

**MINUTES
CITY OF ORMOND BEACH
CITY COMMISSION
SIGN REGULATIONS WORKSHOP**

August 6, 2016

5:30 p.m.

City Commission Conference Room

I. CALL TO ORDER

Mayor Ed Kelley called the meeting to order at 5:30 p.m.

Present were Mayor Ed Kelley, Commissioners James Stowers, Troy Kent, Rick Boehm and Bill Partington, Planning Board members Harold Briley, Pat Behnke, Al Jorczak, Rita Press and Lori Tolland, Quality of Life Advisory Board members Dr. Philip Shapiro, Brian Nave, and Debbie Berner, City Manager Joyce Shanahan, Assistant City Manager and Public Works Director Ted MacLeod, City Attorney Randy Hayes, Planning Director Ric Goss, and Catherine Reischmann, partner with Garganese, Weiss & D'Agresta, P.A.

Mayor Kelley welcomed members of the Planning Board and Quality of Life Advisory Board. He noted that there was a guest speaker for the workshop. He asked those at the meeting to introduce themselves.

Ms. Rita Press, Planning Board member, introduced herself and stated that she had served on the Planning Board for many years. She noted that she was very interested in signage.

Mr. Al Jorczak, Planning Board member, introduced himself and echoed Ms. Press' comments. He noted that signage had been a big issue for the Planning Board.

Ms. Pat Behnke, Planning Board member, introduced herself.

Mr. Harold Briley, Vice chairman of the Planning Board, introduced himself.

Mr. Ted MacLeod, Assistant City Manager and Public Works Director, introduced himself.

Ms. Joyce Shanahan, City Manager, introduced herself.

Commissioner Stowers introduced himself.

Commissioner Kent introduced himself.

Mayor Kelley introduced himself.

Commissioner Boehm introduced himself.

Commissioner Partington introduced himself.

Mr. Randy Hayes, City Attorney, introduced himself.

Ms. Catherine Reischmann, partner with Garganese, Weiss & D'Agresta, P.A., introduced herself and stated that she would be giving the presentation.

Mr. Ric Goss, Planning Director, introduced himself.

Dr. Philip Shapiro, Quality of Life Advisory Board Chairman, introduced himself.

Ms. Debbie Berner, Vice Chair of the Quality of Life Advisory Board, introduced herself.

Mr. Brian Nave, Quality of Life Advisory Board member, introduced himself.

Ms. Lori Tolland, Planning Board member, introduced herself.

Mayor Kelley asked that all questions be held until after the presentation.

II. SIGN REGULATION AFTER THE REED DECISION

Mr. Hayes stated that the purpose of the workshop was to discuss sign regulations after the Reed v. Town of Gilbert case ("Reed"), which was decided by the United States Supreme Court about a year prior. He explained that their decision had reshaped the landscape of sign regulations. He noted that sign regulations seemed like a simple concept to many people but explained that it had always been very challenging for lawyers to draft enforceable regulations. He stated that elected bodies wanted to grant certain privileges and flexibility for certain types of uses and it was now more challenging to do so in wake of the Reed decision. He explained that there had been a few issues over the course of the last year that had caused staff to want to take a comprehensive review of the city's signage regulations. He noted that this was such a technical component of the law that he felt it best to have someone who was more of an expert in this area provide an overview.

Mr. Hayes introduced Ms. Reischmann and stated that she was with the law firm of Garganese, Weiss & D'Agresta, P.A. He explained that that firm primarily represented local governments and was attuned to local government issues. He stated that Ms. Reischmann was board certified in local government law as well as real property law, and was an expert in sign regulations. He stated that Ms. Reischmann would help the city with the subject matter. He noted that the Commission had been provided with some information over the past year but that the Planning Board and Quality of Life Advisory Board had not been provided with the same level. He stated that the PowerPoint presentation that Ms. Reischmann would go through was provided to the Commission, the Planning Board, and the Quality of Life Advisory Board prior to the workshop.

Mr. Hayes explained that in the wake of the Reed case, the city's ability to regulate certain aspects of signage was more problematic. He stated that that was why the city asked Ms. Reischmann to look at their regulations and present information to the City Commission and board members. He noted that during a workshop the Commission could not vote, but explained that staff wanted to receive some direction from the Commission. He stated that while a lot of material was provided before the workshop, they would be trying to narrow the focus down to some core points. He explained that there was a risk analysis line and that on one end there were very stringent regulations that could be adopted to lower risk, and that on the other end much more risk would be incurred. He stated that one decision point would be deciding how much risk that they were willing to assume in terms of making modifications to the city's sign regulations. He

noted that the risks were fairly significant in terms of potential liabilities, challenges, and paying attorneys' fees.

Ms. Reischmann thanked Mr. Hayes and Ms. Shanahan for having her there. She played a video clip showing Sao Paulo, Brazil, before and after enacting strict sign regulations. She noted that while it did not directly have to do with the Reed case it was a good warm-up for thinking about what sign regulation could do for a community. She noted that Ormond Beach was already a beautiful community and that she had lived there some years ago. She stated that the city presently had strict regulations on billboards and right-of-way signage. She noted that she was certain that they wanted to continue to maintain that. She stated that signage could impact the feeling of community.

Ms. Reischmann stated that the "need to read" standard was established in the Reed decision. She explained that that meant that if the sign needed to be read in order to determine its legality then the code was unconstitutional. She noted that that was a rather tough standard and that Reed could be overwhelming to deal with. She explained that many communities have dealt with it by reviewing their temporary signage regulations first, as that was the main thrust of the Reed case. She stated that signs were regulated through location, dimensions, use of technology, and duration. She noted that in the city's code there were some spacing regulations but explained that spacing would become particularly important now that signage had to be more generic. She stated that there were still ways around the Reed decision even though that standard made it very difficult to regulate signage.

Ms. Reischmann stated that overly fine-tuning a sign code could get a city in trouble. She noted that in the process of fine-tuning there might be content discrimination and regulations may actually become under-inclusive. She provided an example of trying to have political signs be the largest signs, which was what the Town of Gilbert was doing, and trying to make directional signs smaller. She noted that having regulations to that effect would be under-inclusive because their rationale for limiting directional signage was that they did not want clutter but they still allowed political signs to be larger. She explained that the rationale for the sign code had to keep with the way that the regulations were written. She noted that sign codes could also be "dumbed down" and become over-inclusive. She stated that examples of that could include a ban on temporary signs or trying to make regulations very generic where speech would be limited. She stated that going to either far end on the spectrum would impede the city's ability to do their job as a government.

Ms. Reischmann stated that justifications were extremely important, and noted if and when the city was attempting to amend their sign code that they would unfortunately have to weed through a lot of important findings. She stated that one primary importance of any sign code was protecting residential areas from a lot of signage, which was a real challenge. She noted that there were so many reasons why the city would desire to have appropriate sign codes to channel commercialism away from non-commercial areas and preserve opportunities for self-expression. She displayed a photograph taken by a planner in the City of Clearwater Beach, Florida, before they enacted effective sign regulation, and then displayed a photograph taken in the same location after the sign regulations were enacted. She noted that the city did not want the rules for an ideological sign to be different from the rules for election signs. She stated that the regulations had to be the same.

Ms. Reischmann reiterated that if the sign had to be read to determine its legality then the code was unconstitutional. She stated that all of the members of the U.S. Supreme Court voted in the affirmative on the Reed case. She noted that the reason she thought that the Reed case went as far as it did, and why one small sign created all of the hoopla, was that non-commercial temporary signage often dealt with very sensitive issues. She stated that the Reed case featured a church trying to advertise its services. She explained that often a non-profit group would take on the expense of prosecuting the case against a city and count on getting attorneys' fees, or at least nominal damages, as a result. She noted that was why she believed it imperative to amend the city's code quickly. She stated that the pastor in the Reed case had the Alliance Defending Freedom, which was a conservative Christian group from Arizona, backing him. She stated that what happened was that bad facts made bad law.

Ms. Reischmann stated that the Town of Gilbert had a patchwork quilt of sign regulations without any real rationale. She displayed a PowerPoint slide of their regulations. She explained that Reed marked the first decision by the Supreme Court on sign law in 20 years and that the dissection of their sign code did not pass scrutiny, according to the Supreme Court Justices. She explained that the city claimed in their oral arguments that directional signs needed to be smaller because they needed to guide traveler along a route, which was nonsensical. She read a key quote about warning signs as follows:

"An ordinance narrowly tailored to the challenges of protecting the safety of pedestrians, drivers and passengers – e.g. warning signs marking hazards on private property or signs directing traffic – MIGHT also survive strict scrutiny."

Ms. Reischmann explained that the court was indicating that perhaps warning signs would be a legal category for the government to allow. She noted that the court apparently agreed that government can still make distinctions between commercial and non-commercial signage as well as temporary and permanent signage. She stated that she wanted to show how confusing the ruling was. She asked what was to be done about a sign for a hidden driveway. She stated that one of the judges in the case stated that a town had no way to prevent hidden driveway mishaps except through well placed speedbumps, lower speed limits, or banning hidden driveways entirely, because apparently a hidden driveway sign could not be allowed – since you had to read it to know whether it was allowed or not.

Ms. Reischmann noted that there was a safe harbor in government speech not being governed by the first amendment. She explained that the government could therefore put up warning signs. She noted that the judges were concerned that the cities and counties would have to lift their sign restrictions altogether and have clutter. She noted that the important point was that anyone, including a candidate for office or someone who was impacted by a non-commercial sign regulation, could bring a challenge and recover attorneys' fees. She explained that the challenge could be mooted by changing the side code. She noted that the Town of Gilbert was advised to change their code before going to the Supreme Court but decided not to. She stated that there was still a possibility that a city could be hit with nominal damages even if they changed their code as a result of a challenge.

Ms. Reischmann stated that the bottom line was that there were no more descriptors in the sign code, which meant not labeling signs as political signs or directional signs. She noted that the only descriptors with a chance to survive were perhaps directional signs

or safety signs. She stated that the city had designations for signs in their code, such as community event signs, construction signs, outdoor activity signs, political signs and real estate signs. She noted that all of those descriptors need to be removed.

Ms. Reischmann stated that they needed to be careful about enforcement. She noted that perhaps the city would have sign anarchy for a time during election season in order to avoid getting into enforcement battles.

Mr. Briley stated that he thought that the city already did that.

Ms. Reischmann explained that if the desire was to place a limit on the total number of temporary signs on a parcel, it could be tricky because there were so many variables with every parcel. She noted that some variables included the number of tenants on a property, the types of signs that were allowed, and the amount and type of permanent signs on the property. She stated that it was possible to consider handling that with caps on individual sign types or allowances for one banner for each tenant.

Ms. Reischmann noted some critical areas to review. She stated that one was how to justify allowing non-commercial signs to be larger than real estate signs if justification for sign regulation was reducing driver distraction. She noted that the bottom line was to simplify and have only a few categories of signs. She stated that the best case scenario was to collapse all of the temporary non-commercial signs into one single sign type of the same height, setback, spacing and duration. She noted that that was very difficult to do. She stated that allowing a certain square footage of signage, both temporary and permanent, on a parcel would encounter problems such as the need to recalculate each time the owner wanted to change their sign, parcels seeking large, permanent signs rather than temporary signs due to size restrictions, and temporary signs becoming quasi-permanent due to insufficient options. She noted that there were many possible outcomes from a very generic one-size-fits-all concept.

Ms. Reischmann stated that having a total ban on banners may be seen as the government infringing on people's rights. She stated that on the other hand, allowing unrestricted banners could cause a lot of clutter and interfere with other objectives. She noted that banners and signs placed all over would impede the ability to see street signs and businesses, and would impact residential areas. She advised caution in deciding how electronic and changeable signs would be limited within the code, and in favoring gas stations and theaters. She stated that presently the city did favor those types of businesses. She stated that it was easy to distinguish based on structural characteristics and noted that the city had that in their code. She stated that the city's code was very good with regards to the way the law was before Reed.

Ms. Reischmann stated that one of the largest problems with generic temporary signs was duration. She stated that a regulation that regulated how long signs could be up often did not work because certain signs needed to be for certain lengths of time, such as real estate signs and political signs. She noted that some of the pictures displayed in the presentation were taken around Ormond Beach by Mr. Goss. She stated that someone suggested having a sticker on the temporary signs, rather than a permit, that had to be registered online so that the sticker could be checked to see if any time deadlines had been exceeded. She stated that other ideas that had been suggested included allowing one temporary sign on properties at all times, or a certain number of signs per candidate or per issue during an election season – which she noted that she believed was presently in the city's code. She explained that the idea was not to

specifically reference political signs but to allude to that by starting that the restriction was during an election time.

Ms. Reischmann noted that the city could also choose to establish a maximum number of temporary signs allowed year-round and restrict that to specific makes of signs, such as yard signs and banners. She noted that restrictions could be placed on the height and location of those signs. She stated that one suggestion that was made was to prohibit temporary commercial signs, noting that temporary non-commercial signage had to be allowed. She explained that it was theorized that if you eliminated temporary commercial signs it would result in businesses simply paying the fine to put their signs up as part of the cost of doing business. She noted that that was indicative of the kind of crazy suggestions she had heard in the wake of Reed.

Ms. Reischmann displayed a sign criteria and limitations table from the City of Jacksonville Beach, Florida. She noted that Jacksonville Beach had been threatened with a lawsuit. She explained that they set generic numbers of temporary signs and noted that she believed it to be an excellent model. She pointed out that they referenced total surface area, in order to prevent clutter, and also addressed spacing between signs. She noted that the signs could only be up until seven days after the event, whatever the event was. Ms. Reischmann stated that there was no more regulation of election signs by name. She noted that they did not have to allow one sign per candidate.

Ms. Reischmann stated that signs would not be regulated by what was on the sign but by what was happening on the property. She referenced address signs and stated that the solution for those was to allow every parcel a small sign in front of the building or by the mailbox. She stated that directional signs were not directly implicated by the Reed decision as they were permanent signs. She explained that there could not really be a category for directional signs but noted that they could all be banned, though she noted that she was unsure why anyone would do that. She noted that there was no first amendment right to those signs. She stated that directional signs were important, especially for public safety. She noted that commercial advertisements could not appear on the directional signs if the justification for the directional sign category was public safety. She explained that that included using the name or logo of a business. She stated that drive-thru and menu signs could be allowed without naming them by stating that businesses could have signs that faced drive-thrus.

Ms. Reischmann stated that anyone could challenge the code and recover attorneys' fees. She noted that if the city amended the code before the lawsuit progressed, it could moot out the lawsuit, but explained that they would have to be in a rush to do so. She stated that the city had to look at its risk analysis. She explained that they wanted to avoid regulating signs that had negligible impact. She noted that there could be concern about promoting local businesses and not changing the sign code in such a way that it would restrict them. She stated that things could be done to offset that, such as increasing a business' permanent sign allowance or allowing more digital messages. She noted that oftentimes a business would feel that a temporary sign had more visibility. She stated that this would be a difficult task to undertake.

Ms. Reischmann stated that if the city kept its current sign code there was a probability that they would get sued. She noted some of the different approaches she had previously discussed. She stated that there was a little concern that there may still be some risk in allowing signs based on what was happening on the site, for example

allowing a sign for a property that was under construction or for sale. She noted that the risk was that there might be some implied content for the sign. She explained that if the regulation allowed a sign on a property during the time that it was for sale then it would be obvious that the intent was for a sale sign. She stated that they could say that every parcel was allowed two commercial signs and two non-commercial signs or employ the strategy which allowed a certain square footage of signs for 180 days a year. She noted that political signs had to be allowed to remain up for probably around 90 days. She stated that increasing that could help make sure that the city did not get sued.

Ms. Reischmann stated that non-commercial speech had to be allowed in single-family residential zones. She stated that Ormond Beach's code was very strong in prohibiting signs in the right-of-ways. She explained that that became even more important now because any group could place signs in the right-of-way once it was opened up to any kind of non-commercial or commercial signs. She noted that the government still controlled its own property and the right-of-way.

Ms. Reischmann noted that the trap associated with favoring commercial speech was that if you allowed commercial speech then you had to allow non-commercial speech. She explained that before the courts tightened up the issue, groups used to go around and prey on small cities by challenging their codes in a "billboard shakedown scheme." She stated that there were now some protections from the courts, such as the ability to moot the lawsuit, and the requirement that the person challenging the code must have standing and be impacted by the code themselves.

Ms. Reischmann stated that the bright note in all of this was the Walker v. Texas Division, Sons of Confederate Veterans case ("Walker"), which provided that government speech on government property was not subject to the first amendment. She noted that government signs could be eliminated from the city's code, explaining that the city did not have to regulate themselves in their sign code.

III. QUESTIONS / COMMENTS

Dr. Shapiro referenced banners over roads for a government sponsored event. He stated that that would knock out the non-profits.

Mayor Kelley stated that he spoke to Mr. Hayes about that. He explained that the banner would have to note that the event was sponsored by the city on it.

Dr. Shapiro asked what would happen if a deed restricted development within the city limits had bylaws that prohibited yard signs, except for sale signs. He asked if the city was liable.

Ms. Reischmann stated that that was a civil matter that would involve that development's Homeowners' Association (HOA). She noted that her understanding was that HOAs had to allow for political signs. She stated that that was not relevant to what the city did.

Ms. Berner asked if the city would still be forced to pay attorneys' fees if it amended its codes against a judgment.

Ms. Reischmann stated that typically the city would immediately address the issue by amending the code when it was sued. She noted that the plaintiff would probably decide that that was a victory and would want to argue for attorneys' fees from the judge. She

stated that her understanding was that most of the time they would not be awarded attorneys' fees but that they might be awarded nominal damages. She noted that it was within the realm of possibility that they could receive attorneys' fees however.

Mr. Nave asked Ms. Reischmann if she could explain about the government speech doctrine.

Ms. Reischmann stated that the government was not governed by the sign code. She explained that as a government, the city could decide what it felt was appropriate speech. She noted that, absent some crazy circumstance, the city could not be told that what it was saying did not account for some particular viewpoint. She explained that if the city demanded that warning signs be put up it would be acceptable for the city to have created that category. She noted that the situation was a little difficult to explain. She stated that if the city's code allowed warning signs on all properties that would constitute a descriptor, and would then make someone have to read the sign in order to determine if it was allowed. She stated that a government could simply put up warning signs without having that issue be raised against them. She noted that in Walker the government decided what was on license plates. She stated that a particular group wanted to put a confederate flag on a license plate and the courts ruled that the government, the State of Texas, could decide not to allow that because a license plate was government speech. She stated that the government could make rules about its own signs and what it did on its own property.

Mr. Nave asked what the basis of that was; whereby, Ms. Reischmann stated that the U.S. Supreme Court decided that there such a thing as government speech.

Mr. Briley stated that it was probably still very difficult to control, or rule on the content of, private signs, particularly those that were non-commercial; whereby, Ms. Reischmann noted that after Reed you could not do so.

Mr. Briley referenced Ms. Reischmann's usage of the phrase "need to read." He asked if that affected the size of signs; whereby, Ms. Reischmann stated that that regulation did not affect the type or size of signs.

Commissioner Boehm presented a hypothetical situation in which the city adopted an ordinance that regulated the size of signs and the distance between signs, but an HOA had even stricter regulations. He asked if the HOA could try and enforce their more stringent regulation as part of their covenants and restrictions.

Ms. Reischmann replied that they absolutely could do so.

Commissioner Boehm asked if the HOA could enforce a ban on political signs within their subdivision.

Ms. Reischmann stated that they could try and do so; whereby, Mayor Kelley stated that such cases had been lost before. Ms. Reischmann noted that her understanding was that political signs had to be allowed.

Ms. Press referenced the signs in the Main Street area that named the historic districts and signs referencing the Ormond Scenic Loop. She asked how those would be affected.

Ms. Reischmann stated that there could not be provisions in the sign code about historic signs or scenic signs, as those would be descriptors. She noted that those were government signs and so qualified as government speech. She stated that if those were placed by the government on public property they would not be subject to the sign code.

Mayor Kelley stated that one of the scary things to him was that the Reed decision had been a unanimous decision of the Supreme Court. He noted that the court did not often make unanimous decisions.

Ms. Reischmann noted that there were many concurring opinions. She noted that important distinctions still remained, such as off-site and on-site.

Mr. Jorczak asked if there was anything within government with respect to codes at the state level that would preempt what a community could do.

Ms. Reischmann stated that the state did preempt certain regulations such as signs along federal highways and at polling places. She noted that the State of Florida might be in a better position than some states because it had a scenic component to its constitution and has in the statutes the requirement for every community to have a sign code. She noted that some states did not have those requirements.

Dr. Shapiro asked where Reed stood on something like a directory sign near the road explaining what was in a building complex.

Ms. Reischmann noted that that would be tricky. She explained that if the sign was erected by the government and simply designed for the purpose of safety, and could be justified on that basis; then it would be acceptable. She stated that the problem arose from trying to accommodate individual businesses with locators for those individual businesses, which might get into the realm of advertising. She explained that once the government opened up its right-of-ways, or its government property, to commercial signage, then it would open it up to hate speech and all other forms of speech. She noted that the floodgates would be opened.

Mayor Kelley stated that he believed that Dr. Shapiro was referring to an office complex or a commercial complex that had such signs on private property.

Dr. Shapiro asked what kind of a cost the city was looking at.

Ms. Reischmann explained that the city would not necessarily be telling everyone to tear down their signs. She noted that it was about what the code said for the future.

Dr. Shapiro asked if Ms. Reischmann was talking about grandfathering in what was already there; whereby, Ms. Reischmann confirmed that was correct. She explained that they would not be requiring anyone to take down signs.

Ms. Reischmann stated that it may be possible to look to what other communities are doing, or maybe even do a study within our community, with regards to directional signs on private property. She noted that the city might be able to get away with a regulation that demands directional signs because of safety concerns.

Dr. Shapiro noted that if the city went with a grandfathering approach then those who already had signage would keep their existing signage. He stated that new structures

could not have such signage and thus the economic impact in the long term would be tremendous. He asked why anyone would want to locate here.

Ms. Reischmann noted that those types of considerations would have to be weighed. She stated that that was why she was suggesting that perhaps they increase the allowed permanent signage.

Dr. Shapiro stated that the law would probably be tweaked as it moved along and the city would forever be dealing with it until it was overturned. He asked what the financial impact would be on the city government.

Ms. Reischmann stated that the impact would hopefully not be too tremendous. She noted that the city's present sign code, and the community, was in good shape. She stated that the city had not allowed a lot of exceptions and existing signs that they wish were not there. She noted that the city could come up with a compromise like Jacksonville Beach did. She stated that it was possible to come up with a decent sign code that would provide relative protection without spending a lot of money. She noted that they would never be completely protected from a challenge but would be relatively protected if they were fairly liberal in their allowance of non-commercial signs. She pointed out that Reed was about temporary non-commercial signs.

Mr. Briley stated that electronic changeable copy signs had been allowed in certain areas of the city but not in others. He asked what type of challenge they faced there.

Mr. Hayes noted that the code presently did not allow those at all. He explained that there were certain limited exceptions. He noted that what existed would be grandfathered in. He stated that opening it up to those types of signs might be something that they would have to deal with.

Ms. Reischmann noted that that was what some cities were doing.

Ms. Shanahan referenced developments of regional impact (DRI)s and noted that exceptions had often been made for DRIs, which received different opportunities for signage. She asked if that was survivable.

Ms. Reischmann stated that it was if there was a rationale for it. She noted that there could be certain districts designated in the city. She stated that they would be taking the sign code and shrinking it for the DRI. She noted that there were obvious reasons why more intensive signage would be allowed in certain areas and not in others. She explained that the problem becomes when, like the Town of Gilbert, the government thinks that they have reasonable rationale but cannot really justify it.

Ms. Shanahan noted that the Town of Gilbert had the opportunity to amend their sign regulations before the case moved to the Court of Appeals and the Supreme Court but chose not to do so.

Ms. Press referenced changeable signs being allowed in one specific area. She asked if anyone could put whatever they wanted on those types of signs if they were allowed all over, due to free speech regulations.

Ms. Reischmann stated that they could do so now. She noted that any commercial sign could be changed into a non-commercial sign.

Ms. Press stated that anyone could sit at a computer and put anything they wanted on a changeable sign.

Ms. Reischmann stated that allowing those signs all over made the city less vulnerable to a lawsuit. She noted that she believed that Ms. Press was asking how they could create a community standard for what was put on those signs; whereby, Ms. Press agreed.

Ms. Reischmann stated that it would be extremely difficult to control. She noted that the city's code enforcement would have to sit in front of the sign and watch it every day.

Ms. Press noted that she was against digital signs.

Mr. MacLeod noted that there were non-digital signs in the city that were also changeable and that the message on them could be changed as well.

Ms. Press stated that it was a lot easier to change the content on digital signs. She noted that that was a discussion that needed to be had sometime as well.

Mayor Kelley stated that there were some situations where some of the city's present restrictions on some areas could be challenged. He stated that they might have some difficulties with allowing certain size signs on certain roads without proving that those regulations were for public safety reasons.

Mr. Hayes stated that if a sign was lawful at the time that it was approved, and then different regulations were subsequently adopted, the lawfully approved signs would be grandfathered in. He noted that that did not mean that anyone coming in later could point to those signs as justification in asking for similar treatment.

Mayor Kelley stated that he believed that Dr. Shapiro pointed out that all of the city's existing signage would be grandfathered in. He noted that he did not believe that to be the case.

Ms. Reischmann asked if Mayor Kelley was referring to temporary signage. She stated that with permanent signs the city could not generally require people to remove their signs with paying just compensation. She noted that temporary signs were different.

Mayor Kelley stated that snipe signs were allowed in some areas but not in others. He stated that he believed that the sticker idea Ms. Reischmann mentioned earlier was a good idea and noted that he had once suggested it years earlier.

Ms. Shanahan stated that she believed that the focus at present was on temporary non-commercial signs.

Ms. Tolland noted the aforementioned discussion on digital signs. She asked whether the city could regulate the frequency of the sign changing.

Ms. Reischmann stated that the frequency could still be regulated post-Reed, but noted that the content could not be regulated. She stated that they mostly needed to be concerned with safety because the only defense applicable to a challenge was if the changes were being made for safety reasons. She noted that aesthetics would not save

them if their regulations had categories of signs and were on the higher side of the risk continuum.

Mayor Kelley asked if Mr. Hayes had a chance to review Jacksonville Beach's litigation briefs; whereby, Mr. Hayes stated that he had not. He noted that Ms. Reischmann had mentioned that they had revised their code.

Ms. Reischmann stated that Fernandina Beach had also done so. She noted that Jacksonville Beach did a very good job in revising their code. She stated that Fernandina Beach adopted something similar to Jacksonville Beach but their changes just dealt with their temporary signage. She noted that that was an option for Ormond Beach as well.

Commissioner Boehm stated that signs could be limited to an event, such as an election, by using the term "event."

Ms. Reischmann stated that that seemed a reasonable way to do it but noted that some said that that was even a little bit risky, to tie it to an event, and that it should be given a time period. She noted that the people that she respected in the field were using "event" and she did not believe that that was unreasonable.

Commissioner Stowers stated that he thought that this was a very important discussion which was, in his opinion, largely academic. He noted that he was unsure what lack of relationships led the Reed case to go all the way to the Supreme Court but he felt it might have been personal. He stated that on a day-to-day basis in Ormond Beach he did not believe that the city had been threatened with any lawsuits. He noted that he wished that he did not know as much as he did about sign regulations when he looked at political signs, noting that signs were placed in the right-of-way and that some signs were too numerous and too large. He stated that had a great City Manager, staff, and code enforcement department that managed those issues.

Commissioner Stowers explained that his concern was that making wholesale changes would open things up, facilitate more discussion, and educate people who do not have good intentions. He noted that he understood if a couple of changes needed to be made but he was opposed to getting too far into the weeds. He stated that this was not on the level of some of the American Disabilities Act (ADA) laws where locust attorneys went through areas and tried to file suits. He noted that it would be a much taller order to do that with regards to the Reed decision. He stated that if the city was threatened with a lawsuit they could modify the code at that point. He asked what the turnaround would be for implementing a minimal form of the Jacksonville Beach model. He noted that he had not been around as long as some others and explained that he thought back to the mural issue. He stated that that was a huge issue and then a decade later The Grind had a mural and discussion again ensued. He explained that at one of those meetings he noted that there had been a mural decision every ten years and asked whether they wanted to micromanage all of those things. He noted that he understood that this was different but he explained that signage could get really nasty.

Commissioner Boehm stated that the whole idea of threatening the lawsuit would be that something in the city's regulations violated Reed and needed to be changed to comply. He noted that during the threat the city could analyze whether it was legitimate and amend their code if needed. He stated that the threat would need to arise and arise with specificity. He stated that until that time he concurred with Commissioner Stowers in

terms of overreacting because of what might one day happen. He noted that presently nothing was happening and they had to weigh that.

Ms. Reischmann noted that she agreed and that the issue could be overblown. She stated that the city had a great code and great community that could easily deal with this. She noted, however, that if the city was under the gun to make changes they might not be able to listen to their constituents in the way that they might wish to. She stated that there were groups who would try the same tactics as they did with the billboard shakedown, noting that those types of groups formed when there was money to be made. She stated that she felt that there were some tweaks that the city could make to put them in a safer spot. She stated that fees associated with the case cost the Town of Gilbert about \$1 million before the case was even heard at the Supreme Court.

Mr. Jorczak asked roughly how long it would take for the city to review the existing code and highlight the areas relative to this discussion, in order to look at them a little more closely.

Mayor Kelley suggested that Mr. Hayes take this information, and any applicable questions or concerns from the Commission and boards, and bring back the results of his review at a future workshop.

Mr. Hayes stated that he could suggest some temporary, minor tweaks to be used as a temporary stop-gap measure. He stated that that would provide something additional for them to look at.

Mayor Kelley asked if that information would need to be presented to the Commission at a workshop. He noted that the Planning Board would also need to review it; whereby, Mr. Hayes noted that the regulations were in the Land Development Code.

Mr. Hayes stated that he thought the discussion during the workshop was pretty successful and noted that the Commission may wish to consider holding another such workshop. He stated that he would review the code and bring something back to the Commission, but noted that it would not consist of wholesale changes

Commissioner Stowers stated that there was a real enforcement staff cost associated with monitoring the number of signs and the duration that they were displayed. He noted that Ormond Beach was a small community. He stated that some other communities had approved time restrictions for signs and he wondered how those would ever be enforced. He stated that he did not see a scenario where code enforcement would be taking pictures of a sign for 89 days and sending a violation letter on the 91st day. He noted that more and more regulation meant increased government, increasing codes, and increased staff work. He stated that this was all based on a spat between a church and city.

Mayor Kelley stated that he had to look at the codes of every city in Volusia County. He noted that in South Daytona, signs could not go up until 30 days before the election. He stated that signs would be taken down if they were up before then. He noted that Daytona Beach changed their political sign regulations by eliminating the need for a deposit and providing a few specific instructions. He stated that the City of Daytona Beach Shores required a \$250 deposit and limited the size.

Mr. Hayes stated that some of the takeaways from the meeting were that the sign code as a whole was not in bad shape but that there were some areas where some minor tweaks could be made. He noted that those areas could be highlighted and brought back to the Commission for more direction. He noted that they were primarily looking at temporary signage. He stated that ultimately it boiled down to where the Commission wanted to be on the sign code risk continuum.

Commissioner Partington stated that he wanted to be in a place that best protected the aesthetics of the community. He noted that, as Mayor Kelley frequently stated, Ormond Beach was a community of choice. He stated that residents chose to live in the city based on how it looked and the amenities that the city provided. He stated that the purpose of the city's sign code was to protect how the city looked, which he felt was different than in other cities. He stated that they had to balance that desire as well as protect the city and taxpayer dollars from being opened up to suit. He noted that he would prefer to be reasonably placed somewhere in the middle and the will-not-get-sued side and still allow economic opportunities to happen.

Mr. Hayes stated that he believed that he had enough information.

Mr. Nave stated that he had a conceptual informational question. He noted that he would be happy to ask it after the workshop or could ask it then if there was interest.

Mayor Kelley asked if he could do so after, noting that the City Commission meeting was to start in about ten minutes.

IV. ADJOURNMENT

The meeting was adjourned at 6:48 p.m.

Transcribed by: Colby Cilento