

**ORMOND BEACH CITY COMMISSION SPECIAL MEETING
ORMOND BEACH/DAYTONA BEACH
UTILITY SERVICE ISSUES
March 27, 2004 8:30 a.m.**

Present were: Mayor Fred Costello, Commissioners Jeff Boyle, Troy Kent, Scott Selis, and Bill Partington, City Manager Isaac Turner, Assistant City Manager Theodore MacLeod, City Attorney Randy Hayes, and City Clerk Veronica Patterson.

A G E N D A

- 1) Call to Order
- 2) Discussion of Daytona Beach/Ormond Beach Utility Service Dispute
- 3) Close the Meeting

Item #1 - Call to Order

Mayor Costello called the meeting to order at 8:34 a.m.

Item #2 - Discussion of Daytona Beach/Ormond Beach Utility Service Dispute

Mayor Costello stated the discussion could include any aspect of the conflict; however, whatever decision reached should be held by all, and the past would not be discussed at the Monday meeting with Daytona Beach.

Mr. Isaac Turner, City Manager, recommended reviewing the maps, agenda sheet, and the three sheets currently being distributed this morning, and then staff would answer any questions.

Mr. Turner advised the first map, Exhibit #1, represented the current situation, showing the municipal boundaries and the service lines of Daytona Beach and Ormond Beach west of I-95. He reported the difference between the maps, Exhibit #1 and Exhibit #2, was the delineation of the service area and proposed subsequent municipal boundaries, including the proposed 721 acres previously described that would come into Ormond Beach. Mr. Turner reported the 2,317 acres depicted would remain in Daytona Beach and become their service area. He pointed out two 141-acre sites, both of which would become the Daytona Beach service area. Mr. Turner explained Exhibit #3 map depicted the area east of I-95, excluding the beachside. He stated the 13.5 acres in the Riviera Hotel area was physically in Holly Hill, but Ormond Beach served the area before the existing agreement was in place and would continue to serve that area. Mr. Turner stated the 16.5 acres noted in the map in the Arroyo Parkway area was an FDOT retention pond, and it was not included in the calculations. He stated the 201-acre Arroyo Parkway area was physically located in the Daytona Beach service area, but it would be in the Ormond Beach service area under this proposal since it was currently within the Ormond Beach municipal boundary. Mr. Turner stated Daytona Beach was servicing the 27 acre Wellington Station area.

Ms. Judy Sloane, Public Works Director/City Engineer, explained there was a mobile home park by Hand Avenue that Daytona Beach was servicing; therefore, Daytona Beach was the only entity to have utilities in the area when Wellington Station was developed. She stated this was in the Daytona Beach service area; and although it was now within Ormond Beach City limits, it was previously in an unincorporated area.

Mr. Turner stated this would continue to be in the City of Ormond Beach and in the Ormond Beach service area, but Daytona Beach would continue to service this area.

Ms. Sloane noted Daytona Beach services the Wellington Station area with water and sewer, but only sewer in the Life Mobile Village area.

Mr. Turner pointed out 63 acres that included the southern tip of The Falls and Coquina Point along with areas at Clyde Morris Boulevard and Hand Avenue. He noted Daytona Beach sent a memo indicating Ormond Beach could service these areas temporarily unless or until Daytona Beach decided they would prefer to service the area or until this agreement was worked out. Mr. Turner advised the reason for this was to avoid impeding the progress of the ongoing development in the area. Mr. Turner noted the 11 acres depicted south of Clyde Morris Boulevard was in Daytona Beach, but it was in Ormond Beach's service area. He noted Daytona Beach would service this area. Mr. Turner reported the 78 acres depicted south of Hand Avenue at Williamson Boulevard was currently in Ormond Beach's service area, but located in the City of Daytona Beach, and Daytona Beach would service that area as well.

Mr. Turner advised the plan would clean up the issues of the service line and the assertions of insurgence by following municipal boundaries for the most part. He reported these were concepts with many details to be worked out legally and operationally. Mr. Turner noted there would be two units per acre overall in the CTLC property, but Mr. McMunn indicated that in the 700 acres that Ormond Beach would potentially annex there would be 512 homes, which was substantially less than two units per acre. He reiterated that all of the acreage would be permitted and processed through Daytona Beach, and then the 700 acres would subsequently be annexed into Ormond Beach. Mr. Turner advised the wetlands and floodplain standards that the lands currently had were St. Johns River Water Management District standards and that would be maintained. He stated there would be a landscape buffer of 50 feet along State Road 40, and he noted that Ormond Beach codes would only require a 30-foot buffer.

Mr. Clay Ervin, Planning Director, advised that Daytona Beach had greater allowances for signage height, but they do require monument signs. He noted Daytona Beach would follow the signage that was permitted at the Ormond Towne Square, which would allow for a six-foot sign and two-foot architectural embellishment.

Mr. Turner clarified that the commercial area would be on the southern portion at Stagecoach Road and Granada Boulevard on the east and west sides. He stated an estimated 721 acres or a minimum of 700 acres would be available for Ormond Beach to annex. Mr. Turner stated east and west of I-95 the line would generally follow the municipal boundaries. He stated Ormond Beach would pay Daytona Beach \$250,000. Mr. Turner pointed out Ormond Beach had collected approximately \$214,000 in impact fees, but pointed out this money would not be a compensation to Daytona Beach.

Ms. Sloane reviewed the handout entitled "Approximate Acreage of Proposed Service Area Changes." She noted Ormond Beach would gain the Riviera, Arroyo Parkway, Calle Grande, and Hand Avenue areas. Ms. Sloane advised this would basically follow the line that the City

was already servicing, and it would clean up the boundary. She stated on 10-acre parcel on Clyde Morris Boulevard across from Aberdeen and a 78-acre parcel south of Hand Avenue that were located in the Daytona Beach City limits but were in the Ormond Beach service area would become the Daytona Beach service area. Ms. Sloane reported Ormond Beach would gain 230 acres on the east side of I-95.

Ms. Sloane stated prior to the agreement, Daytona Beach was already serving Life Mobile Homes with sewer, and Ormond Beach was serving water, and this would continue in this unincorporated area. She noted the service line would show that it was in the Ormond Beach service area, but Ormond Beach would acknowledge it to be served by Daytona Beach. Ms. Sloane stated the Wellington Station area was in the Daytona Beach service area and now in the Ormond Beach City limits; and it would remain being served by Daytona Beach, but the line would be adjusted to follow the city limit boundary.

Ms. Sloane advised that on the west side of I-95 the 141 acres designated on the map within Daytona Beach City limits would become the Daytona Beach service area, making the 141 acres in the unincorporated area contiguous. She stated the additional 2,317 Consolidated Tomoka Land Company (CTLIC) acreage would become Daytona Beach service area. Ms. Sloane advised that Daytona Beach would gain 2,369 acres.

Mr. Paul Lane, Finance Director, reviewed the handout entitled "Revenue Worksheet." He reported the first option was the 700 acres being annexed into the City, calculating 512 homes at a taxable assessed value of \$250,000 including property taxes, franchise/utility taxes, communications taxes, sales taxes, State revenue sharing, and general fund revenues would generate a total of \$708,988. Mr. Lane advised the water and sewer revenues at the inside City rates and stormwater revenues would total \$855,053.

Mr. Lane noted the service area option would use the same assumptions and would represent net operating revenue of \$1,237,044 for inside the City and \$1,845,242 for outside the City. He reported this presumes 5,800 homes would be built with a long build out period.

Mr. Turner estimated the build out to be 20 to 25 years west of I-95.

Mayor Costello advised these figures did not include the income from any Ormond Beach gains east of I-95.

Mr. Ted MacLeod, Assistant City Manager, reviewed the handout entitled "Proposed Settlement." He explained Ormond Beach would gain the revenues from the 512 homes previously outlined, 700 acres would meet most of Ormond Beach's standards, the City would have some input in the remaining 2,300 acres, there would be a 50-foot Granada Boulevard greenbelt, there would be an additional 1.5 miles fronting Granada Boulevard in the City, the service area east of I-95 would be redefined, and legal action would be halted. Mr. MacLeod reported the City would lose water and sewer revenue from the 5,300 homes in Daytona Beach and would pay \$250,000.

Mr. MacLeod reported Daytona Beach would gain revenue from water and sewer services of the 5,300 homes, but they would lose the revenues on the 512 homes in Ormond Beach. He noted Daytona Beach would gain from the service area east of I-95 being well defined, they would be able to stop legal action, and they would gain \$250,000.

Mr. MacLeod advised CTLC would be able to proceed immediately without interference on the 700 acres, but would also be agreeing to stricter standards of development. He reported an Ormond Beach location would equal higher valuation, but they would provide a 50-foot buffer on Granada Boulevard.

Mr. MacLeod reviewed the pros and cons of the circumstances if no agreement could be reached. He advised Ormond Beach would receive the maximum water and sewer revenue, but it would have no control over development, no buffer along State Road 40, there would be different cities on each side of State Road 40, the service area conflicts would continue, and there would probably be legal action against the City.

Mr. MacLeod reported Daytona Beach would receive all of the tax revenue from homes, but not the water and sewer services revenues, and legal action would continue.

Mr. MacLeod explained CTLC would not need to deal with two cities in their reviews and would enjoy more favorable development standards; however, they would probably face continued challenges from Ormond Beach during the development process. He stated CTLC would have to deal with Ormond Beach for water and sewer services and with Daytona Beach for everything else, and service area conflicts would continue.

Mr. Turner reported there were also intangibles to consider where dollar figures could not be assigned such as the value of the buffer, the value of having property in Ormond Beach as opposed to merely having service area in Ormond Beach, and the relationship between two neighboring communities. He explained a challenge the staff and attorneys would have would be how to “paper” this agreement. Mr. Turner stated this would be a great opportunity, regardless of the final decision, to start inroads in building a better relationship with Daytona Beach; but it would be a challenge to look to the future and not at the past. He advised minor technical revisions may be done to the proposed settlement sheets. Mr. Turner commended staff for the job they had done in responding to concerns and the Commission for their support.

Mayor Costello complimented Mr. Turner, Mr. Richard Quigley, and Mr. Bill McMunn, noting he was personally not involved in the crafting of this proposal. He reported he was pleased the negotiators were able to arrive at a proposal. Mayor Costello noted the Commission would surely not favor every aspect of the proposal, but he urged everyone to keep the entire package in mind while examining specific issues. He commended Commissioner Boyle for a statement he made at last Monday’s meeting where he intoned that he reserved the right to speak passionately about this issue, but when meeting with Daytona Beach and CTLC at the Monday meeting, he would reserve his comments and reserve his right to vote against the proposal without a great deal of contention.

Commissioner Boyle advised the Commission to go to the meeting unified, noting that this would not be a proper occasion for minority opinions.

Mayor Costello reported he was extremely excited about the future possibilities of this proposal and that he would not try to selectively decide on the merits of each component because the Commission was asked to consider the entire package as a whole. He advised this package would: 1) end the conflicts with Daytona Beach; 2) clean up the service lines; 3) Ormond Beach would have influence over 3,000 acres that it currently did not possess; 4) Ormond Beach would be trading service area for land; and 5) it would allow both cities to end focusing on the past and look to the future. Mayor Costello reported members of the Commission and citizens had indicated they objected to Ormond Beach serving areas outside City borders, and this would

minimize this type of situation. He noted looking to the future may include sharing an effluent reuse storage pond out west, joint dispatch, or any number of other issues impacting both cities.

Mayor Costello urged not to discuss the hospital since the hospital had not yet purchased land. He also asked that the annexation of a 50-foot buffer for the remaining portion of State Road 40 that he proposed last week not be discussed. Mayor Costello explained deannexation would not be legal; this proposal would recommend making amendments to the voluntary annexation agreement. He stated when all aspects are completed and Ormond Beach and Daytona Beach become good neighbors, there was a possibility to go back and ask for another amendment to the annexation agreement, which may be acceptable because Daytona Beach would not have to police State Road 40.

Commissioner Boyle distributed a list he prepared with the “pros” and “cons” of the proposal that was similar to the list staff prepared; however, he added a few issues that he would consider “cons” that staff did not include. He revised the fourth “minus” on his list under Ormond Beach that stated “loses additional service area rights east of I-95” that should actually be considered neutral after receiving a more in depth analysis from staff. Commissioner Boyle advised that in many ways, this special meeting was one of the most important meetings in Ormond Beach history; therefore, he expressed disappointment that the Commission received half of the important material yesterday and the other half as they arrived today. He noted he understood the urgency and agreed with Mayor Costello that a consensus be reached today.

Commissioner Boyle reported this was a complicated three-party agreement. He stated his chart dealt only with the proposal and the perspective of each party. Commissioner Boyle reported if no agreement could be reached a “con” for CTLC was that the landowner would experience delays in development. He pointed out neither he nor staff made any attempt to rank the elements, and his chart was based on his particular perspective and his experience with the issue.

Commissioner Boyle pointed out the two items on his list that had asterisks were not on the staff’s list possibly because they could not be quantified in figures and may be considered intangibles.

Mayor Costello advised the reason the items were omitted was because they were occurring now, and no change was being proposed.

Commissioner Boyle reported he was not faulting staff for this omission, merely defending why he included them in his list. He stated that it could be assumed that everyone in Daytona Beach administration, such as the Mayor, the Commissioners, the City Manager, the City Attorneys, and the planners, would all defer to the wishes of the landowner. Commissioner Boyle reported Daytona Beach would not have come this far in the negotiations without the approval of the landowner, and that the proposal of “all” or “nothing” would eliminate the right to agree with the bulk of the proposal while disagreeing on other elements. He stated another assumption he made was that Daytona Beach would not agree to the elements of the proposal at this point if there was not some uncertainty of the strength of their position should this lawsuit go to court.

Commissioner Boyle explained that if the Ormond Beach Commission should agree to this proposal, Ormond Beach would be developing land preconstruction under a different set of rules or allowing it to be developed under a different set of rules, and then incorporated into the City. He pointed out that this would not only cause equity problems for all previous development, it would also have implications for all future residential development such as the development at

Ormond Crossings. Commissioner Boyle advised Ormond Beach had always contemplated trading water and sewer rights for land, and this proposal would accomplish that; but at no time did the City ever contemplate conditions being placed on that land. He advised the conditions placed on the land were that the permitting would not be processed by Ormond Beach, and it would be permitted to follow the St. Johns River Water Management District rules.

Commissioner Boyle stated Ormond Beach had collected impact fees and revenues, but had already invested in infrastructure and obtained grants for water and sewer service in Arroyo Parkway. He questioned why Ormond Beach should be required to pay \$250,000 for encroachment over a line that would then be erased by the same agreement.

Commissioner Boyle advised the report indicated the land use and zoning standards of the two cities were similar, and he supposed that referred to the minutia of the code since clearly the wetland rules had always been a major issue. He reported the landowner came to Ormond Beach asking for changes in its rules. Commissioner Boyle advised it had never been an overwhelming mandate, but it was a consistent mandate, not to change the wetland rules to accomplish an annexation. He noted the question had been raised as to what would be the difference if the area was developed in the County under County rules and then it was annexed into the City, and he stated the answer was that a great deal was commercial, but more importantly, Ormond Beach had never altered its rules preconstruction. Commissioner Boyle expressed concern relative to the legal liability that would allow the developer to sell his land at a lower price, enjoying a competitive advantage, while developing simultaneously with other permitted projects throughout the City that did not enjoy that same competitive advantage. He stated the City was on a fast track with this issue. Commissioner Boyle advised if the Commission would agree to this proposal, the City would go to the Monday meeting to make the announcement, and at a future time, the City would approve a resolution for an annexation at a public hearing. He stated at that point the City would have given its word to another City and the landowner before the public would have the opportunity to express its opinion, and the decision would have already been made. Commissioner Boyle advised that if any Commission member were at all concerned with any single element, the proposal should be rejected since the vote would be for the entire proposal. He reported the safest rule in government when there was any doubt about an issue, was to not approve it. Commissioner Boyle advised that if a majority did not concur with his view to reject this proposal, he urged the Commission to at least not commit to it until it had been thoroughly examined by the community. He reported he could certainly understand why the landowner and Daytona Beach favored this proposal, but he seriously questioned why Ormond Beach should favor it.

Mayor Costello reported that he concurred with much of what Commissioner Boyle stated. He advised that 512 homes on over 700 acres would be approximately .74 units per acre, while Breakaway Trails had 2 units per acre; therefore, even though development would follow a different standard, the yield was much less than Ormond Beach's standard directly across the street from the subject property.

Commissioner Boyle stated he understood the entire 3,000 acre parcel had 43% serious wetlands; therefore, the 700 acres would be closer to 400 acres of buildable land.

Mayor Costello advised there would not be 1,400 homes, which provided him additional comfort; whereby, Commissioner Boyle conceded the point.

Commissioner Selis advised he saw Ormond Beach's goal was to end the dispute and improve relations with Daytona Beach along with keeping as much control over the undeveloped

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acreage west of I-95 as possible. He stated money was not the most important issue. Commissioner Selis reported this agreement accomplished those goals.

Commissioner Selis reported Daytona Beach's goal was to keep as much of the acreage as possible, obtain water and sewer rights in the annexed area, and obtain damages to compensate for what they perceived to be prior losses for Ormond Beach serving in areas that it should not have served. He noted another goal for Daytona Beach, on behalf of the landowner, was to move forward with the development as quickly as possible.

Commissioner Selis stated the landowner preferred to deal with one government and that government was Daytona Beach. He reported since the landowner wished to move forward on the development, they would prefer to facilitate a resolution between Daytona Beach and Ormond Beach as soon as possible.

Commissioner Selis noted the only portion of the entire proposal that made him uncomfortable was being forced to pay \$250,000, because it was an attempt to show that Daytona Beach won and Ormond Beach lost; but it was his desire for everyone to leave these negotiations knowing that everyone won. He advised that if Daytona Beach wanted this money for a "feel good" reason, the question would be how Ormond Beach could feel better about paying it in a realistic manner. Commissioner Selis offered that the City would be paying for this largely with funds already received from impact fees. He asked if there were a way to insure that Daytona Beach would use that money in a way Ormond Beach would have used it had it remained in the City.

Mr. Randal Hayes, City Attorney, advised Ormond Beach could ask them to do anything, but it would be up to Daytona Beach to agree or disagree. He noted it could certainly be included as a component in the agreement.

Mr. Paul Lane, Finance Director, advised it would be illegal for Ormond Beach to collect impact fees and pay them to another entity.

Commissioner Selis concurred that impact fees could not be collected and paid to another City, but using the rationale that Ormond Beach had collected \$214,000 in impact fees and there would be a limited use for those fees, he would personally be more comfortable paying the \$250,000 with a request to use those funds for specific purposes. He noted that a condition impacting future years would be difficult to monitor, and future commissions could not be compelled to fulfill those obligations.

Commissioner Selis reported that perhaps Daytona Beach would waive the \$250,000 if Ormond Beach would agree to use that money for a specified purpose. He complimented Mr. Turner, Mr. McMunn, and Mr. Quigley for fashioning this agreement because it met many of the needs of all the parties.

Commissioner Partington commended Mr. Turner for bringing the negotiations this far. He reported he favored the general direction by which the process was moving, but would prefer it be more equitable for Ormond Beach. Commissioner Partington stated a basic lesson from a law class considering mediation was never to take the first offer. He advised he could not vote for this proposal as it was currently outlined, but it was a great start. Commissioner Partington reported eliminating the \$250,000 payment and increasing the acreage where State Road 40 would be in Ormond Beach would address his concerns.

Commissioner Kent reported he wanted a win/win situation. He stated fighting a sister-city was a waste of good talent and money, but he was also uncomfortable with the proposal. Commissioner Kent concurred the agreement needed to be more equitable. He specified the money and the amount of acreage were of concern to him as well. Commissioner Kent thanked Commissioner Boyle for his chart and the history of this situation and Mayor Costello for his leadership. He stated due to the lateness in obtaining this report, he did not have sufficient time to thoroughly digest the proposal.

Mr. Turner reported CTLC made it clear they did not wish to go through Ormond Beach's permitting process; and if this proposal should be accepted, the plans would be submitted to both Daytona Beach and Ormond Beach's development staff. He stated Daytona Beach had accepted St. Johns River Water Management District wetland standards, but the basic development standards, water and sewer, and roads would follow Ormond Beach standards.

Mr. Turner advised this entire issue was precedent setting as would be the Chapter 164 litigation process. He stated the cities are now in the conflict resolution process prescribed by Chapter 164, and the March 29th meeting was set by Daytona Beach because different steps must occur within a certain number of days. Mr. Turner pointed out that for the past month to month and one-half he had been trying to determine if an alternative could be found. He stated staff had been feverishly attempting to put maps and documents together as quickly as possible, and he finished his review on the sheets that he handed out today at 11:30 last night. Mr. Turner advised he was not asking for a formal approval of this proposal at the Monday meeting, rather that both staffs receive directives to proceed with documents and processes to be worked out.

Mr. Turner reported minor tweaking may possibly be done, but major changes would not be agreeable to the parties; therefore, increasing the 700 to 1,500 acres would not be workable. He stated there was a possibility for an additional 100 acres; however, it was clearly indicated that State Road 40 would not be located in Ormond Beach.

Mr. Turner advised that the \$250,000 also troubled him in a sense, but this had to be considered through the perspective of the life of the community, not merely a single event. He stated a community's life cycle was 300 to 600 years, and this land was predominantly undeveloped. Mr. Turner reported the \$250,000 was significant for the taxpayers, but it should be understood that it was a multi-million dollar project that would span over a number of years. He advised the revenues collected to date in Arroyo Parkway were \$214,000, and for these reasons he was comfortable with the amount in the proposal. Mr. Turner reported these funds would come from the water and sewer fund. He stated it may be possible for Daytona Beach and Ormond Beach to prepare lists of projects where the money could be spent. Mr. Turner pointed out the dollars were mostly symbolic. He reported if this proposal were to be accepted, the two cities would be able to discuss a joint fire station, dispatch, and other joint projects.

Mayor Costello stated because of the possibility of resolving the conflict and continuing with a "clean sheet," he would be willing to approve the proposal as it stood; however, if the Commission could make recommendations, he would concur with that concept as well, although he was not optimistic it would be accepted. He reported he was comfortable placing \$250,000 in an escrow account to be spent on anything related to Hand Avenue or some other project that would impact both Daytona Beach and Ormond Beach at a future date. Mayor Costello advised more acreage would be wonderful, but he was skeptical the City would be successful in requesting more. He pointed out that with Aberdeen, when Ormond Beach took 80 acres and 30 acres for the retention pond, Daytona Beach wanted 110 acres in return. Mayor Costello

noted Ormond Beach held fast for 30 acres and lost 3,000 acres; therefore, he encouraged the Commission to look at the big picture and decide what was more valuable—the additional acreage or resolution of the issue. He stated a long-range plan could be offered for a joint fire station. Mayor Costello advised that Ormond Beach should know if land would be reserved for a high school, and if so, the money could go to purchase recreational facilities in the vicinity. He urged the Commission to focus on whether they were in favor of ending the dispute and moving on to new issues.

Ms. Jeannie Ball, 3 Eagle Drive, asked where the 50-foot buffer on State Road 40 was proposed; whereby, Mayor Costello explained it would start at the new expanded right-of-way.

Mr. Gene Reale, 132 Avalon Drive, Ormond-by-the-Sea, commended the Mayor, City Manager, and Commissioners for the job that had been done thus far and for working so hard on this issue. He cautioned that the density of construction should be restricted. He reported the \$250,000 was also a concern. Mr. Reale urged this be discussed in the public before any decision was made.

Mayor Costello reported that the Commission would try to reach a conceptual agreement on Monday that this was the direction the agreement should take, but Ormond Beach and Daytona Beach would hold public hearings before the final decision would be made. He stated the cities would not be locked into an agreement other than a commitment to consider the agreement.

Mr. Turner stated a letter was sent to CTLC from a previous Commission in response to certain requests regarding the 3,000 acres. He noted he understood a previous Commission approved St. Johns River Water Management District wetland standards.

Mayor Costello explained that the Commission did not approve St. Johns River Water Management District standards, but it did agree to the aggregation of the wetlands.

Commissioner Boyle advised he did not foresee Daytona Beach allowing Ormond Beach to dedicate the \$250,000, and he opposed attempting this, concurring that the issue was not the money. He reported he agreed with Commissioner Partington that the two cities were on a positive path, but not yet ready to embrace the entire agreement and that negotiations should continue. Commissioner Boyle advised in this way, Ormond Beach would not be accepting or rejecting the proposal. He stated thanks to the Mayor's ability in creating consensus, he has learned to try to give in order to receive. Commissioner Boyle noted he would not object to paying the money as long as this land would develop as any other land in Ormond Beach had developed in the past under Ormond Beach rules and with Ormond Beach personnel. He stated everything would remain the same except for the St. Johns River Water Management District rules. Commissioner Boyle advised he could accept the deal if CTLC would work with Ormond Beach, exhibits some trust, and adheres to Ormond Beach wetland rules. He pointed out Ormond Beach agreed to tweak the wetland rules, and the City had a new method of measuring wetlands that was more scientific. Commissioner Boyle stated that he had remained firm in his belief that wetland standards were important from the original annexation request, from wetlands being an issue in City elections, through the City's petition to County government not to allow higher density when CTLC planned on going into the County, through the City's challenge to the Daytona Beach annexation, and to the tweaking of the wetland codes to allow cluster density.

He concurred he would like to put an end to the squabbles and spending money for attorneys, but he was not ready to accept the proposal. Commissioner Boyle urged the Commission to go

to Daytona Beach unified, with a positive attitude and grateful for the meeting, pointing out that all parties were willing to make concessions to reach a positive agreement; but he advised Ormond Beach should make it clear further negotiations were necessary and the public must be heard. He stated if his constituents indicate to him that this should be put to rest at any cost and the other landowners who developed under the current rules would agree to compete with the 700 acres in this proposal, he would then accept the proposal. Commissioner Boyle stated it was a tribute to Mr. Turner and evidence of his talent that Daytona Beach and CTLC would agree to discuss a settlement.

Mayor Costello advised he has heard at least four issues that were keeping the Commission from approving this proposal: 1) the St. Johns River Water Management District standard in the 700 acres, 2) CTLC not utilizing Ormond Beach boards and planning staff for the 700 acres, 3) the \$250,000 payment, and 4) the total acreage allotted to Ormond Beach. He pointed out each Commissioner articulated different aspects of the proposal they could not accept. Mayor Costello noted that meant that it was a decent agreement because each chose only one or two items they opposed, and the Commission was close to finding a compromise.

Mayor Costello explained that the St. Johns River Water Management District had new stricter regulations; therefore, CTLC would have to accept regulations that may not be Ormond Beach standards, but were tougher than they were previously. Mayor Costello stated he did not object to turning the development oversight over to Daytona Beach boards and staff, knowing it would have 512 units as a maximum on 721 acres. He reported he perceived going to the Monday meeting with a positive attitude knowing no final decision would be made at that meeting, but there were two amendments that would help Ormond Beach approve this agreement: 1) the money Ormond Beach would invest should benefit both cities; and 2) Ormond Beach would like to have State Road 40 in Ormond Beach at the conclusion of the project.

Ms. Sloane reported that on February 2nd new wetland mitigation regulations went into effect with the St. Johns River Water Management District; and as a result, it would be more costly to impact wetlands because of the higher level of mitigation required. She advised St. Johns River Water Management District not only looked at acreage, there was also a scientific calculation of the land that would have to be mitigated and the value of that land would be considered.

Mr. Parker Mynchenberg, 1729 Ridgewood Avenue, reported St. Johns River Water Management District was now looking at secondary impacts. He clarified they would now not only look at the acreage that was mitigated, but also what occurred to the remainder of the wetland.

Ms. Ball asked if the loss of revenue indicated on the fact sheets was projected over a 20-year build out or calculated at the current rate.

Mr. Turner explained there was nothing on this land at the moment; therefore, the figures were projected at build out, which would be approximately 20 years.

Ms. Ball stated that as each phase of the 25-year build out would occur, CTLC should have to conform to the rules at the time they start construction in that phase, because what was deemed best today, may not be the same as it would be 10 or 15 year in the future.

Commissioner Selis stated this was one of the most productive meetings the Commission had ever had, noting progress was being made. He pointed out that all three parties agree to the

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idea of municipal boundaries as a determination for the service line modifications, and both parties concur deannexation of some area was warranted.

Mayor Costello clarified deannexation would not be legal, and what would actually occur would be that an amendment would be made to the voluntary annexation agreement.

Commissioner Selis pointed out he was encouraged that both parties agree that the portion annexed into Ormond Beach would be to Ormond Beach standards. He renewed his previous suggestion that a joint development review board be established by the two municipalities to review the development standards and to make recommendations, which would help to allay Ormond Beach concerns. Commissioner Selis advised Ormond Beach would not be forfeiting anything by permitting St. Johns River Water Management District standards because the developer could now develop to St. Johns River Water Management District standards; however, he did respect Commissioner Boyle's concern with setting a precedent. He suggested making the annexation amendments at the conclusion of the development, because in that way Ormond Beach would not be relaxing its standards.

Commissioner Selis reported he was not as concerned with the quantity of land as he was with the location and quality of the land. He advised that as the Zone 3 Commissioner, one statement he had heard consistently by residents was a plea not to allow "horrible" development across the street.

Commissioner Selis offered suggestions as to what could be done with the \$250,000. He stated he concurred with Mayor Costello to use the money for a recreational park. Commissioner Selis recommended the possibility of using the money to help acquire off-beach parking. He reported if that was not acceptable, he suggested a joint memorial to the soldiers serving in wars or another joint project that would capture the spirit of feuding neighbors coming together for a common goal. Commissioner Selis asked Mr. Hayes if this Commission could discuss these issues at the Monday meeting, adjourn, and then reconvene.

Mr. Hayes pointed out this would be a public meeting with everything on the public record, and no final decision would have to be made, although a general consensus could be reached; and the meeting could certainly be reconvened. He strongly recommended that if the entities would be close to a common understanding that the meeting be recessed and reconvened at another date.

Commissioner Selis stated he was pleased the meeting could be recessed and reconvened because he hoped to get as much as possible done on Monday; but as publicly elected officials, public input was essential. He stated after the public input, the bodies could reconvene and finalize the agreement. Commissioner Selis advised that up to now there had been much focus on the differences, but there were a great deal on which the entities agree.

Mayor Costello reported he did not believe that off-beach parking would be acceptable to Daytona Beach since it had nothing to do with this issue; however, he suggested Ormond Beach could invest the first \$250,000 in an escrow account for land to be used as a storage lake for effluent reuse in the west. He noted the funds could be used for effluent storage, a joint fire station, or anything agreeable to both entities; but it should be located in the area being discussed.

Commissioner Boyle advised while all of the creativity and brainstorming were great, he thought Ormond Beach would either have to accept or reject the premise of paying the money and not

negotiate how the money should be spent since it would distract from the key issues. He reported Ormond Beach could go back at a later date to work on joint projects.

Mayor Costello reported he would consider this tweaking; however, if the City would determine they would not pay the money, then that would be considered changing the agreement. He stated this would keep the spirit of the agreement and improve upon it rather than diminish the spirit of the agreement.

Commissioner Kent advised he understood the pressure staff was under relative to getting this material to the Commission, and he was not being critical in his comments. He clarified his only concern was that this was such an important issue, and the Commission did not have enough time to thoroughly study the information, but it was helpful to review the material today.

Commissioner Kent reported each member of the Commission was elected to be a consensus builder. He concurred with Commissioner Partington relative to “never taking the first offer.” Commissioner Kent advised he was more comfortable paying the money under the direction Mayor Costello recommended. He commended Commissioner Selis for the idea of off-beach parking, but concurred with Commissioner Boyle that it would probably not be accepted and should be kept closer to the area in question. Commissioner Kent stated he would prefer as much land as possible, but accepted that 1,500 acres would be a huge change from the proposal; therefore, he asked Mr. Turner if there were a possibility to receive 300 additional acres. He questioned what would occur if the Daytona Beach and Ormond Beach planning departments would not agree on an issue. Commissioner Kent expressed an additional level of comfort after being informed that St. Johns River Water Management District had increased its standards.

Mr. Turner reported there was a threshold, but he was unsure where that threshold was. He expressed doubt as to whether Ormond Beach could gain 300 additional acres since he started negotiations at 1,000 acres, and it was refused twice. Mr. Turner stated to have an opportunity to gain another 100 acres he would first have to be able to articulate a rationale as to why the additional land should be provided and where it would be located. He advised if the Commission directed staff to request additional land, he would need at least another day or longer to work on that issue. Mr. Turner reported the figure was 650 acres for a length of time, but he could not agree for less than 700 acres. He stated he could possibly try to negotiate for another 100 acres.

Commissioner Kent reported the rationale for more acreage could be to gain more land on State Road 40. He stated he had to defer to Commissioner Selis to know what his constituents' concerns were.

Mayor Costello clarified that the people in the western area were not extremely concerned about the potential for “horrible” development; their concerns were more emotional in their belief that State Road 40 should be in Ormond Beach. He advised this area would be upscale development.

Mr. Hayes reported the law requires that once land was annexed into a jurisdiction that the standards of that jurisdiction apply. He stated Daytona Beach was willing to apply standards similar to Ormond Beach's standards under the current proposal, and Daytona Beach would have to undergo some sort of internal process to allow the city to do this. Mr. Hayes advised that Ormond Beach would have some opportunity to offer input into that process but not in the final decision-making process.

Mr. Ervin stated the concepts had been identified to the Ormond Beach staff by the property owner and the City of Daytona Beach relative to land use. He reported two units per acre would be used plus commercial parcels at the intersection of State Road 40 and the power line and at the intersection of Tymber Creek Road and Stagecoach Road. Mr. Ervin advised that the densities were generally consistent with the City's Suburban Low Density Residential, which would allow for a range of 1.6 to 2.5 units in that area and also would allow for commercial uses. He reported the City could not contract away land use and zoning; therefore, intentions could be stipulated. Mr. Ervin stated the intention identified was to go through a Planned Unit Development (PUD) for zoning similar to Ormond Beach's Planned Residential Development Overlay where there would be a public hearing and Ormond Beach could review, comment, and make recommendations that would be presented to the Planning Board and City Commission of Daytona Beach. He noted this was similar to the process Ormond Beach has with the County for land located within one mile of the City limits or in Ormond Beach's service area. Mr. Ervin reported the responses would be technical adherence to Ormond Beach standards and policy issues. He advised Daytona Beach would hear Ormond Beach's input, but the final decision would rest with Daytona Beach.

Mr. Hayes reported the agreement may recognize key components that both sides would like to see carried through with voluntary compliance, but one side could not compel the other side to comply. He stated when all stipulations would be carried out, a triggering mechanism would be set for such things as the payment to Daytona Beach to occur.

Mayor Costello clarified the Commission would leave it to the attorneys to be assured that Ormond Beach standards, other than the wetlands standards, would be upheld.

Mr. Ervin reported Daytona Beach had not yet processed any Comprehensive Plan amendments for this area; therefore, the agreement could identify the land development goals for the area, and as such, would be incorporated into the Comprehensive Plan, which was where Ormond Beach would have the most input.

Mr. Turner stated the mechanics of these issues have not been completed, and there were many challenges. He reported staff was seeking a clear direction in which to proceed from the Commission. Mr. Turner advised this would mean additional meetings to accomplish those goals.

Mr. Mynchenberg reported he was an engineer first and a developer secondly. He disclosed CTLC was his client; however, he clarified that was he was not representing CTLC at this meeting. Mr. Mynchenberg concurred with Commissioner Selis in stating that this was one of the best meetings he had ever attended in the City of Ormond Beach. He stated he routinely dealt with Ormond Beach and Daytona Beach codes, and the difference was in the interpretation by the staff more than the written code. Mr. Mynchenberg discouraged the formation of a joint committee to try to interpret the other city's codes. He stated if CTLC would be assured they could have the 512 units, they could meet Ormond Beach codes. Mr. Mynchenberg advised putting the \$250,000 into the proper perspective, it would not be worth making an issue of paying the money or what should be done with the money.

Commissioner Selis reported his constituents indicated to him that they were concerned regarding high density, but he was comforted to learn that there would not be high density in this area and that the City would be accomplishing a large goal. He noted he would prefer the line

in Ormond Beach be extended on Granada Boulevard on the map; however, if that were not possible, it would not be a deal breaker.

Commissioner Partington advised he supported Commissioner Selis' recommendations because it would keep State Road 40 in Ormond Beach and would accomplish the purpose of the agreement. He stated he opposed paying the \$250,000 since it was essentially a "spanking" from Daytona Beach for some alleged incursions, and Daytona Beach was equally responsible in that they did not police their service area. Commissioner Partington reported he did not favor settlement for settlement sake, but would support a win/win situation for all concerned. He pointed out Daytona Beach must have this meeting on Monday to continue the lawsuit, and he questioned if offering an 80/20 settlement was a pretext to continue through this portion of the legal procedure. Commissioner Partington noted he would work with anyone on an equal basis and even consider a 55/45 or 60/40 split if it would accomplish Ormond Beach goals; however, he was charged to represent his constituents and could not agree with such a disparity. He advised he supported the process and working toward a win/win solution. Commissioner Partington stated he did not have misgivings about Daytona Beach being across the street from Ormond Beach and was not concerned that the development would be anything less than fine; however, Daytona Beach may not be as environmentally friendly as he would prefer relative to the wetlands. He recommended discussing these issues at the Monday meeting, recessing, and coming back at a later date even if a series of meetings or a mediator would be needed to finalize the issues. Commissioner Partington reported this proposal was not the best deal for Ormond Beach, but it was a good deal for Daytona Beach and CTLC; therefore, he could not support it.

Commissioner Boyle reported the constituents instructed the Commission to not allow inequitable substandard development to occur across from Ormond Beach's high standard development. He stated he would prefer trusting Daytona Beach with their 2,300 acres, and he did not see a need for a joint committee, which could be problematic. Commissioner Boyle advised that since each Commissioner had an objection to at least one of the provisions and this was an "all or nothing" deal, Ormond Beach could not possibly approve this proposal. He noted a company could still pay money to St. Johns River Water Management District to mitigate outside of the City, which may be acceptable in rural settings, but it was not good in urban settings. Commissioner Boyle reported Ormond Beach would be trading away a great deal for 512 homes. He noted he could not foresee a judge in court rendering a less favorable decision. Commissioner Boyle stated the present annexation agreement stipulated that Ormond Beach would provide the water and sewer. Commissioner Boyle pointed out his two objections were not with Daytona Beach. He stated the problems began a long time ago when these two cities tried to accommodate this same landowner. Commissioner Boyle noted that ending the disagreements with CTLC was just as important as ending the disagreements with Daytona Beach. Commissioner Boyle stated if CTLC could trust Ormond Beach, knowing they would be able to construct 512 homes, an agreement could be reached. He stated Ormond Beach recognized CTLC could make a positive contribution to the community, and they need to recognize that if they were to have an Ormond Beach address, they would need to trust Ormond Beach.

Mayor Costello summarized that a majority was not ready to approve the proposal. He stated Commissioner Boyle would stipulate 512 homes could be constructed if CTLC would go through Ormond Beach codes, boards, and staff.

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Commissioner Boyle stated he would like to know the difference of the number of homes CTLC could build with St. Johns River Water Management District rules and the number of homes they could build with Ormond Beach rules.

Mr. Mynchenberg stated that with this acreage, five units per acre would be acceptable and cluster density would be used.

Commissioner Boyle stated he would support the 512 homes because it would embrace the concept of cluster density, which had been done for other developers.

Mr. Mynchenberg stated any developer would prefer to develop in the uplands as opposed to developing in the wetlands where demucking, fill, and mitigation would be needed. He advised developers have options whether to develop in Daytona Beach, Ormond Beach, or Volusia County, and currently, developments could be processed in Daytona Beach in half the time that it would take in Ormond Beach. Mr. Mynchenberg reported this did not mean there was anything wrong with the staff or the codes; it was just the process. He noted after that the building was completed, it would take twice as much time to have the plat recorded in Ormond Beach. Mr. Mynchenberg advised that if the job would cost \$100,000 in Daytona Beach, it would cost \$140,000 to \$150,000 in Ormond Beach because of all of the processes and resubmittals the developer would have to contend with.

Mayor Costello called for a break at 11:08 a.m. and reconvened at 11:20 a.m.

Mayor Costello summarized a majority indicated 512 units would be developed through the Ormond Beach process and Ormond Beach staff.

Regarding the \$250,000 payment, Mayor Costello offered the possibility of paying the money and providing possibilities of how it could be used, such as using the money to purchase land on State Road 40 and allowing driveway access, purchasing land for the effluent reuse, or some project around Hand Avenue.

Commissioner Boyle stated he opposed adding “strings” to the payment, noting he would pay the money to close a deal.

Commissioner Selis advised he would prefer the money be used for a specified purpose agreed upon by both commissions. Commissioner Partington and Commissioner Kent concurred with Commissioner Selis.

Mayor Costello advised the consensus was to pay the \$250,000 on a project to be determined at a later date that was acceptable to both commissions that would relate to the area in question.

Commissioner Selis reported he would concur with Mayor Costello’s analysis; however, he would be agreeable to using the funds for any purpose agreeable by both entities and would rather not specify it had to relate to a specific area.

Mayor Costello advised from the landowner and Daytona Beach’s perspective, he doubted they would approve anything outside of the area.

Commissioner Selis reported he would agree to Mayor Costello’s recommendation as a fallback position, but would prefer starting out by opening up the options for a project not necessarily

within the area in question. Commissioner Kent and Commissioner Partington concurred with Commissioner Selis.

Mayor Costello clarified that the consensus was to pay the \$250,000 on a project to be determined at a later date that was acceptable to both commissions.

Mayor Costello questioned what the will of the Commission was relative to the amount of land acceptable if the first two amendments were agreed upon.

Commissioner Boyle accepted the current acreage proposed.

Commissioner Kent reported he would prefer more land on SR-40.

Commissioner Partington advised the number of acres was not as important as attaining that strip of land on SR-40.

Mayor Costello reported this was the very reason he proposed purchasing frontage on State Road 40 with the \$250,000. He advised this land would be kept in a greenbelt buffer, but whatever roadways were needed could be built.

Commissioner Kent clarified that it would not be a deal breaker if Ormond Beach was unable to obtain an additional 100 to 300 acres.

Commissioner Selis reported he agreed with Commissioner Kent regarding the 721 acres, but would prefer the strip of land on State Road 40.

Mayor Costello reported he would rather be more specific and ask for the strip of land, noting Ormond Beach could not know what proposal Daytona Beach would accept or reject.

Commissioner Partington explained he would prefer the caveat to not only purchase the strip, but also agree to place a perpetual environmental easement on the land to afford the Hunter's Ridge and Breakaway Trails residents a certain level of comfort.

Mayor Costello advised there would be roadways through the land and commercial development at the corner of Stagecoach Road and State Road 40, which was smart growth. He stated this development could still occur, but it would be set back further. Mayor Costello reported there was a consensus to use the \$250,000 for land to complete the border; it was understood there would be commercial on the corner of Stagecoach Road and State Road 40, and that staff was to come back with a proposal to allow this to occur.

Commissioner Boyle stated the money would not purchase much land, and he would prefer to work within the agreement. He noted he did not believe this was negotiable; whereby, Mayor Costello noted he did not believe the St. Johns River Water Management District proposal was negotiable, but Ormond Beach could request the changes.

Mr. Ervin reported if the City were to purchase 1,000 to 1,500 linear feet south of State Road 40 to where the current CTLC property ends, it would equal approximately 200 acres, and the \$250,000 would only purchase five to ten acres.

Mayor Costello explained his goal would be to create a greenbelt with no development allowed; and the City would pay \$250,000, and the developer could provide the remainder.

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Commissioner Partington offered another alternative, which was to pay the \$250,000 with no strings and obtain an additional 200 acres. He pointed out that was still not one third of the total land involved.

Mayor Costello summarized that a consensus was reached to accept the proposal using Ormond Beach standards and staff for the 721 acres, and the \$250,000 was to be used to purchase frontage on State Road 40 in order to keep State Road 40 within Ormond Beach.

Commissioner Boyle stated that while the deal indicated Ormond Beach would comment on the 2,300 acres, he would prefer only reserving Ormond Beach's right to comment to DCA and trusting Daytona Beach to develop as they choose in the 2,300 acres.

Mayor Costello noted this may show that Ormond Beach knew Daytona Beach standards were high and the development would be outstanding, and Daytona Beach should not have to waste their time coming to Ormond Beach for comment.

Mr. Turner advised he would speak to his counterparts at Daytona Beach and CTLC to make them aware of what had occurred.

Commissioner Boyle urged Mayor Costello be the spokesperson at the Monday meeting.

Mr. Turner reported Daytona Beach did not have the opportunity to discuss these issues as Ormond Beach had just done and would probably have comments at the table on Monday. He asked the Commission to understand that Daytona Beach's perspective could be very different than Ormond Beach's perspective.

Commissioner Selis thanked Mayor Costello and Commissioner Boyle for their leadership and Commissioner Kent and Commissioner Partington for bringing a fresh perspective to the issue.

Mr. Hayes recognized Mr. Turner for bringing this issue to this point, and noted it may not be what everyone would prefer, but it was much better than what was available only a few months ago. He stated if both sides could focus on solving the problems on Monday as opposed to fighting over issues of the past, it could be a very productive meeting. Mr. Hayes reported if it should start to degenerate, the Ormond Beach Commission should be the ones to try to stay focused on the issues.

Commissioner Partington asked if this agreement addressed the Aberdeen issue; whereby, Mr. Turner reported the Aberdeen issue was resolved before the negotiations started relative to this proposal.

Commissioner Kent observed that the leadership had been great regarding this issue. He stated the Commission would be positive, and he would hope for the best. Commissioner Kent thanked Mr. Turner and staff for the information provided and for giving up a Saturday to provide the Commission a greater level of comfort with the proposal.

Item #3 – Close the Meeting

The meeting was adjourned at 11:46 a.m.

APPROVED: _____ April 7, 2004 _____

BY: _____
Fred Costello, Mayor

ATTEST:

Veronica Patterson, City Clerk