is to recognize a new technology and provide regulations for its use within the City.

- 2. The proposed development is consistent with the Comprehensive Plan.**

The Comprehensive Plan does not provide any direct Goals, Objectives, or Policies regarding signage. The Comprehensive Plan does address the need to maintain the

aesthetics and character of the City. The original intent of the sign amendments was to provide a balance between the residential nature of the City and the desire for non-residential development to have adequate signage to provide advertising necessary to maintain their businesses. The proposed Ordinance seeks to provide a content neutral framework if ECC signs are permitted.

- 3. The proposed development will not adversely impact environmentally sensitive lands or natural resources, including but not limited to waterbodies, wetlands, xeric communities, wildlife habitats, endangered or threatened plants and animal species or species of special concern, wellfields, and individual wells.**

There is no project-specific development application and the proposed Land Development Code amendment will not have an adverse impact on environmentally sensitive lands.

- 4. The proposed use will not substantially or permanently depreciate the value of surrounding property; create a nuisance; or deprive adjoining properties of adequate light and air; create excessive noise, odor, glare, or visual impacts on the neighborhood and adjoining properties.**

Electronic signage was previously permitted under the Land Development Code and there has been substantial review and criteria established to ensure that ECC signs will not negatively impact adjoining properties. These criteria include:

- d. Minimum separation of 300' from residential lots.
- e. Requirement of automatic dimmers.
- f. Limitation of the size of ECC signs area.
- g. Limitation to monument sign only.
- h. Dimensional criteria designed to restriction to large parcels.

The proposed Land Development Code amendment has been drafted not to create visual impacts on adjoining properties or depreciate the value of surrounding properties.

- 5. There are adequate public facilities to serve the development, including but not limited to roads, sidewalks, bike paths, potable water, wastewater treatment, drainage, fire and police safety, parks and recreation facilities, schools, and playgrounds.**

The proposed Land Development Code amendments are not applicable to public facilities.

- 6. Ingress and egress to the property and traffic patterns are designed to protect and promote motorized vehicle and pedestrian/bicycle safety and convenience, allow for desirable traffic flow and control, and provide adequate access in case of fire or catastrophe. This finding shall be based on a traffic report where available, prepared by a qualified traffic consultant, engineer or planner which details the anticipated or projected effect of the project on adjacent roads and the impact on public safety.**

There is no development proposed for this amendment. The application pertains to a Land Development Code amendment.

**7. The proposed development is functional in the use of space and aesthetically acceptable.**

There is no development proposed for this amendment. The application pertains to a Land Development Code amendment.

**8. The proposed development provides for the safety of occupants and visitors.**

There is no development proposed for this amendment. The application pertains to a Land Development Code amendment.

**9. The proposed use of materials and architectural features will not adversely impact the neighborhood and aesthetics of the area.**

There is no development proposed for this amendment. The application pertains to a Land Development Code amendment.

**10. The testimony provided at public hearings.**

There has been public testimony provided at previous Planning Board and City Commission meetings which is included in Exhibit D. Any additional testimony from the Planning Board meeting will be forwarded to the City Commission.

**RECOMMENDATION:**

It is recommended that the Planning Board **APPROVE** the amendments attached in Exhibit "A" amending Chapter 1: General Administration, Article III-Definitions, Section 1-22, Definitions of Terms and Words and Chapter 3: Performance Standards, Article IV-Sign Regulations, Section 3-47, Site Identification Signs of the Land Development Code to allow electronic changeable copy signage under certain conditions.

# Exhibit A

## Proposed Land Development Code Amendments

**CITY OF ORMOND BEACH  
DRAFT REVISION TO SIGN CODE REGARDING  
ELECTRONIC CHANGEABLE COPY SIGNS**

**ADD THE FOLLOWING DEFINITIONS TO SECTION 1-22: DEFINITION OF TERMS AND WORDS**

.....

**On-site sign:** A sign relating in its subject matter to the premises on which it is located, or to products, accommodations, services, or activities on the premises.

**Sign, Electronic Changeable Copy:** A sign with a static illuminated message area composed of a series of LED with a minimum of nine (9) pixels per LED with a 1” diameter, such that it could be changed through electronic means. Such signs are not permitted to flash, scroll, or otherwise be animated. An electronic changeable copy sign is a sign that displays an electronic image, which may only include text, where the rate of change is electronically programmed and can be modified by electronic processes. Electronic changeable copy signs are only allowed as “on-site” signs.

**ADD A NEW SECTION TO SECTION 3-47 OF LDC TO READ AS FOLLOWS:**

**Sec. 3-47: SITE IDENTIFICATION SIGNS:** All signs shall be located on the property which they identify. Such property shall include the lot frontage of any premise under single ownership or developed as a single site for purposes of meeting setback, buffer, land area or other dimensional requirements of this Code and subject to the following:

.....

**I. Electronic changeable copy signs.**

(a) Electronic changeable copy signs shall meet the following design, construction, operation, and location standards.

1. Electronic changeable copy signs are permitted only along US Highway 1, from Wilmette Avenue to the north City limits.
2. Electronic changeable copy signs shall be allowed only on multi-tenant sites consisting of a minimum of three (3) contiguous acres and a minimum of two hundred (200) linear feet of frontage along roadways designated in (a)1 above. For this section only, multi-tenant sites shall be

defined as a site that has been issued more than one business tax receipt for the same business site address.

3. No more than one electronic changeable copy sign shall be allowed for each property, and this provision shall not be deemed to allow additional signs, but shall be consistent with Section 3-47 B(3).
4. The electronic changeable copy signage display screen must be integral to the design of the sign structure and shall not be the dominant element. The display area for the electronic changeable copy signage shall not exceed 50% or less of the permitted total sign area.
5. Electronic changeable copy signs shall not be located within 300 linear feet of a conforming single-family residence as measured to the leading edge of the sign to the residential lot line.
6. The pixel spacing of the electronic changeable copy signage display screen shall be 20 millimeter or less.
7. Electronic changeable copy signs shall be constructed as a monument sign, and meet all size and landscaping requirements located of Section 3-47.B.
8. The display of the electronic changeable copy sign shall not change more rapidly than once every hour.
9. The electronic changeable copy sign display shall consist of text only. The display shall not appear to flash, undulate, pulse, scroll, or portray explosions, fireworks, flashes of light, or blinking or chasing lights; the display shall not appear to move toward or away from the viewer, expand or contract, bounce, rotate, spin, twist or otherwise portray movement or animation as it comes onto, is displayed on, or leaves the sign board.
10. The electronic changeable copy sign display shall have a one color dark background with only the message or foreground lit in one color lettering .
11. All electronic changeable copy signs shall have installed ambient light monitors and shall at all times allow such monitors to automatically adjust the brightness level of the electronic changeable copy sign based on ambient light conditions.
12. Electronic changeable copy sign permit applications shall be submitted to the Chief Building Official consistent with Section 3-39 of the Ormond Beach *Land Development Code*, and shall be reviewed by the City's Site Plan Review Committee for a determination that the application is consistent with all provisions of the Ormond Beach *Land Development Code* and *Code of Ordinances*. The Site Plan Review Committee shall

issue a final recommendation to the Planning Director within thirty (30) days of receipt of a completed application, and the Planning Director shall issue a final determination within fifteen (15) days of the Site Plan Review Committee recommendation. Electronic changeable copy sign permit applications denied by the Planning Director shall be appealed to the City Commission pursuant to Section 1-19 (B) (1) of the Ormond Beach *Land Development Code*.

13. Electronic changeable copy sign permit applications must include a copy of the manufacturer's operating manual, which includes the manufacturer's recommended standards for display operations.
14. Electronic changeable copy sign permit applications must also include a certificate from the owner or operator of the sign stating that the sign shall at all times be operated in accordance with the Ormond Beach *Land Development Code* and *Code of Ordinances* and that the owner or operator shall provide proof of such conformance upon request of the City.

DRAFT

# Exhibit B

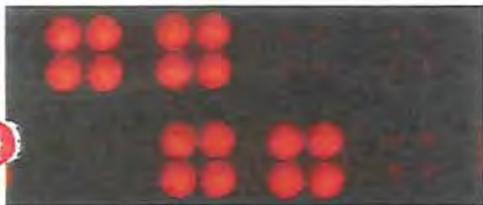
## Information on Electronic Sign Resolution

# LED, PIXEL AND RESOLUTION



## LED

LED is an abbreviation for light emitting diode. An LED is a solid-state electronic device that is much more efficient at creating light than an incandescent lamp. LEDs contain chemical compounds that emit light when electric current passes through them. Different chemical compounds emit different colors of light. Unlike incandescent lamps, LEDs have no filaments that can burn out or fail. Daktronics uses the highest quality LEDs from the top manufacturers in the world.



Pixels can be a single LED or multiple LEDs grouped together (eight pixels, four LEDs per pixel are shown)

## PIXEL

Pixel is short for picture element. Pixels are points of light that illuminate to form letters, words, graphics, animation and video images. A pixel can be made up of a single LED, multiple LEDs of the same color or multiple LEDs of different colors. A pixel is the smallest element of the electronic display system that can be individually controlled. It can be turned off or on at various brightness levels.

## RESOLUTION

Resolution is defined as the number of pixels contained in the physical area of an electronic display. The greater the number of pixels per square foot, the greater the amount of detail displayed. The three examples below show a house with pricing as if it was displayed on electronic message centers from the same distance, with different pixel spacing. Each of these three images represents an electronic display approximately five feet high.

## LINES

The EV (Evolution) pixel layout, found in some models of the GalaxyPro® Revolution™ series, is measured in lines and columns. The layout offers the customer more horizontal lines without the cost of increased resolution.

More horizontal lines form a more complete image, resulting in higher-quality graphics.

Approx.  
5'0"



34 mm (1.33") spacing  
40 lines high x 80 columns wide  
82 pixels per square foot

Approx.  
5'0"



20 mm (0.78") spacing  
64 lines high x 144 columns wide  
230 pixels per square foot

Approx.  
5'0"



16 mm (0.65") spacing  
80 lines high x 176 columns wide  
341 pixels per square foot



25 MM Sign at 399 North US 1



20 MM Sign

## Lake Brantley High School

Altamonte Springs, Florida, United States

### Display One

**Product Line:** Message Displays

**Product Category:** Galaxy

**Series:** AF-3400

### Description

Lines & Columns: 48 x 112

Pixel Spacing: 20 mm (.79")

Approx. Dimensions: 3'8" x 7'10" (1.12 m x 2.39 m)

**Source:** <http://www.daktronics.com/ProductsServices/PhotoGallery/Pages/default.aspx?photoID=WP-13504&keywords=20%20mm&filters=ProductCategory,Message%20Displays;Country,United%20States;USA;State,Florida;FL>



20 MM Sign

### Mount Dora High School

Mount Dora, Florida, United States

### Display One

**Product Line:** Message Displays

**Product Category:** Galaxy

**Series:** AF-3400

### Description

Lines & Columns: 32 x 80

Line Spacing: 20 mm

Approx. Dimensions: 2'8" x 5'9" (.81 m x 1.75 m)

**Source:** <http://www.daktronics.com/ProductsServices/PhotoGallery/Pages/default.aspx?photoID=WP-14110&keywords=20%20mm&filters=ProductCategory,Message%20Displays;Country,United%20States;USA;State,Florida;FL>



## 20 MM Sign

### Source:

<http://www.daktronics.com/ProductsServices/PhotoGallery/Pages/default.aspx?photoID=WP-12159&keywords=20%20mm&filters=ProductCategory,Message%20Displays;Country,United%20States;USA;State,Florida;FL>

### Brevard Zoo

Melbourne, Florida, United States

### Display One

**Product Line:** Galaxy Message Displays

**Product Category:** Galaxy

**Series:** AF-3400 (Quantity 1)

### Description

LED Color: Red

Lines & Columns: 48 x 80

Pixel Spacing: 20 mm

Approx. Dimensions: 3'8" x 5'9" (1.12 m x 1.75 m)

Sides: 2



## Parker Elementary School

Panama City, Florida, United States

### Display One

**Product Line:** Message Displays

**Product Category:** Galaxy

**Series:** AF-3400

### Description

Lines & Columns: 16 x 48

Line Spacing: 34 mm

Approx. Dimensions: 2'4" x 5'10" (.71 m x 1.78 m)

 Email Photo

 Print Photo

 Contact Us

 Have photos to share? Upload them to our Facebook Page.

## Source:

[http://www.daktronics.com/ProductsServices/PhotoGallery/Pages/default.aspx?photoID=WP-](http://www.daktronics.com/ProductsServices/PhotoGallery/Pages/default.aspx?photoID=WP-14349&keywords=34%20mm&filters=ProductCategory,Message%20Displays;Country,United%20States;USA;State,Florida;FL)

[14349&keywords=34%20mm&filters=ProductCategory,Message%20Displays;Country,United%20States;USA;State,Florida;FL](http://www.daktronics.com/ProductsServices/PhotoGallery/Pages/default.aspx?photoID=WP-14349&keywords=34%20mm&filters=ProductCategory,Message%20Displays;Country,United%20States;USA;State,Florida;FL)



## Greater Palm Bay Senior Center

Palm Bay, Florida, United States

### Display One

**Product Line:** Message Displays

**Product Category:** Galaxy

**Series:** AF-3200

### Description

Lines & Columns: 24 x 64

Line Spacing: 34 mm

Approx. Dimensions: 3' x 7'8" (.91 m x 2.34 m)

## 34 MM Sign

### Source:

[http://www.daktronics.com/ProductsServices/PhotoGallery/Pages/default.aspx?photoID=WP-](http://www.daktronics.com/ProductsServices/PhotoGallery/Pages/default.aspx?photoID=WP-14091&keywords=34%20mm&filters=ProductCategory,Message%20Displays;Country,United%20States;USA;State,Florida;FL)

[14091&keywords=34%20mm&filters=ProductCategory,Message%20Displays;Country,United%20States;USA;State,Florida;FL](http://www.daktronics.com/ProductsServices/PhotoGallery/Pages/default.aspx?photoID=WP-14091&keywords=34%20mm&filters=ProductCategory,Message%20Displays;Country,United%20States;USA;State,Florida;FL)



34 MM

Source: May 18, 2010  
Daktronics City  
Commission presentation



# Exhibit C

City Attorney's  
Memorandum dated  
08.03.2010

# Discussion Item



# CITY OF ORMOND BEACH

Office of the City Attorney • P.O. Box 277 • 173 South Beach Street • Ormond Beach, FL 32175-0277 • (386) 676-3217 • Fax (386) 676-3321

## Memorandum

**TO:** Rick Goss, Planning Director

**FROM:** Randal A. Hayes, City Attorney

**DATE:** August 3, 2010

**RE:** **Electronic message signs**

Included herewith, please find a brief inter-office legal memorandum that discusses the legal principles involved in the regulation of electronic signs and *Solantic, LLC vs. City of Neptune Beach*, 410 F.3d 1250 (11<sup>th</sup> Cir. 2005), an Eleventh Circuit U.S. Court of Appeals case that originated from the U.S. District Court for the Middle District of Florida (Ormond Beach is within the jurisdiction of those federal courts). The legal principles have broad application to other forms of signage and speech in general. An analysis of case law demonstrates the complexities that are inherent in an attempt to regulate this subject. The outcome of each case depends on the elements of the particular regulation in question and the particular facts regarding the alleged violation. I have described some general rules below that I hope will serve as a quick-reference guide. Neither the quick-reference guide nor the memorandum is intended to serve as an exhaustive analysis of the issues regarding this topic, but they should be helpful in developing a basic understanding of the legal principals.

1. General rules:

- a) *"The most effective way to eliminate the problems raised by electronic signs containing commercial advertising is to prohibit them."* *Metromedia, Inc. vs. City of San Diego*, 453 U.S. 490, 101 S. Ct. 2882 (1981). Otherwise, the legal principles that follow apply.
- b) ~~Reasonable time, place, manner restrictions on protected speech, without reference to content and that leaves open other channels of communications, is a valid exercise of police powers.~~
- c) **Non-commercial** speech is afforded more constitutional protection than **commercial** speech (i.e., expression related to economic interest or commercial transaction).

2. Judicial analysis:

- a) Is the speech protected by the First Amendment?

- b) Is it a **content-neutral** or **content-based** regulation?
- c) Is it **commercial** speech or **non-commercial** speech?
- d) If **content-neutral**: determine whether the regulation is a permissible time, place, and manner restriction.

If so, **intermediate scrutiny test** applies: the regulation must not restrict speech substantially more than necessary to further a legitimate government interest and it must leave open adequate alternative channels of communication.

**Content-neutral** regulation: time, place, manner restriction; applies equally to everyone without exemptions or distinctions between categories of signs; applies to size, height, and location of sign; illumination or brightness of sign; location, distance or proximity to other signs; does not control the message or speech.

- d) If **content-based** (i.e., one that controls the message or speech; creates exemptions or distinctions between categories of signs; presumptively invalid):

**Strict scrutiny test** applies: must be narrowly drawn and be the least restrictive means of advancing a compelling government interest (abstract references that promote general safety or aesthetic interests are not compelling government interests).

3. Miscellaneous rules:

- a) A regulation must provide a reasonable time period within which a government official must approve or deny a sign permit; otherwise it will constitute an invalid “prior restraint” on speech.
- b) Most legal challenges are filed as federal section 1983 action. A party that successfully challenges a regulation will be entitled to recover attorney’s fees.

**LEGAL ANALYSIS OF PROPOSAL TO AMEND ORMOND BEACH LAND DEVELOPMENT CODE TO ALLOW ELECTRONIC CHANGEABLE COPY SIGNAGE**

**I. INTRODUCTION**

The proposed amendment to the ordinance to allow “electronic changeable copy” (ECC) signage appears to strictly regulate the size and technical performance standards of ECC signs, as well where the signs may be placed, on what types of parcels the signs may be placed, and the minimum distance allowed between ECC signs.<sup>1</sup> Besides technical requirements of size, resolution, and brightness, the ordinance would provide a minimum distance of 700 feet between ECC signs.

The ordinance would also allow churches to change sign content “no more than once every hour” and content would be allowed to change “no more than once every twelve hours for all other uses”. Because this proposed ordinance applies differently to different zoning uses, particularly the way it applies the frequency of content changes to churches versus “all other uses”, the scope of the issues raised will primarily center on those constitutional issues. The major issues raised from this proposed ordinance are (1) whether the proposed ordinance requiring minimum distances between ECC signs is a valid time, place, and manner regulation of the municipal zoning police power; (2) whether the ordinance violates any equal protection, establishment clause, or other constitutional violations such as prior restraint; and (3) whether the proposed ordinance violates any constitutionally protected free speech rights by allowing churches to change the sign message more often than “all other uses”.

**II. BACKGROUND**

Since signs take up space, may obstruct views, and distract motorists, it is common ground that governments may regulate the physical characteristics of signs.<sup>1</sup> It is important to make an initial determination about whether the *content* of the speech is being regulated or merely the time, place, and manner. Generally time, place and manner regulation falls well within the police power of local government. “It is well established that [governments] may impose reasonable restrictions on the time, place or manner of engaging in protected speech provided that they are adequately justified without reference to the content of the regulated speech.” *City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 428, 113 S. Ct. 1505, 123 L. Ed. 2d 99 (1993). Sometimes however, the ordinance may not facially attempt to regulate content but the *effect* of the ordinance may be considered content regulation, and therefore in violation of First Amendment guarantees.

When sign ordinances are challenged on First Amendment issues with regard to free speech, the degree of constitutional protection afforded will determine upon whether the speech is commercial or non-commercial. The First Amendment affords greater protection to noncommercial than to commercial expression.<sup>2</sup> (Generally commercial

speech gets intermediate scrutiny and noncommercial gets strict scrutiny.) As a practical matter, most challenges are made under § 1983 actions and if a sign ordinance is found unconstitutional under the First Amendment and the sign owner prevails, the owner may be entitled to attorney's fees under 42 U.S.C. § 1988. *See Ackerley Communications Inc. v. City of Salem, Oregon*, 752 F. 2d 1394 (9<sup>th</sup> Cir. 1985).

### **III. DISCUSSION OF ISSUES**

#### **A. ISSUE (1): WHETHER MINIMUM DISTANCE (700 FEET) BETWEEN ECC SIGNS IS A PROPER TIME, PLACE AND MANNER RESTRICTION.**

Even though Ormond Beach ECC signage amendment would regulate "on-site" signs, much of the case law on regulation of proper time, place and manner regulation regarding the minimum allowable distances between signs was developed to regulate the outdoor advertising industry (off-site signs), but the analysis is still useful.

Under *King Enterprises, Inc. v. Thomas Township*, 215 F. Supp. 2d 891 (2002), the court found that sections of an ordinance that regulate the size, height, location (including the distance from other signs), and illumination of billboard signs did not regulate content, and that the regulations all furthered the government's stated purposes of promoting traffic safety, protecting public and private investment and property values, preventing light obstruction, and limiting adverse impact cause by the proliferation of billboards.

The second part of the time, place, and manner restriction analysis is whether there are alternative channels for communication. By allowing other types of signs, and not just ECC signs, courts have held that alternative channels of communication are held open. Also, in *Naser Jewelers v. Concord, New Hampshire*, 513 Fed. 3d 27 (1<sup>st</sup> Cir. 2008), the Court found that the complete ban on EMC signs was constitutional because it met all the tests for a time, place and manner rule. It is content neutral, narrowly tailored to serve significant government interests and leaves open ample alternatives.

In *Trinity Assembly of God v. People's Council of Baltimore County*, 178 M.D. App. 232, 941 A. 2d 560 (M.D. App. 2008), the city denied the church's application for variances to rebuild an existing sign which would have added electronic changeable copy signage as well as increased the size. The church challenged the denial based the Federal Religious Land Use and Institutionalized Persons Act (RLUIPA). The Court held that the church was not denied any use of the sign as a religious use, but only because the sign was a nonconforming use due to the size and illumination regulation. Sign restrictions based on zoning, size, and height are constitutionally permissible. *See Valley Outdoor, Inc. v. County of Riverside*, 337 F. 3d 1111, 111415, (9<sup>th</sup> Cir. 2003).

#### **B. ISSUE (2): WHETHER ORDINANCE ALLOWING SIGN TEXT TO CHANGE NOT MORE THAN EVERY HOUR FOR CHURCHES AND**

**NO MORE THAN EVERY 12 HOURS FOR ALL OTHER USES COULD BE CONSIDERED A CONTENT-BASED REGULATION.**

As previously mentioned, even though courts have long held that governments may use their police power to regulate the technical aspects of the signs, one question that may be raised is when regulation of technical aspects can become considered content based regulation. The proposed change to the Ormond Beach LDC would allow churches to change the ECC sign “not more than every hour” versus “not more than once every twelve hours” for businesses. By allowing churches the opportunity to change the message more often than businesses may raise the question of whether the City is regulating content by affording one speaker the opportunity for more content to speech than another. Review of case law provides some indication as to when courts hold that technical regulation has reached into content regulation.

One of the difficulties of analyzing the case law on this issue is that usually once a constitutional challenge is made and initially successful in the lower courts, often times the municipality will amend the ordinance before the appeal is heard which, in many instances renders bad case law (See *North Olmsted Chamber v. North Olmsted* and *Solantic v. City of Neptune Beach*.)

In *Carlson's Chrysler v. City of Concord*, 983 A. 2d 69, 156 N.H. 339 (29907), the City of Concord denied a sign permit application to a car dealership for an ECC sign based upon a section of the sign ordinance that prohibits “[s]igns which move or create an illusion of movement except those parts which solely indicate date, time, or temperature.” The superior court held that the City’s ordinance violated the First Amendment to the United States Constitution as an unlawful infringement upon commercial speech since the City allowed time, date, and temperature but did not allow other commercial speech as a content-based violation. Following the trial court’s decision, the City amended its ordinance to prohibit all electronic message centers, including those indicating time, date, and temperature. The constitutionality of the amended statute was challenged in U.S. District Court for New Hampshire, which the district court held that the *amended* statute is content-neutral and constitutes a lawful time, place, and manner restriction upon commercial speech in compliance with the test in *Ward v. Rock Against Racism*, 491 U.S. 781, 791, 109 S. Ct. 2746, 105 K.Ed.2d 661 (1989). The New Hampshire Supreme Court went on to hold that, “To protect its interests, the City could regulate the number, proximity or placement of electronic display signs or it could ban all types of electronic signs, including those displaying time, date, and temperature. [T]he most effective way to eliminate the problems raised by electronic signs containing commercial advertising is to prohibit them.” See *Metromedia*, 453 U.S. at 508, 101 S. Ct. 2882.

The first determination a court must make when evaluating a law that governs speech is whether the regulation is content-neutral or content-based, because this determination will determine the level of scrutiny that is used in assessing the constitutionality of the law.<sup>3</sup> Under *North Olmsted Chamber of Commerce v. City of North Olmsted*, 86 F. Supp. 2d 755 (N.D. Ohio 2000), the Court found an ordinance

which classified signs by their use type were content-based and the sections that classified signs by their structural type were content-neutral. A regulation can be content-neutral if it can be "justified without reference to the content of the regulated speech," even if regulation has an incidental effect on some but not all speakers or messages.<sup>4</sup> A law which controls the substance of the speaker's message is not content-neutral" even if it has broad application.<sup>5</sup>

If the regulation is content-neutral, it may permissibly impose reasonable time, place, and manner restrictions.<sup>6</sup> The restrictions are valid if they (1) are narrowly tailored to serve substantial government interest" and (2) "leave open ample channels for communication of the information." Under the time, place and manner analysis, a "narrowly tailored" ordinance "does not have to have eliminated all less restrictive alternatives," but must not burden substantially more speech than is necessary to further the government's legitimate interest.<sup>7</sup>

If the restrictions on expressions are content-based, then the court must determine whether the restrictions involve commercial or non-commercial speech. Commercial speech has been defined as "expression related solely to the economic interest of the speaker and its audience" or "speech proposing a commercial transaction."<sup>8</sup>

Content-based restrictions of commercial speech are analyzed under the four-part test announced by the Supreme Court in *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of New York*, 447 U.S. 557, 100 S.Ct. 2343, 65 L.Ed.2d 341 (1980). Under *Central Hudson*, the Court must determine whether (1) the speech is protected by the First Amendment; (2) the government interest is "substantial"; (3) the regulation "directly advances the governmental interest asserted"; and (4) the regulation is not more extensive than necessary to serve the governmental interest. Similarly, the Supreme Court has held that "safety" and "aesthetics" are substantial governmental interests that can justify the regulation of some commercial speech.<sup>9</sup>

Content-based restrictions on non-commercial speech are analyzed under the "strict scrutiny" test. Under this test, the government must show that the regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end.<sup>10</sup> Although "safety" and "aesthetics" are substantial government interests, they are not compelling enough to justify content-based restriction on full-protected non-commercial speech."<sup>11</sup> Generally speaking, non-commercial speech is given more constitutional protection than commercial speech, therefore the proposed ECC sign ordinance would be on safer constitutional ground because it is less restrictive in regulating non-commercial speech by allowing churches to change content no more than once an hour than it is regulating commercial speech by allowing sign content to change no more than once every twelve hours. It should however be determined what constitutes "all other uses" for purposes of analyzing what other types of non-commercial speech may be effected.

Currently, Section 3-45 (A) [Substitution Clause] of the Ormond Beach *Land Development Code*, provides that at the option of the property owner, a sign may contain

a non-commercial message unrelated to the business located on the premises where the sign is erected. "The sign face may be changed from commercial to non-commercial messages, or from one non-commercial message to another, as frequently as desired by the owner of the sign, . . .". The substitution clause allows owners to change non-commercial messages "as frequently as desired by the sign's owners provided the sign is not prohibited and the sign continues to comply with all requirements of this chapter."

Ordinances that provide *exemptions* to regulation, such as exempting time, date and temperature on electronic signs, have been held to be content-based regulations.<sup>12</sup>

1. *Solantic v. City of Neptune Beach* 410 F.3d 1250 (2005)

Solantic had an electronic variable message (EVM) sign, and brought an action against the City of Neptune Beach seeking preliminary and permanent injunctive relief enjoining enforcement in the sign code ordinance on the ground that it violated the First Amendment in at least two ways. First, it *exempts from regulation* certain categories of signs based on their content, without a compelling justification for the disparate treatment; and secondly, it contained no time limits for permitting decisions.

The City had the case removed to the U.S. District Court for the Middle District of Florida, which denied the preliminary injunction, and upheld the sign ordinance. Solantic then took an interlocutory appeal. The U.S. Court of Appeals, Eleventh Circuit held that: (1) the sign code was a content based restriction on speech; (2) the sign code was facially unconstitutional since it was not narrowly tailored to accomplish the city's asserted interest in aesthetics and traffic safety, since those interests were not "compelling"; and (3) absence of any time limits rendered city's sign code's permitting requirement unconstitutional.

Initially, the City's Code Enforcement Board conducted a hearing and found Solantic's sign violated the sign code three ways: by allowing the sign to change copy more than once a day; by allowing the sign to blink, flash, or scroll alternating messages; and by not controlling the sign solely from the property on which it was located.

The City's sign code had seventeen exemptions, such as governmental bodies, religious displays, works of art, public warning signs, and official signs of a noncommercial nature erected by public utilities to name a few. The court found these exemptions resulted in content-based regulation, stating; "In short, because some types of signs are extensively regulated while others are exempt from regulation based on the nature of the messages they seek to convey, the sign code is undeniably a content-based restriction on speech".

A content-based restriction is analyzed under strict scrutiny and to be held constitutional, the ordinance must be "necessary to serve a compelling state interest" and "narrowly drawn to achieve that end". The court found the Neptune Beach sign code failed both aspects: it was not narrowly tailored to accomplish the City's asserted interests in aesthetics and traffic safety, nor has the case law recognized those interests as "compelling". The court went on to state: "The code does not, however, explain how

these factors affect motorist' safety, or why a moving or illuminated sign of the permissible variety-for example, a sign depicting a religious figure in flashing lights, which would be permissible under § 27-580 (17)'s exemption for "religious displays" would be any less distracting or hazardous to motorists than a moving or illuminated sign of the impermissible variety-for example, one depicting the President in flashing lights, which falls within no exemptions and is therefore categorically barred."

Finally, the court found that since Neptune Beach's sign ordinance did not have a time limit on the permit process, it was a prior restraint on speech "that the First Amendment will not bear". Neptune Beach's sign code contains no time limit of any sort for permitting decisions, with the court stating: "The absence of any decision-making deadline effectively vests building officials with unbridled discretion to pick and choose which signs may be displayed by enabling them to pocket veto the permit applications for those bearing disfavored messages."

2. *Dimmitt v. City of Clearwater* 985 F.2d 1565 (1993)

In this Eleventh Circuit case, an automobile dealership operator brought an action against the city challenging the constitutionality of the city ordinance regulating the display of signs, flags, and other means of graphic communication. The City counterclaimed, asserting that the operator's display of flags violated the federal Flag Code. The U.S. District Court for the Middle District of Florida granted partial summary judgment to the operator and denied the city's summary judgment motion. The City appealed, and the U.S. Court of Appeals held that (1) the limitation of ordinance permit exception to government flags unconstitutionally differentiated between speech based upon its content; (2) under the overbreadth doctrine, the operator could assert rights of those whose non-commercial speech was restricted by the ordinance; and (3) the Flag Code is merely advisory and is not intended to proscribe conduct.

3. *City of Ladue v. Gilleo* 512 U.S. 43 (1994)

The City of Ladue enacted an ordinance that prohibited homeowners from displaying any signs on their property except those that fell into one of 10 exemptions such as "residence identification" signs, "for sale" signs, and signs warning of safety hazards. The ordinance permitted commercial establishments, churches, and non-profit organizations to erect certain signs not allowed at residences. The question for the court is whether the ordinance violated resident's right to free speech.

The plaintiff placed a sign in her window against the gulf war and after being cited for a violation, challenged the ordinance. The District Court held the ordinance unconstitutional, the Court of Appeals affirmed, relying on *Metromedia v. San Diego* 453 U.S. 490 (1981), and holding that the ordinance was invalid because it was a content based regulation because and the City treated commercial speech more favorably than non-commercial speech, and favored some kinds of non-commercial speech over others.

### **C. ISSUE (3): WHETHER ALLOWING CHURCHES TO CHANGE MESSAGE MORE FREQUENTLY THAN BUSINESSES VIOLATES ESTABLISHMENT CLAUSE OR EQUAL PROTECTION.**

#### **1. Establishment Clause Analysis**

By allowing churches the opportunity to change the message more frequently than businesses, the ordinance is providing more constitutional protection for noncommercial speech than commercial speech, which has been held valid.<sup>13</sup>

Besides First Amendment speech challenges, this proposed ordinance may receive challenges of a violation of Equal Protection or Establishment clauses. The Establishment Clause prohibits the government from promoting or affiliating with any religious doctrine or organization.<sup>14</sup> Establishment Clause violations are analyzed under the '*Lemon*' test, meaning the law (1) must have a secular purpose; (2) neither advance nor inhibit religion in its principal or primary effect; and (3) not foster an excessive entanglement with religion. The proposed ordinance would not appear to be a violation of the Establishment Clause under the *Lemon* test.

#### **2. Equal Protection Analysis**

Usually, in order for an equal-protection challenge to get off the ground, the plaintiff must have a colorable basis for representing that they are similarly situated to the class of persons accorded different treatment. This means that under the proposed ordinance, a business owner would have to provide a basis that they are 'similarly situated' to a church to challenge the language of the ordinance that allows churches an opportunity to change sign content "not more than once every hour", compared to "no more than once every twelve hours" for all other uses.

But non-religious entities are not similarly situated to religious entities as a matter of constitutional law.<sup>15</sup> The United States Constitution itself 'discriminates' on the basis of religion in that the free exercise and establishment clauses of the first amendment put religious and secular entities on a different footing in their relations to government.<sup>16</sup> Under *Cohen v. City of Des Plaines*, 8 F.3d 484 (7<sup>th</sup> Cir. 1993) the court held that religious exemption from daycare zoning ordinance does not violate the establishment clause or the equal-protection-clause. And in *Pre-School Owners Assoc. of Illinois, Inc. v. Dept. of Children and Family Services*, 119 Ill. 2d 268, 518 N.E. 2d 1018 (Ill. 1988), the court held that various exemptions from daycare regulation, including a religious exemption, do not violate the equal protection clause, or the religion clauses of the first amendment, and are not unconstitutionally vague.<sup>17</sup>

Another approach to equal protect challenges is the "class of one" theory. Under this theory, a plaintiff does not claim to be a member of a specific class that was discriminated against but argues that the defendant arbitrarily and without rational basis treated the plaintiff differently than someone similarly situated. See *Village of Willowbrook v. Olech*, 528 U.S. 562, 120 S. Ct. 1073, 145 L.Ed.2d 1060 (2000)(per

curiam). To prevail on this claim, the plaintiff must establish that the City “intentionally treated him differently from other similarly situated and that there is no rational basis for the difference in treatment.”<sup>18</sup> As in most rational basis cases, the government wins by a minimal showing that the law in question is rationally related to further a legitimate purpose, which in this case would be to control aesthetics and protect the safety of motorists.

#### IV. CONSIDERATIONS AND RECOMMENDATIONS

##### A. GENERAL VALIDITY OF ORDINANCE

As mentioned in *Metromedia*, the “most effective way to eliminate the problems raised by electronic signs containing commercial advertising is to prohibit them.” *See Metromedia*, 453 U.S. at 508, 101 S. Ct. 2882. Aside from that, an ordinance that is content-neutral and regulates only time, place and manner is usually upheld. The proposed ordinance has several time, place and manner restrictions regarding the technical aspects of ECC signs that would be considered content neutral; including the zoning areas the signs would be permitted in and the minimum distance allowed between ECC signs.

The ordinance would appear to be on stronger ground from challenges that arise on the basis of a constitutional violation of establishment or equal protection clauses because the case law provided that churches are different from other secular groups and can be regulated differently. Also, since non-commercial speech has been afforded stronger constitutional protections than commercial speech, the ordinance would be most likely upheld in that regard as well.

Thus, from the case law research that was conducted, the biggest concern with the constitutional validity of the proposed ordinance is whether the language allowing churches to change the sign content more often than all other uses would be construed by the courts to be a content-based regulation because it is allowing one speaker more of an opportunity to provide content than others. One of distinguishing factors from this ordinance is that the ordinance specifically regulates the ‘change time’, and does not provide a blanket exemption to churches. In the researched cases where an ordinance was held unconstitutional as not being content-neutral, generally there was a wide exemption for a variety of uses such as government buildings, warning signs, churches, time, date and temperature, etc. By making these exemptions, many courts construed this as content regulation and held the ordinance unconstitutional.

##### B. PRACTICAL CONSIDERATIONS

- As a practical consideration to the proposed amendment to the Ormond Beach *Land Development Code*, language should be included to be extremely explicit about including a severability clause so if one part is found to be unconstitutional, the rest of the ordinance should be unaffected by it.<sup>19</sup>

- Other practical considerations include providing a substitution clause, which currently exist under § 3-45 of the *LDC*.
- If the ordinance is challenged, not waiving any defenses such as mootness, ripeness, or standing.<sup>20</sup>
- Provide language more inclusive such as “places of worship”.
- Provide a time limit for permit approval or denial (such as 45 days) to avoid challenges that regulation constitutes a “prior restraint” because building officials have no deadlines to decide upon the application.

### C. HYPOTHETICAL VIOLATIONS/ ENFORCEMENT SITUATIONS

Some scenarios to be considered that could complicate enforcement of potential non-conforming uses or pose legal challenges should include:

- A potential constitutional challenge arising where an ECC sign permit is issued to a place of worship, and subsequently commercial speech is integrated into use; albeit a minority of the time (for example 20% of the time). Conceivably, an argument may be made that the City ordinance is attempting to regulate speech content by enforcing onsite noncommercial speech versus off-site commercial speech through the same vehicle. The facts would be reversed, but very similar to the case of *Metromedia*.
- Potential challenge from businesses that claim unequal application of constitutional protection and contradiction with the substitution clause of § 3-45 because businesses would be limited to content change “no more than once every twelve hours”, whereas the substitution clause allows businesses to change messages of non-commercial speech as “frequently as desired”. Also, churches are allowed to change non-commercial speech messages more frequently under the new ordinance.
- Potential difficulties may arise when enforcing compliance with “change time” requirements, and assuring that enforcement efforts are equally applied as to each business or places of worship.

### ENDNOTES

<sup>1</sup> *City of Ladue v. Gilleo*, 512 U.S. 43, 48, 114 S. Ct. 2038, 129 L.Ed 2d 36 (1994).

<sup>2</sup> *National Advertising Company v. City of Orange*, 861 F. 2d 246 (9<sup>th</sup> cir. 1988) (at 248).

<sup>3</sup> *Richland Bookmark Inc. v. Nichols*, 137 F. 3d 435, 440 (6<sup>th</sup> Cir. 1998).

<sup>4</sup> *Ward v. Rock Against Racism*, 491 U.S. 781,791, 109 S. Ct. (1984).

<sup>5</sup> *Hill v. Colorado*, 530 U. S. 703,767, 120 S. Ct. 2480, 147 L.Ed 2d 597 (2000).

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<sup>6</sup> *Cleveland Board of Realtors v. City of Euclid*, 88 F. 3d 382, 386 (6<sup>th</sup> Cir. 1996).

<sup>7</sup> *Id.* at 385.

<sup>8</sup> *Rubin v. Coors Brewing Co.*, 514 U.S. 476, 115 S. Ct. 1585, 131 L.Ed 2d 800 (1981).

<sup>9</sup> *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 507-08, 101 S.Ct. 2882, 69 L.Ed 2d 800 (1981).

<sup>10</sup> *Boos v. Barry*, 485 U.S. 312, 321-22, 108 S.Ct. 1157, 99 L.Ed 2d 333 (1988).

<sup>11</sup> *North Olmsted Chamber of Commerce v. City of North Olmsted*, 86 F. supp. 2d 755, 767 (2000).

<sup>12</sup> *King Enterprises, Inc. v. Thomas Township*, 215 F. Supp. 2d 891 (2002).

<sup>13</sup> *Lamar Advertising Associates of East Florida, Ltd. V. City of Daytona Beach*, 450 So. 2d 1145 (1984), citing *Metromedia, Inc. v. City of San Diego*.

<sup>14</sup> *County of Allegheny v. American Civil Liberties Union*, 492 U.S. 573, 590, 109 S. Ct. 3086, 3099, 106 L. Ed. 2d 472 (1989).

<sup>15</sup> *Kid's Care, Inc. v. State of Alabama Dept. of Human Resources*, Not Reported in *F. Supp. 2d* (2001). 2001 WL 35827965, United States District Court, M.D. Alabama, Northern Division.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Meredith v. City of Lincoln City*, 2008 WL 4375591, United States District Court, D. Oregon, [Not Reported in *F. Supp. 2d* (2008)].

<sup>19</sup> "A Local Government Attorney's Guide to Successfully Regulating First Amendment Land Uses", by Susan Trevarthen, 32<sup>nd</sup> Annual Local Government Law in Florida Seminar (2009).

<sup>20</sup> *Id.*

410 F.3d 1250  
United States Court of Appeals,  
Eleventh Circuit.

**SOLANTIC, LLC, a foreign limited liability  
company, Plaintiff-Appellant,**

**v.**

**CITY OF NEPTUNE BEACH, a municipality,  
Enforcement Board of the City of Neptune  
Beach, its local administrative  
governmental body, Defendants-Appellees.**

No. 04-12758. May 31, 2005.

**Synopsis**

**Background:** Business, whose electronic variable message center (EVMC) sign was found to violate city sign code, brought action in state court against city, seeking preliminary and permanent injunctive relief enjoining enforcement of the sign code on ground that it violated the First Amendment. After city removed the case, the United States District Court for the Middle District of Florida, No. 04-00040-CV-J-25-MMH, Henry Lee Adams, Jr., J., denied preliminary injunction, upheld the sign code and business took an interlocutory appeal.

**Holdings:** The Court of Appeals, Marcus, Circuit Judge, held that:

1 sign code was a content-based restriction on speech;

2 sign code was facially unconstitutional since it was not narrowly tailored to accomplish the city's asserted interests in aesthetics and traffic safety, and since those interests were not "compelling;" and

3 absence of any time limits rendered city's sign code's permitting requirement unconstitutional.

Reversed and remanded.

**West Headnotes (10)**

**1 Constitutional Law**—Narrow Tailoring Requirement; Relationship to Governmental Interest

If an ordinance is a content-neutral time, place, and manner restriction on speech, it is subject to intermediate scrutiny under First Amendment; ordinance must not restrict speech substantially more than necessary to further a legitimate government interest, and it must leave open adequate alternative channels of communication. U.S.C.A. Const.Amend. 1.

Cases that cite this headnote

**2 Constitutional Law**—Strict or Exacting Scrutiny; Compelling Interest Test

If an ordinance restricting speech is content based, it is subject to strict scrutiny, meaning that it is constitutional under First Amendment only if it constitutes the least restrictive means of advancing a compelling government interest. U.S.C.A. Const.Amend. 1.

Cases that cite this headnote

**3 Constitutional Law**—Content-Neutral Regulations or Restrictions  
**Constitutional Law**—Content-Based Regulations or Restrictions

As a general rule, laws that by their terms distinguish favored speech from disfavored speech on the basis of the ideas or views expressed are content based for purposes of First Amendment analysis; on the other hand, a content-neutral ordinance is one that places no restrictions on either a particular viewpoint or any subject matter that may be discussed. U.S.C.A. Const.Amend. 1.

Cases that cite this headnote

**4 Constitutional Law**—Signs

City's sign code was a content-based restriction on speech for purposes of First Amendment analysis since it exempted from its regulations some categories of signs, based on their content, but not others. U.S.C.A. Const.Amend. 1.

Cases that cite this headnote

*Content-based / Commercial Speech*

5 Constitutional Law ⇌ Signs

City's sign code, which was a content-based restriction on speech for purposes of First Amendment analysis since it exempted from its regulations some categories of signs, based on their content, but not others, was facially unconstitutional since it was not narrowly tailored to accomplish the city's asserted interests in aesthetics and traffic safety, and since those interests were not "compelling." U.S.C.A. Const.Amend. 1.

Cases that cite this headnote

6 Statutes ⇌ Effect of Partial Invalidity

Florida law favors severance of the invalid portions of a law from the valid ones where possible.

Cases that cite this headnote

7 Constitutional Law ⇌ Time Limits for Grant or Denial

Whether a licensing ordinance which constitutes a prior restraint on speech must contain a time limit within which to make licensing decisions depends on whether the ordinance is content based or content neutral.

Cases that cite this headnote

8 Constitutional Law ⇌ Time Limits for Grant or Denial

To satisfy the time-limit requirement under First Amendment, a licensing ordinance which constitutes a prior restraint on speech must ensure that permitting decisions are made within a specified time period. U.S.C.A. Const.Amend. 1.

Cases that cite this headnote

9 Constitutional Law ⇌ Signs

Absence of any time limits rendered city's sign

code's permitting requirement unconstitutional under First Amendment where sign code was a content-based restriction on speech. U.S.C.A. Const.Amend. 1.

Cases that cite this headnote

10 Federal Courts ⇌ On Separate Appeal from Interlocutory Judgment or Order

Court of Appeals had jurisdiction, on an appeal from the district court's denial of a preliminary injunction, to reach the merits and strike down city's sign code as unconstitutional where there were no relevant facts at issue and the questions raised were purely legal ones. 28 U.S.C.A. § 1292(a)(1).

Cases that cite this headnote

Attorneys and Law Firms

\*1251 Cynthia L. Hain, Lawrence Hamilton, II, Michael G. Tanner, Holland & Knight, Jacksonville, FL, Stephen H. Grimes, Holland & Knight, Tallahassee, FL, for Plaintiff-Appellant. Ernest H. Kohlmyer, III, Bell, Leeper & Roper, PA, Orlando, FL, Christopher A. White, Ponte Vedra, FL, for Defendants-Appellees.

Appeal from the United States District Court for the Middle District of Florida.

Before MARCUS, FAY and SILER\*, Circuit Judges.

Opinion

\*1252 MARCUS, Circuit Judge:

At issue in this case is the constitutionality of the City of Neptune Beach's sign code. Appellant Solantic, LLC ("Solantic") argues that the sign code violates the First Amendment in at least two ways: first, it exempts from regulation certain categories of signs based on their content, without compelling justification for the disparate treatment; and second, it contains no time limits for permitting decisions. We agree with Solantic, and hold the sign code unconstitutional on both grounds.

I.

18 Fla. L. Weekly Fed. C 575

Solantic is a business operating emergency medical care facilities in various locations, including the City of Neptune Beach (“the City” or “Neptune Beach”). In April 2003, Solantic installed in front of its Neptune Beach facility a large “Electronic Variable Message Center” (EVMC) sign. A videotape showing the sign was viewed by the district court and is part of the record. The district court describes the EVMC sign as sitting in the middle of a pole, approximately 10 to 12 feet above the ground, and situated below a larger blue sign displaying Solantic’s business name.

Solantic states that the EVMC sign “was used for, and is intended to be used for, commercial messages, i.e. to identify Solantic’s business and to convey information about its products and services, and for noncommercial messages, i.e. to promote social and health ideas and causes.” Br. at 4. As the City describes it, Solantic’s EVMC sign conveyed “electronically lit messages that flashed, blinked and scrolled across the surface of the sign.” Br. at 1.

Prior to erecting the sign, Solantic obtained an electrical permit from the City to operate the sign. Solantic did not, however, submit to the City a sign application, despite the sign code’s general requirement that no sign be erected without first obtaining a permit.

Consequently, on April 28, 2003, the City sent Solantic a notice of violations of various sections of the sign code, including § 27-579 (requiring a permit to erect a sign); § 27-581(4) (prohibiting signs with any “visible movement achieved by electrical, electronic or mechanical means, except for traditional barber poles”); § 27-581(5) (prohibiting signs “with the optical illusion of movement by means of a design that presents a pattern capable of giving the illusion of motion or changing of copy”); and § 27-581(6) (prohibiting signs “with lights or illuminations that flash, move, rotate, scintillate, blink, flicker, or vary intensity or color except for time-temperature-date signs”). The notice also informed Solantic that violations of the sign code are punishable by fines of up to \$250 a day, or \$500 a day for repeat violations.

The City’s Code Enforcement Board (“the Board”) conducted a hearing on June 11, 2003, and determined that Solantic’s sign violated the sign code. The Board subsequently directed Solantic, in an undated order, to cure the violation by taking four steps: (1) obtaining a sign permit; (2) modifying the sign to change copy no more than once a day; (3) modifying the sign so that its copy would not blink, flash, or scroll, but rather would permanently glow; and (4) controlling the sign only from the premises on which it was located.

Following the Board’s June decision, Solantic applied for a sign permit. The district court concluded, however, that

Solantic \*1253 appeared to have continued to operate its sign without modifying it in accordance with the City’s order.

Thus, on September 24, 2003, the City sent Solantic another notice of alleged violation of the same sections of the sign code. The Board held another hearing on October 8, 2003, after which it issued another undated order reiterating that Solantic was in violation of the sign code in three ways: by allowing the sign to change copy more than once a day; by allowing the sign to blink, flash, or scroll alternating messages; and by not controlling the sign solely from the property on which it was located. The Board thus ordered that Solantic be assessed fines totaling \$75 per day (\$25 for each of the three violations), running from September 3, 2003 (“the date of discovery or verification or violation(s)”) until all violations were cured.

On October 28, 2003, Solantic filed an application for appeal from both the June and the October decisions of the Board. The City denied the appeal on November 3, 2003. Solantic then brought suit in the Circuit Court for the Fourth Judicial Circuit in Duval County, Florida, on January 5, 2004. Soon thereafter, the City removed the case to the United States District Court for the Middle District of Florida.

In its second amended complaint (the operative pleading for purposes of this appeal), filed March 9, 2004, Solantic argued that the sign code violated the First Amendment in a variety of ways, including as a content-based regulation of speech and as an unlawful prior restraint.<sup>2</sup> Solantic sought declaratory relief, in the form of a judgment declaring the City’s sign code to be unconstitutional and unenforceable against Solantic, and absolving Solantic of any liability for accrued fines based on alleged violations of the sign code. In addition, Solantic sought preliminary and permanent injunctive relief enjoining enforcement of the sign code.

On March 10, 2004, Solantic moved for a preliminary injunction. The district court held a provisional hearing on April 2, 2004, and ruled on May 3, 2004. The district court denied the preliminary injunction solely on the ground that Solantic had not shown a likelihood of success on the merits, without reaching the other relevant factors.<sup>3</sup> The court reasoned that although the sign code’s permit requirement was a prior restraint on speech, it was a content-neutral time, place, and manner restriction that did not place excessive discretion in the hands of licensing officials, and was therefore constitutional.

It is from this order that Solantic took an interlocutory appeal, pursuant to 28 U.S.C. § 1292(a)(1).

II.

A.

The decision to grant or deny a preliminary injunction “is within the sound discretion of the district court and will not be \*1254 disturbed absent a clear abuse of discretion.” *Palmer v. Braun*, 287 F.3d 1325, 1329 (11th Cir.2002); *see also, e.g., Horton*, 272 F.3d at 1326; *Siegel v. LePore*, 234 F.3d 1163, 1178 (11th Cir.2000). We review the district court’s findings of fact for clear error, and its application of the law *de novo*, “premised on the understanding that ‘[a]pplication of an improper legal standard ... is never within a district court’s discretion.’ ” *Johnson & Johnson*, 299 F.3d at 1246 (quoting *Am. Bd. of Psychiatry & Neurology, Inc. v. Johnson-Powell*, 129 F.3d 1, 3 (1st Cir.1997)); *see also Horton*, 272 F.3d at 1326.4

Solantic argues that the district court abused its discretion in denying preliminary injunctive relief, since Neptune Beach’s sign code violates the First Amendment in three ways: first, the enumerated exemptions from its regulations render it an unconstitutional content-based restriction on speech; second, its permit requirement is an unlawful prior restraint; and third, it is unconstitutionally vague as applied to Solantic. Because we agree with Solantic as to the first two issues, we need not and do not reach the third.

In determining whether the district court correctly concluded that Solantic was unlikely to succeed on the merits, we review the relevant provisions of the Neptune Beach sign code in some detail. The sign code regulates all signs erected within the City, other than those that are explicitly exempted from its regulations. *See* § 27-572 (“This article exempts certain signs from these regulations ...”); § 27-573 (“This article applies to all signs, and other advertising devices, that are constructed, erected, operated, used, maintained, enlarged, illuminated or substantially altered within the city.”); § 27-580 (enumerating exempt signs).

At the outset, the sign code contains a number of findings of fact, pertaining to the safety and aesthetic harms that signs may cause. These findings state:

- (1) The manner of the erection, location and maintenance of signs affects the public health, safety, morals, and welfare of the people of this community:
- (2) The safety of motorists, cyclists, pedestrians, [and] other users of the public streets is affected by the number, size, location, lighting and movement of signs that divert the attention of drivers.

(3) The size and location of signs may, if uncontrolled, constitute an obstacle to effective fire-fighting techniques.

(4) The construction, erection and maintenance of large signs suspended from or placed on the tops of buildings, walls or other structures may constitute a direct danger to pedestrian and vehicular traffic below, especially during periods of strong winds.

(5) Uncontrolled and unlimited signs may degrade the aesthetic attractiveness of the natural and manmade attributes of the community and thereby undermine the economic value \*1255 of tourism, visitation and permanent economic growth.

§ 27-574.

In light of these findings of fact, the sign code lays out the “intentions and purposes of the city council” in enacting it:

(1) To create a comprehensive and balanced system of sign control that accommodates both the need for a well-maintained, safe and attractive community, and the need for effective business identification, advertising and communication.

(2) To permit signs that are:

- a. Compatible with their surroundings.
- b. Designed, constructed, installed and maintained in a manner which does not endanger public safety or unduly distract motorists.
- c. Appropriate to the type of activity to which they pertain.
- d. Large enough to convey sufficient information about particular property, the products or services available on the property, or the activities conducted on the property, and small enough to satisfy the needs for regulation.

e. Reflective of the identity and creativity of individual occupants.

(3) To promote the economic health of the community through increased tourism and property values.

§ 27-575.

A “sign,” as broadly defined by the code, “means any device which is used to announce, direct attention to, identify, advertise or otherwise communicate information or make anything known. The term shall exclude architectural features or art not intended to communicate

Signs that are regulated by the sign code are subject to a variety of regulations, two of which are particularly important here. First, § 27-579 requires that a permit be obtained before a sign may be erected.<sup>5</sup> Second, § 27-581 establishes numerous limitations on the form that signs may take, including that they may not contain any visible movement, § 27-581(4); they may not create the optical illusion of movement, including by changing copy, § 27-581(5); and they may not contain lights or illuminations that flash, move, rotate, scintillate, blink, flicker, or vary in intensity or color, except for time-temperature-date signs, § 27-581(6), among other things.

However, the sign code expressly exempts from these regulations certain enumerated categories of signs. Two provisions <sup>\*1256</sup> in particular are significant here. First, § 27-580 provides:

The following types of signs are exempt from these regulations, provided they are not placed or constructed so as to create a hazard of any kind:<sup>6</sup>

<sup>\*1257</sup> (1) Signs that are not designed or located so as to be visible from any street or adjoining property.

(2) Signs of two (2) square feet or less and that include no letters, symbols, logos or designs in excess of two (2) inches in vertical or horizontal dimension, provided that such sign, or combination of such signs, does not constitute a sign prohibited by this Code.

(3) Flags and insignia of any government, religious, charitable, fraternal, or other organization, provided that:

a. No more than three (3) such flags or insignia are displayed on any one parcel of land; and

b. The vertical measurement of any flag does not exceed twenty (20) percent of the total height of the flag pole, or in the absence of a flag pole, twenty (20) percent of the distance from the top of the flag or insignia to the ground.

(4) Signs erected by, on behalf of, or pursuant to authorization of a governmental body, including, but not limited to the following: legal notices, identification signs, and informational, regulatory, or directional signs;

(5) Integral decorative or architectural features of buildings, provided that such features do not contain letters, trademarks, moving parts or lights.

(6) Signs on private premises directing and guiding traffic and parking on private property, but bearing no advertising matter;

(7) Signs painted or attached to trucks or other vehicles for identification purposes.

(8) Official signs of a noncommercial nature erected by public utilities, provided that such signs do not exceed three (3) feet in height and the sign area does not exceed one-half (½) square foot in area.

(9) Decorative flags or bunting for a celebration, convention, or commemoration of significance to the entire community when authorized by the city council for a prescribed period of time.

(10) Holiday lights and decorations.

(11) Merchandise displays behind storefront windows so long as no part of the display moves or contains flashing lights.

(12) Memorial signs or tablets, names of buildings and dates of erection when cut into any masonry surface or when constructed of bronze or other incombustible materials and attached to the surface of a building.

(13) Signs incorporated into machinery or equipment by a manufacturer or distributor, which identify or advertise only the product or service dispensed by the machine or equipment, such as signs customarily affixed to vending machines, newspaper racks, telephone booths, and gasoline pumps.

(14) Public warning signs to indicate the dangers of trespassing, swimming, animals, or similar hazards.

(15) Works of art that do not constitute advertising.

(16) Signs carried by a person; and

(17) Religious displays (e.g. nativity scenes).

§ 27-580.

Second, § 27-583(b) exempts only from the sign code's permit requirement a variety of types of temporary signs.<sup>7</sup> Exempt signs include:

(1) On-site for sale/rent/lease signs;

<sup>\*1258</sup> (2) Grand opening signs;

(3) Construction-site identification signs;

- (4) Signs to indicate the existence of a new business or business location;
- (5) On-site signs to announce or advertise such temporary uses as fairs, carnivals, circuses, revivals, sporting events, festivals or any public, charitable, educational or religious event; and
- (6) Election or political campaign related signs.

**B.**

Solantic says that the sign code is a facially unconstitutional content-based restriction on speech, since it exempts from its regulations some categories of signs, based on their content, but not others. Because most (though not all) of the exemptions from the sign code are based on the content rather than the time, place, or manner of the message, we are constrained to agree with Solantic that the sign code discriminates against certain types of speech based on content.

In evaluating the constitutionality of an ordinance restraining or regulating speech, we first inquire whether the ordinance is content neutral. *Burk v. Augusta-Richmond County*, 365 F.3d 1247, 1251 (11th Cir.2004); see also *One World One Family Now v. City of Miami Beach*, 175 F.3d 1282, 1286 (11th Cir.1999) (“It is only if we find the governmental action content neutral that we examine whether the action is a permissible time, place, and manner regulation.”) If the ordinance is a content-neutral time, place, and manner restriction, it is subject to intermediate scrutiny that is, it must not restrict speech substantially more than necessary to further a legitimate government interest, and it must leave open adequate alternative channels of communication. However, if the ordinance is content based, it is subject to strict scrutiny, meaning that it is constitutional only if it constitutes the least restrictive means of advancing a compelling government interest. *Burk*, 365 F.3d at 1251 (citations omitted).

As the Supreme Court has explained:

At the heart of the First Amendment lies the principle that each person should decide for himself or herself the ideas and beliefs deserving of expression, consideration, and adherence. Our political system and cultural life rest upon this ideal. Government action that stifles speech on account of its message, or that requires the utterance of a particular message favored by the Government, contravenes this essential right. Laws of this sort pose the inherent risk that the Government seeks not to advance a legitimate regulatory goal, but to suppress unpopular ideas or information or manipulate the public debate

through coercion rather than persuasion. These restrictions “rais[e] the specter that the Government may effectively drive certain ideas or viewpoints from the marketplace.”

For these reasons, the First Amendment, subject only to narrow and well-understood exceptions, does not countenance governmental control over the content of messages expressed by private individuals. Our precedents thus apply the most exacting scrutiny to regulations that suppress, disadvantage, or impose differential burdens upon speech because of its content ... In contrast, regulations that are unrelated to the content of speech are subject to an intermediate level of scrutiny, because in most cases they pose a less substantial risk of excising certain ideas or viewpoints from the public dialogue.

*Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 641-42, 114 S.Ct. 2445, 129 L.Ed.2d 497 (1994) (citations omitted) (quoting \*1259 *Simon & Schuster, Inc. v. Members of State Crime Victims Bd.*, 502 U.S. 105, 116, 112 S.Ct. 501, 508, 116 L.Ed.2d 476 (1991)); see also *Police Dep’t of the City of Chicago v. Mosley*, 408 U.S. 92, 95, 92 S.Ct. 2286, 33 L.Ed.2d 212 (1972) (“[A]bove all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.”); *R.A.V. v. City of St. Paul*, 505 U.S. 377, 382, 112 S.Ct. 2538, 120 L.Ed.2d 305 (1992) (“Content-based regulations are presumptively invalid.”).

The Supreme Court has articulated and applied various standards for determining whether a law is content based or content neutral. As a general rule, laws that by their terms distinguish favored speech from disfavored speech on the basis of the ideas or views expressed are content based.” *Turner*, 512 U.S. at 643, 114 S.Ct. 2445. On the other hand, a content-neutral ordinance is one that “places no restrictions on either a particular viewpoint or any subject matter that may be discussed.” *Hill v. Colorado*, 530 U.S. 703, 723, 120 S.Ct. 2480, 147 L.Ed.2d 597 (2000); see also *Burk*, 365 F.3d at 1254 (“A content-neutral ordinance applies equally to all and not just to those with a particular message or subject matter in mind.”);<sup>8</sup>

4 In determining whether the Neptune Beach sign code’s series of enumerated exemptions render it content based, we are guided by the Supreme Court’s plurality opinion in *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 101 S.Ct. 2882, 69 L.Ed.2d 800 (1981), and by our own opinion in *Dimmitt v. City of Clearwater*, 985 F.2d 1565 (11th Cir.1993).<sup>9</sup> In *Metromedia*, \*1260 the Court addressed the constitutionality of a San Diego ordinance that banned outdoor signs generally (to promote traffic safety and aesthetics), but exempted from the ban certain categories of signs.

A majority of the Court agreed that the ordinance was constitutional insofar as it banned offsite commercial advertising while continuing to allow onsite commercial advertising, since the city could permissibly distinguish between types of *commercial* speech. *Metromedia*, 453 U.S. at 507-12, 101 S.Ct. 2882 (plurality opinion); *id.* at 541, 101 S.Ct. 2882 (Stevens, J., dissenting in part). However, both the four-Justice plurality opinion written by Justice White and the two-Justice concurrence written by Justice Brennan concluded that the ordinance's regulation of *noncommercial* advertising was unconstitutional—although for wholly different reasons. The plurality found the ordinance unconstitutional in two ways. First, the ordinance continued to allow on-site commercial advertising, while banning on-site noncommercial advertising, which impermissibly favored commercial over noncommercial speech. *Id.* at 512-13, 101 S.Ct. 2882 (plurality opinion). Second—and most relevant to Solantic's case—the plurality concluded that the ordinance's series of exemptions from its general sign ban amounted to impermissible content-based discrimination among types of noncommercial speech. *Id.* at 514, 101 S.Ct. 2882.

The ordinance exempted religious symbols, commemorative plaques of recognized historical societies and organizations, signs carrying news items or telling the time or temperature, signs erected in discharge of any governmental function, and temporary political campaign signs. By exempting these categories of signs, the plurality reasoned, the ordinance “distinguishes in several ways between permissible and impermissible §1261 signs at a particular location by reference to their content.” *Id.* at 516, 101 S.Ct. 2882. The plurality explained that “[w]ith respect to noncommercial speech, the city may not choose the appropriate subjects for public discourse: ‘To allow a government the choice of permissible subjects for public debate would be to allow that government control over the search for political truth.’” *Id.* at 515, 101 S.Ct. 2882 (quoting *Consol. Edison Co. of N.Y. v. Pub. Serv. Comm'n of N.Y.*, 447 U.S. 530, 538, 100 S.Ct. 2326, 65 L.Ed.2d 319 (1980)). It thus found the ordinance invalid.

Justice Brennan, writing for himself and Justice Blackmun, also concluded that the ordinance was unconstitutional, but not because of its exemptions. Instead, the concurrence analyzed the ordinance as a total ban on signs, explaining that, in contrast to the plurality “my view is that the *practical* effect of the San Diego ordinance is to eliminate the billboard as an effective medium of communication for the speaker who wants to express the sorts of messages [not exempted], and that the exceptions do not alter the overall character of the ban.” *Id.* at 525-26, 101 S.Ct. 2882 (Brennan, J., concurring in the judgment). Accordingly, the concurrence applied “the tests this Court has developed to analyze content-neutral

prohibitions of particular media of communication” to conclude that the ban was invalid. *Id.* at 526-27, 101 S.Ct. 2882.

Because the *Metromedia* plurality's constitutional rationale did not garner the support of a majority, it has no binding application to Solantic's case.<sup>10</sup> However, we subsequently adopted the same reasoning in *Dimmitt v. City of Clearwater*. In *Dimmitt*, a panel of this Court addressed §1262 an ordinance very similar to Neptune Beach's, striking it down as a facially unconstitutional content-based restriction on speech. The Clearwater ordinance required a permit to erect or alter a sign, but exempted from this requirement certain types of signs, including: flags representing a governmental unit or body (limited to two per property), public signs posted by the government, temporary political signs, real estate signs, construction signs, temporary window advertisements, occupant identification signs, street address signs, warning signs, directional signs, memorial signs, signs commemorating public service, stadium signs, certain signs displayed on vehicles, signs commemorating holidays, menus posted outside restaurants, yard sale signs, and signs customarily attached to fixtures such as newspaper machines and public telephones.

The plaintiff—an automobile dealership seeking to display twenty-three American flags—brought facial and as-applied challenges to the ordinance. Focusing on the fact that the flag exemption applied only to flags of a governmental body, we found that the ordinance “cannot be treated as a content neutral regulation,” since “the display of the American flag or that of the State of Florida would be exempted from the permit process while a flag displaying the Greenpeace logo or a union affiliation would require a permit.” *Dimmitt*, 985 F.2d at 1569.

After finding that the ordinance was content based, we considered whether it was nevertheless justified by a compelling state interest, concluding that the City's asserted interest in aesthetics and traffic safety was “not a compelling state interest of the sort required to justify content based regulation of noncommercial speech.” *Id.* at 1569-70. Finally, we concluded that even if aesthetics and traffic safety were compelling governmental interests, the ordinance was not narrowly tailored to achieve those ends, since “these asserted interests clearly are not served by the distinction between government and other types of flags.” *Id.* at 1570. We explained that “a municipality may not accomplish its purposes in promoting aesthetics and traffic safety by restricting speech depending upon the message expressed.” *Id.* Thus, we held “that by limiting the permit exemption to government flags, the City has unconstitutionally differentiated between speech based upon its content.” *Id.*<sup>11</sup>

§1263 There is little to distinguish the Neptune Beach sign code from the ordinances at issue in *Dimmitt* and *Metromedia*.<sup>12</sup> Like the exemptions from the Clearwater

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and San Diego sign regulations, the exemptions contained in Neptune Beach's sign code—both § 27-580's exemptions from all regulations, and § 27-583(b)'s exemptions \*1264 from the permit requirement—are largely content based.<sup>13</sup>

Not all of the sign code's exemptions are content based. For example, exemption (1) for signs not visible from any street or adjoining property, and exemption (16) for signs carried by a person, are restrictions on sign placement, not content. Cf. *Members of the City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 811, 104 S.Ct. 2118, 80 L.Ed.2d 772 (1984) (upholding a Los Angeles ordinance prohibiting posting of signs on public property, reasoning that “[t]he private citizen's interest in controlling the use of his own property justifies the disparate treatment” of public and private property). Similarly, exemption (2) for signs smaller than two square feet and containing no letters or symbols larger than two inches pertains only to form, not to content.

However, many of the sign code's exemptions are plainly content based. For example, exemption (3) applies to flags and insignia only of a “government, religious, charitable, fraternal, or other organization.” Thus, a government or religious organization seeking to fly its flag may do so freely, whereas an individual seeking to fly a flag bearing an emblem of his or her own choosing would have to apply for a permit to do so, and would have to abide by all of the restrictions enumerated in § 27-581. For example, the government tax collector's office could display a flag reading, “Stop Tax Evasion,” whereas an individual homeowner could not display a flag saying, “Stop Domestic Violence,” since § 27-581(13) prohibits the use of the word “stop” in any nonexempt, nongovernmental sign.

Exemption (4) is also content based, permitting governmental identification signs and informational signs to be freely posted, but requiring an individual or private organization who wishes to post a sign identifying his office or home, for example, to obtain a permit to do so. Moreover, pursuant to § 27-581, an exempt governmental sign could contain features such as moving parts or flashing lights, whereas the sign code's general prohibitions on such features, see § 27-581(4), (6), bar the use of these devices by nonexempt individual and other private signs. Thus, the City government could display a ten-foot-tall sign identifying “City Hall” in blinking lights, whereas § 27-581(6) would prohibit a homeowner from posting even a modestly sized sign using flashing lights to identify “The Smith Residence,” for example.

Exemption (6) permits signs on private property to be posted freely if they are for the purpose of “guiding traffic and parking” on the property. Thus, without a permit, a homeowner could post a sign reading, “Parking in Back”

and bearing a flashing neon arrow pointing toward the rear of the property, but not a traditional yard sign—which is recognized as “a venerable means of communication” that “may have no practical substitute,” *Ladue*, 512 U.S. at 54, 57, 114 S.Ct. 2038—with a political message like “Support Our Troops” or “Bring Our Troops Home.”

Indeed, the only political signs exempt from any regulation are those “related to elections, political campaigns, or a referendum,” \*1265 and they are exempt *only* from the sign code's permit requirement, are limited to four square feet in size in residential areas, and may not be displayed for more than fourteen days prior to and two days after an election. § 27-583(b)(6). Thus, while a “Re-Elect Mayor Smith” yard sign could be posted for a maximum of sixteen days, the illuminated parking sign may remain indefinitely. In other words, a large neon arrow receives more favorable treatment under the sign code than a political sign. Moreover, electioneering signs are the only form of political expression spared from the sign code's permit requirement. To express any political message not directly related to an upcoming election, a would-be speaker must comply with the sign code's permitting rules and all of its other restrictions. Thus, a sign espousing a viewpoint on a salient political issue—for example, “Reform Medicare,” “Save Social Security,” “Abolish the Death Penalty,” or “Overturn *Roe v. Wade*”—would be subject to a permitting process and to numerous restrictions on form and placement from which other signs—such as those “guiding traffic and parking”—are exempt.

Exemption (10) allows holiday lights and decorations to be displayed freely. Thus, a homeowner could plant a giant illuminated Santa Claus or a jack-o-lantern in his front yard, but not a figure of, say, the President or the Mayor. An illuminated reindeer would be permissible, whereas a less festive animal such as a dog would not. Moreover, an array of multicolored, flashing holiday lights could cover a homeowner's roof year-round, whereas a simple political-campaign sign must, under § 27-583(6), be posted no more than two weeks before the election and removed within two days after.

Exemption (12) provides that certain “memorial” signs on buildings may be freely erected. A comparable sign identifying living occupants, however—such as a plaque reading, “The Brown Family”—could be displayed only after obtaining a permit.

Exemption (13) permits signs incorporated into machinery that advertise the service provided by the machine, but not comparable signs advertising the manufacturer or operator's favored causes, for example. Thus, a sign reading, “Mow Your Lawn With A John Deere,” may receive more protection than one that says, “Support Your Local Public Schools” or “Support Your

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Local Police.”

Exemption (17) covers “[r]eligious displays (e.g. nativity scenes).” Thus, a homeowner could display year-round, without a permit, a manger scene stretching across his entire front yard and bearing a sign reading, “Worship Our Savior.” The scene could even include all of the features off-limits to nonexempt signs, such as moving parts, flashing lights, music, and even smoke. While that homeowner is free to employ limitless quantities of religiously themed figures, his neighbor could not freely display even a small, silent, stationary statue of the President, the Mayor, or any other secular figure, since such a display does not fall within any of the sign code’s enumerated exemptions. Nor could he put up, for example, an image of a soldier bearing the sign, “Support Our Troops” or “Bring Our Troops Home.” Indeed, even to erect either sign alone, without the soldier figure, would require a permit because of the nature of the message.

Even those exemptions that favor certain speech based on the *speaker*, rather than the content of the message—such as exemption (8) for “[o]fficial signs of a noncommercial nature erected by public utilities,” and exemption (4) for signs “erected by, or on behalf of, or pursuant to the authorization of a governmental body”—are content based. Under these exemptions, \*1266 public utilities and government bodies may freely erect signs expressing their political preferences, their positions on public policy matters, and, indeed, their chosen messages on virtually any subject. Thus, while a public utility could post a sign proclaiming, for example, “Choose Electric Power,” an individual homeowner or a private business could not display a sign reading, “Conserve Electricity: Use Solar Power.” Similarly, while the city council could paper the entire City of Neptune Beach with signs advancing its agenda—for example, “Support School Vouchers,” or “Enlist in the National Guard”—an individual resident could not freely post even a single yard sign advocating the opposing position—for example, “Oppose School Vouchers,” or “Abolish the National Guard.”

The Supreme Court has “frequently condemned such discrimination among different users of the same medium for expression,” which is another form of content-based speech regulation. *Mosley*, 408 U.S. at 96, 92 S.Ct. 2286; see also *First Nat’l Bank of Boston v. Bellotti*, 435 U.S. 765, 784-85, 98 S.Ct. 1407, 55 L.Ed.2d 707 (1978) (“In the realm of protected speech, the legislature is constitutionally disqualified from dictating the subjects about which persons may speak *and the speakers who may address a public issue.*” (emphasis added)). Cf. *Ackerley Communications of Mass., Inc. v. City of Somerville*, 878 F.2d 513, 518 (1st Cir.1989) (striking down a sign ordinance whose “grandfather” clause allowed certain speakers to use nonconforming signs,

observing that “[e]ven if a complete ban on nonconforming signs would be permissible, we must consider carefully the government’s decision to pick and choose among the speakers permitted to use such signs”). The sign code exemptions that pick and choose the *speakers* entitled to preferential treatment are no less content based than those that select among subjects or messages.

Moreover, even insofar as § 27-581 simply allows some types of messages to be displayed in a more prominent manner than others—for example, using flashing lights or moving parts—it constitutes content-based regulation of speech. See *Café Erotica of Fla., Inc. v. St. John’s County*, 360 F.3d 1274, 1289 (11th Cir.2004) (holding that limiting signs displaying political messages to a smaller size than signs displaying other types of messages constituted content discrimination); *Whitton v. City of Gladstone*, 54 F.3d 1400, 1410 (8th Cir.1995) (holding that prohibiting external illumination of political signs while allowing it for other signs was an unconstitutional content-based restriction, since “the message on the sign determines whether or not it may be externally illuminated”).

In short, because some types of signs are extensively regulated while others are exempt from regulation based on the nature of the messages they seek to convey, the sign code is undeniably a content-based restriction on speech.<sup>14</sup>

\*1267 5 Accordingly, our second inquiry is whether the sign code survives strict scrutiny. A content-based restriction on speech must be “necessary to serve a compelling state interest” and “narrowly drawn to achieve that end.” *Perry Educational Ass’n v. Perry Local Educators Ass’n*, 460 U.S. 37, 45, 103 S.Ct. 948, 74 L.Ed.2d 794 (1983). The Neptune Beach sign code fails both aspects of this requirement: the sign code is not narrowly tailored to accomplish the City’s asserted interests in aesthetics and traffic safety, nor has our case law recognized those interests as “compelling.”

Even if we were to assume that Neptune Beach’s proffered interests in aesthetics or traffic safety were adequate justification for content-based sign regulations, the sign code cannot withstand strict scrutiny because it is not narrowly drawn to accomplish those ends. The problem is that the ordinance recites those interests only at the highest order of abstraction, without ever explaining how they are served by the sign code’s regulations generally, much less by its content-based exemptions from those regulations. In *Dimmitt*, we noted that even if the government’s interest in aesthetics and traffic safety could be sufficient justification for content-based regulation of signs, those interests “clearly are not served by the *distinction* between government and other types of flags; therefore, the regulation is not ‘narrowly

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drawn' to achieve its asserted end." *Dimmitt*, 985 F.2d at 1570 (emphasis added) (quoting *Perry*, 460 U.S. at 45, 103 S.Ct. 948); see also, e.g., *Gilleo*, 986 F.2d at 1184 (holding that an ordinance was not narrowly drawn since it was not the "least restrictive alternative available").

The same is true here—the sign code recites only the general purposes of aesthetics and traffic safety, offering no reason for applying its requirements to some types of signs but not others. As to traffic safety, the ordinance states that motorists' safety "is affected by the number, size, location, lighting and movement of signs that divert the attention of drivers." § 27-574(2). The sign code therefore permits signs that are "[d]esigned, constructed, installed and maintained in a manner which does not endanger public safety or unduly distract motorists." § 27-575(2). The code does not, however, explain *how* these factors affect motorists' safety, or why a moving or illuminated sign of the permissible variety—for example, a sign depicting a religious figure in flashing lights, which would be permissible under § 27-580(17)'s exemption for "religious displays"—would be any less distracting or hazardous to motorists than a moving or illuminated sign of the impermissible variety—for example, one depicting the President in flashing lights, which falls within no exemption and is therefore categorically barred by § 27-581(5)'s prohibition on signs containing "lights or illuminations that flash." Likewise, a homeowner could not erect a yard sign emitting an audio message saying, "Support Our Troops," since § 27-581(9) generally bans signs that "emit any sound that is intended to attract attention," but the government would be free to erect an equally distracting—and presumably unsafe—sign emitting the audio message, "Support Your City Council," since governmental signs are completely exempt from regulation under § 27-580(4).

Regarding aesthetics, the sign code states that "[u]ncontrolled and unlimited signs may degrade the aesthetic attractiveness <sup>¶1268</sup> of the natural and manmade attributes of the community." § 27-574(5). This provision similarly fails to explain how the sign code's content-based differentiation among categories of signs furthers the City's asserted aesthetic interests. For example, we are unpersuaded that a flag bearing an individual's logo (which is not exempt from regulation), is any less aesthetically pleasing than, say, a flag bearing the logo of a fraternal organization (which is exempt from regulation under § 27-580(3)). Nor is it clear to us that a government-authorized sign reading, "Support Your City Council" in flashing lights (which is exempt from regulation under § 27-580(4)), or a religious sign reading, "Support Your Church" (which is exempt under § 27-580(17)), degrades the City's aesthetic attractiveness any less than a yard sign reading, "Support Our Troops" in flashing lights.

Although the sign code's regulations may generally promote aesthetics and traffic safety, the City has simply failed to demonstrate how these interests are served by the distinction it has drawn in the treatment of exempt and nonexempt categories of signs. Simply put, the sign code's exemptions are not narrowly tailored to accomplish either the City's traffic safety or aesthetic goals.

Moreover, even if the sign code's regulations were narrowly tailored to promote aesthetics and traffic safety—and this codification does no such thing—the plurality opinion in *Metromedia* and our decision in *Dimmitt* have said that these interests are not sufficiently "compelling" to sustain content-based restrictions on signs. In *Metromedia*, the plurality concluded that aesthetics and traffic safety constituted "substantial" but not "compelling" government interests, and thus were insufficient to justify the San Diego ordinance. *Metromedia*, 453 U.S. at 507-08, 101 S.Ct. 2882 (plurality opinion). Subsequently, in *Dimmitt*, we declared that "[t]he deleterious effect of graphic communication upon visual aesthetics and traffic safety ... is not a compelling state interest of the sort required to justify content based regulation of noncommercial speech." *Dimmitt*, 985 F.2d at 1570. Thus, we found the city's interests in aesthetics and traffic safety inadequate to justify exempting certain types of flags but not others from the city's sign permit requirement, *id.* at 1569-70. "As a practical matter," we observed, "only the most extraordinary circumstances will justify regulation of protected expression based on its content." *id.* at 1570.

Applying the *Dimmitt* analysis, we cannot reach a different conclusion in this case. The City has provided no justification, other than its general interests in aesthetics and traffic safety—which are offered only at the highest order of abstraction and applied inconsistently—for exempting certain types of signs but not others. We do not foreclose the possibility that traffic safety may in some circumstances constitute a compelling government interest, but Neptune Beach has not even begun to demonstrate that it rises to that level in this case. Accordingly, we are constrained to conclude that Neptune Beach's sign code is not justified by a compelling government purpose.

6 Because its enumerated exemptions create a content-based scheme of speech regulation that is not narrowly tailored to serve a compelling government purpose, Neptune Beach's sign code necessarily fails to survive strict scrutiny.<sup>15</sup> Moreover, these exemptions are not severable from the remainder of the ordinance; <sup>¶1269</sup> we are therefore required to find the sign code unconstitutional.<sup>16</sup>

C.

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Solantic also says that the sign code is unconstitutional for the wholly independent reason that its failure to impose time limits for permitting decisions makes it an invalid prior restraint on speech. We agree that the absence of any time limits renders the sign code's permitting requirement unconstitutional.

\*1270 7 Whether a licensing ordinance—which constitutes a prior restraint on speech—must contain a time limit within which to make licensing decisions depends on whether the ordinance is content based or content neutral. As we have previously explained, see *Granite State Outdoor Adver., Inc. v. City of St. Petersburg*, 348 F.3d 1278, 1281 (11th Cir.2003), two Supreme Court cases establish the relevant framework.

First, in *Freedman v. Maryland*, 380 U.S. 51, 85 S.Ct. 734, 13 L.Ed.2d 649 (1965), the Court invalidated a state law requiring motion pictures to be licensed prior to their release. The licensing board had discretion to deny licenses for films that were “obscene” or that “tend[ed], in the judgment of the Board, to debase or corrupt morals or incite to crimes.” *Id.* at 52 n. 2, 85 S.Ct. 734. In response to the danger of censorship posed by this ordinance, the Court held that the licensing process was valid only if it contained certain procedural safeguards, which the plurality opinion in *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 110 S.Ct. 596, 107 L.Ed.2d 603 (1990), described in these terms:

(1) any restraint prior to judicial review can be imposed only for a specified brief period during which the status quo must be maintained; (2) expeditious judicial review of that decision must be available; and (3) the censor must bear the burden of going to court to suppress the speech and must bear the burden of proof once in court.

*Id.* at 227, 110 S.Ct. 596. Although the Court was fragmented as to the precise extent of *Freedman*'s applicability in *FW/PBS*, a majority of Justices reaffirmed the continuing validity of the first requirement—strict time limits for licensing decisions. See *id.* at 227-28, 110 S.Ct. 596 (plurality opinion); *id.* at 238, 110 S.Ct. 596 (Brennan, J., concurring in the judgment).<sup>17</sup>

Subsequently, in *Thomas v. Chicago Park District*, 534 U.S. 316, 122 S.Ct. 775, 151 L.Ed.2d 783 (2002), the Court upheld an ordinance requiring a permit before conducting any event involving more than fifty people. The Court distinguished *Freedman*, explaining: “*Freedman* is inapposite here because the licensing scheme at issue here is not subject-matter censorship but content-neutral time, place, and manner regulation of the use of a public forum.” *Id.* at 322, 122 S.Ct. 775. Because the *Thomas* ordinance was content neutral, the Court held

that it was not subject to the *Freedman* requirements, explaining that “[w]e have never required that a content-neutral permit scheme regulating speech in a public forum adhere to the procedural requirements set forth in *Freedman*.” *Id.* However, the Court held that the ordinance was subject to the requirement that it contain “adequate standards to guide the licensing official’s \*1271 discretion and render it subject to effective judicial review.” *Id.* at 323, 122 S.Ct. 775.

Since *Thomas*, we have held that “time limits are not *per se* required when the licensing scheme at issue is content-neutral.” *City of St. Petersburg*, 348 F.3d at 1282 n. 6; see also *Granite State Outdoor Adver., Inc. v. City of Clearwater*, 351 F.3d 1112, 1118 (11th Cir.2003) (“[T]ime limits are required when their lack could result in censorship of certain viewpoints or ideas, but are not categorically required when the permitting scheme is content-neutral.” (emphasis and citation omitted)). We have explained that “whether *Freedman* or *Thomas* controls ... depends on whether the City’s sign ordinance is content-based or content-neutral.” *City of St. Petersburg*, 348 F.3d at 1281. Because Neptune Beach’s sign code is content based, its permitting scheme is subject to *Freedman*’s time-limit requirement. See *Burk*, 365 F.3d at 1255 n. 12 (“A content-based prior restraint must also satisfy the procedural requirements of *Freedman v. Maryland*.” (citation omitted)); see also *Café Erotica*, 360 F.3d at 1282-83 (applying *Freedman*’s time-limit requirement to a sign permit requirement that was facially content neutral, but contained “the potential for content-based decisionmaking,” and finding the requirement satisfied since the ordinance required permit applications to be approved or denied within 14 days of submission).

8 To satisfy the time-limit requirement, an ordinance must “ensure that permitting decisions are made within a specified time period.” *Café Erotica*, 360 F.3d at 1282. In *Café Erotica*, we found this requirement satisfied by a sign permit requirement explicitly providing that licensing decisions had to be made within 14 days. In contrast, “[a]n ordinance that permits public officials to effectively deny an application by sitting on it indefinitely is ... invalid.” since “[t]he opportunity for public officials to delay is another form of discretion.” *Lady J. Lingerie v. City of Jacksonville*, 176 F.3d 1358, 1361-62 (11th Cir.1999). We have repeatedly applied this requirement in the context of licensing schemes for adult businesses, interpreting it as requiring that the ordinance contain a specific provision explicitly limiting the period of time within which licensing officials must make permitting decisions.

Thus, for example, in *Lady J. Lingerie v. City of Jacksonville*, we struck down a requirement that adult businesses obtain a zoning exemption. Although the zoning board was required to conduct a hearing within 63

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days of the business's application, we held that "the ordinance's failure to require a deadline for decision renders it unconstitutional." *Id.* at 1363. In *Redner v. Dean*, 29 F.3d 1495 (1994), we struck down a licensing requirement for adult entertainment establishments, even though the ordinance placed a 45-day time limit on the administrator's licensing decision, since the ordinance further provided that in the event the administrator exceeded the 45-day limit, "the applicant may be permitted to begin operating the establishment for which a license is sought, unless and until the County Administrator notifies the applicant of a denial of the application." This provision, we held, rendered the time limit "illusory" and "risk[ed] the suppression of protected expression for an indefinite time period." *Id.* at 1500-01. Again, in *Artistic Entertainment, Inc. v. City of Warner Robins*, 223 F.3d 1306 (11th Cir.2000), we struck down a licensing requirement for adult entertainment establishments even though it required the city council to approve or deny a license application within 45 days. We reasoned that, "although [the ordinance] imposes a deadline on the City to consider an adult business license application, it does not guarantee the adult business owner the right to \*1272 begin expressive activities within a brief, fixed time frame," since it did not provide for what would happen if the city council, "because of bad faith or innocent bureaucratic delays, fails to act on an application before the deadline." *Id.* at 1310-11.

9 Neptune Beach's sign code contains no time limit of any sort for permitting decisions. Section 27-594, entitled "Permit application and approval procedures," provides: "Within ten (10) days after receipt of an application, the building official shall determine that the information is complete or incomplete and inform the developer of the deficiencies, if any." § 27-594(b). If the application is deemed incomplete, the applicant has ten days to correct the problem. If the application is complete, "the building official shall determine if the sign meets all provisions of this Code and shall issue the permit which states whether the application is approved, denied, or approved with conditions." § 27-594(b)(2).

However, no section of the sign code specifies any time period within which the building official must make this determination, thereby "risk[ing] the suppression of protected expression for an indefinite time period." *Redner*, 29 F.3d at 1500-01. The absence of any decisionmaking deadline effectively vests building officials with unbridled discretion to pick and choose which signs may be displayed by enabling them to pocket veto the permit applications for those bearing disfavored messages. The sign code's permitting requirement is therefore precisely the type of prior restraint on speech that the First Amendment will not bear.

### III.

Although this case is before us on appeal from the denial of a preliminary injunction, we do not think it necessary or prudent to confine our opinion to holding that Solantic has shown a *likelihood* of success on the merits, when it is altogether clear that Solantic *will* succeed on the merits of its First Amendment claims. We recognize that, ordinarily, "when an appeal is taken from the grant or denial of a preliminary injunction, the reviewing court will go no further into the merits than is necessary to decide the interlocutory appeal." *Callaway v. Block*, 763 F.2d 1283, 1287 n. 6 (11th Cir.1985). However, under certain circumstances, a judgment on the merits is appropriate.

10 In *Thornburgh v. American College of Obstetricians & Gynecologists*, 476 U.S. 747, 106 S.Ct. 2169, 90 L.Ed.2d 779 (1986), *overruled on other grounds by Planned Parenthood v. Casey*, 505 U.S. 833, 112 S.Ct. 2791, 120 L.Ed.2d 674 (1992), the Supreme Court held that the court of appeals had jurisdiction, on an appeal from the district court's denial of a preliminary injunction, to strike down as unconstitutional portions of a Pennsylvania abortion statute, and affirmed the judgment of the court of appeals on the merits. *See id.* at 755-57, 106 S.Ct. 2169. The Court observed that appeals courts' general approach of reviewing only the decision on whether to grant preliminary injunctive relief "is not inflexible," *id.* at 756, 106 S.Ct. 2169, reasoning: "That a court of appeals ordinarily will limit its review in a case of this kind to abuse of discretion is a rule of orderly judicial administration, not a limit on judicial power." *Id.* at 757, 106 S.Ct. 2169; *accord Callaway*, 763 F.2d at 1287 n. 6 ("[T]his rule is a rule of orderly judicial administration only. Section 1292(a)(1) of Title 28 of the United States Code,<sup>18</sup> which governs appeals of interlocutory orders denying/granting injunctions, \*1273 grants the courts jurisdiction to reach the merits, at least where there are no relevant facts at issue and the matters to be decided are closely related to the interlocutory order being appealed."); 16 Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure* § 3921.1, at 28 (2d ed. 1996) ("Jurisdiction of the interlocutory appeal is in large measure jurisdiction to deal with all aspects of the case that have been sufficiently illuminated to enable decision by the court of appeals without further trial court development."). We have, on a number of occasions, reached the merits of cases before us on interlocutory appeal from the grant or denial of a preliminary injunction. In *Callaway v. Block*, for example, we affirmed the district court's denial of a preliminary injunction and disposed of the plaintiffs' statutory construction and due process claims on the merits, "since both sides' arguments go to the merits, no facts are at issue, and the questions raised are purely legal

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ones.” *Callaway*, 763 F.2d at 1287. We observed: “Reaching the merits in cases such as these obviously serves judicial economy, as long as the facts are not disputed and the parties have presented their arguments to the court.” *Id.* at 1287 n. 6.

More recently, in *Burk v. Augusta-Richmond County*, 365 F.3d 1247 (11th Cir.2004), a panel of this Court proceeded to the merits of a case before us on interlocutory appeal from the district court’s denial of a preliminary injunction, and struck down on First Amendment grounds the county’s permitting requirement for public demonstrations. Reaching the merits was appropriate, we found, since the appeal presented pure questions of law, and since “our disposition dictates the outcome of the underlying claim.” *Id.* at 1250; *see also*, e.g., *Clements Wire & Mfg. Co. v. NLRB*, 589 F.2d 894, 897-98 (5th Cir.1979)<sup>19</sup> (finding it “apparent that appellee will not succeed on the merits of its action” and thus vacating the preliminary injunction and remanding “with instructions to the district court to enter a judgment consistent with this opinion”); *Siegel*, 234 F.3d at 1171 n. 4 (observing that the court has the authority to reach the merits on appeal from denial of preliminary injunction, but declining to do so, since the factual record was “largely incomplete and vigorously disputed”); *Mercury Motor Express, Inc. v. Brinke*, 475 F.2d 1086, 1091 (5th Cir.1973) (reviewing the district court’s issuance of a stay order that was not independently appealable, reasoning: “Because this case is properly before the court as an appeal from the denial of an injunction under 28 U.S.C.A. § 1292(a)(1) ... our permissible scope of review extends to the stay order as well. A court of appeals normally will not consider the merits of a case before it on an interlocutory appeal except to the extent necessary to decide narrowly the matter which supplies appellate jurisdiction; but this rule is one of orderly judicial administration and not a limit on jurisdictional power. ‘[O]nce a case is lawfully before a court of appeals, it does not lack power to do what plainly ought to be done.’ ” (quoting 9 Moore’s Federal Practice ¶ 110.25[1] (2d ed.1972))).<sup>20</sup>

\*1274 As the Supreme Court has explained, appellate review on the merits is properly conducted “if a district court’s ruling rests solely on a premise as to the applicable rule of law, and the facts are established or of no controlling relevance.” *Thornburgh*, 476 U.S. at 757, 106 S.Ct. 2169. “A different situation is presented, of

### Footnotes

\* Honorable Eugene E. Siler, Jr., United States Circuit Judge for the Sixth Circuit, sitting by designation.

1 References to the “sign code” are to Section 27, Article XV of the City of Neptune Beach Code of Ordinances.

course, when there is no disagreement as to the law, but the probability of success on the merits depends on facts that are likely to emerge at trial.” *Id.* at 757 n. 8, 106 S.Ct. 2169.

Because the case before us falls into the first category, reaching a decision on the merits is the wiser course. The facts of the case are simple and straightforward, and the record needs no expansion. The First Amendment questions—which are the only issues before us—are purely legal; indeed, Solantic’s constitutional challenge to the sign code is facial rather than as applied, so that our resolution of the legal questions is only minimally intertwined with the facts. Moreover, the parties have fully briefed the legal issues and cogently presented them to both the district court and this Court.

In addition, resolving the legal questions finally will substantially further the interests of judicial economy. Determining, *de novo*, whether the district court correctly found Solantic unlikely to succeed on the merits requires us to address complex and purely legal First Amendment issues that the district court has already fully considered once. Accordingly, “there is no point in remanding the case” for the district court to go through the motions of deciding the merits of Solantic’s First Amendment claims yet again, when our opinion compels the result to be reached. *Illinois Council*, 957 F.2d at 310.

We therefore hold that Solantic prevails on the merits of these First Amendment claims, since the exemptions from Neptune Beach’s sign code render it an unconstitutional content-based scheme of speech regulation, and since the sign code’s lack of any time limits for permitting decisions make it an unlawful prior restraint on speech. We underscore that we express no opinion on—and leave it to the district court to consider on remand—Solantic’s requests for permanent injunctive relief and for a declaration that it is not liable for accrued fines.

REVERSED and REMANDED.

### Parallel Citations

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- 2 Solantic also argued that the sign code violated analogous provisions of the Florida Constitution and raised a promissory estoppel claim, based on the City's grant of an electrical permit for Solantic's EVMC sign. These claims have been abandoned on appeal.
- 3 Preliminary injunctive relief may be granted if the moving party establishes: (1) a substantial likelihood of success on the merits of the underlying case; (2) that he will suffer irreparable harm unless an injunction issues; (3) that the harm he will suffer without an injunction outweighs the harm the injunction would cause the opposing party; and (4) that an injunction would not disserve the public interest. *See, e.g., Horton v. City of St. Augustine*, 272 F.3d 1318, 1326 (11th Cir.2001); *Johnson & Johnson Vision Care, Inc. v. 1-800 Contacts, Inc.*, 299 F.3d 1242, 1246-47 (11th Cir.2002).
- 4 The district court has substantial discretion in weighing the four relevant factors to determine whether preliminary injunctive relief is warranted. As we have explained previously:  
This limited [abuse of discretion] review is necessitated because the grant or denial of a preliminary injunction is almost always based on an abbreviated set of facts, requiring a delicate balancing of the probabilities of ultimate success at final hearing with the consequences of immediate irreparable injury which could possibly flow from the denial of preliminary relief. Weighing these considerations is the responsibility of the district court.  
*Siegel*, 234 F.3d at 1178 (quoting *Revette v. Int'l Ass'n of Bridge, Structural & Ornamental Iron Workers*, 740 F.2d 892, 893 (11th Cir.1984) (citation omitted)). However, the district court made no such calculus in this case.
- 5 This section provides:  
(a) Except as otherwise provided in this article, no sign within the city shall be constructed, erected, operated, used, maintained, enlarged, illuminated, or substantially altered without first obtaining a permit as provided in this section.  
(b) A separate application for a permit shall be made for each separate advertising sign or advertising structure, on a form furnished by the city manager.  
(c) The application for a permit shall describe the size, shape, and nature of the proposed advertisement, advertising sign, or advertising structure, and its actual or proposed locations with sufficient accuracy to ensure its proper identification.  
(d) The application for a permit shall be signed by the applicant or his authorized agent and by the property owner, if different than the property owner, or his authorized agent.  
(e) For multiple occupancy complexes, individual occupants may apply for a sign permit, but they shall be issued in the name of the lot owner or agent, rather than in the name of the individual occupants. The lot owner, and not the city, shall be responsible for allocating allowable sign area to individual occupants.  
§ 27-579.
- 6 Neptune Beach suggested for the first time at oral argument that § 27-580 may create an exemption only from the sign code's permitting requirement, not from its other regulations. This argument was never raised in the district court or in Neptune Beach's briefs to this Court, and therefore it is waived. *See, e.g., Chapman v. Al Transp.*, 229 F.3d 1012, 1044 (11th Cir.2000) ("It is axiomatic that an argument not raised before the trial court or on appeal has been waived."); *Marek v. Singletary*, 62 F.3d 1295, 1298 n. 2 (11th Cir.1995) ("Issues not clearly raised in the briefs are considered abandoned.").  
But even if this argument were properly before us, we would reject it on the merits, since we find nothing ambiguous about the scope of the sign code's exemptions. Section 27-580 enumerates signs that "are exempt from these regulations." § 27-580. Although the sign code does not explicitly state that the exemption from "these regulations" extends to *all* sign code regulations, we see no other plausible way to read the ordinance. We can discern no principled basis for determining that the signs § 27-580 declares "exempt from these regulations" are exempt from some of the sign code's regulations but not others. For one thing, the very first provision of the sign code states that the code "exempts certain signs from these regulations." § 27-572. Section 27-580 then enumerates the exempt signs referenced in § 27-572. The language "these regulations" at the beginning of the sign code cannot be read as referring to anything other than *all* regulations that follow. Moreover, a subsequent provision of the sign code enumerates certain other categories of signs that are exempt from *the permit requirement only*, see § 27-583(b), reinforcing that § 27-580's more broadly worded exemption applies to the permit requirement *and* to the sign code's other regulations, including § 27-581's restrictions on form.  
In addition, the fact that § 27-580 explicitly states that some of the exempt categories of signs *are* subject to some of § 27-581's regulations suggests that those exempt categories that are *not* explicitly subjected to these regulations are indeed exempt from them. For example, § 27-580(5) exempts "[i]ntegral decorative or architectural features of buildings, provided that such features do not contain ... moving parts or lights." Moving parts and lights are generally prohibited by §§ 27-581(4) and (6), respectively. Similarly, § 27-580(11) exempts merchandise displays in storefront windows, "so long as no part of the display moves or contains flashing lights." Were these enumerated categories of signs exempt only from the sign code's permit requirement, including these explicit applications of other sign code regulations would be wholly unnecessary.  
Our practice is to "uphold a state statute against a facial challenge if the statute is readily susceptible to a narrowing construction that avoids constitutional infirmities. We 'will not, however, rewrite the clear terms of a statute in order to reject a facial challenge,' and, as a federal court, 'we must be particularly reluctant to rewrite the terms of a state statute.'" *Fla. Right to Life, Inc. v. Lamar*, 273

F.3d 1318, 1326 (11th Cir.2001) (quoting *Dimmitt v. City of Clearwater*, 985 F.2d 1565, 1572 (11th Cir.1993)) (citation and footnote omitted). Because any narrowed reading of the sign code's exemptions would require us to rewrite its basic terms by inserting our own limiting language into § 27-580, the sign code is not susceptible to a narrowing construction.

Finally, even if the City were correct that § 27-580's exemptions are from the permit requirement only, the sign code would still present exactly the same constitutional problem. Content-based exemptions from a permitting requirement raise serious questions of constitutionality that remain at the heart of this case. Reading the exemptions as applicable only to the sign code's permit requirement would render them no less content based than if they applied to all of the sign code's regulations. The problem is with the *character of the enumerated categories*, not with the scope of the exemption. Thus, if we find that the exemptions are content based and fail strict scrutiny, the sign code would be unconstitutional regardless of whether the exemptions are from all of its regulations or from the permit requirement only. The only type of narrowing construction that will save a statute from a constitutional challenge is one "that avoids constitutional infirmities," *id.*-something that Neptune Beach's reading, even if correct, does not do.

7 This section provides: "The following temporary signs are permitted without a sign permit, provided that the sign conforms to the requirements set forth below ...." § 27-583(b). The "requirements" referenced include limitations on size and display time, among other things. *See id.*

8 The City also cites *Ward v. Rock Against Racism*, 491 U.S. 781, 109 S.Ct. 2746, 105 L.Ed.2d 661 (1989), in which the Supreme Court took a somewhat different approach to evaluating content neutrality, explaining:

The principal inquiry in determining content neutrality, in speech cases generally and in time, place, or manner cases in particular, is whether the government has adopted a regulation of speech because of disagreement with the message it conveys. The government's purpose is the controlling consideration. A regulation that serves purposes unrelated to the content of expression is deemed neutral, even if it has an incidental effect on some speakers or messages but not others. Government regulation of expressive activity is content neutral so long as it is "justified without reference to the content of the regulated speech."

*Id.* at 791, 109 S.Ct. 2746 (citations omitted) (quoting *Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288, 293, 104 S.Ct. 3065, 82 L.Ed.2d 221 (1984)).

However, more recently, the Court has receded from this formulation, returning to its focus on the law's own terms, rather than its justification, in *City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 113 S.Ct. 1505, 123 L.Ed.2d 99 (1993). In *Discovery Network*, the Court held that a city ordinance banning news racks containing commercial handbills but allowing news racks containing noncommercial newspapers was an unconstitutional content-based restriction on speech. The city contended that its interests in safety and aesthetics (its proffered justifications for the ordinance) served an interest unrelated to the content of the prohibited publications, rendering the ordinance content neutral. The Court, however, found this argument "unpersuasive because the very basis for the regulation is the difference in content between ordinary newspapers and commercial speech. True, there is no evidence that the city has acted with animus toward the ideas contained in respondents' publications, but just last Term we expressly rejected the argument that 'discriminatory ... treatment is suspect under the First Amendment only when the legislature intends to suppress certain ideas.'" *Id.* at 429, 113 S.Ct. 1505 (quoting *Simon & Schuster, Inc. v. Members of the N.Y. State Crime Victims Bd.*, 502 U.S. 105, 117, 112 S.Ct. 501, 116 L.Ed.2d 476 (1991)). Accordingly, the Court held: "Under the city's newsrack policy, whether any particular newsrack falls within the ban is determined by the content of the publication resting inside that newsrack. Thus, by any commonsense understanding of the term, the ban in this case is 'content based.'" *Id.*

9 In *City of Ladue v. Gilleo*, 512 U.S. 43, 114 S.Ct. 2038, 129 L.Ed.2d 36 (1994), the Supreme Court "identif[ied] two analytically distinct grounds for challenging the constitutionality of a municipal ordinance regulating the display of signs. One is that the measure in effect restricts too little speech because its exemptions discriminate on the basis of the signs' messages." *Id.* at 50-51, 114 S.Ct. 2038 (citing the *Metromedia* plurality opinion). "Alternatively, such provisions are subject to attack on the ground that they simply prohibit too much protected speech." *Id.* at 51, 114 S.Ct. 2038 (citing the *Metromedia* concurring opinion).

*Ladue* involved a challenge to a ban on all residential signs other than those falling within one of ten enumerated exemptions, brought by a homeowner seeking to display in her window a sign reading, "Say No to War in the Persian Gulf, Call Congress Now." Instead of looking first to whether the sign ordinance's exemptions were content based, the Court employed the following approach:

[W]e first ask whether Ladue may properly *prohibit* Gilleo from displaying her sign, and then, only if necessary, consider the separate question whether it was improper for the City simultaneously to *permit* certain other signs. In examining the propriety of Ladue's near-total prohibition of residential signs, we will assume, *arguendo*, the validity of the City's submission that the various exemptions are free of impermissible content or viewpoint discrimination.

*Id.* at 53, 114 S.Ct. 2038. The Court concluded that the city could not constitutionally prohibit the display of Gilleo's sign, reasoning that yard and window signs are "a venerable means of communication," *id.* at 54, 114 S.Ct. 2038. and "may have no practical substitute," *id.* 57, 114 S.Ct. 2038. The Court thereby avoided reaching the question of the constitutionality of the ordinance's exemptions.

Here, we cannot avoid the second question. Neptune Beach has not sought to prohibit Solantic's sign, but rather to subject it to a variety of regulations. We have no doubt that a city may permissibly impose permitting requirements, form restrictions, and other limitations on signs. Thus, we cannot avoid proceeding to the next inquiry-that is, whether subjecting some signs but not others to

these regulations amounts to impermissible content discrimination. We must, therefore, look beyond *Ladue* to the Court's approach in *Metromedia* and our opinion in *Dimmitt*.

- 10 From the fractured decision in *Metromedia*-which contained a total of five separate opinions-there emerges no controlling opinion as to the ordinance's regulation of noncommercial speech, and no subsequent majority of the Supreme Court has ever explicitly adopted or rejected the reasoning of any of the *Metromedia* opinions. The Supreme Court has explained that "[w]hen a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, 'the holding of the Court may be viewed as that position taken by those Members who concurred in the judgment on the narrowest grounds.'" *Marks v. United States*, 430 U.S. 188, 193, 97 S.Ct. 990, 993, 51 L.Ed.2d 260 (1977) (quoting *Gregg v. Georgia*, 428 U.S. 153, 169 n. 15, 96 S.Ct. 2909, 2923 n. 15, 49 L.Ed.2d 859 (1976) (opinion of Stewart, Powell, and Stevens, JJ.)). However, "[t]he Supreme Court has not compelled us to find a 'holding' on each issue in each of its decisions. On the contrary, the Court has indicated that there may be situations where even the *Marks* inquiry does not yield any rule to be treated as binding in future cases." *Johnson v. Bd. of Regents of Univ. of Ga.*, 263 F.3d 1234, 1248 n. 12 (11th Cir.2001) (citing *Nichols v. United States*, 511 U.S. 738, 114 S.Ct. 1921, 128 L.Ed.2d 745 (1994)). *Metromedia* presents just such a case.

Indeed, at least two of our sister Circuits have applied *Marks* analysis to *Metromedia*'s noncommercial-speech holding and have found no controlling opinion. See *Rappa v. New Castle County*, 18 F.3d 1043, 1056-61 (3d Cir.1994); *Discovery Network, Inc. v. City of Cincinnati*, 946 F.2d 464, 470 n. 9 (6th Cir.1991). As the Third Circuit explained, "the plurality and the concurrence took such markedly different approaches to the San Diego ordinance that there is no common denominator between them." *Rappa v. New Castle County*, 18 F.3d 1043, 1058 (3d Cir.1994) (concluding that *Metromedia* was not controlling in the case before it). Whereas the plurality concluded that the ordinance's exemptions rendered it a content-based speech restriction, the concurrence, in contrast, "did not think that the relevant issue was the constitutional effect of the exceptions to the general prohibition," but rather "viewed the San Diego ordinance as a total ban on billboards because it believed that the ordinance would have the *practical effect* of eliminating the billboard industry in San Diego and thereby would eliminate billboards as an effective medium of communication." *Rappa*, 18 F.3d at 1058. Because of these sharp differences, neither opinion has any controlling precedential force.

- 11 We note that the *Dimmitt/Metromedia*-plurality approach is consistent with the prevailing approach among other Circuits. See, e.g., *Nat'l Adver. Co. v. Town of Niagara*, 942 F.2d 145, 147 (2d Cir.1991) (observing that the Second Circuit "has adopted the plurality decision in *Metromedia* concerning billboard regulation"); *Nat'l Adver. Co. v. Town of Babylon*, 900 F.2d 551 (2d Cir.1990) (holding that an ordinance exempting certain signs from a general sign ban was an unconstitutional content-based restriction on speech); *Gilleo v. City of Ladue*, 986 F.2d 1180 (8th Cir.1993), *aff'd on other grounds*, 512 U.S. 43, 114 S.Ct. 2038, 129 L.Ed.2d 36 (1994) (same); *Matthews v. Town of Needham*, 764 F.2d 58, 60 (1st Cir.1985) (same).

Indeed, in *Dimmitt*, we cited with approval the Ninth Circuit's decision in *National Advertising Co. v. City of Orange*, 861 F.2d 246 (9th Cir.1988), which adopted the *Metromedia* plurality approach. See *Dimmitt*, 985 F.2d at 1570. *City of Orange* involved a ban on signs, with a series of enumerated exemptions. The court concluded that "[b]ecause the exceptions to the restriction ... are based on content, the restriction itself is based on content." *Id.* at 249. Although the city's proffered interests in aesthetics and traffic safety were substantial, they were not sufficient to justify the content-based ban, and thus the court struck it down. Subsequently, in *Desert Outdoor Advertising, Inc. v. City of Moreno Valley*, 103 F.3d 814 (9th Cir.1996), the Ninth Circuit used the reasoning of *City of Orange* and the *Metromedia* plurality to strike down a statute exempting certain categories of billboards from a permitting requirement. The court explained: "Because the exemptions [for official notices and directional or informational signs, among other things] require City officials to examine the content of ... signs to determine whether the exemption applies, the City's regulation ... is content-based." *Id.* at 820.

Only the Third Circuit has taken a different approach. In *Rappa v. New Castle County*, 18 F.3d 1043, 1056-61 (3d Cir.1994), the court addressed an ordinance generally prohibiting placement of signs within a certain distance of a highway, but exempting designated types of signs from this restriction. Drawing on Justice Brennan's concurrence in *Metromedia*, the court adopted a "context-sensitive" test for evaluating the constitutionality of content-based exemptions from sign regulations. *Id.* at 1064. The test provided that "when there is a significant relationship between the content of particular speech and a specific location, the state can exempt speech having that content from a general ban so long as the exemption is substantially related to serving an interest that is at least as important as that served by the ban." *Id.* at 1066. We have found no cases applying the *Rappa* approach, and we are uncertain how it would work in practice. At all events, we are guided by our own precedent in *Dimmitt*.

- 12 *Dimmitt* is much more closely on point than our prior decision in *Messer v. City of Douglasville*, 975 F.2d 1505 (1992), in which a panel of this Court held that an ordinance exempting certain signs from a city permit requirement was *not* content based. The ordinance in *Messer* exempted "from permitting requirements and/or permit fees" the following signs: (1) one wall sign per building, attached to the side of the building, announcing the business; (2) one real estate "for sale" sign per property; (3) one bulletin board located on religious, public, charitable or educational premises; (4) one construction identification sign; (5) directional traffic signs containing no advertisements. *Id.* at 1511.

The *Messer* Court acknowledged that *Metromedia* and the Ninth Circuit's decision in *City of Orange* had invalidated ordinances exempting certain types of signs from a general ban on signs as unconstitutional content-based restrictions on speech. However, *Messer* distinguished the Douglasville ordinance on two bases. First, it stated that a permitting requirement was different from a ban

in that it was simply a time, place, and manner regulation, reasoning that since “Messer has not challenged the *permit process* as an unconstitutional restriction on speech,” “the Douglasville sign ordinance stands on a different footing from the complete bans on speech in San Diego and the City of Orange.” *Id.* at 1513. Second, the *Messer* Court observed that Douglasville’s “exemptions are much more limited than those in the San Diego or City of Orange ordinances,” and contained “no specific exemptions for political, historical, religious, or special event signs.” *Id.*

Solantic’s case is much more closely analogous to *Dimmitt* than to *Messer*, and indeed is distinguishable by *Messer*’s own terms. For one thing, Solantic *has* challenged the sign code’s permit process as an unconstitutional restraint on speech. Moreover, unlike in *Messer*, at issue here is not just a permit requirement, but a whole array of restrictions on the form that nonexempt signs may take. Exempt signs can convey their message in virtually any manner—for example, using flashing lights, moving parts, or any of the other features generally prohibited by § 27-581—as long as they “are not placed or constructed so as to create a hazard of any kind.” § 27-580. Nonexempt signs, in contrast, are subject not only to the permit requirement, but also to all of the limitations enumerated in § 27-581. Thus, the regulations embodied in Neptune Beach’s sign code reach substantially farther than those in the Douglasville ordinance.

The Douglasville ordinance is further distinguishable because the exemptions from the Neptune Beach sign code are much more numerous and extensive than Douglasville’s. In this regard, the content-based exemptions in this case are more analogous to those in the San Diego and City of Orange ordinances the *Messer* Court distinguished from Douglasville’s. Section 27-580, for example, contains seventeen categories of exemptions, and § 27-583(b) contains another six, whereas Douglasville’s ordinance contained a total of five narrow exceptions. In short, *Dimmitt* is much more closely on point than *Messer*.

- 13 The fact that these content-based provisions take the form not of regulations but of *exemptions* from regulations is immaterial. As the First Circuit has explained, “when a city’s goal is to reward one type of speech, the necessary effect is that all other types of speech are penalized. A finding that the motive was to promote, rather than to penalize, a certain type of speech does not alter this fact.” *Ackerley Communications of Mass., Inc. v. City of Somerville*, 878 F.2d 513, 521 (1st Cir.1989). For our purposes today, whether these content-based restrictions are cast as regulations or exemptions is simply a matter of semantics.
- 14 *Cf. Linmark Assocs., Inc. v. Twp. of Willingboro*, 431 U.S. 85, 94, 97 S.Ct. 1614, 52 L.Ed.2d 155 (1977) (striking down as unconstitutional an ordinance seeking to prevent the flight of white homeowners from racially integrated communities by prohibiting the posting of “For Sale” or “Sold” signs on property, reasoning that the ordinance “proscribed particular types of signs based on their content,” without a compelling reason for doing so); *Mosley*, 408 U.S. at 94-95, 92 S.Ct. 2286 (striking down on equal protection grounds—which were “closely intertwined with First Amendment interests”—an ordinance exempting peaceful labor picketing from a general prohibition on picketing near schools, observing that “[t]he central problem with Chicago’s ordinance is that it describes permissible picketing in terms of its subject matter,” and that “[t]he operative distinction is the message on a picket sign”); *Carey v. Brown*, 447 U.S. 455, 460-62, 100 S.Ct. 2286, 65 L.Ed.2d 263 (1980) (striking down, on equal protection grounds, a prohibition on picketing that exempted peaceful picketing of a place of employment involved in a labor dispute, since it discriminated “based upon the content of the demonstrator’s communication,” by according “preferential treatment to the expression of views on one particular subject”).
- 15 Solantic also argues that the sign code is an impermissible regulation of commercial speech under the *Central Hudson* test, which lays out a framework for evaluating the constitutionality of restrictions on commercial speech. Commercial speech that is not misleading and does not advocate illegal activity may be regulated if the regulation directly advances a substantial governmental interest and reaches no further than necessary to accomplish that goal. *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n of N.Y.*, 447 U.S. 557, 564, 100 S.Ct. 2343, 65 L.Ed.2d 341 (1980). Because the sign code does not regulate commercial speech as such, but rather applies without distinction to signs bearing commercial and noncommercial messages, the *Central-Hudson* test has no application here.
- 16 “Severability of a local ordinance is a question of state law....” *City of Lakewood v. Plain Dealer Pub’g Co.*, 486 U.S. 750, 772, 108 S.Ct. 2138, 100 L.Ed.2d 771 (1988); *see also Coral Springs Street Sys., Inc. v. City of Sunrise*, 371 F.3d 1320, 1347 (11th Cir.2004). As we have previously explained:  
Florida law clearly favors (where possible) severance of the invalid portions of a law from the valid ones. According to the Florida Supreme Court, “[s]everability is a judicial doctrine recognizing the obligation of the judiciary to uphold the constitutionality of legislative enactments where it is possible to strike only the unconstitutional portions.” *Ray v. Mortham*, 742 So.2d 1276, 1280 (Fla.1999) (citing *State v. Calhoun County*, 126 Fla. 376, 383, 127 Fla. 304, 170 So. 883 (1936)). The doctrine of severability is “derived from the respect of the judiciary for the separation of powers, and is ‘designed to show great deference to the legislative prerogative to enact laws.’ ” *Id.* (quoting *Schmitt v. State*, 590 So.2d 404, 415 (Fla.1991)).  
*Coral Springs*, 371 F.3d at 1347.  
The Florida Supreme Court has articulated the following test for severability:  
When a part of a statute is declared unconstitutional the remainder of the act will be permitted to stand provided: (1) the unconstitutional provisions can be separated from the remaining valid provisions, (2) the legislative purpose expressed in the valid

provisions can be accomplished independently of those which are void, (3) the good and the bad features are not so inseparable in substance that it can be said that the Legislature would have passed the one without the other and, (4) an act complete in itself remains after the invalid provisions are stricken.

*Id.* at 1348 (quoting *Smith v. Dep't of Ins.*, 507 So.2d 1080, 1089 (Fla.1987)).

Applying this test, we find that the exemptions contained in §§ 27-580 and 27-583(b) are not severable from the remainder of the sign code. These provisions *can* be separated, since they are discrete sections of the statute, satisfying the first prong of Florida's severability test. Additionally, the stated legislative purpose of improving traffic safety and aesthetics can still be accomplished without the exemptions, satisfying the second prong.

The problem lies with the third prong. It is not clear that the legislature would have enacted the sign code, complete with its permit requirement and restrictions on form, even without the exemptions. The legislature might have preferred not to impose these regulations on any signs if doing so meant that all signs would be subjected to these rules. For example, we cannot say with any certainty that the legislature would have chosen to adopt a potentially time-consuming permitting process if even signs displayed only on a short-term basis—such as those advertising festivals, sporting events, and religious functions, among other things, which are exempt under § 27-583(b)(5)—were required to comply, since would-be advertisers might be unable to obtain permits in time for their events. Similarly, we are not persuaded that the legislature would have chosen to ban signs using the words “stop,” “look,” and “danger,” *see* § 27-581(13), if this rule applied even to governmental signs, which are exempt under § 27-580(4). Because the general regulations and the exemptions are not “so inseparable in substance that it can be said that the Legislature would have passed the one without the other,” *Coral Springs*, 371 F.3d at 1348, invalidating the scheme of exemptions requires us to invalidate the sign code in its entirety.

- 17 In *FW/PBS*, the Court applied *Freedman's* time-limit requirement to an ordinance regulating adult businesses through a scheme of zoning, licensing, and inspections. A majority held that the ordinance violated the First Amendment because it failed to impose strict administrative time limits and to provide for prompt judicial review, as required by *Freedman*. *See FW/PBS*, 493 U.S. at 227-28, 110 S.Ct. 596 (plurality opinion); *id.* at 238, 110 S.Ct. 596 (Brennan, J., concurring in the judgment). However, Justice O'Connor, writing for herself and two other Justices, found that only two of *Freedman's* protections—strict administrative time limits and prompt judicial review—applied to the licensing scheme. *Id.* at 228, 110 S.Ct. 596 (plurality opinion). Justice Brennan, writing for himself and two other Justices, would have applied all three of *Freedman's* safeguards, including the requirement that “the would-be censor ... bear both the burden of going to court and the burden of proof in court.” *Id.* at 239, 110 S.Ct. 596 (Brennan, J., concurring in the judgment).
- 18 28 U.S.C. § 1292(a) states, in pertinent part, that “courts of appeals shall have jurisdiction of appeals from: (1) Interlocutory orders of the district courts ... granting, continuing, modifying, refusing, or dissolving injunctions.”
- 19 The Eleventh Circuit has adopted as precedent the decisions of the former Fifth Circuit rendered prior to October 1, 1981. *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir.1981).
- 20 Numerous other Circuits have also recognized the appropriateness, in limited circumstances, of reaching the merits of a case before the court on interlocutory appeal from the grant or denial of a preliminary injunction. *See, e.g., Hurwitz v. Directors Guild of Am., Inc.*, 364 F.2d 67, 69-70 (2d Cir.1966) (reversing denial of preliminary injunction and directing entry of judgment for plaintiffs on the merits, reasoning that doing so “serve[d] the obvious interest of economy of litigation” and was appropriate since the case “contain[ed] no triable issue of fact”); *Amandola v. Town of Babylon*, 251 F.3d 339, 343-44 (2d Cir.2001) (reversing denial of preliminary injunction and striking down permitting requirement for use of town facilities on First Amendment grounds); *United Parcel Serv., Inc. v. United States Postal Serv.*, 615 F.2d 102, 106-07 (3d Cir.1980) (reaching the merits because the case involved “a pure question of law,” the legal question was “intimately related to the merits of the grant of preliminary injunctive relief,” and the legal issue would not “be seen in any different light after final hearing than before”); *Doe v. Sundquist*, 106 F.3d 702, 707-08 (6th Cir.1997) (finding that reaching the merits was “in the interest of judicial economy,” since “the legal issues have been briefed and the factual record does not need expansion”); *Illinois Council on Long-Term Care v. Bradley*, 957 F.2d 305, 310 (7th Cir.1992) (“Since plaintiffs cannot win on the merits, there is no point in remanding the case for further proceedings. Therefore we affirm the district court’s judgment and remand with instructions to dismiss the case on the merits.”); *Campaign for Family Farms v. Glickman*, 200 F.3d 1180, 1185-87 (8th Cir.2000) (reaching the merits because “we are faced with a purely legal issue on a fixed administrative record”).

# Exhibit D

## Minutes

December 11, 2008	Planning Board discussion item
December 2, 2009	Planning Board discussion item
January 14, 2010	Planning Board
March 16, 2010	City Commission
May 18, 2010	City Commission discussion item
June 10, 2010	Planning Board
August 12, 2010	Planning Board discussion item
August 23, 2010	Planning Board workshop
September 28, 2010	Planning Board workshop (not available yet)

in order not to miss anything, though there were other references to the DRB that would be eliminated as they arose.

Some discussion ensued about notifying property owners by certified mail. In response to a question from Mrs. Press on the need for certified mail, Mr. Spraker said there was little extra cost to the city, but there were three forms of notification and regular mail would suffice if that was the board's preference. City Attorney Hayes noted that an amendment would be needed to change the language from certified mail, as it currently read, to regular mail. He recommended voting on the staff recommended changes first, then voting on an amendment to remove the requirement for notification by certified mail.

**Ms. Behnke moved to approve the changes as recommended by staff. Mr. Jorczak seconded her motion and it was approved by unanimous vote.**

**The amendment removing the requirement for notification by certified mail, requiring notification by regular post instead, was proposed by Ms. Behnke and seconded by Mrs. Press. It, too, was approved by unanimous vote.**

## **VIII. OTHER BUSINESS**

### **A. Electronic Sign Workshop & Presentation by Kenco Signs**

Mr. Raymond Webb, 1539 Garden Avenue, Holly Hill, said he had set up a demonstration on LED signs outside the chambers for the benefit of the board members. The demonstration was being provided by Watchfire, a leading manufacturer of LEDs from Danville, Illinois and a representative was present to answer questions, he said. He added that he did not think the board members would find the illumination at all overwhelming. Some letters of reference were also available from business owners describing the effects on their businesses from changing to LED signs. The representative from Watchfire also had some information from different government agencies that had initially had some concerns, including how those concerns had been resolved. Mr. Webb said that changeable copy signs had pretty much gone the way of the stone age as LED signs allowed the messages to be changed at will – anywhere from every 5 seconds, to every 3 minutes, to once per day or week. He said there were countless letters from business owners to the major manufacturers of LED signs saying the signs were the best investments they had ever made. Currently, he said, many businesses and restaurants in town were failing and the signs could help them to continue to do business in today's tough market. He presented some case studies showing the difference in sales after changing to an LED sign. In every study, business went up 20 to 30 percent.

Regarding safety issues, Mr. Webb said that the AAA Foundation for Traffic Safety had found that distraction was a problem for drivers of all ages and both sexes. Specific sources of distraction varied considerably, but roadside ad signs were not considered a significant distraction. He noted that the Small Business Administration currently was loaning money to government agencies for LEDs to put on roadways. According to the SBA, several states had conducted studies on the safety of LEDs and none had found any evidence of accidents from

signage. A leading insurance company surveyed had also reported no incidents or lawsuits related to LED signs. He suggested that the members take a break for a few minutes so they could move to the courtyard for a demonstration of the signs. City Attorney Hayes asked that members not to speak until they had returned to the board room and begun taping again. Mr. Thomas moved to adjourn for a four minute break.

Mr. Thomas called the meeting back to order at 7:35 pm.

Mr. Webb pointed out the different options available, using the sign for Destination Daytona (similar to what the board members had seen outside) and the one at The Trails as another, simpler, used with limited movement and no blinking. Ms. Sara Vandagriff, representing The Trails Shopping Center, said that only two colors were allowed and that the sign could not roll or move, blink, or scroll. Mr. Webb said the technology had changed considerably since Mr. Jaffe had purchased the sign for The Trails. Mrs. Press said she had been on the board at the time that sign had been approved and the restrictions proposed. In response to Chair Thomas, Mr. Webb said the most common configurations were 4x8', 4x10', 5x8', or 5x10' and the signs became more expensive as the size increased. He said the illumination for the signs had to be greater in the daytime and automatically decreased at night.

Mr. Jorczak asked if other cities had established standards. The representative from Watchfire responded that they had not. Mr. Thomas asked who was responsible for deciding the appropriate brightness for a sign. She replied that if the sign was too bright, it was illegible – it did no good to have the lighting higher than 1000 to 1500 nits as it detracted from a sign's legibility. In any case, sign companies worked with their customers to adjust the lighting.

Ms. Behnke said she thought it would be good if the signs were closely regulated; she thought they could easily become garish. She liked the signs on high poles as she did not believe they were as distracting. She felt it was important to establish standards with which the residents of Ormond Beach would be alright. Mr. Jorczak thought particular consideration would need to be given to the size of signs, their locations, and how much motion would be allowed. He, too, thought it was important to establish some parameters. Mr. Webb suggested restricting print to 30 percent or less of the sign's area. Mr. Jorczak asked about limitations that could be applied to movement. The representative from Watchfire replied that a 2 to 3-second hold time took away the ability for movement. She added that resolution was more important than color. In answer to Mr. Jorczak and Mr. Thomas, Mr. Webb said the size of an allowable sign could be correlated to the size of the business and be required to match the design of the site. As for color, he said most people would only be able to afford red, noting that multi-colored signs were very expensive.

Mrs. Press observed that of all the discussions that she had been part of on the Planning Board and in the City, the one that had provoked the greatest interest was signage. The topic often sent residents up in arms, she said, and she was one of the people affected that way. She said the difficulty in coming up with a sign ordinance was that one size did not fit all. She did not feel the citizens of Ormond Beach would appreciate flashing signs and movement like what she board members had seen in the parking lot, but she did think there would be places signs might be appropriate. For instance, she did not like the plastic Walgreens sign and thought something else might look better there. She thanked Mr. Webb for educating the board members a bit on LEDs.

Ms. Behnke said that she disliked the delivery trucks with the rolling signs as she found them distracting, but was in favor of looking at LEDs. Mr. Jorczak said he was not against LED signs, but felt controls were needed. He said he did not find anything objectionable in the sign at The Trails. Mr. Webb said he could obtain any studies the Board was interested in and whatever ordinances there were – for instance, he knew Chicago required a 5-second hold to prevent scrolling.

Mr. Thomas asked about Mr. Webb's earlier reference to free speech. City Attorney Hayes replied that governments could impose regulations such as time restrictions, setbacks, brightness, etc., but could not regulate content. Typically, cities did not regulate content, though there was a little more latitude with commercial than non-commercial. Mr. Hayes emphasized that obscenity would still be regulated by the City, however. He noted that these signs would not allow any more than signs already permitted by Ormond Beach. Something that would not be allowed on a static sign would not be allowed on a message center.

Ms. Behnke pointed out as something to consider was that the current signs were immovable, expensive, and hard to replace. Mr. Webb said it was also possible to regulate who would be allowed to use a sign; for instance, if a Bike Week vendor was set up on the premises of a business with a sign, it could be used to advertise for the vendor, but a vendor across the street could be barred from using the sign. Mr. Hayes concurred that the sign use could be required to be associated with the principal use of the property. Mr. Thomas said he was very interested in the signs as the older he got the harder it was to see and find places. He said he could see the benefits of LED signs, though he could also see problems with flashing. He disagreed with Mrs. Press that the City would never accept LED signs, saying that times change. He said he would like to continue to research the LED signs for Ormond Beach and that he was open to hearing more. He told Mr. Webb that he appreciated his and the representative from Watchfire coming to talk with the board. Mr. Webb said he would be happy to help at a workshop or meeting, if needed.

Mr. Jorczak said he would like to take things one step further and have staff start acquiring data to try to establish standards. He felt there was enough interest to start exploring further. Ms. Behnke, Mr. Wigley, and Mr. Thomas agreed. Ms. Press had no comment. Mr. Goss said he would bring a draft code with options for the Planning Board.

On another matter, Mr. Jorczak asked about the regulations and oversight for laser light displays. Mr. Hayes thought perhaps that fell under FAA regulations. As lasers were used for a variety of purposes other than display, he was unsure how they could be regulated by the City.

**B. Form Based Code Workshop**

Stating that the subject had been discussed a bit at the last meeting, Mr. Goss began a PowerPoint presentation on form based codes. He explained that with form based codes, design was more important than use. Typically, in Ormond Beach, it was use that the City regulated. The purpose of form based codes was to meet the street need and the block need. Staff wanted to be able to present a template so everyone would know what the street should look like and how

things would interrelate with each other at the street level. Form based codes would clearly spell out controls for the building form, serving as a regulating plan almost like a zoning map, but with build-to lines. The codes would move away from style and toward design, laying out parameters but not referring to any particular style. The streetscape would be examined, looking at walkability, primary and minor streets, urban design standards, and how the building was situated on the lot.

Mr. Goss said form based codes were different than anything that had been done in Ormond Beach before. Typically they were used in downtown infill areas and redevelopment areas for which the community had a specific vision. Ormond Beach did have such a vision in this case, as well as the resources to bring it about, Mr. Goss stated, presenting some pictures envisioning the downtown redevelopment. He went on to say that the City's current codes would not permit this vision to be fulfilled. Form based codes were for livable cities and looked at the context of a site not the site itself, scale not use, and form rather than style, allowing the free market to dictate design.

Offering a regulating plan staff had put together, Mr. Goss said there were several districts: river, ocean, and creek, that called for 3 to 5-story mixed use buildings along the street for a walkable downtown area. The purpose of this was to give ideas, Mr. Goss said, not to lay out the downtown now. The plan would have display windows and shops at the ground floor with offices or residential above.

Form based codes were adopted expressly for a district, and in order to work properly, probably should be mandatory, Mr. Goss said. The City might be able to provide assistance in helping property owners meet the code. Correctly done, the process should be faster, more predictable for developers, and could be administratively approved. Such codes had been used by counties, such as Indian River, as well as cities. Form based codes had been used in Sarasota, Madiera Beach, Arlington, Columbia, and were now being considered by Miami. Mr. Goss said he would get a list of communities within driving district in which such codes had been applied.

Mr. Thomas asked if it was Mr. Goss's opinion that the adoption of form based codes would encourage development of the Downtown. Mr. Goss replied that he had not been in Ormond Beach long enough to understand everything about the area, but based on his past experience, it had worked well in other downtowns.

Mrs. Press questioned whether commercial below with residences above would really work, stating that she had owned a storefront business with tenants above and she could not wait to get out of that business to move to a free-standing site. She said she did not know why anyone would want to live on Granada Boulevard above a store. Mr. Goss expressed some confusion, saying this was the vision adopted by the City Commission. Mrs. Press said this was not what she thought they were agreeing upon. Mr. Goss pointed out that the City had been employing conventional zoning for years without success. He questioned why the Board would think the next 10 years would be any different than the previous decades. Mr. Thomas concurred, stating that he had been in Ormond Beach for 35 years and had not seen much change from Granada to US 1 in that time. Mr. Goss said he thought the members needed to be bold and set a new course of action, providing some leadership for the business community. Assuming the vision was

correct, Mr. Goss said he thought form based codes were the best shot for bringing the desired changes to Ormond Beach.

Mrs. Press said she could see the desirability of having apartments that overlooked the river within walking distance to the beach, but said in many walkable cities there were jobs such as with hospitals, etc., downtown that people wanted to be able to walk to, but she did not see that in Ormond Beach. She pointed out that there was nothing like Microsoft or a similar industry to employ people downtown. Mr. Goss responded that laying out the framework for that type of downtown could enable it to occur. He pointed out that just with the few changes that had already been made, there were already more restaurants downtown, stating that it was tough to even get a seat at Caffeine's on Thursday and Friday nights. Mr. Thomas observed that there were parks, historical buildings, the river, and the ocean all within walking distance and said he thought it was time to start thinking outside the box. He felt that Ormond's downtown had been having an identity crisis. Related to a question from one of the board members, Mr. Goss added that there was plenty of parking for a walkable downtown and that zoning should not keep businesses from establishing downtown due to parking so long as they were within the pedestrian shed (acceptable walking distance).

Mr. Jorczak asked if Winter Park had adopted form based codes. Mr. Goss was not sure. He said most districts using form based codes had one elongated corridor with a block included to either side, perhaps New Britain and Tomoka, in this case. West of US 1 was primarily suburban. Staff was in the process of documenting every block of the redevelopment district to come up with a building form layout. Mr. Goss said they hoped to be done by the end of the month. Mr. Goss emphasized that now, while the economy was slow, was the time to undertake changing the codes to put in place something more in line with the City's vision.

In response to Mrs. Press, who was not sure that people would be willing to walk, and that the downtown could be transformed as Mr. Goss suggested, Mr. Goss offered St. Petersburg and Sarasota as examples of other places where people had said the same.

Mr. Thomas said he was glad to see the proposed changes as he found the idea that downtown could change exciting. Mr. Goss said he hoped to have something by Spring to take through Ormond MainStreet to develop a model. Mr. Jorczak was also very interested in the concepts discussed. In response to Mr. Jorczak, Mr. Goss said currently about 50 percent of the property from the river to US 1 was under-utilized or vacant. Mr. Thomas asked if Hull's Seafood had been part of TIF [Tax Increment Financing] funding. Mr. Goss replied that it had. Mr. Thomas said it looked very nice.

Mr. Bill Partington, 1284 Fernway Drive and a downtown property owner, said the City was very fortunate to have Mr. Goss's knowledge of, and expertise in, downtown redevelopment. He observed that though not much had changed in Ormond Beach over the last 35 years, he felt citizens were buying into the idea that there might be the potential to do something now. He felt that Mr. Goss was very capable of guiding the City through these changes. He noted that there were many successful examples of such redevelopment and said that although form based codes were considered new, there were places in Florida that had been redeveloped similarly to what was planned for Ormond Beach since the 1980s, thus there was plenty of data available. He said

he was convinced that form based codes were the right way to go, as Mr. Goss had recommended.

Mr. James Staros, 805 Candlewood Circle, stated that although he was a member of Ormond MainStreet, he was addressing the board just as a citizen. He felt that New Britain should be looked at as a pedestrian area as well, perhaps including walkways between New Britain and Granada. He envisioned a European feel with balconies along New Britain. He thought it was possible to create something unique that would draw people to Ormond Beach. He hoped to see some flexibility from the City for projects that might come up such as a mixed use hotel, perhaps, or some other mixed use project. Mr. Thomas thanked him for his input.

Ms. Maggie Sacks, 215 Ormwood Drive, director of Ormond MainStreet, said that since Mr. Goss had come on board he had done much to help MainStreet to bring about its vision for Downtown. She said MainStreet was really behind Mr. Goss's recommendations for form based codes. From a visioning standpoint, she suggested board members think of Winter Park and St. Augustine. Though, of course, Ormond's character was different, the City still had its own unique charm. Mr. Thomas asked about University Park in Orlando, west of I-4 off of Princeton, stating that it was charming and he had been quite surprised to find it so. He thought perhaps form based codes had been used there. Ms. Sacks recommended that board members visit College Park in Orlando as well.

#### **IX. MEMBER COMMENTS**

The members wished everyone happy holidays. Mr. Jorczak passed out an article on sprawl. Ms. Behnke asked whether hard copies would always be delivered and suggested printing double-sided to save paper. She said she did print her packets out as she had a hard time reading from the computer screen, but would not do so anymore if the department was sending out packets. Mr. Goss said the department would be sending out both hard copies and electronic, but that the documents could be printed on both sides as the department was trying to conserve as much as possible. Chair Thomas said he had enjoyed working with the board and staff over the last year and that he was looking forward to working with all of them again next year.

#### **X. ADJOURNMENT**

The meeting was adjourned at 9:14 p.m.

Respectfully submitted,



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Ric Goss, AICP  
Planning Director

She said that the draft language would be taken back to VCARD once the language had been revised.

Mr. Goss clarified for Mr. Thomas that the regulation was for new development of vacant lots in low-lying areas; new structures, even in replacement homes, would now have to do compensatory storage. He reiterated that having the requirement in place would result in recovering lost flood volume over the years.

### **C. Signage Land Development Code Amendments**

Mr. Spraker said that staff reviewed the sign code and amended the language to address issues that had previously arisen. He informed the Board that staff had met with sign companies representatives, the Ormond Beach Chamber of Commerce personnel, VCARD representatives and property owners who had historically had complained or who had issues with their signage.

He summarized as the major issues:

- Formatting the sign section to condense all the requirements throughout the code into one location.
- Requiring architectural treatment of monument signage, as required within most of the planned developments.
- Allowing flexibility with the five-foot setback requirement for older developments; planning director would have some discretion based on site conditions.
- Allowing electronic changeable copy signs in the primarily commercial areas of SR A1A, Nova Road, US 1 and excluding them along Granada Blvd., Hand Avenue, in the B-1, B-9 and B-10 zoning districts and within the Downtown Redevelopment Area.

#### Electronic Changeable Copy Signs

In response to Chair Thomas, Mr. Spraker noted that the electronic changeable copy signs were currently allowed for The Trails and for governmental signage. He pointed out that the City Commission, through the Volusia County review process, had allowed one at the Harley Davidson dealership at Destination Daytona as part of their planned development. He also responded that no one with a business on Granada Boulevard had complained because such signs were allowed elsewhere in the city. He said that it was staff's opinion that it was not appropriate for the office and professional development along Granada Boulevard, but acknowledged that there were some commercial uses at the major intersections. He responded to Mr. Thomas that Lowe's or Wal-Mart would be denied such a sign under the proposed ordinance, but pointed out that they could try to negotiate it through a planned business development. He said that they would have to prove that it should be allowed, however, and it would then be at the discretion of the Planning Board and the City Commission.

Mrs. Press asked if the language would restrict the color changes and flashing lights and whether or not it would require a complementary architectural foundation.

Mr. Spraker explained that all monument signs have architectural requirements. He added that the display could not be more than 50% of the sign area (32 square feet of the 64 square-foot maximum signage allowance). He said that pole signs allowed for bigger signage, i.e., up to 125 square feet for sites 600' long, equating to a 62.5 square foot electronic changeable copy sign. He added that there were prohibitions against flashing or blinking, dimmers were required, and said that they could be used to advertise on-site tenants.

Mrs. Press recalled that The Trails could change only a certain number of times per day; Mr. Spraker explained that it was a specific condition of The Trails development order.

Chair Thomas stated that the city of Ormond Beach was going to place an electronic changeable copy sign on the Performing Art Center's US 1 frontage that would inform the public of any activity related to the city.

Mr. Spraker asked the Board to let him know if they needed additional time to consider the changes. He said he did not want to rush the members if they felt they needed additional time to consider the issue.

Chair Thomas said he could foresee the City's wanting to have flashing lights to simulate fireworks [to advertise the Fourth of July celebration] and cautioned the members look at the overall implications.

Mr. Spraker said that there was a difference between flashing lights (illegal) and animation (legal), which would be allowed under the Code.

Mrs. Press noted that animation would be, e.g., a moving caricature and something that she would oppose; Chair Thomas said he would not object to the animation.

Mr. Spraker pointed out that to be the reason the item had been brought forward for discussion.

#### Other Signage Issues

Mrs. Press asked if the city could require that signs be removed if a business vacated a particular location and if they required removal of nonconforming signs.

Mr. Spraker replied that if a business moves out, the city has the right to require them to cover the sign cabinet or install a blank face on the sign; it gives the Chief Building Official some flexibility in addressing that issue. He said that to his knowledge, however, the City had never forced removal of a nonconforming sign in that situation, because the sign could be re-utilized if another, similar use occupied the same location. He cited Moe's use of the former Long John Silver's sign as an example.

Mrs. Press said that she would prefer to see the nonconforming signs removed if a business was vacant for a period of time.

Mr. Spraker advised that as currently written, a sign must be removed if a use is abandoned or discontinued for a period of six months; it did not have to be removed if a new tenant took some additional time to establish their business of similar use.

Mrs. Press clarified that the idea was not to punish business endeavors, but rather to eliminate eyesores, such as the sign at the former gas station at the southwest corner of Granada Boulevard and Ridgewood Avenue, a property that had been vacant for years. She stated that she wanted the removal provision for nonconforming signs to be enforced.

Mr. Spraker explained that the city did not actively pursue the removal of nonconforming signs, but instead required them to be replaced at the time of site development. He said that there was no amortization and that nonconforming signs were allowed to be maintained or repaired as long as the use was not changed or the business did not close.

Mrs. Press expressed dismay at the proliferation of signage (balloons, flags, etc.) throughout the city since the easing of the sign restrictions (deemed necessary as a result of the current economic climate). She asked for assurance that the proposed language would not permit the continuation of the current regulations when the economy rebounded.

Mr. Spraker said that they were not allowed by the city ordinance that had changed the Code. He said that he thought the sunset provision was longer than six months.

Mrs. Press said that she had no problem with the A-frame signage, but felt that the signage she was referring to was like graffiti in that one mess generated another mess.

Mr. Goss said that the added provision in the Code was for **A-frame signage**, not for illegal human directionals or signs tied to trees, and that the provision did not create the sign mess to which she was referring. He reminded the Board that the City employed reactive enforcement, i.e., issues were only addressed when complaints were received.

Chair Thomas said that as a business person, he was somewhat conflicted about requiring the upgrading of nonconforming signs, because nonconforming houses were not required to be brought up to code when they changed hands.

In response to Mr. Wigley, Mr. Spraker said that it was not only that the **nonconforming signs** were too close to the property lines, but that pole signs were required to be replaced with monument signage in some areas of the city. He pointed out that many of the pole signs along Granada Boulevard in the Downtown were grandfathered and could remain forever or until the property became vacant for 6 months or underwent a change of use or the sign was destroyed. He also confirmed for Mr. Thomas that there was no such requirement for nonconforming homes.

Mr. Spraker said that the **wall sign height** requirement of 20' had been removed from the Code and that the proposed language would allow alternative locations, rather than only over the front entrance. He said, e.g., that wall signage would be allowed on the side, as long as it did not impact residential. He added that there was also a provision that would allow 50% of the site signage to be transferred to additional wall signage if a property owner did not or could not have site signage, such as in the Downtown or on SR A1A, where some of the properties do not have enough frontage for site signage.

Mr. Spraker also advised that language had been included to make the **calculation of square footage for identification signage** more equitable. He explained that currently, the bigger the unit frontage, the smaller the allowable signage as a percentage. A unit with smaller frontage would achieve more signage on a percentage basis than would a storefront of 100 linear feet (LF). He said that the solution proposed by staff would allow a 1:1 ratio up to 30 LF; any additional footage over 30 LF would be calculated at 1:0.5. Therefore, a 100 LF storefront would be calculated as 30 LF, plus ½ of the 70 remaining linear feet, or 35 LF, resulting in 65 SF, as compared to a maximum of 53 SF under the existing calculation. He pointed out that the change altered only the square foot copy area of the sign and did not increase the number of allowable signs; he said that a corner or double-frontage lot would be allowed more copy area to be allocated to the two permitted signs.

Mr. Spraker said that staff had addressed the issue of **wall vs. canopy signage**, raised at the public meeting, by including language to permit the allowable square footage of wall sign to be divided between wall signage and canopy signage. He said that the calculation for window signage had also been simplified to allow a 20% of the total window area for **window signage**, whereas at present, it was based upon a percentage of square footage of the wall signage. He explained that this was also a simpler way of calculating allowable signage and would allow more signage than before.

Mr. Spraker recalled that **sign variances** had been discussed at length at the public meeting, and said that the position of staff was that there should be no variances for nonconforming signs, since the purpose of nonconformity was to eliminate them. He said that the current code allowed sign variances for existing nonconforming signs destroyed by an act of God, thereby allowing the continuation of nonconforming signs. He pointed out that the code allowed for other mechanisms, such as the planned business development zoning district, during which signage could be negotiated and permitted through a public hearing process. He said that rather than going through a rezoning, a Special Exception could be utilized as an alternative for properties that did not need to rezone, but only wanted to **negotiate signage** based on some unique characteristic. He said that that change in the language might afford more people the opportunity to negotiate their signage.

In response to Mr. Thomas, Mr. Spraker felt the only risk would be that someone would want to utilize the Special Exception process for a second sign, which was not the intent of the change. He added that the time and effort involved for staff in the Special Exception process would be about the same, but could be less expensive for the applicant. He said the difference would be that the PBD was more of a negotiation tool, whereas the Special Exception would require that the application would have to meet certain criteria.

Mrs. Press and Mr. Opalewski thought the Special Exception route seemed preferable.

Mr. Jorczak asked if the owner of a nonconforming sign could utilize the one of those routes to extend it beyond the six-month requirement.

Mr. Spraker answered that the owner would have the right to apply, but questioned whether or not staff would recommend approval; he thought the applicant would have a heavier burden of

proof. He reiterated that the purpose of identifying nonconforming signs was to ensure that at some point they would be removed.

Mr. Goss reminded the board that the PBD had already been changed to include a list of criteria that could be gained by the City in exchange for allowing increased signage.

Mrs. Press commented that political signs should be limited to six weeks.

Mr. Spraker recalled that a previous attempt to change that requirement had been unsuccessful and the language continued to limit the time to the qualifying period.

City Attorney Hayes pointed out that there was a State statute addressing the issue, which made it difficult to regulate. In response to Mrs. Press, he said he was unsure if asked if a candidate could put out signs a year in advance, if he or she opened an account as a qualified candidate.

**IX. MEMBER COMMENTS**

Mr. Jorczak wished his fellow board members a safe and merry Christmas, as did Mr. Opalewski. He stated that he had enjoyed serving with his fellow board members.

Chair Thomas asked that staff provide an opinion from the Chief Building Official regarding standards, windloads and codes for different housing types so that the Board could differentiate between a 1950's concrete block house and a 21<sup>st</sup> century manufactured home. He did not believe that the standards were the same.

Chair Thomas said he also enjoyed serving this year and reminded the board that they had one more year as a Board in which to accomplish what they wanted [before the next election].

**X. ADJOURNMENT**

The meeting was adjourned 9:00 p.m.

Respectfully submitted,

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Ric Goss, AICP, Planning Director

ATTEST:

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Doug Thomas, Chair

*Minutes transcribed by Betty Ruger*

Exception process to negotiate their own architectural style. He said that the form based code would establish basic design guidelines that did not advocate a particular architectural style, but instead would require certain minimum standards. He confirmed for Mr. Wigley that the style for the project before the Board was Spanish, one of the four architectural styles.

Ms. Dorian Burt re-addressed the Board and said that those with an investment in the Downtown wanted unique styles, rather than a cookie-cutter suburban downtown. She said that they were embracing parts of the form based code that let the uniqueness of each building shine through.

Mr. Jorzak complimented the applicants on making the proposed project as attractive on the rear as on the front and agreed with his fellow board members that it would be helpful if the applicant and the city could facilitate the establishment of walkways for pedestrians to make it advantageous in the long term.

Mr. Wigley said he supported the project and thought it would be a welcome addition and huge improvement for the Downtown.

Chair Thomas agreed with Ms. Burt, saying he liked the diversity of styles in the Downtown. He also said that he thought the proposed project would be a great addition to the Downtown and that he wholeheartedly supported it. He asked only that the applicants and staff work together to try to address some of the issues raised during the meeting.

In response to City Attorney Hayes, Mr. Spraker explained that Special Exception would allow two years for the first phase (the building, stormwater and parking improvements) and four years from the date of City Commission approval for the second phase (additional kitchen and additional seating). He assured Mr. Wigley that any deviation from the approved Special Exception would require a return appearance before the Board; any future waivers would also require re-hearing.

**Mr. Jorzak made a motion to recommend approval of SE-10-44, the Maria Bonita project. Mr. Wigley seconded the motion, which was approved by unanimous vote.**

**B. LDC 09-41: Land Development Code Amendment - Signage**

Mr. Spraker stated the proposed amendment would affect three sections of the Land Development Code (LDC) and said that the language had not changed since the discussion with the Board the previous month regarding signage regulations. He referenced the staff report and said that the major change was the reformatting of the entirety of the regulations for monument or pole signs into one section of the Code. He said it also included the accompanying landscaping requirements, currently located in another section.

Mr. Spraker said another change was the allowance for electronic changeable copy signs in commercial areas of the city, such as along SR A1A, Nova Road, and Williamson Boulevard, while not allowed in traditional office areas, such as along Granada Boulevard and the the B-1, B-9, B-10 office zoning districts. Those signs would not be allowed in the Downtown.

Other changes, said Mr. Spraker, would give the Planning Director or the Site Plan Review Committee (SPRC) a little more flexibility, e.g., wall signage (now allowed only on the entrance side of the building) could be located on another side of a building with better exposure as long as it did not impact a residential area. He recalled that Ace Plaza had to go through the public hearing process several years ago, since there was no administrative ability at that time to allow that variation in wall signage. He said also that the changes would allow up to one-half of the square footage of the site signage to be utilized in a wall sign. Signage would be allowed on both a canopy and wall sign, as long as the signage was within the allowable square foot of the wall signage.

Ms. Behnke asked if the changeable electronic signage text could flash or roll over every few seconds.

Mr. Spraker explained that if a business was allowed a 64 square foot sign, ½ of that square footage could be in electronic changeable copy. He said that flashing was prohibited, but some animation was allowed, as was a change in text. He recalled that The Trails Shopping Center sign had been approved on the condition that the text could change only twice a day, which allowed individual tenants an opportunity to advertise on that sign. He said an additional requirement would be for self dimming signage, which he thought was now fairly standard, so that the sign would not be as bright at night. He confirmed for Mrs. Behnke that people standing on the sidewalks with signs were not permitted.

Mr. Jorczak questioned why someone would have to obtain a building permit from the city in order to erect a flagpole in their front yard (Page 2, Section 3-40).

Mr. Spraker explained that the flagpole was considered a structure, based on the pole height. He said that the inspectors need to know that it would be properly installed in the ground because of the potential for it falling. He clarified that the pole height was not limited by the regulation, only that a permit would be required if the flag exceeded 40 feet.

Mr. Jorczak thought that while the city might want to regulate flag poles in relation to their proximity to a right-of-way or their vertical height in a residential area, he thought that any fee should be nominal. Otherwise, he said, the proposal was acceptable as previously discussed.

Ms. Behnke referenced Section 3-43, C, 2, which stated that the Chief Building Official was authorized to cause the removal of a sign and that any cost "shall be paid by the person owning and occupying the building". She suggested that it read "owning and/or occupying the building", since owners do not always occupy their buildings. When Mr. Spraker pointed out that the property owner would be the one cited, she suggested that the language simply read "property owner".

Mr. Spraker agreed to correct that verbiage.

Ms. Behnke questioned why in Section 3-45, A (Substitution of Noncommercial Speech for Commercial Speech) that the content of a message could be at the option of the owner, while Section 3-44 stated that no sign shall be erected that displays any statement, work, character or

illustration of an obscene nature. She said that the language "shall not be any limitation based upon the content" should be clarified, since it seemed contradictory.

Mr. Spraker explained that Florida Statutes defines certain things as obscene and that if used, the city's code enforcement can issue citations. He said that other than obscenity, the city would not regulate non-commercial speech and that notwithstanding anything in the code to the contrary, an obscene message could not be utilized. He agreed to take another look at the content language.

Mr. Sam Jaffe, 29 Twin River Drive, identified himself as the person who suggested including language to allowing vinyl lettering on canopies or awnings. He asked if language had been included to that effect.

Mr. Spraker confirmed that it was and explained that a unit allowed 64 square feet of signage, could divided the signage, e.g., into 10 square feet on the canopy and 50 square feet on the wall.

Mr. Jaffe questioned if the language prohibited the canopy signage from being the same as the wall signage, as discussed.

Mr. Spraker said that staff had concerns with totally exempting it out. He said staff was most comfortable with 1) increasing the allowable wall signage, and 2) including it as part of the overall square footage. He said that it would be up to the Board if they wanted to include a size minimum that exempted canopies of say, less than eight square feet.

Mr. Wigley felt that it was fine to increase the amount of space dedicated to the canopy, but said that it would need to be deducted from the allowable wall signage square footage. In response to Mr. Jaffe's proposal that one should have nothing to do with the other, he responded that it would result in an unlimited amount of canopy signage that would not affect the wall sign size or overall signage.

Mr. Jaffe remarked that although he thought it was a step in the right direction, he would be curious to see how it was written in other communities. He said that he wanted to go on record that the changes were very much appreciated.

Mr. Spraker reiterated that the alternative would be an exemption for canopy size under a certain square footage that would not count as part of the overall wall signage.

Mr. Wigley pointed out that there was no uniform size for canopies and agreed with Mr. Jaffe that it had the potential to create aesthetically disappointing signage.

Mr. Goss suggested that the item proceed as written, since they had the option of revisiting the issue. He pointed out that staff was trying to be conservative, while at the same time trying to accommodate the needs of the business community.

Chair Thomas commented that everyone understood that staff had been very reasonable and just wanted to be sure that the issue could be re-evaluated at some future time.

Mr. James Stowers, 805 Candlewood Circle, co-chair of the Design Committee for Ormond MainStreet, apologized to staff for addressing his comments in a public forum, but reported that

on Monday night they had held a meeting at which they suggested that Section 3-49 include language to allow larger properties opportunities for more dynamic signage that would be appropriate and consistent with the comp plan and the LDC. He said that some flexibility could potentially be achieved through a master sign plan, as used in other municipalities such as Daytona Beach. He said that their master sign plan allowed very large projects such as the Speedway or Halifax Hospital such flexibility through a public process. He expressed concern that his suggestion to include factors for evaluation of a large property might be impeded by the provision of being adjacent to “abutting residential properties”; he felt it might be misconstrued to mean a property was ineligible simply because it was adjacent to residential.

Mr. Spraker said that the way the Section was currently written was that an application would have to meet every criterion, rather than to have to meet some of the criteria and then be evaluated in order to make a decision.

Mr. Wigley pointed out that the proposed language referenced “impacts” to abutting residential, not simply “abutting residential uses”, which he assumed meant a negative impact.

Mr. Spraker agreed and stated that in a situation where everyone agreed that a pole sign would be appropriate instead of a monument sign, an applicant would have to meet Criterion #2, which mandated only monument signs. He said that although the city generally requires monument signs, pole signs were still allowed in certain areas; he said that city staff recognized that pole signs might be advantageous for certain uses. He responded to Chair Thomas that their options were to leave the language unchanged (having to meet every criterion), evaluate listed criteria within the review, or modify the criteria. He also responded to Mr. Wigley that an applicant would still have the opportunity to waive one of the criteria through the PBD (Planned Business Development) process.

Ms. Behnke agreed there should be no problem with the signage if a huge tract of land did not impact a neighboring residential area, but should not be permitted if it did.

Chair Thomas questioned the definition of impact, to which Mr. Spraker responded that a 100 square foot sign immediately next to a single-family house could be expected to have an impact, as the glare from the sign would affect the house.

Ms. Behnke suggested that an impact was something that resulted in the lowering of property value. In response to Mr. Jorczak’s suggestion of color impact, Mr. Thomas thought that might be too subjective and suggested that a definition of “impact” might be needed.

Mr. Wigley pointed out that an impact would be complaint driven, i.e., based on someone’s objection to it.

Mr. Spraker reminded the members that anything going before the Planning Board would include a review of the criteria and a staff recommendation as a professional opinion. He stated that the Planning Board and City Commission would make the final determination.

**Mr. Wigley made a motion to recommend approval of LDC 09-41. Mr. Opalewski seconded the motion, which passed by unanimous vote of the Board.**

Item #8B – LDC Amendments: Chapter 3, Article II, Section 3-21 Wetland Protection

ORDINANCE NO. 2010-20

AN ORDINANCE AMENDING CHAPTER 3, PERFORMANCE STANDARDS, ARTICLE II, ENVIRONMENTAL PROTECTION STANDARDS, SECTION 3-21, WETLAND PROTECTION OF THE *LAND DEVELOPMENT CODE* TO DELETE THE CURRENT WETLAND CLASSIFICATION SYSTEM TO ALIGN WITH THE ST. JOHNS RIVER WATER MANAGEMENT DISTRICT, DEPARTMENT OF ENVIRONMENTAL PROTECTION, AND VOLUSIA COUNTY WETLAND STANDARDS FOR WETLAND IMPACTS, REQUIRED BUFFERS, AND MITIGATION; REPEALING ALL INCONSISTENT ORDINANCES, OR PARTS THEREOF; PROVIDING FOR SEVERABILITY; AND SETTING FORTH AN EFFECTIVE DATE.

Mayor Costello stated this was a public hearing regarding the wetland protection standards, and there were no requests to speak. He reported the Environmental Advisory Board and the Planning Board approved a recommendation of approval of the ordinance.

**Commissioner Kelley moved, seconded by Commissioner Kent, for approval of Ordinance No. 2010-20, on second reading, as read by title only.**

Mayor Costello stated this would protect more functioning wetlands and protect wetlands by mitigating where it mattered, rather than isolated wetlands.

Call Vote:	Commissioner Partington	Yes
	Commissioner Gillooly	Yes
	Commissioner Kent	Yes
	Commissioner Kelley	Yes
Carried.	Mayor Costello	Yes

Mayor Costello stated without objection the public hearing was closed.

Item #8C – LDC Amendments: Signage

ORDINANCE NO. 2010-21

AN ORDINANCE UPDATING THE SIGN REGULATIONS OF THE CITY OF ORMOND BEACH BY AMENDING CHAPTER 1, GENERAL ADMINISTRATION, ARTICLE III, DEFINITIONS AND ACRONYMS, SECTION 1-22, DEFINITION OF TERMS AND WORDS, DELETING CHAPTER 2, GENERAL AND DISTRICT REGULATIONS, ARTICLE VI, OVERLAY DISTRICTS, SECTION 2-70, DOWNTOWN OVERLAY DISTRICT, SUB-SECTION K, SIGNS, AMENDING CHAPTER 3, PERFORMANCE STANDARDS, ARTICLE IV, SIGN REGULATIONS, SECTION 3-38, PURPOSE, CHAPTER 3, PERFORMANCE STANDARDS, ARTICLE IV, SIGN REGULATIONS, SECTION 3-39, SIGN PERMIT REQUIRED, CHAPTER 3, PERFORMANCE STANDARDS, ARTICLE IV, SIGN REGULATIONS, SECTION 3-40, SIGNS EXEMPT FROM THE PERMITTING STANDARDS OF THIS ARTICLE, CHAPTER 3, PERFORMANCE STANDARDS, ARTICLE IV, SIGN REGULATIONS, SECTION 3-41, SIGN MAINTENANCE, CHAPTER 3, PERFORMANCE STANDARDS, ARTICLE IV, SIGN REGULATIONS, SECTION 3-42, PROHIBITED SIGNS, CHAPTER 3, PERFORMANCE STANDARDS, ARTICLE IV, SIGN REGULATIONS, SECTION 3-43, NON-CONFORMING SIGNS, CHAPTER 3, PERFORMANCE STANDARDS, ARTICLE IV, SIGN REGULATIONS, SECTION 3-44, GENERAL SIGN REGULATIONS, DELETING CHAPTER 3, PERFORMANCE STANDARDS, ARTICLE IV, SIGN REGULATIONS, SECTION 3-45 TEMPORARY SIGNS AND CREATING A SECTION TITLED COMMERCIAL VS. NONCOMMERCIAL SPEECH AND CONTENT, DELETING CHAPTER 3, PERFORMANCE STANDARDS, ARTICLE IV, SIGN REGULATIONS, SECTION 3-46, NON-RESIDENTIAL SITE IDENTIFICATION SIGNS AND CREATING A SECTION TITLED TEMPORARY SIGNS, DELETING CHAPTER 3, PERFORMANCE STANDARDS, ARTICLE IV, SIGN REGULATIONS, SECTION 3-47, BUSINESS PREMISE IDENTIFICATION SIGNS AND CREATING A SECTION TITLED SITE IDENTIFICATION SIGNS, DELETING CHAPTER 3, PERFORMANCE STANDARDS, ARTICLE IV, SIGN REGULATIONS, SECTION 3-48, SPECIALIZED SIGNAGE STANDARD AND CREATING A SECTION TITLED BUSINESS PREMISE IDENTIFICATION SIGNS, DELETING CHAPTER 3, PERFORMANCE STANDARDS, ARTICLE IV, SIGN REGULATIONS,

SECTION 3-49, RESIDENTIAL DEVELOPMENT IDENTIFICATION SIGNS, AND CREATING A SECTION TITLED MASTER SIGN PLAN, DELETING CHAPTER 3, PERFORMANCE STANDARDS, ARTICLE IV, SIGN REGULATIONS, SECTION 3-50, HISTORIC DISTRICT/BED AND BREAKFAST INN SIGNS, DELETING CHAPTER 3, PERFORMANCE STANDARDS, ARTICLE IV, SIGN REGULATIONS, SECTION 3-51, SIGN VARIANCES OF THE LAND DEVELOPMENT CODE; REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THERE; PROVIDING FOR SEVERABILITY; AND SETTING FORTH AN EFFECTIVE DATE.

Mayor Costello stated this was a public hearing, and there were no requests to speak.

Planning Director Ric Goss requested clarification regarding whether the electronic, changeable signs would be allowed on just Granada Boulevard or city-wide. Mr. Goss stated the problem with city-wide was that it applied to any churches in residential areas, but language could be added to clarify the need to be at least 200 feet from residential use and nothing in the downtown district. Mr. Goss stated the signs were stated as "business premise identification signs," but he wanted to point out that was for all signs.

Commissioner Kelley stated his motion was intended to allow all the churches on Granada Boulevard to have the electronic signs the same as on Nova Road, excluding churches within 200 feet of residential homes, or in the Downtown Development District.

Mayor Costello requested a motion to clarify the matter.

Commissioner Kelley stated his motion would be to allow houses of worship on Granada Boulevard, not within 200 feet of a residential home and not in the Downtown Development District.

Mayor Costello suggested including all churches not within 200 feet of a residential home and not in the downtown district.

**Commissioner Kelley moved, seconded by Commissioner Partington, to amend Ordinance 2010-21 to allow electronic, changeable signs for all houses of worship, not within 200 feet of a residential home or in the Downtown Development District.**

Commissioner Kent inquired why the downtown district was excluded.

Planning Director Goss stated the downtown district was being developed as a downtown area, different from other areas, without electronic monument signs.

Commissioner Kent stated he did not support the ordinance because he did not believe electronic, changeable signs should be allowed for churches or any others.

Commissioner Gillooly stated initially the discussion was whether to allow churches over 20 acres to have electronic, changeable signs. She stated after the first reading, she was amenable to allowing all churches on Granada Boulevard to have electronic, changeable signs. Commissioner Gillooly stated there was a concern about flashing signs, which would not be compatible with the image of the City. She stated she would support permitting only the churches on Granada Boulevard to have the electronic, changeable signs as a pilot program to determine if they were compatible with the City's image.

Planning Director Goss stated, initially, the staff recommendation was for the three larger churches on Granada Boulevard that exceeded 20 acres as an experiment, but he reminded the Commission that if they approved them for Granada Boulevard, the signs would be there forever; there was no such thing as a pilot program.

Mayor Costello clarified the points to be determined were should the electronic, changeable signs be permitting within 200 feet of single family home, and should the electronic, changeable signs be permitted within the Downtown Development District. He stated support for non-flashing electronic, changeable signs that would not change more often than once an hour; and he supported requesting those with these signs to post community events, such as the Birthplace of Speed event.

Planning Director Goss stated the criteria allowed for high resolution, 16 mm pixel spacing or less, no flashing or blinking, and the brightness as 2,500 NTS; all of which was based on demonstrations presented to the Planning Board. He suggested the Commission proceed with the ordinance and come back with any adjustments that were needed.

Commissioner Partington suggested the issue be continued until a public workshop could be held with a demonstration of an electronic, changeable sign during the daylight hours and nighttime hours.

Planning Director Goss suggested the Commission move forward with the ordinance minus the electronic, changeable sign issue.

Mayor Costello called for the vote on the amendment to allow electronic, changeable signs for all houses of worship, not within 200 feet of a residential home or in the Downtown Development District.

Call Vote:	Commissioner Gillooly	No
	Commissioner Kent	No
	Commissioner Kelley	No
	Commissioner Partington	No
Carried.	Mayor Costello	No

**Commissioner Gillooly moved, Commissioner Partington seconded, to amend Ordinance No. 2010-21 by deleting Section 3-47.F regarding electronic, changeable signs, on second reading as amended.**

Call Vote:	Commissioner Kelley	Yes
	Commissioner Partington	Yes
	Commissioner Gillooly	Yes
	Commissioner Kent	Yes
Carried.	Mayor Costello	Yes

Mayor Costello called the vote for the main motion minus Section 3-47.F.

Call Vote:	Commissioner Kelley	yes
	Commissioner Partington	yes
	Commissioner Gillooly	yes
	Commissioner Kent	yes
Carried.	Mayor Costello	yes

City Attorney Hayes stated that any motion to come back before the Commission would be treated as a new ordinance with two readings.

Mayor Costello stated the public hearing was closed.

Item #9 – LDC Amendments: T-1 Zoning District

ORDINANCE NO. 2010-22

AN ORDINANCE ESTABLISHING USES AND DIMENSIONAL STANDARDS FOR MANUFACTURED AND MOBILE HOME COMMUNITIES CURRENTLY ZONED AS T-1 AND DELETING THE REQUIREMENT FOR A REZONING TO PLANNED MANUFACTURED HOME COMMUNITY (PHMC) BY AMENDING CHAPTER 2, DISTRICT AND GENERAL REGULATIONS, ARTICLE I, ESTABLISHMENT OF ZONING DISTRICT AND OFFICIAL ZONING MAP, SECTION 2-02, FUTURE LAND USE MAP DESIGNATIONS AND ZONING DISTRICTS, TABLE 202, FUTURE LAND USE MAP DESIGNATIONS AND COMPATIBLE ZONING DISTRICTS, AMENDING CHAPTER 2, DISTRICT AND GENERAL REGULATIONS, ARTICLE II, DISTRICT REGULATIONS, SECTION 2-20, RESERVED (T-1) BY RE-ESTABLISHING THE T-1 ZONING DISTRICT, DELETING CHAPTER 2, DISTRICT AND GENERAL REGULATIONS, ARTICLE II, DISTRICT REGULATIONS, SECTION 2039, PLANNED MANUFACTURED HOME COMMUNITY (PHMC) IN ITS ENTIRETY AND RESERVING THE SECTION, AND AMENDING CHAPTER 2, DISTRICT AND GENERAL REGULATIONS, ARTICLE IV, CONDITIONAL AND SPECIAL EXCEPTION REGULATIONS, SECTION 2-57(M), CRITERIA FOR REVIEW OF SPECIFIC CONDITIONAL AND SPECIAL EXCEPTION TO ESTABLISH CONDITIONS FOR MANUFACTURED HOME COMMUNITY (MAHC) AND MOBILE HOME COMMUNITY (MOHC); REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; PROVIDING FOR SEVERABILITY; AND SETTING FORTH AN EFFECTIVE DATE.

Mayor Costello stated this was public hearing relative to manufactured home and mobile home standards. The Mayor reported the Planning Board recommended approval of the ordinance. He stated there were no requests from the audience to speak.

**Commissioner Kelley moved, seconded by Commissioner Partington, for approval of Ordinance No. 2010-22, on first reading, as read by title only.**

Call Vote:	Commissioner Partington	Yes
	Commissioner Gillooly	Yes
	Commissioner Kent	Yes
	Commissioner Kelley	Yes
Carried.	Mayor Costello	Yes

Mayor Costello closed the public hearing without objection.

Item #8E – LDC Amendments: Airport Overlay District Map

ORDINANCE NO. 2010-23

AN ORDINANCE AMENDING CHAPTER 2, DISTRICT AND GENERAL REGULATIONS, ARTICLE VI, OVERLAY DISTRICTS SECTION 2-72, AIRPORT OVERLAY DISTRICT, OF THE *LAND DEVELOPMENT CODE* BY ADDING THE AIRPORT OVERLAY DISTRICT MAP 10-2; REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; PROVIDING FOR SEVERABILITY; AND SETTING FORTH AN EFFECTIVE DATE.

**Commissioner Kent moved, seconded by Commissioner Kelley, for approval of Ordinance No. 2010-23, on first reading, as read by title only.**

Call Vote:	Commissioner Gillooly	Yes
	Commissioner Kent	Yes
	Commissioner Kelley	Yes
	Commissioner Partington	Yes
Carried.	Mayor Costello	Yes

Mayor Costello stated with no objection the public hearing was closed.

Item #9 – Front Yard Parking Residential Properties

ORDINANCE NO. 2010-24

AN ORDINANCE AMENDING CHAPTER 14, OFFENSES-MISCELLANEOUS, OF THE CODE OF ORDINANCES, BY ADDING ARTICLE X, VEHICLE PARKING/NUISANCE, AND SECTIONS 14-103, FRONT YARD AND STREET-SIDE YARD PARKING, THEREUNDER; BY ESTABLISHING TERMS AND CONDITIONS RELATIVE THERETO; AND SETTING FORTH AN EFFECTIVE DATE.

**Commissioner Kelley moved, seconded by Commissioner Partington, for approval of Ordinance No. 2010-24, on first reading, as read by title only.**

Mayor Costello stated this ordinance was for no front, unimproved parking extensions, but allowed side driveway extensions that were unimproved.

Rick D'Louhy, 108 Rio Pinar, complimented staff for their interpretation of the discussion last December. He stated the City Manager's memorandum stated, "gravel, mulch or stone" but the ordinance omitted the word, "stone."

Commissioner Kelley explained that in the ordinance stone was covered in Sec. 14-103(b) and gravel and mulch were covered in Sec. 14-103(e).

Call Vote:	Commissioner Kent	yes
	Commissioner Kelley	yes
	Commissioner Partington	yes
	Commissioner Gillooly	yes
Carried.	Mayor Costello	yes

Mayor Costello stated the key was that this was discussed three years ago and was still recommended.

Commissioner Gillooly stated, from a customers point of view. it would be a smooth process, and it would be a value to staff by being more efficient. She expressed her support.

**Commissioner Partington moved; seconded by Commissioner Gillooly, to support a Joint Permit Counter at a cost of \$121,125.00.**

Call Vote:	Commissioner Kent	yes
	Commissioner Kelley	yes
	Commissioner Partington	yes
	Commissioner Gillooly	yes
Carried.	Mayor Costello	yes

Item #11B – Electronic Sign Display

Greg Breyfogle, Daktonics, explained a PowerPoint presentation. He explained an Electronic Message Center (ECC) was an LED display and showed examples of signs. He recommended not allowing flashing display in the code, which was not effective anyway. He stated almost all ECCs had an automatic dimmer to avoid too bright displays at night. He stated animation was appropriate in some situations, but the Commission could restrict it to specific areas. He suggested that ECC not be permitted in residential areas, but in heavy commercial corridors, fewer restrictions might be appropriate, such as light animation or slightly brighter lights.

Mayor Costello recessed the City Commission meeting at 8:31 p.m. for an outside demonstration of an electronic sign.

Mayor Costello reconvened the City Commission meeting at 8:46 p.m.

Commissioner Gillooly requested a copy of the PowerPoint presentation. She stated there had been some interest from churches on Granada. She stated she had envisioned a permanent sign with changeable display area.

Robert Skelton, Fantastic Design Group, stated often an encapsulated message center was used within a cabinet, such as a monument sign.

City Manager Shanahan asked Mr. Skelton to display the slide with the before and after photo of a church sign as an example.

Pat Behnke, 15 Malayan Sun Bear Path, expressed concern that the reason for discussion of this issue was a request to approve these signs for houses of worship and now it was being discussed to open it to everyone citywide.

Mayor Costello stated churches on Granada were being considered and businesses in the commercial corridor; not in the Downtown and only churches on Granada Boulevard.

Ms. Behnke stated the ordinance before the Commission was specifically for houses of worship, which was on hold until the demonstration. She stated she understood advertising was important, but Ormond Beach was an elegant, genteel city, not “flash and trash.” She pointed out that the Performing Arts Center sign was ineffective, because you did not get all the information; and drivers should not be looking away from driving. She stated Orlando allowed changeable signs, but four billboard signs had to be eliminated for each ECC. She stated these signs were not appropriate at the City’s gateway. She stated they were not appropriate when presented to the Planning Board, and not appropriate now.

Todd Duplantis, RaceTrac, expressed excitement about being part of Ormond Beach, and as a business owner, he felt the LED sign was the future. He stated a couple of the advantages were less maintenance was required, and the ECCs were more durable. He expressed support for the fixed text, not blinking or flashing; and location of the signs was very important and should be determined by the landscaping and surrounding businesses. He stated the size of the RaceTrac sign in Ormond Beach was conforming at 64 square feet, but he showed a typical RaceTrac LED sign, which was 100 square feet with the LED display at 40% of the sign area. He stated the proposal was to allow 100% LED display for government signs, while allowing businesses 40% of display area for LED display, when businesses stimulated the economy. He suggested the allowance should be equal for all ECC. He stated the maximum number of signs per location should be determined on a case-by-case basis, dependent upon the landscaping

and surrounding businesses. He challenged the Commission on the proposed limit of the distance between signs, and the designated “first come, first serve” gave an advantage to the first business owner while penalizing any businesses opening later within 700 feet of the business with an ECC.

Mayor Costello stated the proposed LED display area of 50% per business and 100% for government was due to the government sign advertising community events to inform residents of activities, rather than for commercial purposes.

Matt Reardon, 1687 West Granada Boulevard, Calvary Christian Center, stated they had an old, grandfathered sign, but wanted to put in a board that was modern, clean, and did not break down frequently. He stated Calvary Christian Center made several suggestions to the Planning staff on how to include them in the sign ordinance, such as on Granada Boulevard west of I95. He stated they had a beautiful new facility with an ugly sign, and would like to make the front of the property look as good as the rest with an ECC that was environmentally friendly. He urged support of ECCs for churches.

Commissioner Kent agreed that an ECC helped get the message across, particularly for businesses, but he personally loathed ECCs and regretted voting for the Performing Arts Center sign. He stated he had not heard any support from residents for ECCs but had heard objections. He stated Ormond Beach had a classy, elegant feel, and ECCs would diminish that. He stated it was not a new idea, but the City had not had any because the ECC did not fit the look and feel of the City. He stated the proposal started with a few churches, and now included businesses throughout the City.

Commissioner Kelley stated he voted against the sign at the Performing Arts Center because it was too small and could not be read. He stated he had yet to get the entire message driving by the sign; and therefore, if ECCs were approved, 100% of the sign should be allowable for the LED display. He stated the original concept was to allow three houses of worship to replace their signs, but it had mushroomed from there. He stated the LED signs were not the future but the present. He stated it was a matter of how much the City wanted to be involved. He stated he was not in favor of a seven second change because that was too quick, but he liked Holly Hill's sign because it's was large enough to get the message across.

City Manager Shanahan stated staff had not been trained on the Performing Arts Center sign, but training was in the works; and she reassured the Commission the situation would be resolved.

Commissioner Partington suggested a fixed text only sign with no flashing, no blinking and two text changes a day.

Mr. Goss requested the Commission go through each portion of the memo to determine what the Commission would allow, such as locations and characteristics. He commented that allowing 18mm characters, but not allowing animation, would be a waste of money for the sign owner, suggesting 20mm instead. He stated it would be important to know hold time between messages; and if there should be an option to reward good behavior, he suggested it would be to increase what would be allowed. He stated staff needed direction on all aspects of ECCs before an ordinance could be crafted. He suggested a conservative approach, which would allow for broadening later.

Commissioner Kelley suggested static messages would not require a 700 foot distance between signs.

Mayor Costello summarized that Commissioner Kelley and Commissioner Partington seemed to favor text only; Commissioner Kent was not in favor of ECC signs; and he suggested hearing from Commissioner Gillooly.

Commissioner Gillooly stated that although the Performing Arts Center sign caused her blood pressure to spike, she reminded all that the sign was still being tested. She stated she had envisioned static text that was changed twice a day. She was concerned that allowing animation would be disastrous. She stated the proposal started with three churches with large land size, progressed to other churches, and then, allowing businesses, which was the start of a problem. She pointed out the Trails Shopping Center sign was tasteful.

Mr. Goss stated the Commission could take a conservative approach with only static text messages for a long time, which could be opened up later. He pointed out that all the capabilities were part of the ECC.

Commissioner Gillooly referenced the sentence in the memo, “any ordinance that allows ECC signs will place additional burdens on the City’s code enforcement officers to investigate, document, and justify if a violation did or did not occur,” which would require a lot of staff time to monitor. She inquired if businesses were requesting ECCs before choosing the City to locate their business.

Mr. Goss stated he believed it was not a deciding factor for businesses in their decision to locate in the City.

Mayor Costello summarized three members had already supported static text only, with a change every 12 hours, with no limit as to the distance between signs.

Commissioner Gillooly stated she favored static text; but she was concerned that should someone purchase an ECC at three times the cost of a stationary sign and had all the other capabilities, they would later request to fully utilize all those capabilities.

Mayor Costello stated Mr. Goss pointed out that an ECC that displayed animation would require 16mm, instead of 20mm, which would be more costly.

Commissioner Kent stated he understood what Commissioner Gillooly was saying, and this was a big change for the City that could lead to other things. He stated one of the best signs in the City was at the Casements, a static sign costing approximately \$2,000.

Mayor Costello confirmed the signs would not be in the Downtown area or residential areas. The Mayor asked if anyone had an issue with the spacing of signs.

Commissioner Kelley stated if someone currently had a sign, it should make no difference that they change to a readable electronic sign.

Mr. Goss inquired as to the percentage of a sign that would be allowable for LED display.

Mayor Costello stated he was comfortable with allowing 50% of the sign to be LED display.

Mr. Breyfoyle stated a lot of cities were allowing ECC, but were not overrun with ECCs because they were cost prohibitive. He stated cost was the main issue in determining how many requests the City would have.

Mayor Costello stated the consensus was for text only, with a minimum screen resolution of 20; no quiet time; changeable every 12 hours; not in Downtown; not in residential areas; not in B1, B9 or B10, except for churches; only in the commercial corridors and for churches; 50% of allowable square footage of signage for LED display; requiring automatic dimmers; no maximum per parcel; no spacing requirement between signs; and a specific light source required.

Mr. Skelton suggested an inexpensive light gun for use by code enforcement; consideration of a five minute change time for message changes; and he offered his company’s services at no charge to assist with the Performing Arts Sign.

City Manager Shanahan stated the assistance would be welcomed.

Commissioner Kelley stated he understood Mr. Skelton’s suggestion regarding the five minute change time, but objected to the possibility that motorists driving long a street would see a continuing change in signs as they drove.

Mr. Goss stated staff had sufficient direction to craft the ordinance.

Matt Reardon suggested churches be allowed changes more than twice a day to be able to promote all the services offered to the community.

Commissioner Kelley stated he would be amenable to allowing churches to change every hour or every two hours.

Mayor Costello confirmed that churches could change the message every hour, and businesses could change their messages every 12 hours. He stated he liked the signs in Port Orange and Holly Hill. He stated if someone was willing to purchase the Performing Arts Center sign, he would be willing to purchase a bigger sign.

Commissioner Kelley suggested letting it be known the Performing Arts Center sign could be purchased at a discount and purchase one that worked.

Mayor Costello stated that could be determined once staff received training on the use of the sign.

Item #11C – City Manager Evaluation

City Manager Shanahan thanked the Commission for the thorough and comprehensive evaluation, and she stated she had clear direction from the Commission.

Mayor Costello explained that Page 4 was missing an answer, which was a “4.”

Commissioner Kelley commented on Commissioner Partington's suggestion that the City Manager take time off; and he thought it was a great suggestion, because it was important for the City Manager's health. He agreed with Commissioner Partington's suggestion for webcasting.

City Manager Shanahan stated a proposal was coming to the Commission regarding webcasting and streaming audio.

Commissioner Kelley requested a discussion on this issue before it was finalized.

Commissioner Partington stated that after seeing the other member's comments, the City Manager must feel great. He stated she really had done a great job.

Commissioner Kelley expressed appreciation for the Mayor's suggestion that the weekly activity report be more concise; they know staff was working hard, and unless the City Manager did it for her benefit, it was not necessary for the Commission.

City Manager Shanahan stated the report was done for her benefit and she passed it along to them.

Mayor Costello stated he did not want to feel the need to read 20 pages unless she pointed out something as important.

Commissioner Kent stated he was a tough grader, but the City Manager was outstanding in all areas. He stated she dealt with the constituents in an expeditious and efficient manner.

Commissioner Gillooly agreed with everyone, that in a short time, the City Manager had established herself; as City Manager she had found ways to get out into the community. Commissioner Gillooly appreciated that the City Manager had become part of the community, and for her professionalism.

Mayor Costello stated the best way for him to sum up was that the survey regarding a beachfront park determined that 73% of the residents thought the City was going in the right direction, which reflected on the City Manager and showed she was doing a good job.

City Manager Shanahan stated it was a team effort with the Commission giving her direction.

Item # 12 - Reports, Suggestions, Requests

Proclamation Honoring Blaine O'Neal

Commissioner Gillooly thanked Mayor Costello for taking the leadership role relative to the proclamation for Blaine O'Neal and for capturing Blaine O'Neal's spirit in the proclamation.

Commissioner Partington stated one could not say enough good things about Blaine O'Neal, who always had a kind word for everyone and was dedicated to professionalism and learning what you needed to know before you did something. Commissioner Partington stated the League of Cities was working to find a way to honor him.

Parks Clean-Up

Commissioner Gillooly stated she had the privilege to work with the volunteers on the Bailey Riverbridge Park clean up, which was a success. She stated Robert Carolin was out with his staff working and made it a nice experience.

Nova Community Park

Commissioner Kelley expressed appreciation for Commissioner Partington's efforts on Nova Community Park. He stated he had first attended a meeting in 1993, when Diane Ledforth led the meeting to improve the park in 1995.

#### **IV. NOTICE REGARDING ADJOURNMENT**

NEW ITEMS WILL NOT BE HEARD BY THE PLANNING BOARD AFTER 10:00 PM UNLESS AUTHORIZED BY A MAJORITY VOTE OF THE BOARD MEMBERS PRESENT. ITEMS WHICH HAVE NOT BEEN HEARD BEFORE 10:00 PM MAY BE CONTINUED TO THE FOLLOWING THURSDAY OR TO THE NEXT REGULAR MEETING, AS DETERMINED BY AFFIRMATIVE VOTE OF THE MAJORITY OF THE BOARD MEMBERS PRESENT (PER PLANNING BOARD RULES OF PROCEDURE, SECTION 2.7).

#### **V. APPROVAL OF THE MINUTES**

The minutes of the May 13, 2010 Planning Board meeting were unanimously approved, as presented.

#### **VI. PLANNING DIRECTOR'S REPORT**

Mr. Spraker informed the Board of a community meeting to be held at 7:30 p.m. on June 24<sup>th</sup> at the Nova Community Center regarding an application from T-Mobile, who is proposing a 140-foot telecommunications antenna at the rear of the Club Boom property, 1 South Old Kings Road. He said that the applicants had just sent out notices to property owners within a 600-foot radius and had advertised in the newspaper that they are applying for a camouflaged telecommunication antenna, a conditional use (staff approval) within that zoning district. He explained that the community meeting was required because the property abutted residential uses and that based on the community input there would be a determination of whether it would be a staff approval or would require a Special Exception (public hearing). He invited the Board members to attend and to participate.

Mr. Spraker responded to an inquiry by Mrs. Press that the tower would look like a flagpole. He also responded to Mr. Jorczak that it would be a new tower, not a co-locate, and advised that staff had asked for an analysis of 1) why it was needed at that location, and 2) why they needed a 140-foot tower. He added that based upon his review, such towers appeared to average between 140 feet and 150 feet in height. He noted that the applicants had to first go through site plan for initial staff comments, have a community meeting and then go back through site plan review to resolve any outstanding comments.

Replying to questions regarding the tower structure, Mr. Spraker confirmed that the tower would indeed fly a large, American flag and that the pole would be illuminated at night. He assured the Board that the light would not be intrusive to area residents or to aviation.

#### **VII. PUBLIC HEARINGS**

##### **A. LDC 10-114: LDC Amendment – Electronic Changeable Copy (ECC) Signage, Sec. 3-47**

Mr. Spraker said that the item was a request to amend the Land Development Code (LDC) to allow electronic changeable copy signs. He said that staff first became aware of the desire for electronic changeable copy (EEC) signage when sign companies, as well as business and property owners, expressed interest in utilizing a new technology. He recalled that The Trails [Shopping Center] had installed such signs about 4-5 years earlier and that there was now some interest in allowing those signs elsewhere in the city.

Mr. Spraker said that in December, 2008, Kenco Sign Company provided a demonstration to the Planning Board. He said that subsequent to soliciting input from the Planning Board, staff had advised the sign company personnel that the recommendations would be incorporated as part of the LDC revisions to the sign article. He said that the changes were then presented to the Planning Board for discussion in December, 2009, with the amendments presented for consideration and recommendation in January, 2010. He recalled that when the amendments were heard by the City Commission, they pulled the electronic changeable copy signage section for discussion and that the item currently before the Board was drafted based on the direction provided by the City Commission at their May 18<sup>th</sup> meeting.

Prior to the latest amendment, Mr. Spraker explained, electronic changeable copy signs had been allowed 1) for shopping centers over 120,000 square feet, and 2) for governmental agencies (hence, allowing the signage at The Trails and the Performing Arts Center [PAC]). He pointed out that the latest draft would allow the signs along commercial corridors (zoning districts B-4, B-5, B-6, B-7, B-8 and the PBD with a commercial land use) and for houses of worship, and would continue to allow them for governmental agencies as long as they met the proximity requirement for single-family residential areas.

Mr. Spraker referenced the accompanying map and pointed out the areas in which such signs would be allowed: Granada Boulevard, Nova Road, US 1 and along SR A1A. He also pointed out that the amendment would preclude use of electronic changeable copy signage within 200 feet of a residential lot line; he noted that it would disallow signs along sections of Atlantic Avenue within 200 feet of the oceanfront homes and along sections of US 1, primarily in the city's core area.

Mr. Spraker informed the Board that the City Commission specifically desired to allow houses of worship to have electronic changeable copy signs, most being located along West Granada Boulevard; e.g., Tomoka Christian Church and Tomoka United Methodist Church. Also eligible would be commercial areas not only along SR 40, but also in B-7 zoning areas along corridors such as Interchange and Williamson Boulevards. He said that, for example, the Ormond Town Square could have an ECC sign on the Williamson side of the property, but not along SR 40. He further reported that there had been no discussion regarding whether or not to allow electronic changeable copy signs along I-95, but added that they would not be allowed along Granada Boulevard (except for houses of worship), within the redevelopment area or within 200 feet of Granada Boulevard.

Mr. Spraker said that a concern had been expressed that the city would eventually look like Las Vegas, and stated that it would not, because 1) the ordinance allowed only text, with no blinking, flashing, pulsing, video images or animation, and 2) the electronic copy area could be no larger than 50% of the already restrictive square footage allowed for both monument and pole signs. He pointed out that sign changes and animation as allowed for electronic signage in Volusia County's jurisdiction (e.g., at Destination Daytona) would not be allowed under Ormond's regulations. He also noted that those signs were larger than what would be allowed in Ormond Beach and reminded the board that the changeable copy area could only be 50% of the sign area. In addition, Mr. Spraker said that the required pixel spacing was regulated at 20mm, a sharp viewing image, and that automatic dimmers would be required at night. He said there was no sign limitation per parcel, as discussed by the city commission, and said that the existing sign

ordinance allowed multiple signs for corner lots, for a Granada or Interchange frontage, as well as multiple signs for multiple principal buildings; he advised that a 120-square foot sign was allowed, based on a lot's linear frontage.

Mr. Spraker responded to Mrs. Press that a particular lot could have multiple signs, since the number of signs was based on the lot frontage. He cited the Tomoka Plaza shopping center on Nova Road as an example of a very long property that could have even more signs if it were to be subdivided. He said that the proposed ordinance had infinite possibilities and implored the Board members to make recommendations for anything that they did not like. He said that the recommendations of the Planning Board and the direction of the City Commission would determine the way the signs were to be regulated.

Mr. Jorczak asked if the signs would also be allowed on the buildings.

Mr. Spraker replied that they were site signs only (monument or pole signs). He confirmed for Mrs. Press that the site at the southwest corner of SR40 and Nova Road would not be allowed to have a changeable copy sign because it was within 200 feet of Granada Boulevard. He added that because the property's lot frontage had been reduced over time by Department of Transportation acquisitions, and that the remainder would be allowed only about 30 square feet of monument sign. He agreed that except for the existing development order, that parcel would have been allowed a pole sign.

Mrs. Press asked if the Strasser center on US 1 would be allowed an electronic changeable copy sign, to which Mr. Spraker responded that they could.

Mr. Spraker read into the record an e-mail from Norman Lane, who stated that, *'I am opposed to allowing these signs anywhere in the city. I believe that these will be impossible to maintain, the kind of restrictions that have been proposed. Restrictions on the types of properties or locations will be seen as arbitrary and unfair and will fall over time. Similarly, restrictions on color, brightness, patterns and frequency of change will also erode. This is a very slippery slope that I believe will result in our beautiful city being peppered with distracting and unsightly moving picture signs. If the present owners of changeable text signs are trying to justify this by saving labor, it seems unlikely that they will pay for the high cost of the signs anytime soon. Thank you for your consideration, Norman Lane.'*

Mrs. Behnke verified with Mr. Spraker that the property owner would own the accompanying software and would have the capability of setting the number of copy changes and the timing.

Mr. Opalewski verified with Mr. Spraker that only houses of worship were allowed ECC signage along Granada Boulevard.

Mr. Spraker pointed out that properties such as the South Forty Shopping Center could not have electronic signage on Granada, but because the property also fronted on Clyde Morris Boulevard, they could have an ECC sign if located more than 200 feet from Granada Boulevard.

City Attorney Hayes stated for the record that Doug Thomas (Chair) had arrived.

City Attorney Hayes also pointed out that signage regulations were always tricky and explained that there has to be some rational basis that advances a legitimate government purpose, such as by means of zoning and setbacks. He stated for the record that allowing a commercial business to have ECC signage, but not a house of worship, could be viewed as discriminatory. He said that allowing the signs along the Granada Boulevard corridor would be all right, as long as the city did not except out certain businesses over others; he also cautioned that the regulations should not allow some uses to have different operational aspects (such as more frequent copy changes) than other uses. He said that legal staff had been researching the issues since receiving direction from the city commission at their last meeting and would continue to do so.

Mr. Thomas asked Mr. Jorzak to continue to chair the item.

Mrs. Press said that the proposed language did not limit the use of color. She recalled that The Trails had been approved for their ECC signage because some of the stores were not visible to passersby, a result of the center's layout. She said that The Trails sign now utilized two colors.

Mr. Spraker said that Tomoka Plaza could have had the same type signage if approved by a Special Exception or Planning Business Development at that time. Since the language was no longer in the Land Development Code, he pointed out that the signs were totally prohibited and that even the city's sign was now nonconforming.

Mrs. Press also pointed out that one of the other issues not mentioned was that there was no restriction on font size.

Mr. Jorzak referenced the questionnaire he had sent to staff and said that there were no color standards in the specifications. He pointed out that LED's now allowed a nearly infinite color range for both background and text and suggested that it be addressed in the Code language. He said he had also questioned the number of potential physical locations for electronic signage in Ormond Beach and reported that, per staff analysis, there were some 350 locations that could allow varying sizes of such signs, given the property constraints. He also asked if there were any proximity standards being considered, such as the distance allowed between the signs. He expressed concern with the language being considered, since he felt there could eventually be a myriad of electronic signs in Ormond Beach that could negatively alter the character of the city.

Mr. Jorzak said that his questions regarding the existing proposed had been raised to aid in the Board discussion so that staff and the City Commission could determine if the language presented was perhaps too broad. He stated that he understood the use of the electronic signage for the public benefit, particular for safety and disasters purposes, but felt that a more gradual approach would be prudent.

Mr. Spraker recalled a suggestion at the City Commission meeting to establish separation criteria for the signs; he said staff suggested a 600-foot minimum separation on a first come, first serve basis. He responded to Mr. Opalewski that the separation requirement for existing monument signs was 100 feet, but noted that it was not typically an issue.

Mr. Opalewski questioned whether the electronic changeable copy would simply be a component of the monument sign, and if so, whether or not a property owner could continue to have the vinyl component as well.

Mr. Spraker explained that at least 50% of the sign would have to be non-electronic changeable copy; if allowed a 120 square-foot pole sign, the maximum EEC sign area would be 60 square feet. He agreed with Mr. Jorczak that the sign would not necessarily have to utilize the static information, but that the static area would still have to be integrated into a portion of the sign.

Mrs. Behnke asked how, e.g., Publix handled changing the fixed portion of their sign.

Mr. Spraker stated that a sign contractor would physically change the fixed portion of the sign.

Mr. Jorczak opened the hearing to the public.

Mr. Matt Reardon, 1687 West Granada Boulevard, an attorney on behalf of Calvary Christian Center, and a resident of the city, said that he had been involved in the discussion since it was first forwarded to the City Commission from the Planning Board. He said that Calvary Christian Center, along with some other churches, had asked for the houses of worship to be allowed electronic copy signage, primarily because they are located on Granada Boulevard. He recalled that the original sign plan (that included EEC signs) recommended by the Planning Board and considered by the City Commission had totally excluded properties along Granada Boulevard, allowing churches not on Granada Boulevard to have electronic signage. He said that they were working to also include houses of worship along Granada Boulevard, and noted that ECC signage was now allowed for churches in other jurisdictions.

Mr. Reardon stated that they were currently using the outdated channel-letter signs, which required manual changes. He said that the new sign would allow the church to advertise not only their events, but also community events, provide public service announcements, etc. He said that the monument sign at Calvary Christian Center was moved from its original location at the now-Performing Arts Center and was grandfathered in. He said that their intent was to replace that sign with one that not only complemented their facility, but that would be a nice addition to the community, and thought that an electronic copy sign would accomplish that.

Mr. Reardon acknowledged the City's great counsel, but said that as an attorney who dealt with other jurisdictions, he would caution the Planning Board against specifics regarding things such as font size and color. He said that the greater the limitations, the more difficult the code enforcement issues. He also expressed concern about the concept of first come-first serve, pointing out that the RaceTrac gasoline station was being built across the street from the church; he said they would have to race to city hall to see who get their electronic changeable copy sign first. He said that while the gas station wanted to have the ability to change their gas prices, the Calvary Christian sign was for a completely different use. He stated that the church was in full support of the ECC signs as written, and urged the Board to make their recommendation to the City Commission so that the Code change could be acted upon.

Mr. Jorczak questioned whether the existing nonconforming church monument sign could be converted to an electronic changeable copy sign or whether it would have to be completely reworked in favor of the current (smaller) size requirements.

Mr. Spraker responded that the improvements/alteration would exceed the cost threshold established by the code for a nonconforming sign; therefore, the sign would have to be totally rebuilt to current allowable specifications.

Mr. Opalewski asked if city staff had looked at the sign ordinances of other communities and whether electronic changeable copy signs were allowed.

Mr. Spraker replied that Holly Hill, South Daytona and New Smyrna Beach allowed the ECC signs with varying regulations; he added that Port Orange allowed them only for governmental use and at major shopping centers, similar to what was done with the sign at The Trails. He added that Daytona Beach was struggling with the issue. He also reminded the board members of the photographs of ECC signs in the County that they had seen earlier and reported that City staff had met with the firm (Dektronics) in New Smyrna Beach, Florida, that did the display for the City Commission. He agreed with the city attorney that one of the purposes for regulating signs was to control the aesthetics of the community.

City Attorney Hayes expressed concern with the suggested 600-foot separation between signs and stated that the legal department needed to research it further. He said that the issue was whether or not the aesthetics and the elimination of visual blight would be enough to satisfy the rational basis test, i.e., would it advance a legitimate government interest. He questioned the difference between establishing the proposed separation of ECC signs at 600 feet, as opposed to 200 feet or say, 900 feet, and pointed out that the issue would be the same. He felt that the first come-first serve basis would be somewhat discriminatory. Mr. Hayes reiterated that legal staff would be continuing to study the issue as it moved forward.

Mr. Opalewski questioned if Legal would have a problem allowing electronic signs only for houses of worship on Granada Boulevard and not businesses.

City Attorney Hayes felt that the answer was to address the issue from a zoning perspective and opined that the city's planning staff had done a good job of trying to limit the signage along the Granada Boulevard corridor, already identified as the commercial gateway to the city. He stated that the question was whether or not the conditions established to regulate that would be sufficient enough to satisfy the rational basis test.

Mrs. Behnke reported numerous phone calls in the last week and a half and said that all but two calls opposed the change. She said that the two calls in favor of ECC signage were both businesses; the rest of the calls from residents were not in favor of the signs. She expressed concern with the possibility of more than 300 such signs being allowed in the city and said that she did not want Ormond to look like some of the other local cities; she felt that Ormond Beach was a more beautiful and gentile city.

Mrs. Behnke voiced her concern with enforcement of the ECC sign regulations. She acknowledged that the city's code enforcement was complaint driven, but felt it was basically

ineffective; she pointed out that violations occurred in the evening and on weekends and that if code enforcement staff did not see a violation, they could not pursue a remedy. She said that once purchased, the buyer had the software to effect the change in sign display and copy and said there would be no one to ensure that operation of the signs remained as permitted. She referenced Option 3, saying that to reward someone for responsible operation (what they were supposed to do anyway) was ridiculous, particularly if it meant they then would be allowed to have what the regulations did not permit, i.e., a display that could flash, spin, etc. She further pointed out that the signs could ruin the city's aesthetics and that restoring the city's appeal would be very difficult to achieve.

Mrs. Press stated that the subject of signs always evoked strong emotional reactions. She thought that many business owners, if left to their own devices, would do whatever they could to call attention to their businesses and products, even if it meant painting their buildings in all kinds of eye-catching colors, using pole signs, etc. She said that without the city's regulations, all the main roadways in Ormond would look like SR 436 in Altamonte Springs.

Mrs. Press said that one of the reasons the electronic changeable copy signs were so expensive was because of the capability to flash, pulsate, spin, rotate, scroll, animate, use a number fonts, colors and backgrounds, and said she doubted that the owners would be content with the limitations established by the city. She likened the situation to buying a Maserati and expecting the owner to drive only 25 MPH; she said it would only be a matter of time before users would ignore the ordinance and that it would then be up to the city to police the violations. She agreed with the city attorney that any ordinance had to be reasonable and fair to all and opined that government could not be allowed 100% of sign area for changeable signs, while everyone else was allowed 50%.

If changeable signs were such an improvement, Mrs. Press stated, then everyone should be allowed to have them regardless of the use. She agreed with Mrs. Behnke that Option 3 (the reward for responsible operation) made no sense and would appear to allow options to which the citizens of Ormond Beach are vehemently opposed. She said that owners of signs with such vast capabilities would not be content to live within the requirements outlined at the City Commission meeting and that it would only be a matter of time before the city would have distracting, flashing, pulsating, and animated signs, which were designed to catch the passersby's attention. She stated that the electronic changeable copy signs were controversial for a reason and that the distractions created for the passing drivers would have devastating consequences.

Mrs. Press thought that there were many other ways for both churches and businesses to get their messages out and that ECC signs were not the way to do so. She stated that it was not the residents who were clamoring for the signs and that the Planning Board should be representing the residents.

Mr. Opalewski agreed that it was a difficult issue. He said that he did not find the electronic sign at The Trails to be offensive and thought that the signs made sense as a way for government (such as Leisure Services) to disseminate information to the public. He stated that his issue with the signs was in allowing one sector the use of the signs and denying that others that same right. He thought that the static electronic sign used to advertise gas prices at the Love's station, e.g.,

actually looked nice, but added that the would not want to see flashing, animated or pulsating signs at every business.

Mr. Thomas agreed. He asked the city attorney if the item had sufficient legal support to allow it to move forward to the city commission or whether legal staff would feel more comfortable by looking at additional options.

City Attorney Hayes said that signage issues were always challenging, but that the issue of electronic signage, currently before the Board, was a bit more complicated because it was a new technology for which there was not yet much regulation history and each community was struggling to adequately address the needs and concerns of their residents. He stated that the easiest way to regulate the ECC signs was not to allow them.

City Attorney Hayes explained that policy issues were the concern of the City Commission, who would take into consideration the Planning Board's recommendation and that city staff had to work with the direction from the City Commission and try to create the best regulations possible. He thought that in the case of the electronic changeable copy signage that planning staff had done an admirable job; he said that staff would address the concerns raised and present those issues to the city commission when re-presenting the item. He said that the City Commission might decide they did not want to regulate the electronic signs; however, if they did decide to regulate them, then staff would have to create the most enforceable regulation possible. He acknowledged that there were aspects of the issue that concerned him and informed the Board members that he would work with planning staff to educate both the Planning Board and the City Commission and to create the best possible regulation for the city. He said that the question was not an easy one to answer.

Mr. Thomas agreed with Mr. Opalewski that the electronic sign at the RaceTrac station was very informative and advised that he found the new electronic sign at the Performing Arts Center (PAC) much easier to read than the old sign. He thought it was less distracting for him and therefore, safer. He also felt that the concept of first come-first serve was unfair and pointed out that the new technologies were more easily accepted by younger residents, who were more technologically savvy.

Mr. Thomas stated that not all business people had a used-car-salesman, struggling-home-builder mentality and said that there were many businessmen who tried to conduct their businesses in a respectable and responsible manner. He agreed that there were some who would try to create a circus atmosphere, but that there were also many good business people in whom he had faith.

City Attorney Hayes suggested that in their deliberations with respect to the regulation and each of its components, the board members ask themselves if the regulation would result in 1) advancing a legitimate governmental interest, and 2) if there was a rational basis to support it. He thought that there might be a rational basis for some components and not for others. He said that since the purpose of signage was to convey a message, they could try to distinguish between the differences, if any, in the messages conveyed by the electronic signage and those conveyed by traditional signage. He felt that what made electronic signs so vastly different was that they needed different types of standards, and it was those differences in standards that created the pitfalls.

City Attorney Hayes expressed concern with the suggested 600-foot separation distance between electronic signs, as he did with the proposed first come-first serve standard. He said that treating one commercial establishment differently from another, and treating houses of worship differently from commercial establishments were also problematic. Although it could be approached from a zoning perspective, Mr. Hayes said, he reiterated that the regulation had to demonstrate that the city was trying to advance a legitimate governmental interest and that there needed to be a rational basis for doing so, i.e., some nexus between the basis and the interest that the city would be trying to advance. He suggested that the board members use that information to simplify the electronic signage issues.

Mrs. Behnke agreed that electronic signs were the wave of the future, but stated that the regulation and content needed more work [before it would be ready to proceed back to the City Commission]. She likened the issue to the specific language that had been added to the LDC regarding sandwich board signs and pointed out that although written out in easy-to-understand language, the regulation was constantly being violated. She said people were using wire signs stuck in the ground, flying flags, and using human directional signage; she said her biggest concern was in how the regulation would be enforced. She stated that she had no problem with the electronic sign at The Trails, but did have a problem with the potential for 300 such signs throughout the city.

Mr. Jorczak thought that the sign separation requirement presented a problem and established a discriminatory situation, pitting one legitimate business against another. He agreed that the signs were few and far between at present, but pointed out that the potential for more such signs was great. He felt that the regulation options were, at present, incomplete and needed more work to address issues such as sign size and location in relation to other electronic signs. He did not feel that the Planning Board was ready to make a definitive recommendation to the City Commission and stated that if pressed, he could not vote to recommend approval. He said that there were simply too many unanswered questions that needed to be addressed. He clarified that he was not opposed to electronic signs per se, since they served a very real public need in communicating public safety issues/information for the benefit of the community. He thought that perhaps any regulation could differentiate between what could be done by a governmental entity vs. what could be done by others. He restated that the Board was not ready to make a recommendation regarding electronic changeable copy signage.

Mrs. Press observed that the billboard in the Rivergate Shopping Center changed constantly, flashed and was animated, yet she did not know what the sign was advertising. She said that likewise, the electronic sign at the PAC was also not as productive as might be believed, and not as successful in getting the message out as were traditional signs. She said that the sign at The Trails was not offensive as it was currently used, but if the font or background changed, it might not be as informative. She said that the current methods for government to disseminate information worked well and again said that the people of Ormond Beach did not want the electronic signs. She agreed with Mrs. Behnke that allowing electronic signs should be put to a vote of the residents.

Mr. Thomas remarked that the Leisure Services sign was much easier for the younger residents to read than for older citizens, and pointed out that the younger people were the ones who were registering their children and using the information provided. He reported that as Vice Chairman

of the Leisure Services Board, the entire LSB would strongly disagree that the traditional methods [of communicating that information] were as effective, as would many parents with children in sports in Ormond Beach. Saying he meant no disrespect, Mr. Thomas said that the younger generations of residents readily accepted electronic messaging and was what they expected. He agreed with the other board members' concerns with flashing signs, as well as the potential number of electronic signs that could be permitted; he also felt that the item should be tabled until the board members had more information on which to base a recommendation.

Mrs. Press recalled the commission meeting at which the idea was conceived and said that an issue of such importance to the city necessitated study and consideration before being adopted. She said that the matter was too important to simply push through a regulation. She stated that if the signs were so wonderful, everyone should be able to have them, not just those in certain locations or for certain uses. She reiterated that she was opposed to rewarding someone for doing what they were supposed to do anyway.

Mr. Thomas agreed.

Acting Chair Jorczak remarked that the consensus of the Board members seemed to be that more work was needed. He asked if there was a mandate from the City Commission for the item to move forward immediately.

Mr. Spraker said that staff would need specific direction as to what they were to research if the Board members voted to table the item.

Mr. Jorczak acknowledged that staff was trying to establish parameters for a most difficult issue that would have to stand up to legal challenge.

Mr. Spraker recalled that the original intent (December, 2008) was to allow electronic changeable copy signs only in traditional commercial corridors and was the reason that they were not allowed in the Granada Boulevard (Office/Professional) corridor. He said it was up to the Board to decide whether or not they wanted the signs at all, wanted to narrow the scope, or limit them to certain areas. He cautioned them that the city attorney had already expressed his reservations with limiting the use of the signs to a specific use or location.

Mr. Jorczak suggested that they hold a workshop with the planning board members and city staff to help in identifying the issues and solutions. He noted that there were already two electronic signs in the city, as well as electronic signs in the immediate surrounding areas. He said that the idea was to create an ordinance that would ensure that the signs were done in a tasteful manner. He agreed with Mr. Thomas that business owners utilizing an ECC sign would want something in which he/she could be proud because it would be associated with their business. He acknowledged that there were, however, those who would not care as long as the signage promoted their businesses. He reiterated that more internal discussion was needed.

Mrs. Press suggested that perhaps the signs could be permitted by Special Exception, thereby being allowed to operate under specified conditions.

City Attorney Hayes pointed out that there would still have to be established standards and reasonable regulations. He agreed with Mr. Jorczak that it was the same situation as with

murals. He said that a simple motion to continue the item indefinitely would suffice and would give city staff an opportunity to more clearly define the legal parameters and to establish a benchmark from which to evaluate the concept before submitting any recommendation to the City Commission.

Mr. Spraker assured Mrs. Press that the item would not go forward to the City Commission for action until the Planning Board made a formal recommendation.

Mrs. Press commented that the item had been conceived on the fly at a city commission meeting and said that the language before the Board was flawed.

City Attorney Hayes said that he wanted to study the issue further prior to any additional meeting or workshop discussion.

Mrs. Press questioned the need for a workshop.

Mr. Thomas said it would allow them to work through their ideas in a more informal setting.

Mr. Jorczak said it would also allow them to decide whether or not to permit electronic signs in the city and if so, in what situations they would be appropriate. He said that if they were going to proceed, they would need to establish effective guidelines and necessary controls.

Mr. Spraker responded to Mrs. Press that it was the overall sign amendment that was shared with VCARD (Volusia County Association for Responsible Development) and the Chamber. He pointed out that it had gone to the Planning Board more than once. He reiterated that with regard to the electronic changeable copy signs, the basic question was whether or not to allow them at all.

Mrs. Press said she was ready to vote against allowing them in Ormond Beach.

City Attorney Hayes informed the Board members that a no vote would allow the item to proceed to the City Commission; he pointed out that legal staff still wanted to look at the issues. He responded to Mrs. Press that while he wanted time to study the related issues to determine what would and would not work, his office would not let the item stagnate. He advised Mr. Jorczak that he did not believe it was necessary to set a time limit.

Mr. Jorczak thought that 60 days would suffice.

Mr. Thomas questioned whether a property owner in the County would lose the right to use a very expensive electronic sign if the property were subsequently annexed into the city.

City Attorney Hayes explained that the property would be allowed to keep the sign, pointing out that there was already such a case with Destination Daytona when it annexed. He said that if a use was lawful at the time it was established, then rendered nonconforming because of regulation changes, it would be grandfathered in and the use could be continued as long as it was not destroyed or abandoned.

Mr. Reardon reminded the Planning Board that although there were 300+ potential locations in Ormond Beach that could accommodate an ECC sign, the substantial cost of those signs (\$50,000-\$70,000) would preclude their use for most people/businesses. He stated that because of the cost-prohibitive nature of the signs, there was little chance that Granada Boulevard or the other main arteries would ever take on a Las Vegas appearance. He reminded the Board members that the previous sign code amendment had included language for electronic copy signs and had fewer regulations than did the current proposal. He expressed concern that the Planning Board members would now change their minds while considering the electronic signage as a separate issue. He said that he did not think that the sign at the PAC was offensive and was in fact better looking than some of the other signs in the city. He thought it was an opportunity for the City to craft a regulation that would result in good-looking, modern signs that would show that Ormond Beach was a community that embraced positive change. He said that the City needed to do everything possible to embrace businesses, embrace the residents who live and operate businesses, and embrace houses of worship in the city. He thanked the Board for the opportunity to address them.

Mr. Jorczak explained to Mr. Reardon that the Board was charged with considering the implications of the regulations that they enacted, not just in the short term, but to try to anticipate the results of their actions 20 years in the future.

Mrs. Behnke acknowledged that the signs were expensive, but asked Mr. Reardon if he had a problem in delaying their decision and possibly enacting additional regulation.

Mr. Reardon understood Mr. Jorczak's position and advised Mrs. Behnke that he had no problem with additional regulation. He did, however, point out that he had not heard anyone give the [planning or legal] staff some clear direction. He noted that the more specific the direction and the more specific the regulation, the more that code enforcement personnel would be required to know in order to enforce that regulation.

Mrs. Behnke remarked that the Board members clearly wanted the space requirement eliminated.

Mr. Reardon stated that there never was such a requirement, but was included only as a potential option to consider, as was the suggestion of rewarding those who adhered to the requirements.

Mrs. Behnke said that she had no problem with a detailed requirement for the city's code enforcement personnel to pursue and said that they could not do so without it.

Mr. Reardon agreed, but stated that the Code was actually a little too restrictive in allowing only once-per-day copy changes. He said that a lot of people would not invest in an electronic sign under the current regulations; he said there was no point spending money on technology that they could not use. He added that the current problem with the Code was that it did not allow ECC signs. He said that with all the great ideas, the code did not allow them to do anything.

Mrs. Press responded that to be exactly the point of the restrictions, since the people of Ormond Beach did not want the signs.

Mr. Reardon disagreed and explained that the reason Calvary Christian Center had asked to be allowed to change their copy up to one time each hour is that they have a school and a pre-

school, as well as a church. He said that each of those has many activities, such as special services, school performances and outreach, and that it would be much easier to change electronic copy than to change out channel letter signs. He pointed out that the billboard at Nova Road and Granada Boulevard changed its copy every eight seconds.

Mrs. Press said that the information they would display on the church sign was primarily to inform the members of their church community. She said that there were other ways to publicize the information, such as announcing the activities at the church services, sending notes home with the students, or by e-mail notification.

Mr. Reardon agreed that there were many ways to disseminate information, but pointed out that the information was not just for church members. He said that the school auction to raise money often attracted passersby and that those people, not affiliated with the church, often showed up for those kinds of activities, as well as for performances and concerts being held there. He said that they would sometimes come to church because the sermon title shown on their sign was something that visitors thought might be interesting. He agreed that e-mail and announcements were a good way to let their congregation know about their activities, but said that the information would not otherwise reach people outside of the church community. He pointed out that no one would know about the Southeast Dance annual showcase if they did not read it on the Performing Arts Center sign.

City Attorney Hayes clarified for the meeting participants that using the billboards as an example was misleading, since they were the product of litigation resulting from the 1998 fires. He said that as a part of the settlement agreement, the advertising company removed most of their old signs in return for being allowed the two electronic billboards.

Mr. Thomas suggested that the board members compare the look of the electronic billboard at Granada Boulevard and Nova Road with the new signage at that same intersection. He also pointed out that the majority of the businesses along North US 1 were located in strip centers or multi-tenant centers and that of those that were not, quite a few were churches. He said he just did not foresee requests for huge numbers of electronic signs, particularly given the cost. He added that of the many individual businesses along Hand Avenue from Nova Road to Clyde Morris Boulevard, all were in about six different buildings. He thought that they were overestimating the demand for electronic signs and stated that as a businessman, he would have to repeatedly lose his existing signage before spending \$75,000 for a flashing sign. He reiterated his desire to study the issue further.

**Mr. Thomas made a motion to continue the item to the next Planning Board meeting.**

**Mrs. Behnke seconded the motion, which was approved by unanimous vote of the Board.**

## **VIII. OTHER BUSINESS**

There was no other business to be discussed.

City Attorney Hayes did not think there was pressing timeline for some of the items; he said that they could always continue any item for which they wanted to have more discussion.

Mr. Goss had no objection to the continuation.

Mr. Wigley made a motion to continue LDC 10-111 until the next Planning Board meeting.

Chair Thomas suggested moving the item to the end of the meeting.

Ms. Dorian Burt acknowledged that the sign issue was important, but said that the Form Based Code was also. She pointed out that they were already halfway through the discussion and that there were a lot of people who had worked on the Code and who felt very strongly about it. She requested that if they had to continue the item to the next meeting, that it be first on the agenda. She restated her desire to continue with the discussion.

Chair Thomas agreed with Mrs. Press that there were many important items to be discussed. He expressed his concern, however, with the members of the audience who had been waiting to talk about an item that had been second on the agenda.

Mrs. Behnke seconded Mr. Wigley's motion.

**Mr. Wigley** then withdrew his motion in order to have the opportunity to further discuss the Code if they had time at the end of the meeting. As suggested by the city attorney, he **made a motion to table the item until the end of the meeting.**

**Mrs. Press seconded the motion, which was approved by unanimous vote.**

### **Electronic Changeable Copy Signage**

City Attorney Hayes said he wanted to establish some parameters prior to the discussion to ensure there were no false expectations. He stated that the item before the Board was a discussion item only; therefore, there was no proposed ordinance on which to act. He explained that his legal staff had researched the issue in order to determine the legal parameters in the event that the Planning Board wanted to recommend to the City Commission that they adopt an ordinance with standards to allow electronic signs.

City Attorney Hayes stated that it was very difficult and complicated subject matter and said that staff had struggled in their efforts to simplify the issues, both by using lay terminology and by condensing/limiting the amount of information provided. He said that the legal memorandum was an attempt to categorize the information into some general rules, but pointed out that he did provide a copy of one case to show the complexity of the subject matter. He reiterated that the item was for discussion only and was not the Amaral project; he cautioned those present to limit their remarks to the matter at hand.

Chair Thomas added that the Board was soliciting thoughts on whether or not to allow electronic changeable copy signage, not on a specific application. He addressed those present, saying that

although he was trying to be very open, he was also attempting to stay in bounds. He opened the meeting to public comment.

Antonio Amaral, Jr., representing Amaral Custom Homes, 13 Utility Drive, Palm Coast, Florida, said that without trying to get too specific, he was a little upset about the continuance [of the Amaral Sign item] with less than three hours notice. That being said, Mr. Amaral commented that it was apparent at the last meeting he attended that signs were a continuing issue for the city.

Mr. Amaral opined that electronic changeable copy signs provided a more aesthetically pleasing alternative to the current requirements which would allow for a certain project to have 38 A-frame signs of up to 6 square feet, or 38 banners of a maximum of 64 square feet for 14 consecutive days, 4 times a year. He explained that his signage along the North US 1 corridor was actually out of place, compared to the other existing signs in that area and thought that there should be some allowance in the regulations for that type of situation. He pointed out that changing [the rules for] only one property would not change the overall view from the road along the corridor.

Chair Thomas thanked him for his comments and for speaking in generalities.

Mr. Norman Lane, 1314 Northside Drive, said he thought that everyone present agreed that having a proliferation of blinking signs would seriously detract from the beauty of the city. He recounted the discussions regarding the desire to allow some signs at a few churches and limiting their impacts, then because of discrimination issues, allowing all churches to have the signs. The same issues had been discussed for businesses, he said, as well as discussions about allowing no more than 1 sign every 600 feet, which was then determined to be impractical. He said that the concept of first come, first serve would not work and that to date, he had not heard of a good way to limit the density of the signs. He remarked that although the signs had been reported to be cost prohibitive for most, that could be expected to change as they became more common. He cited electronics and big screen TV's as examples.

Mr. Lane also referenced the proposed restrictions on the brightness and the frequency of change, as well as the issues of color and characters on the signs, but said that would become the responsibility of the city's code enforcement, since there was no physical way to stop it. In short, he said he believed that it would be impossible to truly restrict the signs once they had been approved. He thought that the proliferation of those signs would be a huge and negative impact on the appearance and the character of the city and urged the Board not to recommend allowing any more than already existed.

Mr. John Bandorf, 18 Village Drive, said that without getting into particulars, he was concerned that the item that had been tabled. He thought it totally inappropriate that many of those present had received only three hours notice that a recommendation would be made to continue the item and stated that had yet to hear a good reason why. He said that the Board had demanded answers from the people who were requesting approvals and felt that the citizens before them deserved to know why the item was tabled. He said that they had received an e-mail informing them that one of the board members had a concern about hearing the application prior to the electronic ordinance being passed, but said that the city had a history [of such actions]. He cited the recent approval of a mural that was painted with a permit, yet in 2000, the city had taken the position

that a mural was a sign. He said that subsequently, the owner of a restaurant asked for a special exception for a mural and was told that the city did not yet have standards for murals. He felt that they should also be able to apply for a special exception to have their mural.

Mr. Bandorf said that the people in attendance were business owners trying to make a living. He said that he had just heard the Board approve the amendment for the project to house workforce housing, but said there would not be any jobs available if the city was not going to work with the businesses in the city. He said he did not understand why one applicant had to wait for standards to be developed, while another applicant did not. He said he was still awaiting an answer to his question as to why the item had been delayed.

City Attorney Hayes said his only comment was that there were sign standards in the [Land Development] Code for properties in the Greenbelt Preservation District and that the application process did not conform to those requirements.

Mr. Bandorf questioned how it did not comply.

City Attorney Hayes said that he would not get into that discussion other than to say it had been continued for further discussion and that he had rendered a legal opinion to the City's planning staff that afternoon with respect to problems with the application. He apologized for the late notice, but said it was not his doing. He said the Board would be happy to hear his input with respect to the desirability of electronic signs.

Mr. Bandorf stated that he had been brought up to believe that the government answered his questions. He said that the government had required the applicants to answer every one of their questions, but that he had just been told by his government, the city of Ormond Beach, that they could not say why that application had been tabled.

City Attorney Hayes stated for the record that the item in question was a public hearing item which required discussion during the public hearing process; therefore, they would not have discussion outside that public hearing process. He reiterated that in his legal opinion, the application was deficient and did not meet the standards for signs in that district; consequently, the consideration of that application that evening was inappropriate. He restated that the item had been continued and said that staff would revisit it and that the Legal Department would help them with the legal implications. Although he said that he understood the frustration of the residents and was not trying to be argumentative, they had to abide by the procedural requirements. Mr. Hayes said that it was his obligation to protect the record as they moved the issue forward and that they needed to discuss the item at hand, i.e., the general discussion regarding electronic signs.

Chair Thomas asked if a reason for the continuance would be available to the public at some point in the future.

City Attorney Hayes reiterated that the reason for the delay was that the application did not conform to the sign standards in the Code for properties in the Greenbelt Preservation area. He said that staff would re-evaluate the request to see how it could conform to those requirements.

Chair Thomas advised those present that although it might not be the answer they were looking for, the city attorney had answered the question.

Mr. Philemon Mitchell introduced himself as the owner of Suzee's Closet consignment shop in Amaral Plaza. He stated that he was saddened to see that Crossline Pottery was closing and leaving Amaral Plaza. He acknowledged the board members' comments regarding the economy and said that they knew the economy was in trouble and that was the reason they needed the Board to be progressive, expedient and fast. He said that they were trying to run their businesses and survive, but that their customers were telling them that they needed signs to let people know where they were located. He remarked that if they complied with the current signage regulations, the result would be ugly; he pointed out that the business owners were as concerned with aesthetics as anyone else. He stated that their options were to clutter up the frontage or put up one nice sign. He said that the Board looked like an experienced body, but were apparently inexperienced in handling something new. He said that the business owners needed them to be a little more progressive and a little more visionary; not reactive, as the mayor had said, but proactive. He thought they should look forward and anticipate what was about to happen in the city and be prepared for it. He felt that they had dropped the ball. He said that the reason the businesses were failing was not because of their prices or the quality of their products, but because no one knew where they were. He asked that the issue not be allowed to drag on for weeks and months.

Mr. Matt Reardon, 1687 W. Granada Blvd., said that he was appearing on behalf of Calvary Christian Center and as a citizen of Ormond Beach. He echoed Mr. Mitchell's comments and expressed his frustration as a citizen, as well as an attorney with a client to represent. He said that staff had done a great job of writing a sign ordinance that included electronic copy signs, which had been recommended for approval by the Planning Board and forwarded to the City Commission for their hearing. He said that the Commission, on the second reading, pulled out that one component (the electronic copy signs) because they had requested that churches of certain size be excluded from the ordinance. He said that the mayor had taken a consensus of the majority of the Commission at that meeting and had then directed staff to write an electronic copy sign code that would conform to what the 3-2 majority of the Commission had said they would like to see.

Mr. Reardon recalled that at the Planning Board meeting two months earlier, he was the only person other than Mrs. Press' husband and planning staff who had attended to discuss electronic copy signs. He said that he now understood that there was a lot of opposition to the signs and had attended this meeting to tell the Board that they wanted electronic copy signs in the city of Ormond Beach. He said he was frustrated by the lack of movement by the Planning Board, because he thought that the staff had done a pretty good job and instead of considering an electronic copy sign code asked for by the City Commission, they were instead back to another discussion. He reiterated that as a citizen of Ormond Beach, and on behalf of his client, he wanted to see a well-thought-out electronic copy code sign recommended for approval by the Planning Board at some point so that it could go before, and be considered by, the City Commission. He said that electronic copy signs were the wave of the future and could be done very tastefully and appropriately. He thought it was the job of the Board to work with staff to find the appropriate language and to move the item forward, not simply continuing to stall it so

that the city looked like a stagnant community. He urged the Board to find a way to develop an electronic copy sign code with which they were comfortable, so that the issue could be taken to the City Commission to establish an electronic copy sign code for the city of Ormond Beach.

Ms. Cathy Gilyard, a business owner in Amaral Plaza, stated that they were very proud of their accomplishments at the Plaza, but said there were serious issues to be addressed. She said that the signage would help all those who had invested everything they had in their businesses.

Ms. Debbie Kruck, owner of Fitness and Pilates Studio in Amaral Plaza, said that the businesses were simply trying to make it. She stated that her fiancé, Sgt. 1<sup>st</sup> Class Timothy Forrester, was currently putting his life on the line for the fourth time so that they could have the freedom to run their businesses and prosper, whereas she was attending a meeting to squabble over whether or not they could have a sign.

Mrs. Behnke stated that she was 70 years old, but would match her electronic abilities with anybody in the room. She said that her problem with the signs was not because they are electronic or because they were signs, but because Ormond was an elite, upscale city. She asked staff what the minimum price was for electronic changeable copy signs, with and without animation.

Mr. Spraker said a conservative estimate was probably between \$30,000 to \$50,000 for a basic sign, but that the price range could go much higher.

Mrs. Behnke said that \$30,000 would buy an electronic sign and that once the customer bought the software, they could change the sign anytime they wanted.

Mr. Spraker said it was the same concept as a manual reader board.

Mrs. Behnke said that the city's allowing the signs to change only once every 12 hours did not mean that the business owners would comply, only that code enforcement action would then be necessary. She said that the original legislation mandated only fixed signs (no flashing, spinning, twirling, scrolling), but recalled that the request had been for a sign that scrolled from top to bottom or from side to side. She said that she simply did not think that their city needed to be trashed that way. She thought that the signs could be attractive and might be okay if maintained and handled correctly, but did not believe that would happen. She said that the city did not need to be a flashing Las Vegas.

Mr. Jorczak thanked the city attorney for the case law he had provided. He acknowledged that, as pointed out by Mr. Spraker, a distance requirement was never part of the drafted ordinance (only mentioned as part of the discussion) but asked the city attorney if there had been any information in the case law regarding distance/separation requirements for electronic signs, or regulations that would permit signs in only some locations within a certain zoning district.

City Attorney Hayes agreed that the separation distance had not been part of the ordinance, but had been suggested in the discussion memo as a possible alternative. He said that restriction with respect to place and manner had been studied as part of the legal review and that although it had given him some concern, it was one of the elements that was probably enforceable.

Mr. Hayes said that a number of communities had adopted such ordinances, but that the tricky part was in developing objective standards that were content-neutral. He said that there were, however, a number of cases regarding ordinances that indirectly affected content and that the courts had held those ordinances to be invalid. He said that each case was fact-specific to the issues involved and that the courts had generally struggled with the analyses, but that over the years they had developed a number of tests by which to analyze the situations. He further explained that signage was a form of speech, protected under the Constitution of the United States. He said that certain aspects of speech could be regulated by government, whereas certain other aspects could not, and that commercial speech could be regulated more so than non-commercial speech.

Mr. Jorczak asked that he define commercial speech for those present.

Mr. Hayes said that commercial would be something with an economic interest; non-commercial would be residential. He explained that depending upon how an ordinance or regulation was structured would determine whether or not it addressed commercial speech, non-commercial speech, or a mixture of the two, which usually resulted when ordinances created exemptions (e.g., a sign could be placed here, but not there). He said that the courts had determined that once labels were placed on exemptions by the use, it deemed to be related to the content of the sign. He cited the example of allowing religious signs, but not some commercial signs, i.e., favoring the religious over the commercial.

Mr. Hayes continued by saying that the same rationale was present when creating exemptions for allowing government the right to do something that commercial could not, i.e., the implication that speech by government is favored over speech by others, which also goes to content. He said that, generally speaking, those pitfalls made it difficult to adopt and apply an ordinance consistently over time without making any changes to them. He said that it could be done; it was just difficult to do. He said he had tried to set forth the different standards and tests that the courts used in evaluating commercial vs. non-commercial, and content-based or content-neutral. He said that depending on the speech involved, different tests apply.

Mr. Hayes said that the question of distance was something that initially concerned him, but that based on his research, he was more comfortable that it could be an objective standard and could be regulated. He said that they could regulate based on zoning, operational standards, etc., but did not believe that the regulations could sub-classify within a zoning district. He said that they just had to be careful not to favor some over others.

Mr. Jorczak inquired as to whether the ordinance could address the issue of density in order to preclude having a string of electronic signs along a thoroughfare.

Mr. Hayes responded that, depending on the individual circumstances, it would most likely be a reasonable time/place/manner restriction. He explained that standards addressing setbacks and dimensional criteria, composition materials, brightness, etc., were valid, but that attempting to regulate the type of message displayed would not be valid. As an example, he said that an ordinance limiting electronic signage to the time and temperature would be invalid because it dealt with content. The challenge in creating standards for electronic signage was in dealing with

content, he said, because the city wanted them to be aesthetically pleasing, but that it was possible to develop an ordinance that would the legal criteria and be objective.

Mrs. Press recognized that business people in the city would not understand why their neighbors (developed in the County) could have the signs but stated that similar to murals, the content of the electronic signs could not be regulated because of the freedom-of-speech issue. She agreed that they would be a way for the Calvary Church to get their message out, but worried that the sign could also be used to espouse religious positions on controversial issues.

Mr. Hayes said that based on the case law that legal staff had reviewed, houses of worship are non-commercial uses and have more protection on speech than do commercial uses he agreed that the city could not dictate the type of message displayed on signs, whether traditional or electronic. He thought that the city could probably allow some non-commercial electronic signs, without having to allow them for commercial uses, but pointed out that the city could not regulate them if, e.g., a church wanted to recognize a business for contributions or good works by thanking them publicly (on a sign), even though it might be construed as a form of advertisement. He clarified that he was not suggesting it would happen, only that it could.

Mrs. Press stated that the laws had to be fair and equitable and that she thought they were trying to create something that would not be equitable. She said that a business that could have more than one monument sign could install multiple electronic signs. She thought that the best solution was not to allow them.

Mr. Wigley pointed out that not all houses of worship were free-standing buildings on 50 acres of land and asked if all houses of worship were exempt. He noted that churches were often located in shopping centers or office buildings, or as Mr. Thomas noted, in schools.

City Attorney Hayes explained that it was not that houses of worship were exempt, but rather that they were being treated as non-commercial for purposes of applying the laws for signage. He said that the objective standards that could be regulated were time, place and manner, as long as those standards are reasonable; objective standards (setbacks, zoning districts, whether or not they were located in strip malls) could be regulated as long as they were content neutral. He reiterated that operational aspects could be regulated and exemptions could be created based on structural criteria for signs, but not exemptions based on use categories, since that would constitute favoring one type of speech over another.

Mr. Hays said that those were technicalities that the Board would have to evaluate in the process of preparing an ordinance. He recalled that the City Commission had directed city staff to prepare a draft ordinance and to review the legal parameters to provide the Board with some guidelines, and that the Board now needed to provide staff with some direction as to how to proceed. He said that the City Commission expected something back, with or without a favorable recommendation. He said that if their consensus was that they did not want it at all, staff would simply create the ordinance and bring it back so that they could address the particulars at that time.

Chair Thomas expressed his frustration at having to sit and listen. He referred to a member of the audience who had said that they looked like an experienced group and pointed out that there were

no 20 year-old members on the Board. He said that as a baby-boomer and part of probably the most special generation to come along, he said that he always fought for change and to stay young, not 'going calmly into that good night'. He said it was hard for him to not recognize what the future held and pointed out that in ten years, the Board would be comprised of Generation Xers who were the future of the country, the business people and the consumers who did not fight progress, and who were comfortable with changing technology. He said that it was time to face the reality that the world was changing around them and to embrace those changes, and that as a business person, employer and taxpayer who put a lot of money back into the community; he wanted to succeed in his business and needed to advertise his product. Mr. Thomas stated that newspapers do not sell product anymore, nor do the yellow pages. He wondered if the board members were so old that they could not recognize progress when they saw it.

Mr. Jorczak recalled that some of the cases identified in the research had gone to the Supreme Court, who also found the issue to be difficult. He said most of the cases appeared to have been brought by commercial entities and asked the city attorney if he knew how many such actions against municipalities had involved sign ordinances.

City Attorney Hayes said that his department did not track case volume based on subject matter, but did advise that most of the cases required complex analysis. He explained that there was a process the justices had to go through to determine what they were dealing with before they could figure out what tests to apply, which would then lead them to their conclusions. He agreed that the United States Supreme Court had struggled with the same question in the 1981 Metromedia case, which dealt with electronic signage. He said that the greatest legal minds in the country struggled with the issue and that one of their quotes was that the most effective way to deal with electronic signage for commercial speech is 'just don't allow it'.

Mr. Hayes said that developing a viable ordinance that would meet all of the legal criteria was a challenge, but that enforcing and regulating the ordinance (how it might change over time, how is applied) was the difficult challenge that fell to staff to implement. He stated that it was also difficult for the Board that had to provide a recommendation and for the city commission that had to approve it. He restated that the City Commission had expressed interest in the subject; therefore, it needed to move forward. He again solicited feedback from the Board in form of any specific do's and don'ts to be taken into consideration. He restated that an ordinance would be coming back to the Board for action one way or the other. He pointed out that every city ordinance had been broken, bent or challenged at one time or another and did not believe that an ordinance for electronic signage would be opening a new can of worms; he said it was just a matter of enforcement like that of any other ordinance.

Mrs. Press disagreed, saying she thought there was a difference. She recalled that the desire to task staff with investigating the electronic signage issue had not been unanimous on the part of the commissioners. She asked Chair Thomas if he would say that anyone in the city could have a changeable sign.

Chair Thomas said no and agreed that there were certain places where it could be done.

Mrs. Press then asked him whether no one else should be allowed an electronic sign if, e.g., a business on Granada Boulevard wanted an electronic sign and could not have one.

Chair Thomas replied to Mrs. Press that it was just the same as the fact that he could not build a home anywhere he wanted, nor could he open a business and manufacture shutters anywhere he wanted. He said that he had to adhere to the codes.

Mrs. Press questioned the criteria he would use for electronic signage.

Chair Thomas said he was not arguing the criteria, but was arguing that they be able to establish criteria. He said he did not yet know where he thought they should go, but was willing to listen. He pointed out that even the residential and commercial zonings started somewhere. He said that they first needed to determine whether or not to allow electronic signs, and if so, then set the criteria as to where they should be located. He suggested that if businesses wanted electronic signage, they should locate in areas where they were permitted instead of opening elsewhere and then challenging the codes.

Mr. Wigley recalled that they had already approved the use of electronic signs, but now wanted to approve it with added criteria.

Chair Thomas said it was not where he saw the discussion going.

Mrs. Behnke reiterated that the [electronic] signs did not belong in Ormond since they could not be regulated or controlled. She asked if the Board still planned to have a workshop.

Chair Thomas said that if they were going to have a workshop on the subject it should be dedicated solely to electronic changeable copy signs. He also thought they should make a decision for the people who had attended the meeting.

City Attorney Hayes thought the Board discussion was a good one and showed just how divisive the issue could be. He pointed out that Ormond was not the only community struggling with the issue. He said that although there was no ordinance for them to consider at present, they needed to talk with each other about their expectations with respect to allowing those types of signs and if there were certain aspects they might consider for approval. He said that staff could then bring forward a draft ordinance that incorporated those standards, which could help with the decisions they might make. Although he appreciated the frustration felt by some of the residents who wanted that signage now, he reminded those present that it was an important subject matter that would have a long lasting effect on the community if approved. He said that the city needed to take as much time as necessary to ensure doing it right the first time, because if they did not, they would not have time to back and fix it.

Chair Thomas said he whole-heartedly agreed, but thought they needed a deadline.

City Attorney Hayes cautioned that everyone to remember that the issues heard that evening were separate ones and would be treated that way.

Chair Thomas said that the request for electronic signage would not be resolved until the policy issue was resolved, and pointed out that the Planning Board only made recommendations to the City Commission. He said that he wanted a workshop, even though he doubted he would change his opinion. He said that he did not want animated signs with fireworks, flashing starbursts, etc.,

and agreed with Mr. Adams that it was time to talk about what they did and did not want in order to come up with some middle ground.

Mr. Adams thought that the Board would agree that they did not want electronic changeable copy signs in residential areas and felt that there were other aspects on which they could agree, but that it was an issue that needed its own meeting. He agreed with the sentiments of some of the other Board members that having so many major items on one agenda was not workable. He suggested that the Board set a time for a workshop in the near future in order to address the issues, come to a consensus and make a formal recommendation. He also suggested that the workshop include citizen involvement and input and perhaps invite some people from MainStreet to discuss what could and could not be done in the Downtown.

In response to Mr. Thomas, the city attorney advised that the workshop would be advertised and reiterated that he wanted as much feedback from the Board as possible regarding what they expected in the ordinance. He said that he could provide the Board with planning staff's draft ordinance for them to use as a guide discussion purposes.

Mr. Jorczak asked if there was a way to use the salient points covered in previous case law to help the Board members frame the parameters. He thought that if there were a way to determine what the impacts might be in a particular zone, it could potentially save the city money in the long run in the event of a court challenge.

Chair Thomas asked if it would be possible to use a comparison chart to show the worst case scenario that could be done with individual signage, banners, temporary signs or electronic signage in a particular zone. He thought that could also help in their decision making.

Mrs. Press remembered that the City had already scheduled a workshop on signage, not just electronic changeable copy signs early in September and thought that they were hoping for some guidance on electronic changeable copy signage to incorporate into that workshop.

Chair Thomas hoped that the workshop on electronic changeable copy signage would have already occurred.

Mr. Adams said that the information provided to the Board was most helpful. He clarified with the city attorney that the electronic changeable copy area of a sign could be spelled out as a percentage of the overall sign size. He asked if, based on the case law provided, the city could regulate how often the sign text could change.

City Attorney Hayes said it could, but they had to take care not to create sub-classifications that would allow some people to change it more frequently than others, since that would be considered favoring the speech of one over the other.

Mr. Adams said that at least they could limit the change to every so many seconds and could then establish guidelines regarding whether or not the text could scroll. He thought it would be productive if they could narrow down the aspects and come to agreement on some of the criteria, even if it was to establish where they did not want the signs.

Mrs. Press said that they could also look at font size and the proportion of the text to the size of the copy area. She recalled that she had voted to recommend approval for the electronic sign at The Trails and did not think it was that bad, but restated that she was not in favor of allowing electronic changeable copy signs.

Mr. Goss suggested that staff provide a decision matrix in a Power Point presentation that addressed the issue in a progressive manner, e.g., the first slide would simply ask whether or not they supported electronic changeable copy signs. By the end, they would have identified where the signs would be acceptable and identified the legal parameters of the criteria that could be written into an ordinance.

Mr. Goss agreed with Mr. Jorczak that a visual presentation would make it easier for the Board to work through the issues. He said that he did not think that by next Thursday that staff would be able to identify every type of sign allowed for every commercial business in the B-5 zoning district, particular without knowing the criteria. He said that determining whether or not they wanted that type of sign and in which zoning districts (while staying within the time, place and manner parameters) would get them to a decision.

Mr. Adams asked if they could limit the electronic changeable copy signs to businesses, such as shopping centers over 80,000 square feet of retail space, or whether it would have to include every business within a certain zoning district.

Mrs. Press felt that the configuration of the shopping centers, and whether or not the stores were visible, should be considered. She said that buildings perpendicular to the street had less visibility.

Mr. Adams responded that it was somewhat related to the size, because larger centers had more visibility.

Mrs. Behnke responded to Chair Thomas' question that the current regulations allowed a monument sign for each business, but pointed out that the text on those signs could not be changed every 18 seconds.

Chair Thomas opined that it would not matter if the issue was sign size.

Mr. Adams said that one of the biggest concerns was in allowing those electronic signs to be erected one after the other, which would result in the corridor looking like Las Vegas. He said that they would see far fewer electronic signs by limiting them based on the minimum square footage of a building, and realistically, the folks that were more likely to buy such a sign.

Chair Thomas referred to the development of cluster shopping centers on Hand Avenue as indicative of development in the future, with more than one building sharing a driveway and a plethora of signage, which he said could be ugly and obtrusive. He likened the signage to the monument sign at his place of business, where the sign structure actually blocked the view of people entering and existing. He said he would favor a smaller electronic sign to advertise the numerous businesses in the complex, thus taking up less space with less clutter, yet allowing everyone to advertise in a small amount of time.

Mrs. Behnke said she could only see the name of one business when driving by, not necessarily a business in which she would be interested. She also mentioned that she had attended the meeting at which the Caffeine's mural was approved and said that it did not set a precedent for all murals, because as the mayor had explained, the approved mural was in an inner court, closed on three sides on a small back street. Only another mural in exactly the same circumstance would have to be approved to be consistent; everything else would be impossible to compare.

Mr. Thomas agreed and recalled that earlier someone had mentioned the case of the parrot mural that had to be removed. He explained that was because the parrot was an advertisement for their "Parrot" bar, and was a logo. He said that the recently approved mural was not an advertisement and was a totally different issue.

Mr. Jorczak said he thought that the planning director's suggestion of a Power Point to establish the parameters would be helpful in establishing the criteria.

Mrs. Press said that she would second that if it was a motion.

City Attorney Hayes suggested that they should set the meeting date to avoid any potential Sunshine Law violation.

The Board decided to hold the workshop at 6:00 p.m. on Monday, August 23<sup>rd</sup>.

Mr. Hayes agreed to prepare the revised ordinance to make sure it was consistent with the standards they had reviewed and to give them time to think about it. He thought that they had had a healthy discussion, which would aid them in their future deliberations.

Chair Thomas hoped that his colleagues did not take his comments personally.

Mr. Hayes said that by having the workshop on the 23<sup>rd</sup>, they could then update the City Commission for their general signage meeting to be held on September 7<sup>th</sup>.

Mr. Goss agreed with the city attorney that it would be most helpful to be given some direction and to know what the Board wanted.

The Board members agreed to a five minute recess, after which they voted unanimously by roll call to continue the meeting after 10 p.m.

**E. LDC 10-128: North US 1 Rezoning – Zoning Map Amendments**

Mr. Spraker said that the rezoning request stemmed from the annexation of the Ormond Crossings properties. He recalled that when Ormond Crossings was annexed into the city, the annexation included parcels located east of the railroad tracks and west of US1. He said that the Department of Community Affairs (DCA) had found the subsequent land use amendment to be not in compliance. In February, 2010, when DCA then found the amendment to be in compliance, he said, everything west of the railroad alignment was assigned the land use of Activity Center; the properties east of the RR tracks maintained their County land use

**M I N U T E S**  
**ORMOND BEACH PLANNING BOARD**  
**WORKSHOP**

August 23, 2010

7:00 PM

**City Commission Chambers**

22 South Beach Street  
Ormond Beach, FL 32174

PURSUANT TO SECTION 286.0105, FLORIDA STATUTES, IF ANY PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE PLANNING BOARD WITH RESPECT TO ANY MATTER CONSIDERED AT THIS PUBLIC MEETING, THAT PERSON WILL NEED A RECORD OF THE PROCEEDINGS AND FOR SUCH PURPOSE, SAID PERSON MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDING IS MADE, INCLUDING THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.

PERSONS WITH A DISABILITY, SUCH AS A VISION, HEARING OR SPEECH IMPAIRMENT, OR PERSONS NEEDING OTHER TYPES OF ASSISTANCE, AND WHO WISH TO ATTEND CITY COMMISSION MEETINGS OR ANY OTHER BOARD OR COMMITTEE MEETING MAY CONTACT THE CITY CLERK IN WRITING, OR MAY CALL 677-0311 FOR INFORMATION REGARDING AVAILABLE AIDS AND SERVICES.

Members Present

John Adams  
Patricia Behnke  
Al Jorczak  
Patrick Opalewski  
Rita Press  
Doug Thomas  
Doug Wigley

Staff Present

Randal Hayes, City Attorney  
Ric Goss, AICP, Planning Director  
Steven S. Spraker, AICP, Senior Planner  
Chris Jarrell, Recording Technician

**Workshop Item - Electronic Changeable Copy Signage**

Chair Thomas asked the city attorney to initiate the discussion.

City Attorney Hayes recalled that at the last Board meeting, they had discussed the legal standards applicable to signs and the challenges faced by local governments when trying to develop sign standards, since the law recognized signage to be protected speech. He said that the Legal Department had drafted a sample ordinance for use by the Board members as a guide in discussing and developing standards for electronic signage, while also recognizing the legal danger zones. He pointed out that the draft was not an endorsement of a particular position and that the numbers utilized in the draft were arbitrary, simply to be used as a starting point.

Mr. Hayes explained that staff had taken a very conservative approach in order to avoid the legal pitfalls that had caused problems for other jurisdictions and that staff had attempted to create standards that applied equally to everyone within the zoning districts in which signs might be allowed. He said that the

draft was as generic possible and created no exceptions for local government, hospitals, educational facilities, classes or sub-classes of business. He summarized the standards that the Board could discuss (1B through 12), which dealt with time, place, manner, and types of restrictions:

- 1) **Location by Roadway.** The draft would permit signs along Granada Boulevard, US 1, Nova Road and/or SR A1A. Mr. Hayes explained that labeling businesses by uses would create potential legal problems; allowing the signs in certain zoning districts on the roadway from which they would be seen was a more appropriate basis that would not create any class distinctions or labels.
- 2) **Location by Parcels.** The draft would allow signs on sites consisting of five contiguous acres or having 200 linear feet of frontage on the designated roadways. An operational/location standard, Mr. Hayes reiterated that the numbers were arbitrary and something the Board might want to either change or exclude.
- 3) **Number Allowed.** The draft would not allow more than one electronic sign per site.
- 4) **Setback.** The draft would require that the signs be set back a minimum of 10 feet. He said that the distance separation criteria could be regulated and was simply an arbitrary number.
- 5) **Distance.** The draft would allow no sign within 1,000 linear feet of a single-family residence. Although the planning director thought that the requirement was restrictive, he said, the Board could increase or reduce the arbitrary distance requirement.
- 6) **Sign Type.** The draft would require the electronic signs to be constructed as monument signs. A dimensional criterion, the requirement was consistent with the city's policy of encouraging monument signage with landscaping within the applicable zoning district, Mr. Hayes said.
- 7) **Timing.** The draft would preclude the copy from changing more than once per hour. City Attorney Hayes said that the rule would apply to everyone equally with no exceptions. He said that whether or not the Board chose to change the timing, there could be no distinctions made between classes or groups so as to not favor the speech of some over the speech of others.
- 8) **Text.** The draft would allow electronic changeable copy signs to display only text. City Attorney Hayes said that this was an operational standard and that it was within the purview of the Board to allow images or blinking (etc.) if they so desired
- 9) **Copy Color.** The draft would allow only a dark background with white letters. Mr. Hayes stated the intent of the draft ordinance was to establish the most conservative approach from which the Board could work, but reminded the members that it was within their purview to allow colors.
- 10) **Brightness Monitoring.** The draft would require ambient light monitors to allow the brightness level to automatically adjust for daytime and nighttime copy, Mr. Hayes advised.
- 11) **Maximum Brightness.** The draft established the brightness levels for electronic signs to not exceed 5,000 nits for daylight hours or 500 nits between dusk and dawn. Mr. Hayes stated that the Board was free to establish other levels if they thought them more appropriate.

- 12) **ECC Application Review.** The draft would require the applicant to submit the operating manual for the particular sign during the site plan review so that it could be compared to the established criteria. City Attorney Hayes said that the Site Plan Review Committee (SPRC) would have 45 days to render a final decision, a number deemed by the courts to be reasonable. He said that unless a time limit was established, the courts would determine the regulation to be a prior restraint on speech and give government officials unfettered discretion to either accept, not accept or approve a permit application.

The draft ordinance also established an appeal process for applicants who believed they were unjustly denied a permit, Mr. Hayes stated. He said that an applicant could appeal to the Planning Director within 15 days of a denial; if unsuccessful, they could then appeal to the Special Master. He said the Special Master route operated with attorneys and retired judges who are current with the law and was chosen because of the complicated legal issues; he said that route also operated outside the political realm and the legislative appeal processes. The third level of appeal would be to the circuit court, he stated.

City Attorney Hayes thought that the operational standards would be of most interest to the Board and pointed out that the Planning staff had compiled a matrix that might complement the draft ordinance. In response to Chair Thomas, he stated that the meeting had been advertised as a workshop only. He said that in addition to being a work session, it was also a public meeting and open for public participation at the discretion of the Planning Board chairman. He explained that because it was a workshop, the Board could not take final action, i.e., vote [on a recommendation], but that the public could provide the city staff direction by letting them know what they liked and did not like; conversely, he said that staff would do their best to answer any questions. He said that if staff might have to do additional research if they were unsure of an answer to a question, but would later provide the needed information so that they could make an informed decision.

Chair Thomas stated that the Board members would first be given three minutes in which to ask any questions or guidance of the city attorney related to the draft ordinance, but asked that they limit the discussion to legal issues only. The floor would then be opened to public comment, also limited to three minutes per speaker, he said, but reminded those present that the discussion was not related to a particular sign or place of business, but rather whether or not to allow electronic changeable copy signs. He explained having the Board members speak first allowed the public to get a sense of the members' positions from the beginning.

Chair Thomas asked the Board members if they had questions of the city attorney.

Mr. Opalewski replied that the city attorney had provided sufficient legal advice.

Mr. Adams asked City Attorney Hayes if the regulations would apply to existing signage, e.g., at The Trails.

City Attorney Hayes that it would not. He said that staff would create a grandfather clause for properties with existing signs. He pointed out that some properties with existing signs were allowed those signs through the land development process, with different regulations than existed at present.

Mr. Adams asked if the Community Redevelopment Agency (the Downtown) area was excluded.

Mr. Hayes said that the matrix had been created prior to, and separately, from the ordinance. He explained that legal staff had simply drafted a conservative ordinance based, on their knowledge of the legal standards, and without creating any distinctions. He thought that there might a way to exclude the CRA, but thought that creating standards based on lot sizes might be a better way to address exclusions in the Downtown. He acknowledged that he did not know if there were any 5-acre lots in the downtown.

Mr. Adams remarked that Granada Plaza at Granada Boulevard and A1A was probably the largest site.

City Attorney Hayes was unsure whether the draft ordinance and matrix provided by planning staff would be totally consistent, but thought there would be some commonalities that could be discussed as the material was reviewed. He deferred to planning staff regarding the operational sign standards. He responded to Mr. Jorzak that he did not know how the PAC sign compared to the proposed light levels.

Mr. Jorzak explained that he wanted to compare what people had already seen with what was proposed.

City Attorney Hayes said that in trying to establish the numbers, staff had reviewed standards utilized by other jurisdictions; he did not know how they compared with the PAC sign. He reminded the Board that the ordinance would create a legal standard by which to allow the existing sign to be grandfathered. He said that if it was instead rendered nonconforming, it could remain as a perpetual use (unless not used for a period of six months or more). He clarified that the same rule would apply to electronic signs that had been permitted by a County development order prior to annexing into the city.

In response to Mrs. Behnke's inquiry, Mr. Hayes said that a sign destroyed by a natural disaster might be able to be reestablished, but it would depend on the degree of destruction suffered and the particular circumstances at the time. He added that he did not know if the light standards as defined in the draft ordinance (in nits) had ever been litigated; he said those standards were used in ordinances by other jurisdictions and were included in the draft simply to serve as a benchmark for the discussion.

Chair Thomas reminded the Board members to delay any discussion of the detailed standards until after the discussion of the legal issues was concluded.

Mrs. Press questioned that the standards presented would withstand court challenges, such as the replacing of three monument signs with only one electronic sign per property or requiring that all electronic signs be monument signs, even if replacing a pole sign.

City Attorney Hayes reiterated that anyone could, at any time, find a lawyer to file a lawsuit over anything. He reminded the Board that the best defense was not to allow electronic signs for anyone and that if they decided to allow the signs, to create non-discriminatory, content-neutral standards. He said that although he could not assure Mrs. Press that it would not be challenged, based on his review of the case law he was confident that the city would have a very good defense since the ordinance did not create any class distinctions and treated everybody equally; he said it applied the same standards across the board and was designed to regulate in terms of time, place and manner.

Mr. Hayes further explained that the draft ordinance did not take anything away, but was instead giving something not currently allowed. He said that the ordinance did not take away other forms of signage and that there were alternative means of communications (signage); the regulation provided standards for anyone who wanted electronic signage. He explained that although the current draft did not address

allowing only one electronic changeable copy sign in lieu of two existing signs, he was confident that it would be defensible, since there were other means of communication available. He opined that the draft ordinance, as presented, met legal standards.

Mr. Wigley questioned the extent of possible legal appeals.

City Attorney Hayes said that an appeal to circuit court by a writ of certiorari entitled an applicant to an appellate review of the record from the lower tribunal (the review of the Special Master, who was a practicing attorney or retired judge). The circuit court judge, he explained, would evaluate the testimony and evidence previously developed to determine whether or not it met the requirements of law (whether or not it met, complied with, or did not comply with the standards in the Code). He pointed out that it was a difficult standard to meet, but that it assured the appellant that the application would be treated fairly. He said further review would be to the 5<sup>th</sup> District Court of Appeal.

Mr. Wigley said that he did not know if the city could write an electronic changeable sign code that would not be challenged and asked Mr. Hayes how comfortable staff was that the city could survive any such challenges.

City Attorney Hayes explained that policy questions were not the purview of the Board, but instead, they could define for the City Commission the legal parameters and where they thought there might be inherent risks associated with adopting the ordinance, as well as the likelihood of success on a court challenge. He pointed out that as city attorney, he conducted a very conservative practice as reflected in the very conservative draft ordinance; he thought the ordinance treated everybody fairly without creating any discrimination. He responded that the language in the draft was developed using a hybrid approach, taking into consideration the needs of the city of Ormond Beach and that the Board needed to concentrate on the objective standards, rather than on policy issues.

Chair Thomas said that he had nothing to add, having already met with the city attorney. He opened the discussion to the Board, allowing each member three minutes for comments. He reminded the public that the Board comments would be followed by time during which they could speak, but cautioned that they would have only one three-minute opportunity.

Mr. Wigley opined that was no need to draft something that could be expected to become a legal quagmire, but did not feel that the Board should function in a defensive position either. He agreed that the major thoroughfares previously mentioned were predominately commercial and that locating the signs along Granada Boulevard, US1, Nova Road or SR A1A would be the least visually intrusive, but did not think that the majority of the citizens wanted the signs. He expressed concern with the cost of litigation if the law was later challenged and overturned and said that their only way to prevent that was not to allow the electronic signs.

Mrs. Behnke said she still needed more information in order to make a qualified decision. She worried that the stipulations would not be properly monitored and controlled; she said the data provided indicated that there were plenty of businesses that could be expected to erect electronic signs regardless of the cost, particularly if a competitor had one. She thought it would not be attractive if a property that was allowed to have three signs had one electronic sign and two monument signs.

City Attorney Hayes stated that although the draft ordinance did not address that scenario, he thought that the city might want to require the removal of the standard monument signs in exchange for an electronic sign. He reminded the Board that they were not limiting or taking away a right that did not exist and were leaving open alternative channels of communication. He commented that the current Code encouraged the replacement of nonconforming signs with ground monument signs as an incentive to eliminate certain other signs; he said that could be included as a standard.

Mrs. Behnke commended the city staff for all their work and for the information provided. She reported that the city of Orlando sign regulations required an applicant to remove four board signs in order to erect one electronic sign.

Mr. Jorzak said that most of the people with whom he had spoken were not in favor of the signs. He said that when the City Commission first directed staff to provide them with proposals to evaluate, it was because of trying to accommodate a couple of requests for electronic signs; he pointed out that they did not have the benefit of all the research at that time and wondered if the City Commission would still want to move forward with the regulations. He reported that in talking with the city attorney he learned that once enacted, the regulations would be difficult to remove if it was later decided that the signs were not a good idea; he said it would involve several issues and would consume a tremendous amount of the city's time. He felt that if anything was done, it should be very limited in scope in order to determine if the result was acceptable. He thought that the city would regret allowing the electronic signs.

Mr. Adams also thanked city staff for all the information, agreed with the comments of the other members, and agreed that it might result in something no one in the city wanted. He looked forward to the public comments.

Mr. Opalewski echoed the sentiments of the other Board members, but thought they had an obligation to provide the City Commission with an ordinance, as requested.

Mr. Jorzak responded to Chair Thomas that initially, his impression was that the City Commission request was more for informational purposes, rather than as a directive because they thought it was a good idea and wanted an ordinance for electronic signage. He thought that the City Commission probably was unaware of all the issues that the research had uncovered since that time.

Chair Thomas said he had been under the impression that the City Commission had referred it to the Planning Board for a recommendation.

Mr. Wigley thought it had been referred back to the Board for further review.

In response to Chair Thomas, City Attorney Hayes explained that any regulation to be added to the Land Development Code (LDC) required a recommendation from the Planning Board prior to being heard by the City Commission and before the Commission could take action. He said that their options were to 1) recommend that a conservative ordinance be forwarded to the City Commission, 2) recommend denial, or 3) simply table it indefinitely (noting however, that the City Commission was interested in receiving the information). He said that regardless, the LDC needed to be clear as to whether or not electronic signs were allowed in the city, since both the legal staff and planning staff needed some standards with which to work.

Mr. Hayes also responded that whether or not to make a recommendation was not within his purview to advise, but reiterated that there were areas in the LDC that needed to be addressed and that the only way to do so was to move the issue forward. He said that if they chose to allow the signs on only one roadway, e.g., it would be defensible, because it was a distinction based on zoning (place) and would not disallow other means of signage communication.

Mrs. Press acknowledged that while there might be a few businesses and a church who wanted the electronic signage, there was not much enthusiasm from the Board or the community for allowing them. She felt that allowing the signs only on Granada Boulevard would be challengeable, since it was neither something easily understood, nor fair. She suggested that if the Board created standards severely restricting the use of the signage, it would inhibit their use.

Chair Thomas pointed out that the Board would be starting over using the draft provided to establish acceptable standards for the signage.

City Attorney Hayes agreed and said that some of the questions on the matrix would complement the standards in the draft ordinance. He reminded everyone that any recommendation of the Planning Board was only advisory, but would serve to move the item forward; he said the City Commission might endorse it or might decide to do something totally different. He said that the Board might also opt to recommend to the City Commission that they were not in favor of the signs, but were presenting a very conservative ordinance to them in order to move the matter forward.

Mr. Goss reminded the Board that the standards shown in the draft ordinance were arbitrary and for discussion purposes only; he said that the matrix listed the issues that needed to be addressed by the Board and for which the Board could establish standards.

Mr. Jorczak agreed and felt that would give the City Commission a much better understanding of the ramifications as a result of the legal review. He said that the Board first needed to decide what, if anything, they would allow with regard to the electronic signage and convey their rationale for that.

Mr. Hayes said that if it was the consensus of the Board at a public meeting not to allow the signs, their recommendation would proceed to the City Commission. He pointed out that the work of staff would not be over, however, because they would need to go through the same education process with the City Commission in trying to get them to develop standards without the Board's input.

Chair Thomas opened the workshop to public comment. He asked that they limit their comments of whether or not to allow electronic signage to a maximum of three minutes.

Mr. Matt Reardon, 1687 West Granada Boulevard, spoke on behalf of Calvary Christian Center. He recalled that staff had done a wonderful job of writing a sign ordinance for the City that had included electronic changeable copy signs and which had been unanimously recommended for approval by the Planning Board. He said that because there were people present at the City Commission meeting who wanted electronic copy signs not permitted by the ordinance, the Commission had pulled that part of the sign ordinance for further discussion. He recalled that the mayor and two other commissioners had then built a consensus and directed the Planning Board to present an electronic changeable copy sign ordinance that they could consider. He said that the City Commission had given a clear directive to the Planning Board to identify some specific criteria by which they could or could not abide.

Mr. Reardon said he did not know how much more information they thought they needed and felt that it was time to move the issue forward. He wanted the Board to act regardless of whether or not the ordinance was conservative. He disagreed with the Board assessment that no one in the community wanted electronic copy signs, saying that they were the wave of the future. He said that the signs were more environmentally friendly, used less electricity than fluorescent bulbs, and opined that the signs with channel letters currently in use in the city were hideous. He thought that that the city might end up with a legal challenge anyway, since the city's code did not currently allow electronic signage anywhere in the city, yet noted that there was an electronic sign at the Performing Arts Center (PAC). He said that the Calvary Christian Church on West Granada Boulevard wanted an electronic sign and had offered several suggestions for allowing for such a sign, such as designating an interchange corridor to allow the signs within a certain distance from I-95, perhaps with different restrictions west of the interchange.

Mr. Reardon disagreed with Mrs. Press, saying that allowing the signage in certain zones or areas of the city would withstand a legal challenge and was appropriate, as was allowing them by sign plan, building square footage or acreage size. He thanked the Board for their efforts and urged them to forward something for the city commission to consider.

Mr. Adams asked Mr. Reardon why he and his client thought that the electronic signage would make such a difference to them. He advised that most of the people with whom he had spoken were opposed to the electronic signs, but agreed that it was time to take action.

Mr. Reardon agreed that some were opposed, but noted that few had appeared at any of the meetings to voice that opposition. He said that the new technology had not been available when they moved their 1970's sign to the current site. Although grandfathered, they felt the electronic copy sign would be more aesthetically pleasing and would better serve the needs of Calvary Christian Center by allowing for the display of service times as well as the ability to advertise upcoming events.

Mrs. Behnke asked city staff if government-owned buildings were currently entitled to electronic changeable signs.

City Attorney Hayes stated that they were not.

Mr. Spraker said that prior to the change in the LDC in March, 2010, electronic signs were allowed for planned business developments (PBD's) that exceeded 120,000 square feet and for governmental signage, which had permitted both The Trails sign and the sign at the Performing Arts Center. He said that those signs were now nonconforming because there are no standards in place. He agreed with Chair Thomas that the signage had gone before the City Commission for approval, but only for the funding not for the development approval.

There were no further audience remarks and Chair Thomas opened the meeting to Board comment.

Mr. Wigley stated that it was time to move forward on the issue, since people were awaiting some resolution. He noted that the city could invite legal action if the sign issue was tabled indefinitely. He felt that it was better for the City Commission not to pass an ordinance that they knew would be challenged.

City Attorney Hayes suggested that if the Board indeed wanted to move the item forward, they could begin by evaluating the standards in Paragraph B, Items 1-12. He thought that by discussing the pros and cons of each standard, they would provide staff with the needed information to refine the ordinance.

Chair Thomas agreed and asked if anyone wanted to add or delete anything from the list.

### **1) - Location by Roadway**

Mr. Adams thought the list was too expansive. He agreed with having the signs near the interstate interchanges, but thought they were inappropriate in the historic areas and downtown.

Mr. Jorczak agreed but noted that overall, the Board members did not like the signs and would prefer not to have them. If they were to be allowed, however, he thought the both the number and location should initially be limited (within legal limits) as a test case.

City Attorney Hayes responded that he thought that it would be legally acceptable to have staff determine the number of signs that could be allowed in a given area.

Mrs. Behnke stated that once a business spent thousands of dollars for a sign, they would not take it down. She pointed out that businesses such as Granada Plaza (in the CRA\* district) would also want electronic signage, but agreed that allowing them at the interstate area would be a better place to start.  
\*Community Redevelopment Agency

In response to Chair Thomas, Mr. Hayes thought that planning staff could later help define the interchange area without being arbitrary by identifying the surrounding properties

Mr. Jorczak thought those properties preferred pole signage because of visibility from the interstate.

Mrs. Behnke disagreed with the comment that the North US1 businesses did not help the city, but did not want to see an excess of electronic signs in that area.

Mr. Wigley pointed out that once the signs were allowed, they could not be removed. He also noted that the price of the signs could be expected to come down substantially over time.

Mr. Adams said he had suggested the interchange areas first mentioned by Mr. Reardon, because there had been two requests at those locations: one on North US1 and the other west on SR 40.

Chair Thomas said that the property on North US1 was a considerable distance from the interchange and that although Calvary Christian was close to the interchange on SR40, the Baptist church was not. He thought that setting a distance parameter would be very difficult. He suggested that they instead look at using US 1 and only sections of Granada Boulevard, such as west of Nova Road.

Mr. Adams suggested the areas of Pearl Drive to Tymber Creek Road on SR 40 and north of Hull Road on US 1, which would include both interchange areas.

Mrs. Behnke noted those locations were not close to residential uses.

City Attorney Hayes responded to Chair Thomas, saying his staff could study whether or not they could legally defend that as the definition of an interchange.

Chair Thomas thought that defining the area US 1 north of Granada, and SR 40 west of Nova Road could be easily defined and justified and would include businesses such as the Playtex/Hawaiian Tropic facility. He did not think that using geographic lines made sense.

Mrs. Press reiterated her desire to start with something on which they could all agree.

Chair Thomas explained that the method of proceeding had been recommended by the City Attorney and staff, but would follow the consensus of the Board.

Mrs. Behnke said that they would ultimately have to deal with them all. She did not want to define distance parameters that would include residential areas, but thought that from Hull Road north was fine.

Chair Thomas thought that using Hull Road would be too restrictive, and instead suggested using Wilmette Avenue. He concurred with Mr. Opalewski that there was already a city sign at that location.

Mr. Adams agreed that not much could be built between there and Airport Road. He suggested using the river as the southern parameter and did not think that having the sign at the PAC, south of the river, was of any consequence.

Mr. Jorczak agreed.

Chair Thomas agreed that they could not vote on the issue, but could develop a consensus that they wanted to limit where the signs could go.

Mr. Goss said that they were discussing the signs because there were businesses that could not get their message out. He said that limiting the signs to parcels of a certain size would limit the number of properties that would be eligible for an electronic sign. He referenced the matrix and pointed out that limiting the signs to parcels of 30,000 square feet or more would result in the potential for less than 20 signs in the entire city of Ormond Beach. He responded to Chair Thomas' concern that they would be spread throughout the city by noting that such (shopping center) parcels tended to be located in certain zoning districts (such as the B-6 and B-7).

Chair Thomas suggested they try to develop consensus by using Mrs. Press' suggestion.

### **3) - Number Allowed**

Mrs. Behnke asked if a property with an electronic sign could also have other signage.

City Attorney Hayes said that the ordinance would include a provision that would preclude any additional signage for properties with an electronic sign.

No one was opposed to the location of electronic changeable signs at least 10 feet from a right-of-way.

Mr. Adams asked if corner lots would also lose their monument sign on the second frontage if allowed an electronic sign. He cited the case of the plaza at Granada and Williamson Boulevards, noting that passersby on Williamson would not be able to see the signage facing Granada.

City Attorney Hayes said that the location and setback requirements would have to be consistent with the requirements within the applicable zoning district. He said that was a planning question, but suggested that the double frontage signage could perhaps be addressed through the PBD process. He thought that they could look at that as a separate issue at a later time.

Mr. Wigley clarified that the question was whether or not such a property could have an electronic sign on one frontage and retain their traditional monument sign on the other.

City Attorney Hayes reiterated that a provision for that circumstance could be included in the ordinance.

Mr. Adams and Mrs. Behnke thought it was a good idea.

**Mr. Adams thought they could agree that no more than one electronic changeable copy sign shall be allowed for each property and that a second [traditional] monument sign be allowed for properties fronting on corner lots.**

**The Board members agreed.**

#### **4) - Setback**

Chair Thomas and Mrs. Behnke thought that not allowing an electronic changeable copy sign within 1,000 feet of a single-family residence was too restrictive. Chair Thomas wanted to include language that would exclude nonconforming residences.

Mr. Opalewski questioned the distance from residential uses for the existing electronic signs, to which Mr. Spraker responded that The Trails sign was about 400 to 550 feet from residential.

Mr. Opalewski thought 500 feet might be a better distance, since it appeared to be working.

Mr. Thomas clarified with the city attorney that the distance was measured as the crow flies from the residences to the leading edge of the sign, even if it was a different street. He did not think it made sense, because 1,000 feet was behind The Trails shopping center, e.g., and the residents could not see it.

City Attorney Hayes said that they could measure it any way they wanted, as long as they understood that the criteria would have to address all properties, not just The Trails. He reminded the Board that the stated criterion was arbitrary and had been included only as a starting point; he said it could be changed and that the nonconforming residence exception could also be included.

Mrs. Press commented that visibility was the issue, not distance; Chair Thomas agreed.

Mr. Opalewski pointed out that there already were illuminated signs in the city and that if the electronic signs were static, the lighting would not be much different.

Mr. Hayes agreed that the same standard, if reasonable, could be applied since it would be consistent. Following discussion regarding the 300-foot distance for legal notification, **Mr. Hayes said that staff would test the distance for reasonableness and bring it back to the Board.**

Mr. Spraker replied to Mrs. Behnke that the maximum height for a monument sign is seven feet above the crown of the road, with the top two feet for the sign. He cautioned that the language for ground monument signs was included in the pole sign districts, and noted that a ground monument sign could be 20 feet in height. He said that they should instead use the term "monument sign" if that was the goal.

**City Attorney Hayes thought the terminology needed work to make sure that the definition for monument signs was consistent with what the Board was trying to accomplish and would provide the Board with that information as well.**

Chair Thomas said that the consensus was for a distance of 300 to 500 feet.

Mr. Spraker also pointed out that by enacting the legislation they could be mandating going from pole signs to ground signs in certain zoning districts, such as along SR A1A.

#### **6) - Sign Type**

**The Board was in agreement with this criterion.**

#### **7) - Timing**

The Board decided to skip the criterion, since it would not be a simple discussion.

#### **8) - Text**

**The Board members agreed that the criterion was a good one, but wanted the word "scrolling" added to the restrictions.**

#### **9) - Copy Color**

**The Board consensus was for a one-color dark background and one-color lettering.**

#### **10) - Brightness Monitoring**

Mrs. Behnke asked how the lighting could be monitored.

Mr. Goss explained to Mrs. Behnke that the signs came with built-in automatic dimmers to control the lighting intensity.

**The Board members agreed with the criterion and said that the automatic dimmers should be required.**

### **11) – Maximum Brightness**

Mr. Adams thought that the maximum light emanation from the electronic signs should be by foot-candle measurement of no greater than 4.3, rather than nits, and should be measured 200' from the sign.

Chair Thomas questioned the industry standard, but had no problem with Mr. Adam's statement.

Mr. Opalewski thought they could use the standard used by existing signs for the sake of consistency.

Mr. Goss had established a maximum foot-candle property line threshold (0.03), and said that the city had neither the equipment nor the training to measure the effect in nits.

**Mr. Adams suggested the standard be measured by use of a foot-candle meter and that it conform to the city's current signage standards.**

Mr. Spraker explained that staff had talked with four different sign contractors in doing research, who had stated that there were disadvantages in using nits, whereas the foot-candles and the foot-candle meter were relatively inexpensive; thus, the measurement 0.03 foot-candles at a distance of 200 feet. He said that the illumination did not change from daytime to nighttime, but rather, dimmed automatically. He agreed with Mr. Jorzak that the wave length of the light from an LED was different from that of an incandescent or halogen bulb, but noted that they were different technologies.

Mr. Jorzak pointed out that they had to measure the light output with the instrument appropriate for the particular technology in order to get an accurate reading.

**The Board consensus was for the criterion with the changes as recommended by Mr. Adams.**

### **12) - ECC Application Review**

**The Board concurred with the Items 12 -17, as provided by the city attorney.**

### **8) - Text, Revisited**

Mrs. Press pointed out that Criterion 8 did not include language to prohibit the use of graphics.

**The Board agreed that they did not want pictures and in response to Mr. Adams inquiry regarding logos, agreed that they wanted to limit the signs to text only.**

Mrs. Press again expressed concern with the size of the font and the percentage of a sign that could be used for text.

In response to Chair Thomas, who said he needed visual examples, City Attorney Hayes said that those things could be included in a re-draft.

Mrs. Press referenced the PAC sign, saying that it was not readable when first established. She said it was constantly moving and the letters were too large to allow more than one or two words. She opined that if applying now, The Trails would most likely want a larger sign.

Chair Thomas recalled a conversation with Robert Carolin (Leisure Services Director) who said that the initial setup took some time, but pointed out that the problems had been corrected since that time. He agreed with Mrs. Press that the sign at The Trails was much smaller than the sign at the PAC, but pointed out that it had been the first, part electronic copy sign and part monument sign. He thought the sign at the PAC was more attractive.

### **7) - Timing**

Chair Thomas pointed out that in the recent past, the planned business development (PBD) had been utilized to allow multiple businesses in one development. He said that if the electronic signage allowed at these locations were limited to only one change per hour, some businesses could conceivably be without advertising during business hours.

Mrs. Behnke said that The Trails shopping center was managing with changing their sign only once every 12 hours.

Chair Thomas thought if they had it to do again, they might not agree to that condition. He said that if the city was going to allow electronic signs, they would be doing it to help the business community generate more business and added that he did not think one change per hour was reasonable.

Mr. Wigley thought that the owners might rotate the advertising slots for their businesses so that everyone got maximum exposure and thought that other Board members would agree that once per hour was too much. He said that was an issue between the owner and the lessees and did not think the Board should be involved in that aspect.

Chair Thomas felt the Board was already regulating it by limiting the change to once per hour. He strongly disagreed that once per house was too much and said that anyone owning a business knew it was not enough. He reminded the Board that the applicant on North US 1 had already lost one tenant as a result of the lack of signage.

Mr. Wigley pointed out that some owners only allowed their tenants to advertise on the property signage if that right had been included in their lease.

Mrs. Behnke added that the right to advertise sometimes had to be purchased.

**The Board consensus was to limit the text change to once per hour.**

### **2) – Location by Parcels**

Mr. Wigley asked how many commercially-zoned parcels were five acres or greater.

Mrs. Behnke thought that separation by linear footage would keep the signs from being right on top of one another.

Chair Thomas agreed and pointed out that a 5-acre parcel might have only 200 feet of frontage. He said that limiting the signs by parcel size would exclude smaller churches.

Mrs. Press said that it was a difficult question and one for which she had no answer.

Mr. Opalewski concurred. He thought the language "per property owner" was only fair.

City Attorney Hayes responded to Mr. Opalewski that ultimately it was a question of how restrictive or how broad they wanted the standards; he restated that the intent [of the draft ordinance] was to avoid the pitfalls of labeling, classifications and class distinctions. He said that therefore, the designation of roadways and lots by size was employed because they were typically enforceable regulations. He said that they could, if they so desired, allow the standards on any property along the designated roadways.

Mr. Opalewski thought that the linear front footage made more sense.

Mr. Adams agreed that a limitation of one per 200 linear feet would prevent electronic signs from being stacked and would eliminate the need for the 5-acre restriction.

Mrs. Behnke pointed out that the matrix identified 241 lots with a lot frontage of 200 or more feet.

Mr. Spraker answered Chair Thomas that parcels shown on the matrix as having 100+ feet of frontage would include any lots having frontage up to 200+ feet of frontage. He reminded the Board that the matrix had been developed independently of the ordinance and did not account for the roadways along which the Board might want to locate the signs. He said that it could be re-analyzed to show the maximum potential sites under the revised draft ordinance.

Chair Thomas acknowledged the Board's concern with having many electronic signs next to each other, but said that it would not happen, since the properties were in different zoning categories. He felt that the Board would not recommend the electronic signs on each of the streets listed.

Mr. Wigley noted that there were eight houses of worship between Nova and I-95, as well as the South Forty Shopping Center, Ormond Towne Square, Lowe's and several banks.

City Attorney Hayes suggested that the city staff take another look at this criterion, since the Board seemed to feel it was too restrictive, but was not sure what was appropriate. He said if they want to use roadways as the basis, they could present the re-draft in relationship to that.

Chair Thomas agreed that the consensus was to eliminate the 5-acre standard, but said that they were unsure whether or not the 200-foot threshold was too much or too little.

Mr. Jorczak said that they needed to recognize that if they employed roadways to set the standards, the Board would likely be concentrating the signs in one area. Although the density was increased, he said, it would also be isolated to those areas of the city. Mr. Jorczak agreed with Chair Thomas that the effect would be lessened if spread out, but thought that they should isolate the signs in one area as a method of control and could then decide whether to utilize linear feet of frontage or property square footage. He noted that electronic signs were becoming more prevalent in the surrounding areas.

Chair Thomas thought that the signs should be limited to the commercial areas of North US 1 (north of Wilmette, for example) or along Granada Boulevard (west of Nova Road or Clyde Morris Boulevard). He responded to Mrs. Behnke that limiting the location would inundate the area, but pointed out that they did not want the electronic signs along Atlantic Avenue. He likened the situation to the NIMBY

(Not In My Backyard) approach. He thought that the City Commission would adopt some regulations and said that he did not believe that they would prohibit houses of worship from having electronic signs.

Mr. Opalewski said that perhaps they needed to think about who the end users might be.

Mr. Hayes cautioned the Board to refrain from creating distinctions, which could be troublesome.

Mrs. Press said that the Planning Board represented the people of Ormond Beach and were not a rubber stamp. She felt that the people in the community did not want the signs and that the Board action should reflect that. She recalled that the city commission directive had not been unanimous and that the Board should make it clear that the regulations were restrictive and that the ordinance they recommended was the best they could come up with, even though they were not in favor of the signs. She reported that she had received telephone calls from everyone in her zone and that only two had been in favor of the signs.

Mr. Thomas thought that the people with whom Mrs. Press was acquainted might not like the signs, but that the people in the business community with whom he was acquainted did want the electronic signs. He said that he had not received any phone calls about the signs. He agreed with Mrs. Press that because the issue would go to public hearings, the public would have an opportunity to attend and make their wishes known and that anyone strongly opposed to the signs would attend.

Mr. Jorczak said that they should proceed cautiously, not only because it would be a long-term program and would be hard to rein in once established, but also because the technology would continue to improve and could be expected to be quite different in ten years.

Mrs. Press agreed and said she was afraid that the City Commission had been moving too quickly and without all the necessary information. She thought that the issue was complicated and that the repercussions could be considerable; therefore the Board should proceed very slowly, she said.

Chair Thomas recalled that since they began dealing with electronic signage in December, 2008, there had been no public outcry against the signs. He said people would have attended the past meetings *en masse* if there had been a lot of opposition to the electronic signage.

Mrs. Press responded that people had not attended in the past because they had not known about the meetings regarding electronic signage. She added that people were generally busy with their own lives and expected their elected and appointed officials to look out for their best interests.

Mr. Jorczak stated that the Board should take as much time as was needed to address the issue because of the implications and the difficulty in getting rid of the regulations if they made the wrong decision.

Mr. Opalewski felt that the Board needed to move something forward to the City Commission, since it was their decision to make.

**City Attorney Hayes summarized that staff would provide more information for Criteria #2 in the re-drafted ordinance.**

### **#1) – Location by Roadway**

Mr. Jorczak thought that Criteria #1 was a matter of density; Mr. Adams disagreed.

City Attorney Hayes suggested looking at the criteria in terms of property owners in order to avoid classification. He said the signage was not for businesses or for houses of worship, but was for property owners within certain zoning districts or along certain roadways. He asked them to focus on the which roadways they wanted to exclude, if any, and/or distance criteria in order to be able to address the remaining two categories.

In response to the city attorney's inquiry, several Board members expressed opposition to electronic signs along certain sections of Granada Boulevard. **After discussion of the characteristics of the different segments of Granada Boulevard, the Board agreed to limit the signs to the commercial areas of SR40 from Clyde Morris Boulevard west.**

**The Board also discussed the North US 1 corridor and decided upon the commercial area north of the intersection with North Nova Road.**

City Attorney Hayes questioned the parameters, if any, for Granada Boulevard, west of the I-95 interchange. The initial consensus was for the area to terminate at the intersection with Tymber Creek Road.

(In response to Mr. Jorczak's inquiry, Mr. Spraker said that Daytona Beach planned some commercial property on west SR 40, but that it would include a 50-foot scenic setback.)

Mr. Adams pointed out that there were at least three churches located west of Tymber Creek Road.

Mr. Hayes asked if there was a reason that they needed to establish a limit on West Granada. He pointed out that the city would have no control over what the commercial uses in Daytona might do.

Mr. Spraker agreed that there were some scattered commercially-zoned properties on West Granada, and reminded the Board that staff could do an analysis based on lot frontage and/or acreage along West Granada from Tymber Creek Road, giving them a basis for their decision.

Mr. Spraker responded to Mr. Wigley by recalling that the issue began as a discussion item before the Planning Board and that standards had been included in an LDC amendment to the city's sign standards. The Planning Board had recommended approval and the item was forwarded to the City Commission for action, he said. He remembered that during the City Commission meeting, the representative of a house of worship indicated their desire to be included and the electronic sign standards were then extracted from the amendment for further review and analysis.

Mr. Wigley stated that he was not opposed to churches, but pointed out there were at least 12 churches along West Granada, all of whom would potentially want electronic signs, not including the businesses along that route.

Mr. Spraker advised that staff would return with analysis that would help the Board identify and define the standards they wished to use.

Chair Thomas asked that the analysis include the distance measurements in mileage from a) from Nova to the interstate in the North US1 corridor, and b) from Clyde Morris Boulevard to the interstate along West Granada. He pointed out that there were two houses of worship east of the intersection with Clyde Morris Boulevard.

In reply to Mr. Wigley's concern that houses of worship were sometimes located in shopping centers, Chair Thomas noted that the center would be allowed only the signage allowed by their approval.

Following discussion regarding commercial uses along North US 1, City Attorney Hayes again asked the Board to focus not on uses, but on the linear footage and parcel size standards. He acknowledged that it was difficult to separate the uses from the points of reference, but reminded the members that the transcription of the meeting would be a part of the public record. He agreed with Chair Thomas that secondary impacts to residential were an important factor and an appropriate consideration, but stated that he did not want the Board members to discuss business classifications.

In discussing the distance parameter as it related to residential uses off of North US1, Mr. Spraker explained that the measurement was intended for the single-family lot, not to the areas under the ownership of the homeowners' associations.

**The Board consensus was stated to exclude SR A1A (Atlantic Avenue) from eligibility and decided to postpone a decision regarding Nova Road until staff was able to analyze the properties along that roadway.**

Mr. Jorczak and Mr. Wigley were not in favor of allowing the signs along Nova Road.

Mr. Spraker, in response to Chair Thomas, explained that the cemetery on Nova Road was zoned as B-1; he noted that it had tremendous frontage and depth.

Chair Thomas pointed out that there were already two electronic message boards on Nova Road: The Trails sign and billboard. He added that there was another electronic sign on Nova Road, just south of the city limits, and said he did not have as much as a problem with including Nova Road as did Mr. Jorczak.

Mrs. Press wanted the additional information regarding Nova Road properties that had been offered by staff before making a decision.

Chair Thomas stated that he was also not opposed, as were others, to allowing the signs along Atlantic Avenue. He thought the signs should be spread out around the city.

Mr. Wigley questioned whether any thought had been given to allowing electronic signs along the commercial areas of Hand Avenue.

Mr. Spraker said that the businesses along Hand Avenue were primarily office development, with a smaller percentage (20%) of retail. He confirmed for Mr. Wigley that the largest undeveloped parcel was owned by Tomoka Christian Church and had been approved for a house of worship.

Chair Thomas said he wanted staff to look at that area also, because he considered most of the development along Hand Avenue to be commercial.

Mr. Wigley thought that since part of the Board's role was to help business, they should reconsider allowing electronic signs along SR A1A. He said some of the hotels were hurting financially.

City Attorney Hayes advised that there had to be a basis for allowing a different standard of measurement for signs along SR A1A, which meant additional study in that area.

Chair Thomas stated that if they were going to consider including Nova Road, they should consider Atlantic Avenue as well, but pointed out that did not mean they were going to add those thoroughfares.

Mr. Spraker explained that SR A1A was zoned B-6, which allowed both transient lodging and single-family homes; he thought that would be an issue in assigning standards.

Chair Thomas opined that the electronic monument signs would be nicer than the existing pole signs. He felt that the single-family homes used as rentals should be considered as commercial.

### **Public Comment**

Mr. Antonio Amaral, representing Amaral Plaza, 1360-1370 North US1, stated that font size would be dictated by the size of the sign, a problem that would solve itself. He said that by limiting the electronic signs to fixed text, the signs would not be as distracting; therefore, the need to limit the text change to one time per hour was moot. He thought the actions of the Board at the meeting showed progress and hoped that it continued, since he felt some resolution of the issue was needed.

Mr. John Bandorf, 18 Village Drive, expressed concern with the appeal process and thought that the City would be abdicating their responsibility to judges and lawyers. He said that the courts did not represent the public; the elected city officials did.

Mr. Wigley explained that the Special Master would review the city's order by means of an appeal.

Mr. Bandorf questioned the process for the appeal of regular sign issues and asked if that process was different. He felt that the regulation would circumvent the job the Board was appointed to do and was, by nature, a change in the process for appeals.

Chair Thomas explained that the Planning Board was only advisory and only made recommendations to the City Commission, the elected body that made the decisions and established city regulations.

Mr. Bandorf apologized if the appeal being established for electronic signs was the same for traditional signs, but stated that if it was different, they were in the wrong.

City Attorney Hayes stated that city staff would look at the appeal process for other signs and other appeal routes, but said he liked to use that route for those procedural issues that related to project applications. He said he liked to use lawyers and judges for the review of local legislation, since they are trained to apply the law as written. Although he did not know whether his review would change the process in the draft ordinance, he would see if there was a distinction to be made and would advise the Board.

Chair Thomas asked how the Planning Board could recommend denial of an electronic sign that met all the guidelines, given the proposed language in the ordinance that would allow property owner appeals.

Mr. Hayes explained that the signage would be reviewed by the SPRC (Site Plan Review Committee), who was charged with applying the criteria in the ordinance to the sign application. He said they would be obligated to approve the application if it met all the standards; if not, the SPRC could deny the permit. He clarified that some things had appeal routes that were different; e.g., some would go first to the Chief Building Official, then on to circuit court. He added that if an application met the criteria and was turned down, it would then go before the Special Master, who could look at the standards and order staff to issue the permit if the denial was in error. He explained that the judicial appeal route de-politicized the process.

Chair Thomas questioned how the SPRC could turn down something that the City Commission would eventually approve.

Mr. Wigley gave an example of an application that was denied by the SPRC because of a slight shortcoming in a requirement; an applicant could then appeal the decision. He thought that every denial of an electronic changeable sign would most likely be appealed.

City Attorney Hayes further explained that government officials had to apply the standards in the adopted Code regulations. He said that if they did not, for whatever reason, the property owner had to have an avenue of relief, which in this instance, was the due process route called an appeal. He said that since the judicial system was the ultimate protector of citizens' rights, they were the last body that one would expect to be prejudiced. Elected officials, he continued, were the most vulnerable because they were the ones most apt to be pressured politically. **He reiterated that staff would compare the appeal route with other appeal standards in the LDC.**

Ms. Kimberly Bandorf, 18 Village Drive, thought that the city attorney's comments were hogwash. She opined that the lawyers were just as political as was the Board. She stated that they needed electronic signs, which she called the wave of the future. She thanked the Board for their efforts, but said she thought that they had a long way to go.

Ms. Bandorf said that the electronic signs on North US1 were more aesthetically pleasing than most of the existing signage near the interchange. She thought the residents in the area would be pleased to see the signs upgraded and also thought it would be a good thing for the businesses in the area. She stated that she did not understand the problem, particularly since not everyone could afford such an expensive sign. She pointed out that the signs could also be commandeered to disseminate information in emergency situations, a benefit to the city that the city would neither have to pay for nor maintain.

The Planning Board recessed for five minutes.

Mr. Jorczak suggested that if Planning staff was prepared to do so, the Board could discuss the issue further at the next meeting or at a workshop.

Mr. Goss said he preferred a workshop session that could be devoted solely to electronic signage.

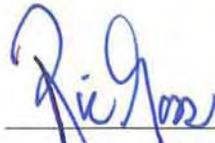
The Board decided to wait until the September meeting of the Board to set a date.

In response to Mr. Jorczak, Mr. Goss confirmed that the Form Based Code would be heard by the Planning Board, following another meeting with Ormond MainStreet on August 31<sup>st</sup>.

**I. ADJOURNMENT**

The meeting was adjourned 9:05 p.m.

Respectfully submitted,



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Ric Goss, AICP, Planning Director

ATTEST:



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Doug Thomas, Chair

*Minutes transcribed by Betty Ruger*

# Exhibit E

Site analysis as  
presented at  
09.28.2010

&

Additional analysis:  
Hand Avenue and U.S.  
1 from Wilmette Avenue  
to Nova Road

# CITY OF ORMOND BEACH

FLORIDA

PLANNING

MEMORANDUM

**TO:** Planning Board Members

**FROM:** Steven Spraker, AICP, Senior Planner

**DATE:** September 22, 2010

**SUBJECT:** Planning Board Workshop –September 28, 2010

Please find attached an analysis relating to the August 23, 2010 Planning Board workshop focusing on the following issues:

1. Potential roadways to allow Electronic Changeable Copy (ECC) signage.
2. Number of properties with a minimum of 200' of lot frontage.
3. Number of properties that are 300' and 500' away from residential uses.
4. Parcel sizes by roadway corridor.
5. Additional potential criteria for consideration, such a building size and multi-tenant or use properties.

There are a number of potential combinations of the criteria listed above. In reviewing the data, staff was mindful of the reasons for the investigation of the use of ECC signs, which include:

1. To provide signage for multi-tenant or multi-use buildings that cannot locate all the tenants on tenant panel signs.
2. To provide signage for those buildings that has large setbacks from the right-of-way and may have limited signage.
3. To provide a better aesthetic look for businesses other than multiple tenant panels that can be hard to read.

Staff analyzed the following corridors:

1. Granada Boulevard, from Clyde Morris Boulevard to Breakaway Trails.
2. US1, from Nova Road to Flagler County line.
3. South Atlantic Avenue, from Granada Boulevard to south City limits.
4. Nova Road, from North US1 to south City limits.

Based on the attached analysis, staff would recommend the following criteria for ECC signage:

**1. Potential Roadways for ECC:**

- a. Granada Boulevard, from Clyde Morris Boulevard to Breakaway Trails.
- b. US1, from Nova Road to Flagler County line.
- c. Nova Road, from North US1 to south City limits.

**2. Minimum lot frontage:** 200 feet.

**3. Minimum distance from residential uses:** 300 feet.

**4. Minimum parcel size:** 3 acres.

**5. Additional ECC criteria:** Only for multi-tenant occupancy.

Number of properties that meet the recommended criteria

<b>Roadway</b>	<b>Granada Boulevard</b> (Clyde Morris Boulevard to Breakaway Trails)	<b>US1</b> (Nova Road to Flagler County line)	<b>Nova Road</b> (North US1 to south City limits)
<b>200' lot frontage</b>	66	92	44
<b>300' from residential uses</b>	42	88	27
<b>Parcel size of at least 3 acres</b>	16	50	13
<b>Multi-tenant</b>	11	9	6

There are currently 26 properties that would meet the criteria listed above.

Attachments:

ECC Sign Roadway Corridor Analysis

# ECC Sign Roadway Corridor Analysis

**Analysis of the following roadways:** (Item I.(b).1 of August 23<sup>rd</sup> draft revision)

- A. Granada Boulevard: Clyde Morris Boulevard to Breakaway Trails;
- B. US1: Nova Road to Flagler County line
- C. South Atlantic Avenue: Granada Boulevard to south City limits
- D. Nova Road: US1 to south City limits

## Electronic Changeable Copy Sign Criteria:

- 1) Minimum of 200' of lot frontage. (Item I.(b).2 of August 23<sup>rd</sup> draft revision)
- 2) Distance from the sign to conforming residential uses – using 300' and 500' distance separation. (Item I.(b).5 of August 23<sup>rd</sup> draft revision)
- 3) Analysis of parcel sizes. (Item I.(b).2 of August 23<sup>rd</sup> draft revision)
- 4) Optional criteria, building square footage and multi-tenant or use. (additional criteria not previous reviewed)

### Notes:

- Parcel size and square footage obtained from Volusia County Property Appraiser and City GIS (Looking Glass program).
- Distance from residential measure by the City GIS (Looking Glass program).
- Final determination of parcel size, building square footage, multi-tenant use and distance from residential is required to be determined by site survey.

## Granada Boulevard from Clyde Morris Boulevard to Breakaway Trails

### 300' away from residential

	Total number of lots/parcels:				<b>76</b>
<b>Criteria 1</b>	Number of lots/parcel with a minimum lot width of 200':				<b>66</b>
<b>Criteria 2</b>	Number of lots/parcels that are or have a portion of the lot further than 300' from a residential use – any part of the lot line, as measured by a radius:				<b>42</b>
<b>Criteria 3</b>	Size of the lots/parcels that meet criteria 2				
	Less than 1 acre:				<b>9</b>
	1 acre to 1.99 acres:				<b>14</b>
	2 to 2.99 acres:				<b>3</b>
	3 or more acres:				<b>16</b>
<b>Criteria 4</b>	A: Building over 10,000 square feet. B: Multi Tenant or Multi Use.	<b>A Only</b>	<b>B Only</b>	<b>A &amp; B</b>	
	Less than 1 acre:	<b>0</b>	<b>2</b>	<b>0</b>	
	1 acre to 1.99 acres:	<b>1</b>	<b>3</b>	<b>1</b>	
	2 to 2.99 acres:	<b>2</b>	<b>1</b>	<b>1</b>	
	3 or more acres:	<b>9</b>	<b>11</b>	<b>9</b>	
	Total:	<b>12</b>	<b>17</b>	<b>11</b>	

### 500' away from residential

	Total number of lots/parcels:				<b>76</b>
<b>Criteria 1</b>	Number of lots/parcel with a minimum lot width of 200':				<b>66</b>
<b>Criteria 2</b>	Number of lots/parcels that are or have a portion of the lot further than 300' from a residential use – any part of the lot line, as measured by a radius:				<b>27</b>
<b>Criteria 3</b>	Size of the lots/parcels that meet criteria 2				
	Less than 1 acre:				<b>7</b>
	1 acre to 1.99 acres:				<b>9</b>
	2 to 2.99 acres:				<b>3</b>
	3 or more acres:				<b>8</b>
<b>Criteria 4</b>	A: Building over 10,000 square feet. B: Multi Tenant or Multi Use.	<b>A Only</b>	<b>B Only</b>	<b>A &amp; B</b>	
	Less than 1 acre:	<b>0</b>	<b>2</b>	<b>0</b>	
	1 acre to 1.99 acres:	<b>0</b>	<b>0</b>	<b>0</b>	
	2 to 2.99 acres:	<b>1</b>	<b>0</b>	<b>0</b>	
	3 or more acres:	<b>4</b>	<b>5</b>	<b>4</b>	
	Total:	<b>5</b>	<b>7</b>	<b>4</b>	

## **Granada Boulevard from Clyde Morris Boulevard to Breakaway Trails**

The criteria for Electronic Changeable Copy (ECC) signage was based on the discussion at the August 23<sup>rd</sup> Planning Board workshop meeting. The first criterion is the number of parcels that have a minimum of 200' of lot frontage. There are 66 parcels that have 200' of lot frontage.

The second criterion applies to those properties that are at least 300' from any conforming residential use. Along Granada Boulevard, from Clyde Morris Boulevard to Breakaway Trails there are 42 properties that meet these two criteria. Staff also analyzed a distance from residential uses of 500' which reduced the total number of eligible properties to 27.

The third criterion applies a minimum lot size to the properties that have a minimum lot frontage and distance away from residential uses. Utilizing the 300' distance standard away from residential uses, there are 9 properties that have less than 1 acre of total lot area, 14 properties that have between 1 and 1.99 acres, 3 properties that have 2 to 2.99 acres, and 16 properties that have 3 or more acres. Utilizing the 500' standard away from residential use, there are 7 properties that have less than 1 acre of total lot area, 9 properties that have between 1 and 1.99 acres, 3 properties that have 2 to 2.99 acres, and 8 properties that have 3 or more acres. The Planning Board did not establish a minimum lot size at the August 23<sup>rd</sup> workshop.

The fourth potential criterion applies two more restrictions. It is the Board's decision to apply both, one or neither of the criteria analyzed. The first restriction is the size of the building on the properties. One option is to restrict ECC signs to those properties which have larger building sizes. Staff used a criterion of buildings over 10,000 square feet, although the Board can select an alternative square footage threshold. Using the 300' residential standard, there are 12 properties that are over 10,000 square feet. Using the 500' residential standard, there are 5 properties that are over 10,000 square feet.

Another potential restriction is to limit ECC signs to properties that are multi-tenant (different units in a shopping center or office complex) or multi-use (such as a Church with a daycare or school). There are 17 multi-tenant or multi-use properties in this corridor using the 300' residential distance standard and 7 using the 500' residential distance standard. A final criterion could require a property be both over 10,000 square feet and multi-tenant or multi-use. There are 11 properties along the corridor using the 300' residential distance standard and 4 using the 500' residential distance standard.

### **Summary Points:**

1. This corridor is a Gateway/Greenbelt corridor requiring only monument signs.
2. Granada Boulevard west of Clyde Morris Boulevard is an office and commercial land use corridor.
3. The properties are generally larger in size and the residential uses are limited west of Williamson Boulevard to Tymber Creek Road where commercial and interchange uses exist.

**US1: From Nova Road to Flagler County Line**

**300' away from residential**

	Total number of lots/parcels:	<b>136</b>		
<b>Criteria 1</b>	Number of lots/parcel with a minimum lot width of 200':	<b>92</b>		
<b>Criteria 2</b>	Number of lots/parcels that are or have a portion of the lot further than 300' from a residential use – any part of the lot line, as measured by a radius:	<b>88</b>		
<b>Criteria 3</b>	Size of the lots/parcels that meet criteria 2			
	Less than 1 acre:	<b>4</b>		
	1 acre to 1.99 acres:	<b>19</b>		
	2 to 2.99 acres:	<b>15</b>		
	3 or more acres:	<b>50</b>		
<b>Criteria 4</b>	A: Building over 10,000 square feet. B: Multi Tenant or Multi Use.	<b>A Only</b>	<b>B Only</b>	<b>A &amp; B</b>
	Less than 1 acre:	<b>0</b>	<b>0</b>	<b>0</b>
	1 acre to 1.99 acres:	<b>3</b>	<b>4</b>	<b>3</b>
	2 to 2.99 acres:	<b>1</b>	<b>1</b>	<b>1</b>
	3 or more acres:	<b>21</b>	<b>9</b>	<b>9</b>
	Total:	<b>25</b>	<b>14</b>	<b>13</b>

**500' away from residential**

	Total number of lots/parcels:	<b>136</b>		
<b>Criteria 1</b>	Number of lots/parcel with a minimum lot width of 200':	<b>92</b>		
<b>Criteria 2</b>	Number of lots/parcels that are or have a portion of the lot further than 300' from a residential use – any part of the lot line, as measured by a radius:	<b>73</b>		
<b>Criteria 3</b>	Size of the lots/parcels that meet criteria 2			
	Less than 1 acre:	<b>4</b>		
	1 acre to 1.99 acres:	<b>10</b>		
	2 to 2.99 acres:	<b>11</b>		
	3 or more acres:	<b>48</b>		
<b>Criteria 4</b>	A: Building over 10,000 square feet. B: Multi Tenant or Multi Use.	<b>A Only</b>	<b>B Only</b>	<b>A &amp; B</b>
	Less than 1 acre:	<b>0</b>	<b>0</b>	<b>0</b>
	1 acre to 1.99 acres:	<b>2</b>	<b>2</b>	<b>2</b>
	2 to 2.99 acres:	<b>1</b>	<b>1</b>	<b>1</b>
	3 or more acres:	<b>20</b>	<b>8</b>	<b>8</b>
	Total:	<b>23</b>	<b>11</b>	<b>11</b>

## **US1: From Nova Road to Flagler County Line**

The criteria for Electronic Changeable Copy (ECC) signage was based on the discussion at the August 23<sup>rd</sup> Planning Board workshop meeting. The first criterion is the number of parcels that have a minimum of 200' of lot frontage. There are 92 parcels of a total of 136 parcels that have 200' of lot frontage.

The second criterion applies to those properties that are at least 300' from any conforming residential use. Along US1, from Nova Road to the Flagler County line, there are 88 properties that meet these two criteria. Staff also analyzed a distance from residential uses of 500' which reduced the total number of eligible properties to 73.

The third criterion applies a minimum lot size to the properties that have a minimum lot frontage and distance away from residential uses. Utilizing the 300' standard away from residential use, there are 4 properties that have less than 1 acre of total lot area, 19 properties that have between 1 and 1.99 acres, 15 properties that have 2 to 2.99 acres, and 50 properties that have 3 or more acres. Utilizing the 500' standard away from residential use, there are 4 properties that have less than 1 acre of total lot area, 10 properties that have between 1 and 1.99 acres, 11 properties that have 2 to 2.99 acres, and 48 properties that have 3 or more acres. The Planning Board did not establish a minimum lot size at the August 23<sup>rd</sup> workshop.

The fourth potential criterion applies two more restrictions. It is the Board's decision to apply both, one or neither of the criteria analyzed. The first restriction is the size of the building on the properties. One option is to restrict ECC signs to those properties which have larger building sizes. Staff used a criterion of buildings over 10,000 square feet, although the Board can select an alternative square footage threshold. Using the 300' residential standard, there are 25 properties that are over 10,000 square feet. Using the 500' residential standard, there are 23 properties that are over 10,000 square feet.

Other potential criteria are properties that are multi-tenant (different units in a shopping center or office complex) or multi-use (such as a Church with a daycare or school). There are 14 multi-tenant or multi-use properties in this corridor using the 300' residential standard and 11 using the 500' residential distance standard. A final criterion could require a property be both over 10,000 square feet and multi-tenant or multi-use. There are 13 properties that meet this criterion using the 300' residential standard and 11 using the 500' residential distance standard.

### **Summary Points:**

1. The US1 corridor is a Gateway/Greenbelt corridor requiring only monument signs.
2. There are a number of larger parcels (65 over 2 acres in size) in this corridor. Some of these are vacant and can be subdivided into additional parcels with 200' of lot frontage.
3. A majority of properties are not within 300' of residential uses.
4. A number of properties in this corridor are located in unincorporated Volusia County. Of 88 eligible properties for ECC signage, 55 are in Volusia County and 33 are in the City.

**South Atlantic Avenue: Granada Boulevard to South City limits**

**300' away from residential**

	Total number of lots/parcels:	<b>106</b>		
<b>Criteria 1</b>	Number of lots/parcel with a minimum lot width of 200':	<b>25</b>		
<b>Criteria 2</b>	Number of lots/parcels that are or have a portion of the lot further than 300' from a residential use – any part of the lot line, as measured by a radius:	<b>14</b>		
<b>Criteria 3</b>	Size of the lots/parcels that meet criteria 2			
	Less than 1 acre:	<b>1</b>		
	1 acre to 1.99 acres:	<b>3</b>		
	2 to 2.99 acres:	<b>7</b>		
	3 or more acres:	<b>3</b>		
<b>Criteria 4</b>	A: Building over 10,000 square feet. B: Multi Tenant or Multi Use.	<b>A Only</b>	<b>B Only</b>	<b>A &amp; B</b>
	Less than 1 acre:	<b>0</b>	<b>0</b>	<b>0</b>
	1 acre to 1.99 acres:	<b>3</b>	<b>0</b>	<b>0</b>
	2 to 2.99 acres:	<b>4</b>	<b>1</b>	<b>1</b>
	3 or more acres:	<b>2</b>	<b>0</b>	<b>0</b>
	Total:	<b>9</b>	<b>1</b>	<b>1</b>

**500' away from residential**

	Total number of lots/parcels:	<b>106</b>		
<b>Criteria 1</b>	Number of lots/parcel with a minimum lot width of 200':	<b>25</b>		
<b>Criteria 2</b>	Number of lots/parcels that are or have a portion of the lot further than 300' from a residential use – any part of the lot line, as measured by a radius:	<b>7</b>		
<b>Criteria 3</b>	Size of the lots/parcels that meet criteria 2			
	Less than 1 acre:	<b>0</b>		
	1 acre to 1.99 acres:	<b>2</b>		
	2 to 2.99 acres:	<b>4</b>		
	3 or more acres:	<b>1</b>		
<b>Criteria 4</b>	A: Building over 10,000 square feet. B: Multi Tenant or Multi Use.	<b>A Only</b>	<b>B Only</b>	<b>A &amp; B</b>
	Less than 1 acre:	<b>0</b>	<b>0</b>	<b>0</b>
	1 acre to 1.99 acres:	<b>2</b>	<b>0</b>	<b>0</b>
	2 to 2.99 acres:	<b>3</b>	<b>0</b>	<b>0</b>
	3 or more acres:	<b>1</b>	<b>0</b>	<b>0</b>
	Total:	<b>6</b>	<b>0</b>	<b>0</b>

## **South Atlantic Avenue: Granada Boulevard to South City limits**

The Planning Board elected not to include the South Atlantic Avenue in the list of eligible roadways for ECC signs. Several members did express an interest to look at this corridor, so it is provided as an informational item. The first criterion is the number of parcels that have a minimum of 200' of lot frontage. There are 25 parcels of a total of 106 parcels that have 200' of lot frontage.

The second criterion applies to those properties that are at least 300' from any conforming residential use. Along South Atlantic Avenue, from Granada Boulevard to the south City limits, there are 14 properties that meet these two criteria. Staff also analyzed a distance from residential uses of 500' which reduced the total number of eligible properties to 7.

The third criterion applies a minimum lot size to the properties that have a minimum lot frontage and distance away from residential uses. Utilizing the 300' standard away from residential use, there is one property that have less than 1 acre of total lot area, 3 properties that have between 1 and 1.99 acres, 7 properties that have 2 to 2.99 acres, and 3 properties that have 3 or more acres. Utilizing the 500' standard away from residential use, there are no properties that have less than 1 acre of total lot area, 2 properties that have between 1 and 1.99 acres, 4 properties that have 2 to 2.99 acres, and 1 property that have 3 or more acres. The Planning Board did not establish a minimum lot size at the August 23<sup>rd</sup> workshop.

The fourth potential criterion applies two more restrictions. It is the Board's decision to apply both, one or neither of the criteria analyzed. The first restriction is the size of the building on the properties. One option is to restrict ECC signs to those properties which have larger building sizes. Staff used a criterion of buildings over 10,000 square feet, although the Board can select an alternative square footage threshold. Using the 300' residential standard, there are 9 properties that are over 10,000 square feet. Using the 500' residential standard, there are 6 properties that are over 10,000 square feet.

Other potential criteria are properties that are multi-tenant (different units in a shopping center or office complex) or multi-use (such as a Church with a daycare or school). There is one multi-tenant or multi-use property in this corridor using the 300' residential standard and no properties using the 500' residential distance standard. A final criterion could require a property be both over 10,000 square feet and multi-tenant or multi-use. There is one property that meets this criterion using the 300' residential standard and no properties using the 500' residential distance standard.

### **Summary Points:**

1. There are a limited number of properties that are 200' in width (25 out of 106).
2. The 300' residential distance requirement standard eliminates a majority of commercial properties. The lot depth along most of SRA1A is less than 300'. The B-6 zoning distance allows single-family residences, transient lodging, and condominiums.
3. Properties along South Atlantic Avenue are permitted to have pole signs which allow more square footage than monument signs.
4. The direction of the Planning Board was not to include this corridor for ECC signs.

**Nova Road: US1 to South City limits**

**300' away from residential**

	Total number of lots/parcels:	<b>89</b>		
<b>Criteria 1</b>	Number of lots/parcel with a minimum lot width of 200':	<b>44</b>		
<b>Criteria 2</b>	Number of lots/parcels that are or have a portion of the lot further than 300' from a residential use – any part of the lot line, as measured by a radius:	<b>27</b>		
<b>Criteria 3</b>	Size of the lots/parcels that meet criteria 2			
	Less than 1 acre:	<b>2</b>		
	1 acre to 1.99 acres:	<b>6</b>		
	2 to 2.99 acres:	<b>6</b>		
	3 or more acres:	<b>13</b>		
<b>Criteria 4</b>	A: Building over 10,000 square feet. B: Multi Tenant or Multi Use.	<b>A Only</b>	<b>B Only</b>	<b>A &amp; B</b>
	Less than 1 acre:	<b>0</b>	<b>0</b>	<b>0</b>
	1 acre to 1.99 acres:	<b>1</b>	<b>2</b>	<b>1</b>
	2 to 2.99 acres:	<b>3</b>	<b>3</b>	<b>3</b>
	3 or more acres:	<b>11</b>	<b>6</b>	<b>6</b>
	Total:	<b>15</b>	<b>11</b>	<b>10</b>

**500' away from residential**

	Total number of lots/parcels:	<b>89</b>		
<b>Criteria 1</b>	Number of lots/parcel with a minimum lot width of 200':	<b>44</b>		
<b>Criteria 2</b>	Number of lots/parcels that are or have a portion of the lot further than 300' from a residential use – any part of the lot line, as measured by a radius:	<b>18</b>		
<b>Criteria 3</b>	Size of the lots/parcels that meet criteria 2			
	Less than 1 acre:	<b>1</b>		
	1 acre to 1.99 acres:	<b>4</b>		
	2 to 2.99 acres:	<b>2</b>		
	3 or more acres:	<b>11</b>		
<b>Criteria 4</b>	A: Building over 10,000 square feet. B: Multi Tenant or Multi Use.	<b>A Only</b>	<b>B Only</b>	<b>A &amp; B</b>
	Less than 1 acre:	<b>0</b>	<b>0</b>	<b>0</b>
	1 acre to 1.99 acres:	<b>0</b>	<b>1</b>	<b>0</b>
	2 to 2.99 acres:	<b>1</b>	<b>0</b>	<b>0</b>
	3 or more acres:	<b>9</b>	<b>4</b>	<b>4</b>
	Total:	<b>10</b>	<b>5</b>	<b>4</b>

## **Nova Road: US1 to South City limits**

At the August 23<sup>rd</sup> Planning Board workshop there was discussion regarding the Nova Road corridor. Board members desired additional information of the characteristics of the corridor. The first criterion for ECC eligibility is the number of parcels that have a minimum of 200' of lot frontage. There are 44 parcels of a total of 89 parcels that have 200' of lot frontage for this corridor.

The second criterion applies to those properties that are at least 300' from any conforming residential use. Along Nova Road, from US1 to the south City limits, there are 27 properties that meet these two criteria. Staff also analyzed a distance from residential uses of 500' which reduced the total number of eligible properties to 18.

The third criterion applies a minimum lot size to the properties that have a minimum lot frontage and distance away from residential uses. Utilizing the 300' standard away from residential use, there are 2 properties that have less than 1 acre of total lot area, 6 properties that have between 1 and 1.99 acres, 6 properties that have 2 to 2.99 acres, and 13 properties that have 3 or more acres. Utilizing the 500' standard away from residential use, there is one property that has less than 1 acre of total lot area, 4 properties that have between 1 and 1.99 acres, 2 properties that have 2 to 2.99 acres and 11 properties that have 3 or more acres. The Planning Board did not establish a minimum lot size at the August 23<sup>rd</sup> workshop.

The fourth potential criterion applies two more restrictions. It is the Board's decision to apply both, one or neither of the criteria analyzed. The first restriction is the size of the building on the properties. One option is to restrict ECC signs to those properties which have larger building sizes. Staff used a criterion of buildings over 10,000 square feet, although the Board can select an alternative square footage threshold. Using the 300' residential standard, there are 15 properties that are over 10,000 square feet. Using the 500' residential standard, there are 10 properties that are over 10,000 square feet.

Other potential criteria are properties that are multi-tenant (different units in a shopping center or office complex) or multi-use (such as a Church with a daycare or school). There are 11 multi-tenant or multi-use properties in this corridor using the 300' residential standard and 5 properties using the 500' residential distance standard. A final criterion could require a property be both over 10,000 square feet and multi-tenant or multi-use. There is 10 properties that meet this criterion using the 300' residential standard and 4 properties using the 500' residential distance standard.

### **Summary Points:**

1. Properties along Nova Road are permitted to have pole signs which allow more square footage than monument signs.
2. There are residential areas directly behind the commercial zoning which eliminates a number of properties ability to utilize ECC signage.
3. Nova Road is a commercial corridor with large commercial centers such as the Trails and Tomoka Plaza shopping centers, smaller commercial centers such as Capital Plaza and Nova Ace, and with multi-tenant office buildings.

# Exhibit F

Correspondence  
received regarding ECC  
signage

## Spraker, Steven

---

**From:** Spraker, Steven  
**Sent:** Friday, May 21, 2010 2:10 PM  
**To:** 'mlahue@cfl.rr.com'  
**Cc:** Ruger, Betty; Roeper, Denise  
**Subject:** RE: Online Form Submittal: Report a Concern

Ms. LaHue:

Thank you for your e-mail regarding the discussion on electronic changeable copy signage. I will provide your e-mail in the agenda packet that goes before the City Commission and Planning Board. Below are the tentative dates that the item is scheduled to be reviewed:

Planning Board: June 10, 2010  
City Commission (1st Reading): July 20, 2010  
City Commission (2nd reading): August 4, 2010

All of these meetings are public meetings starting at 7pm in the City Hall Commission Chambers, where there will be an opportunity to speak regarding the potential Land Development Code amendment.

If you wish to discuss further, please contact me.

Thank you

Steven

Steven Spraker, AICP  
Senior Planner

Planning Department  
22 South Beach Street  
Room 104  
Ormond Beach, FL 32175

Direct Line: 386.676.3341  
Department: 386.676.3238  
E-mail: [spraker@ormondbeach.org](mailto:spraker@ormondbeach.org)

---

**From:** support@civicplus.com [mailto:support@civicplus.com]  
**Sent:** Friday, May 21, 2010 12:18 PM  
**To:** PW Office Operations  
**Subject:** Online Form Submittal: Report a Concern

If you are having problems viewing this HTML email, click to view a [Text version](#).

**Report a Concern**

To report a concern or request service, please complete the information below. Contact information is necessary to properly address your concern or request. Please provide some details in the description box below.

Name\* Marsha LaHue  
Address 6 Ironwood ct  
Phone\* 386-677-6966  
Email\* mlahue@cfl.rr.com

Public Notice: Under Florida law, email addresses are public records. If you do not want your email address released in response to a public records request, do not send electronic email to this entity. Instead, call 386-677-0311 or send your concern/request in writing.

Location of concern/request\* Granada Blvd

Animal Services  Animal Abuse/Cruelty  Running at Large  
 Dangerous Dog  Unsafe/Unsanitary Conditions  
 Nuisance/Barking

Code Violations  Abandoned Vehicles  Parking Violations  
 Noise Abatement  Unlicensed Business  
 Overgrown Vegetation  Water Restriction Violation

General  City Employee  Utility Service  
 Park or City Property Maintenance  Website  
 Utility Billing  Other

Sidewalks/Streets/Street Lights  Sidewalk Damage/Dangerous  Street Sign  
 Street/Pot Hole  Street Light Out

Stormwater  Blocked Drain  Flooding

Solid Waste/Recycling  Recycling  Yard Waste  
 Solid Waste

Description of concern or request I'm totally opposed to any change in signage along Granada or anyplace else in OB! Churches are well enough defined as they are. Mark Lane calls it cheesy; I call it tacky to increase & embellish signs. I'm told Lori my feelings, too.

For beach questions or concerns, please contact Volusia County 386-239-6414. [Volusia County Beach Safety](#)

For consumer complaints, please contact Florida Division of Consumer Services, Consumer Complaints 800-435-7352. [Consumer Complaints](#)

\* indicates required fields.

The following form was submitted via your website: Report a Concern

Name: Marsha LaHue

Address: 6 Ironwood ct

Phone: 386-677-6966

Email: mlahue@cfl.rr.com

Location of concern/request: Granada Blvd

Animal Services: not checked

Code Violations: not checked

General: not checked

Sidewalks/Streets/Street Lights: Street Sign

Stormwater: not checked

Solid Waste/Recycling: not checked

Description of concern or request: I'm totally opposed to any change in signage along Granada or anyplace else in OB! Churches are well enough defined as they are. Mark Lane calls it cheesy; I call it tacky to increase & embellish signs. I'm told Lori my feelings, too.

Additional Information:

Form submitted on: 5/21/2010 11:17:38 AM

Submitted from IP Address: 97.104.27.44

Form Address: <http://www.ormondbeach.org/forms.aspx?FID=41>

## Spraker, Steven

---

**From:** Goss, Ric  
**Sent:** Thursday, June 10, 2010 3:23 PM  
**To:** 'Norman Lane'  
**Cc:** Spraker, Steven  
**Subject:** RE: Lighted Signs

[Mr. Lane: Email letter confirmed as received. Will enter into record. Ric Goss](#)

---

**From:** Norman Lane [mailto:norman@rotomation.com]  
**Sent:** Thursday, June 10, 2010 3:22 PM  
**To:** Goss, Ric  
**Subject:** Lighted Signs

Dear Mr. Gos:

I had hoped to come to the Planning Board meeting tonight to voice my opinion if possible, but have a schedule conflict. I hope that you will read my comments into the record.

I am opposed to allowing these signs anywhere in the city. I believe that it will be impossible to maintain the kind of restrictions that have been proposed. Restrictions on the types of properties or their locations will be seen as arbitrary and unfair and will fall over time. Similarly, restrictions on the color, brightness, patterns, and frequency of change will also erode. This is a very slippery slope that I believe will result in our beautiful city being peppered with distracting and unsightly moving picture signs.

If the present owners of changeable text signs are just trying to save labor, it seems unlikely that they will pay for the high cost of the signs any time soon.

Thank you for your consideration

Norman Lane  
1314 Northside Drive  
Ormond Beach, FL 32174

## Spraker, Steven

---

**From:** Ruger, Betty  
**Sent:** Thursday, March 11, 2010 4:29 PM  
**To:** Goss, Ric; Spraker, Steven  
**Cc:** Kornel, Laureen; Finley, Shawn; Weedo, Becky; Johnson, Sabrina M  
**Subject:** FW: "New sign law will favor churches"

---

**From:** An Oracle [mailto:anoracle@live.com]  
**Sent:** Thursday, March 11, 2010 4:27 PM  
**To:** Community Development  
**Subject:** Re: "New sign law will favor churches"

Re: "New sign law will favor churches" News-Journal March 11, 2010

Any "Law" "Favoring" "Church" Violates the US Constitution First Amendment's "Separation Clause"! ie. "---Shall make no law---  
"etc.

I say: The "Planned" "Flashing Signs" are an admission of ignorance by those who are supporting such an obvious demonstration of  
'Bigotry' against; and illogical neglect of, the 'RATIONAL' members of our Community.

This "Planned" 'Advertisement' also favors Government "Faith-Based", supported "Tax-Free" entities that compete with "Tax-paying"  
"Legitimate Businesses"!

Please re-consider this proposed immoral scheme designed to further divide residents of our Community?  
Thank You, Jim Hanley

-----  
Re: "Religious Freedoms Should be Savored" News-Journal March 11, 2010

COPY

Hello Mark I. Johnson; Do you realize;

Your tolerance of "Religions" is condoning their crimes!

Our US Government is supporting "Religion's Organized Crime"!

RELIGIONS ARE ORGANIZED CRIME

"Religions" corrupt the minds of innocent children and naive fools with ATROCIOUS LIES & fairytales! A "Crime"!

'Islam' "Religion" 'is KILLING innocent children with EXPLOSIVES tied to their bodies which is ignited

in the presence of "INFIDELS"; people like YOU, and your FAMILY MEMBERS, or friends or neighbors! "The "Crime" is "Murder"!  
'Christian' "Religion" KILLS the "FETUSES" they 'save', once they are old enough to DIE in an "ILLEGAL", IMMORAL "INVASION" or,  
WAR! The "Crime" is "Murder!"

The "RELIGIOUS" "Majority", are "responsible": for, 'ELECTING' ALL the ROTTEN ELECTED THIEVES and  
"WAR-MONGERING-GREEDY-MILITARY-INDUSTRIAL-COMPLEX" MURDERERS who profit from killing Americans on battlefields!  
"RELIGIONS" are doing everything possible to INFECT every school-age child in the World with the ROTTEN MIND DESTROYING  
PLAGUE "RELIGION"!

You, and your TOLERANT ILK, are 'COHORTIC' CRIMINAL ASSISTANTS TO THOSE RATS!

"Religious Freedom" is Freedom To Corrupt Humanity!

The worst form of child abuse is corrupting their minds!

When given a choice between: "INFINITE" "UNIVERSE" or, "INFINITE" "GHOSTLY APPARITION"

'Rational' people say: "INFINITE UNIVERSE"!

Now! In the Twenty First Century; we must put an end to this DEBAUCHERY that is the cause of DUMBING-DOWN all of HUMANITY!

We must make a serious effort to incarcerate ALL those "Religious" criminal "proselytizers", and, end their atrocious perfidy!

ALL "Religious" 'people' are INSANE VICTIMS OF 'MIND-CONTROL'! Or, the 'Charlatans' who enslave them!

They are contaminating the World! "RELIGION" IS ROTTING 'MINDS'!

Mark; You are aiding and abetting the ENEMIES OF HUMANITY! You need an Editor!

There aint't no "God", and a so-called "Jesus Creator" never, never lived! GOOGLE IT!

-----  
Jim Hanley

---

Hotmail: Powerful Free email with security by Microsoft. [Get it now.](#)

## Spraker, Steven

---

**From:** An Oracle [anoracle@live.com]  
**Sent:** Thursday, August 19, 2010 8:30 PM  
**To:** Spraker, Steven  
**Subject:** August 23, 2010 - Planning Board workshop regarding electronic signage

Hello Steven Spraker, AICP Senior Planner;I  
Once again I call your attention to the LAWS governing the actions you  
may be 'tampering' with regarding "Signs" for "Religious Organizations".  
Please be cognizant of these very practical and IMPORTANT LAWS?  
As you certainly know both the State of Florida; and, our  
U.S. Constitution prohibit enactment of 'ANY' "LAW" condoning or abetting religion.  
ie.

CONSTITUTION OF THE STATE OF FLORIDA  
SECTION 3. Religious freedom.--

"There shall be no law respecting the establishment of religion"

=====

And:----- U.S. Constitution First Amendment:

"Congress shall make no law respecting the establishment of religion."(!)

-  
To grant "LEGAL PERMISSION" via a 'NEW LAW' for churches to  
"ADVERTISE" A "RELIGION"  
is most obviously an outright violation of both "Florida's Constitution",  
and our "U S Constitution's First Amendment"!  
Such obvious violation will most likely be challenged in a Court of Law.  
This will then require extensive expenditure of large amounts of taxpayers'  
hard- earned money to defend.  
Isn't it time to exercise rational judgement and discard this idea, of  
providing just another artifice for the promotion of a "RELIGION"?

=====

CONSTITUTION OF THE STATE OF FLORIDA  
SECTION 3. Religious freedom.--

"There shall be no law respecting the establishment of religion---

No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury  
directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution".

=====

Jim Hanley

## Spraker, Steven

**From:** Terra Fisher [Terra.Fisher@daktronics.com]  
**Sent:** Tuesday, October 05, 2010 10:02 AM  
**To:** Spraker, Steven  
**Cc:** thesignpeople@mindspring.com  
**Subject:** RE: Ormond Beach Meeting  
**Attachments:** Lewin Distance Breakdown Chart.docx; Comparison PPT.ppt

Hello Steven,

Thanks for the summary. Did it pass the Planning Commission? Also, please see my comments in red below as well as the attached documents.

Thanks,  
Terra

Terra Fisher  
Signage Legislation

tel 605.275-1040 ext 51145 mobile 605.691-1285  
email terra.fisher@daktronics.com  
website [www.daktronics.com](http://www.daktronics.com)

**DAKTRONICS**  
Scoreboards, Displays, Video, Sound.

**From:** Spraker, Steven [mailto:spraker@ormondbeach.org]  
**Sent:** Tuesday, October 05, 2010 6:52 AM  
**To:** Terra Fisher  
**Subject:** RE: Ormond Beach Meeting

Terra:

I was a out a few days. Below is a summary:

- Permit electronic message center signs on North US 1, from Wilmette or Nova Road, to the Flagler County line. The terminus at Nova or Wilmette will be decided at the public hearing.
- Locational standards permit electronic message center signs on parcels which are 3 acres or larger, have 200 feet or more linear feet of road frontage and contain multiple tenants.
- Electronic message center signs would be permitted as monument only.
- Electronic message center signs would not be in addition to current number of signs permitted by code; however, existing monument signs could be switched out for electronic message center signs.
- Setback from road would be 5 feet.
- Changes in messages on the electronic message center signs could only occur once per hour.

- Scrolling, flashing, etc., would not be permitted.

- One color dark background and one-color lettering only.

This has in many jurisdictions, and will likely in your jurisdiction, lead to a degradation in the visual environment of the area. Single color, monochrome display requirements create a disincentive for sign owners to buy quality displays and will ultimately lead to a shoddy appearance. Additionally, the use of full color, static images (not the use of animation or video, but static images) allow the sign to appear more like any other static sign. To quote an over-used saying, a picture is worth a thousand words. It's a lot easier to disseminate information if given the latitude to display images rather than just static, monochrome text. This is especially true with an hour long hold-time. I have attached a PowerPoint document for your reference above.

- Light intensity should incorporate automatic dimmers and enforcement on brightness would be measured using .03 foot-candles at a 200 feet.

This is going to lead to some really bright signs. We suggest measuring our digital billboards (the 10.5ft x 36 ft) at this distance. If you allow this for much smaller signs, it will allow them to be brighter than they should be. Additionally, coupled with the monochrome requirement above, you are much more likely to get a low-quality display (without automatic dimming capabilities, as this brightness provision would most likely not even require smaller signs to dim, as they would be in compliance without dimming).

I attached our suggested break-down for measurement based on size. This will ensure that the signs are dimming appropriately.

- Signs would only be text. No videos or animated pictures.

Again, we are not asking for video or animated pictures. We are asking for the city to consider its visual environment and allow static images as well as text.

- No more than 50% of the allowable sign area could be electronic message center signs, but will be discussed further at the Planning Board Public Hearing.

- Screen resolution would be 20 millimeters or less.

- Appeals of denials for electronic message center signs would follow current code appeals.

Thank you

Steven

---

**From:** Terra Fisher [mailto:Terra.Fisher@daktronics.com]

**Sent:** Wednesday, September 29, 2010 12:42 PM

**To:** Spraker, Steven

**Subject:** Ormond Beach Meeting

Hello Steven,

Just checking to see if the Planning Commission passed on the sign ordinance revisions last night. Please advise, and if possible send me on any revisions they chose to make.

10/7/2010

Thanks,

Terra Fisher  
Signage Legislation

tel 605.275-1040 ext 51145 mobile 605.691-1285

email [terra.fisher@daktronics.com](mailto:terra.fisher@daktronics.com)

website [www.daktronics.com](http://www.daktronics.com)

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Scoreboards. Displays. Video. Sound.

**Notice:**

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**WHICH WOULD  
YOU RATHER SEE  
IN YOUR  
COMMUNITY?**

**People changing with poles?**



**Changed automatically.**



**Cracked and Yellowed?**



Crisp, Clear and Visually Pleasing.



This?



This.



**IF YOU PROHIBIT  
GRAPHICS, IT WILL  
LEAD TO REDUCTION  
IN AESTHETICS**

## No Graphics



## Graphics





The top display is the electronic message center.



## Spraker, Steven

---

**From:** Rearden, Matthew [MRearden@iscmotorsports.com]  
**Sent:** Friday, March 19, 2010 1:44 PM  
**To:** Spraker, Steven  
**Cc:** Troy McCoy; Goss, Ric; Costello, Fred  
**Subject:** RE: Calvary Church - Sign  
**Importance:** High

Steve,

As I'm sure you know, the City Commission sent the entire Electronic Changeable Copy sign issue back to the drafting board on Tuesday. We were obviously disappointed with this result, as it appeared to be acceptable to all parties during the first reading. However, the commission indicated a willingness to quickly research and re-consider inclusion of language into the code.

It appears this change of direction will also temporarily stop the installation (or at least operation) of the Performing Arts center sign on US1.

I spoke with the Mayor and Ric Goss about the issue briefly Tuesday night following the meeting. I am happy to assist you with any information you may need and would appreciate it if Calvary would be included in the consideration, display and re-draft of any code sections. I think staff is aware of the desires of Calvary to replace the old and very outdated sign on Granada with a new, more modern and energy efficient LED changeable copy sign.

Our church is currently working with a few sign companies in the area, including Don Bell. (We understand Don Bell is the contractor on the Performing Arts sign as well). Calvary would be happy to assist with the coordination of the workshop requested by the commission or do anything else needed to move this along.

As someone who watches the activities of other communities in this area, I believe Ormond Beach would benefit from these changeable copy signs and trust that the staff and commission ultimately find a way to make this happen.

I believe staff did a great job with the sign code re-write and trust that the Electronic Changeable Copy sign allowance will quickly find its way into this new code.

I look forward to hearing from you and working with you.

Matt

**Matthew W. Rearden, Esq.**

Ofc: 386.681.4076 | Fax 386.681.4976

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**From:** Spraker, Steven [mailto:spraker@ormondbeach.org]  
**Sent:** Wednesday, February 24, 2010 8:16 AM  
**To:** Rearden, Matthew  
**Cc:** Troy McCoy  
**Subject:** RE: Calvary Church - Sign

Matt:

10/7/2010

It took us some time to come to a final recommendation.

In the attached City Memorandum, staff recommends amending the proposed sign amendments to allow Houses of Worships over 20 acres to have the electronic changeable copy signage based on the variety of uses and events that occur on these large campus. When staff looked at the large Houses of Worships, we did not find any that meet the 75 acreage threshold in Ormond Beach. There are 4 Houses of Worships that meet the 20 acreage minimum threshold (1 of which is already permitted to have these types of signs). Staff recommended this option because it is the most narrow option of limiting electronic changeable copy signage of Granada Boulevard and Hand Avenue.

I would highly recommend that someone from Calvary be present at the March 2nd City Commission meeting to address the Commission on this item. I will forward the agenda once it is completed. If you have any questions, please contact me.

Thank you

Steven

Steven Spraker, AICP  
Senior Planner

Planning Department  
22 South Beach Street  
Room 104  
Ormond Beach, FL 32175

Direct Line: 386.676.3341  
Department: 386.676.3238  
E-mail: [spraker@ormondbeach.org](mailto:spraker@ormondbeach.org)

---

**From:** Rearden, Matthew [mailto:MRearde@iscmotorsports.com]  
**Sent:** Tuesday, February 16, 2010 5:29 PM  
**To:** Spraker, Steven; Goss, Ric  
**Cc:** Troy McCoy  
**Subject:** Calvary Church - Sign  
**Importance:** High

Steve,

Thanks for your time earlier today. As discussed, with the construction of the new sanctuary at Calvary we would like to upgrade our sign on Granada. We understand that there is an amendment to the current city code regarding LED/LCD/Electronic Changeable Copy signs. (Please send me the most recent draft when you have a moment.) As currently written, I don't believe the church is included in this change because of our location at 1687 W. Granada Blvd. Please consider this email our formal request to be included or to find an alternative allowing the church to erect a LED/LCD/Changeable Copy Sign at the Granada Blvd. entrance.

A bit of history on the current church sign.... The current "monument sign" on Granada Blvd. was grandfathered in when the church moved to its current location. The sign was actually brought with us from the churches' former location on

10/7/2010

US1. It is obviously old, outdated and we would love to get our main entrance sign more current. However, we have not changed in because we did not want to be restricted to the much smaller monument signs now required by city code.

If there was a way for the church to be permitted to install a newer Copy Change capable sign, we would certainly consider a sign upgrade. I have reviewed the proposed language (dated February 4<sup>th</sup>) and offer a few suggestions for inclusion of the church property into this proposed change as follows:

- 1) Limit the Granada restriction to Granada Blvd. East of 95. (As you are aware, the church property is West of 95.) The intent of the planning board seemed to try to keep the Changeable Copy signs out of the main Ormond Beach corridor and other residential areas. The areas west of 95 do not fit the intent of the planning board and are mostly commercial in nature.
- 2) Form an interchange zone at I-95 and Granada, allowing property owners within 2500 feet of the 95 interchange to have the Changeable Copy Signs.
- 3) Add an exception to the restricted areas to allow Houses of Worship with over 75 contiguous acres to have one Changeable Copy Sign on their property. In my estimation that would apply to Calvary, Tomoka Christian (at their proposed new location on Hand Ave.) and Riverbend on the West end of Granada.

As a less attractive alternative, the church would also be willing to consider implementing a sign plan for our property, but we would want to include the Changeable Copy sign in that plan. If there is not some freedom in the proposed language, possible even "or as otherwise allowed via a sign plan with the City", then that attempt may not work.

We are very flexible on the vehicle to accomplish our desires, but believe that a new sign to complement the almost complete sanctuary would be appropriate.

I have copied Pastor Troy McCoy on this note, as he is the main church contact. I'll be handling this issue for the church from the legal side.

Let me know how you would like for us to proceed. With the proposed language up for consideration in March, we would like to meet with you to develop a course of action in the very near future. I look forward to hearing from you.

Matt

Matthew W. Rearden, Esq.

**Managing Associate General Counsel**

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10/7/2010

## Spraker, Steven

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**From:** Chris Calabucci [chris@elitecme.com]  
**Sent:** Friday, September 24, 2010 4:40 PM  
**To:** Spraker, Steven  
**Subject:** ECC Signage  
**Attachments:** Sign Memorandum 9-24-2010.doc

Steven,

Thank you for the opportunity to offer comments for the upcoming Planning Board workshop on ECC Signage. Attached, please find our comments and a question.

Have a nice weekend.

Chris

***Christopher M. Calabucci***  
**CCTM Real Estate Holdings, LLC**  
1452 N. US HWY 1, Suite 100  
Ormond Beach, Florida 32174  
888-857-6920, ext 312 – Phone  
386-673-3563 – FAX  
386-235-5569 - Cell

# Memorandum

9-24-2010

To: Steven Spraker, AICP, Senior Planner  
City of Ormond Beach Planning Board

From: Chris Calabucci and Todd Mowl of CCTM Real Estate Holdings, LLC 1452 N US HWY  
1, Ormond Beach

RE: Electronic Changeable Copy (ECC) Signage

We are sorry that we are unable to attend your workshop, but unfortunately, we must be out of town on other business. We cannot emphasize enough to the planning committee how important this issue is to us and many of our fellow businesses along the gateway corridors. We believe the ability for businesses like ours to use Electronic Changeable Copy (ECC) signage can help insure the long-term viability of our enterprises.

A little background about our particular business; we own the Elite Executive Center, a new office building which consists of 17 all inclusive office suites available for lease. We currently have a lighted monument sign on US 1 and would be interested in replacing the current sign with an ECC monument sign for many of the same reasons that have been presented to the planning board previously:

- 1) With our current monument sign we are be unable to offer signage to all our tenants. Additionally, due to the size limitations placed upon us individual sign panels are severely limited with regards to copy. In some instances, we have had to use abbreviated business names in order to ensure the panel was readable. An ECC would provide us the flexibility and visibility to offer signage to all current and future tenants.
- 2) Our visibility from US 1 is limited because our business sets some 100+ feet off of US 1 behind another building. An ECC monument sign would make it easier to identify our location.
- 3) If granted the ability to use an ECC sign, we could remove our current real estate sign advertising office availability, thereby cleaning up the look of our property and US 1.

We have recently reviewed the staff recommendations and those of the planning board's regarding the use of ECC signage on the US 1 corridor. Overall, we would agree that the recommendations for ECC usage are reasonable however we would like to submit some specific comments and questions regarding the proposed criteria which will determine if a business would qualify to use an ECC sign:

- 1) The proposed criteria from staff, suggests that the building requesting use of an ECC must be over 10,000 sq. ft. Our building is 10,000 sq. ft. so we would be unable to meet this proposed criterion. As previously mentioned we can lease space to 17 different businesses and certainly believe that this should qualify an enterprise like ours for ECC usage. We would respectfully request that the threshold begin with buildings that are at least 8,000 sq. ft. This would help smaller business plazas who are struggling in this difficult economy.
- 2) We do not believe the 200 feet of frontage requirement is excessive however we do find the 3 acre (130,680 sq. ft.) parcel size to be onerous. We would recommend reducing this size requirement as you can easily fit a qualifying use building on a site half the size of the 3 acre proposed requirement. One acre (43,560 sq. ft.) would be a fair starting point.
- 3) We believe that clarification needs to be made as to what qualifies as a “conforming residential use”. For instance, the lawn equipment repair business located next to ours (within 300-500 feet), also has an occupied doublewide manufactured home sited on the property. Under the proposed criteria, would this preclude us from having an ECC even though the property in question is zoned or soon to be zoned B-7 (Highway Tourist Commercial)? Certainly from a valuation standpoint its highest and best use is commercial but can it also be deemed a “conforming residential use”? If so, we believe that this would be unfair.

We appreciate the work that the planning board and the city staff have completed on this issue and appreciate the opportunity to share our thoughts. We believe that allowing tasteful ECC signage on US 1 will provide much greater flexibility for qualifying businesses and enhance the appearance of this “gateway” to Ormond Beach.

Again, thank you for soliciting input from the business community on this issue and for your kind consideration of our issues addressed above.