

**ORMOND BEACH CITY COMMISSION MEETING  
HELD AT CITY HALL COMMISSION CHAMBERS**

**February 3, 2009**

**7:00 p.m.**

Present were: Mayor Fred Costello, Lori Gillooly, Troy Kent, Ed Kelley, and Bill Partington, City Manager Joyce Shanahan, Assistant City Manager Ted MacLeod, City Attorney Randal Hayes, and City Clerk Veronica Patterson.

***A G E N D A***

- 1) Meeting call to order by Mayor Costello.
- 2) Invocation by Reverend Virginia Barnes, Grace Lutheran Church.
- 3) Pledge of Allegiance.
- 4) ***AUDIENCE REMARKS:***
- 5) ***APPROVAL OF THE MINUTES*** of the January 20, 2009, meeting.
- 6) ***INTERGOVERNMENTAL REPORTS:***
  - A) Metropolitan Planning Organization
  - B) Volusia Council of Governments
  - C) Water Authority of Volusia
- 7) ***FIRST READING OF ORDINANCE*** No. 2009-02 amending the Future Land Use element of the comprehensive Plan by amending the Future Land Use Map to change the designation of one (1) parcel of real property totaling 4.51 acres located at 1360, 1362, 1364, 1366, 1368 and 1370 North US1 from Volusia County "Commercial" to Ormond Beach "General commercial."

- 8) **RESOLUTION** No. 2009-10 accepting a proposal from Barnes Ferland & Associates, Inc., to provide engineering services regarding the preparation of a consumptive use permit five-year compliance report; authorizing the execution of a Work Authorization thereto. (Not to exceed \$40,377.54)
- 9) **DISCUSSION ITEMS:**
  - A) Granada Boulevard resurfacing project.
  - B) Update on the River Bend golf course lease.
  - C) Fire Department personnel and pension issues.
  - D) Donation to Volusia County Schools.
  - E) Date for an upcoming Focus meeting.
- 10) **REPORTS, SUGGESTIONS, REQUESTS:** Mayor, City Commission, City Manager, City Attorney.
- 11) **CLOSE THE MEETING.**

Item #1 - Meeting Call to Order

Mayor Costello called the meeting to order at 7:02 p.m.

Item #2 – Invocation

The invocation was given by Commissioner Ed Kelley.

Item #3 - Pledge of Allegiance

Mayor Costello led the Pledge of Allegiance.

Item #4 – Audience Remarks

Anticipating citizens' concerns regarding the Fire Department issues, Mayor Costello read a post card sent out by the Fire Department that stated, "Reduction in emergency vehicles and personnel; ladder #93 responded to 832 calls in 2008." The Mayor explained that of the 832 calls, 44 were fire related and 788 were non-fire related calls. Mayor Costello read an email written by Acting Fire Chief Skip Irby that explained the recent events relative to the ISO (Insurance Service Office) rating that precipitated the implementation of the Quint Concept, which required replacement of ladder truck #93 with a pumper engine equipped with an aerial device on top and the redistribution of two personnel, avoiding any lay offs of personnel.

Jim Schultz, 117 Harvard Drive, spoke about the government reporting of lead levels in the water in Washington, D.C.

Lanny Harris, 44 Aaron Circle, stated that he felt the City should continue to provide the same levels of fire services as in the past. He explained in his job with a natural gas company he had several incidents with natural gas leaks when these firefighters responded quickly and were willing to help.

Tommy Bozeman, 1319 North Beach Street, stated he was proud to have been an Ormond Beach firefighter for five and one half years as well as a resident of the City. He expressed his commitment to being the best Emergency Medical Technician and firefighter that he could possibly be. Mr. Bozeman stated that on December 12, 2008, one fifth (one of five) of the City's first response emergency vehicles were removed from service, causing an immediate negative impact to the City's fire services. He stated that citizens should be able to decide regarding any reduction in fire equipment or personnel. He asked for the return of the ladder truck 93.

Jim Shaw, President of IAFF, discussed the expenses involved in changing to the Quint concept, the reduction in personnel, and the possible effects on fire services.

Janice Jacks, 960 Northbrook Drive, stated she has been a resident of the City for eight years and opposed the budget cuts to the fire department personnel and equipment. She said, although the economy was affecting every city, emergency public services was not the area in which cuts should be considered.

Lucille Bornman, 6 Windsor Drive, stated the City could do without a lot of things but not fire and police services. She discussed several incidents when she needed the services of a fire department where a quick response was so important. She stated she was very concerned about any possible cuts to fire or police services.

Greg Avakian, 161 Heritage Circle, commented on the FP&L bill he received. He expressed surprise when he learned because he had reduced his electrical demand last summer, when he resumed normal usage, it was considered a spike in usage, and was subject to an unusually high billing rate. He stated he was penalized for conserving energy.

Mayor Costello asked City Manager Joyce Shanahan to contact Bob Coleman with FP&L for an update on their billing practices.

Lee Dunkel, 94 Ormond Parkway, spoke regarding the issue of the tree plantings on Ormond Parkway. She related she spoke with her neighbors to find out how they felt. She stated many of the people she spoke with agreed the trees would be a great idea and hoped the project would be implemented. She suggested the hotel at the end of Ormond Parkway, which was slated for demolition in June or July, be fumigated before it was demolished because, after sitting empty for five years, it had to be infested with rats and termites that would spread into the surrounding neighborhood.

Mayor Costello asked the City Manager to investigate Ms. Dunkel's idea and to get an update on the dates she mentioned. He expressed concern that the Commission was not made aware of the demolition timetable.

#### Item #5 – Approval of the Minutes

Mayor Costello advised the minutes of the January 20, 2009, regular meeting had been sent to the Commission for review and, with no corrections, additions, or omissions, the minutes would stand approved as printed.

#### Item #6(A) – Metropolitan Planning Organization

Mayor Costello stated the stimulus package was the topic of discussion, but the Metropolitan Planning Organization (MPO) was not optimistic that any transportation funds would be available for Volusia County.

The Mayor reported the improvements to the Daytona Beach portion of Clyde Morris Boulevard were approved without any impact on the City's contribution to the City's portion of the project. He stated the project consisted of six traffic lanes and bike trails.

Mayor Costello stated Granada Boulevard, west of Interstate 95 was slated to be fourteen lanes in the distant future, which emphasized the need to extend Hand Avenue over Interstate 95.

#### Item #6(B) – Volusia Council of Governments

Mayor Costello reported discussions were held regarding regionalization of emergency medical and fire services, but no decisions were made. He stated that Matthew Falconer, who had done a study in Orange County, brought his information, and Lt. Lynn Taft from the Daytona Beach Fire Department spoke regarding the right of Daytona Beach to transport.

#### Item #6(C) – Water Authority of Volusia

Commissioner Kelley reported that applications had been received for all seventy rebates for energy efficient washing machine purchases. He stated since not many citizens were interested in the rain barrel project, the Water Authority of Volusia (WAV) was to determine if, possibly, monies from the rain barrel project could be used to extend the washing machine program. Commissioner Kelley stated that WAV continued to look for new projects to conserve water.

#### Item #7 – Rezoning of 1360, 1362, 1364, 1366, 1368 and 1370 North US1

##### ORDINANCE NO. 2009-02

AN ORDINANCE AMENDING THE FUTURE LAND USE ELEMENT OF THE COMPREHENSIVE PLAN BY AMENDING THE FUTURE LAND USE MAP TO CHANGE THE DESIGNATION OF ONE (1) PARCEL OF REAL PROPERTY TOTALING 4.51-ACRES LOCATED AT 1360, 1362, 1364, 1366, 1368, AND 1370 NORTH US1, FROM VOLUSIA COUNTY "COMMERCIAL" TO ORMOND BEACH "GENERAL COMMERCIAL" REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; AND SETTING FORTH AN EFFECTIVE DATE.

Mayor Costello reported the Planning Board approved the ordinance by unanimous vote, and it was accepted by the Volusia Growth Management Commission.

**Commissioner Kelley moved, seconded by Commissioner Partington, for approval of Ordinance No. 2009-02 on first reading, as read by title only.**

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

Item #8 – Engineering Services – Five Year CUP Compliance Report

RESOLUTION NO. 2009-10

A RESOLUTION ACCEPTING A PROPOSAL FROM BARNES FERLAND & ASSOCIATES, INC., TO PROVIDE ENGINEERING SERVICES REGARDING THE PREPARATION OF A CONSUMPTIVE USE PERMIT FIVE-YEAR COMPLIANCE REPORT; AUTHORIZING THE EXECUTION OF A WORK AUTHORIZATION THERETO; AND SETTING FORTH AN EFFECTIVE DATE.

**Commissioner Kelley moved, seconded by Commissioner Gillooly, for approval of Resolution 2009-10, as read by title only.**

Commissioner Kelley commented that this was another fee grab from St. Johns River Water Management District and could have been avoided if all the municipalities in Volusia County had supported the Water Authority of Volusia in the manner it was intended to operate. He expressed the well monitoring process where the City was required to pay to have the same well monitored three times was another example of government bureaucracy.

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

Item #9(A) – Granada Boulevard Resurfacing Project

Planning Director Ric Goss stated the meeting with Florida Department of Transportation (FDOT) went very well, and there was a good turnout of fifteen people for the meeting and walk of Granada Boulevard. He reported FDOT seemed to be receptive to the possibility of rerouting the bike lanes onto the lower classification streets. He recommended the City wait to hear from FDOT before taking any action.

Commissioner Kelley stated he felt there would be some compromise, and while the City would not get everything as far as the medians; if FDOT would do the bike lanes, that would make the project worthwhile. He suggested the appropriate action was to wait on the action for the time being.

Mayor Costello thanked Ric Goss for a job well done. The Mayor commented if the FDOT Secretary for the district came to the walk of the City's downtown, it showed FDOT was trying to accommodate the City's needs.

Items #9(B) – Update on the River Bend Golf Course Lease

City Attorney Randy Hayes reported that Mr. Hal Layman's attorney sent a letter dated December 29, 2008, to give the City formal notice that Mr. Layman would cease operations of the golf course as of the end of April. He stated Mr. Layman felt he has not have a valid lease with the City since 2005 as a result of a restated agreement not being entered into within sixty days of the execution of the Third Amendment to the Ground Lease. The City Attorney stated he and Ted MacLeod met with Mr. Layman and his attorney, Doyle Tumbleson, to discuss Mr. Layman's concerns relative to the golf course at which time the City Attorney told Mr. Layman and Mr. Tumbleson the City's position was that there was a valid and binding agreement. The City Attorney reported that he met with the City's insurance agent to address the liability questions of Mr. Layman. He asked for direction from the Commission as to how he should proceed. The City Attorney suggested Mr. Layman be put on formal notice that he was in breach of the contract, rent was past for December 2008 and January 2009, and his letter was a repudiation of his contractual obligation under the contract. The City Attorney explained there were legal remedies which should be preserved, but there were other options such as continuing to work with

Mr. Layman to restructure the lease to shift some of the responsibilities to the City and the taxpayers, to bring in someone to manage the operations, or issue a Request For Proposal. He suggested putting Mr. Layman on notice while staff continued to explore options for the Commission to consider.

Mayor Costello summarized that the City Attorney would write a letter to put Mr. Layman on notice, requesting Mr. Layman pay the past due rent and to let the City know his intentions, which would allow the City to arrange for someone to manage the golf course operations should Mr. Layman express his intention to cease operation of the golf course as of the end of April, thereby allowing the courts to determine the outcome. The Mayor expressed he would like to see Mr. Layman continue operating the golf course, but the City was not in the position to make some of the concessions Mr. Layman desired.

The City Attorney stated he would continue to work with Mr. Layman while he put together as many options as possible. He stated he expected to hear from Mr. Layman within two weeks as to whether he intended to stay beyond the end of April.

Commissioner Gillooly stated the rent was two months behind already and asked what would happen if Mr. Layman does not respond to the letter.

The City Attorney stated the situation was an anticipatory breach of contract, which gave the City the right to declare the breach and institute immediate legal action, if the Commission desired. He said the City could evict Mr. Layman and file a lawsuit against him for breach of contract. He stated staff was not advocating that position but proposed to demand written assurance, within a specific time period, from Mr. Layman that he would pay past due rent and would continue operating after the April 30 date.

Commissioner Gillooly agreed with the proposal but was concerned that when Mr. Layman came before the Commission, he was very firm about what he wanted. She stated she had been getting letters from people who were concerned the City was “shutting down” the golf course. Commissioner Gillooly explained she was concerned about the misinformation in the community that the Mayor was acting to close the golf course to provide more land for the airport. She wanted assurance Mr. Layman would work as a partner with the City, and she requested information to support whether it would serve the City to be a partner in the golf course. She asked the letter to Mr. Layman be as firm as his requirements were to the City.

Commissioner Kent stated he was the one who suggested additional hangars at the airport as a source of additional revenue. but he did not want to eliminate the golf course. He stated he had received letters and calls based on misinformation. He explained that when he shared Mr. Layman’s requests with these individuals, he discovered they had not heard Mr. Layman’s requests. He stated after hearing the list of requests from Mr. Layman would be at the taxpayers’ expense, these individuals changed their view of the issue.

Commissioner Kelley stated he received a call from an individual, who until a few years ago, owned and managed golf courses. He related the individual offered his services to the City, including a free evaluation of the golf course operations, if the City would provide him with the numbers. Commissioner Kelley remarked that information provided by the starter showed about 40,000 rounds of golf last year. He said the individual he spoke with expressed that between 30,000 and 35,000 rounds of golf should be profitable for a golf course. Commissioner Kelley expressed his preference was for Mr. Layman to continue with the lease or for someone else to manage the operation because the City did not need to get into the golf course business. Commissioner Kelley stated that Mr. Layman had called him after getting some additional information, and Mr. Layman said he would probably stay, which was Commissioner Kelley’s first choice.

#### Item #9(C) – Fire Department Personnel and Pension Issues

Mayor Costello stated there were several options before the Commission, including Option 3 to delay the early retirement, foregoing approximately \$10,000 in immediate saving, until the results of the ISO (Insurance Service Office) report were known. Mayor Costello asked the Commission what their opinions were.

Commissioner Kelley expressed that former Chief Baker had 41 years of fire experience, was the Florida Fire Chief of the Year in 2007, was a resident of the City, and recommended the Quint Concept; therefore, he questioned that Chief Baker would jeopardize himself and his family with a poor recommendation. Commissioner Kelley stated, felt the Quint Concept was an enhanced vehicle to serve the residents, and there was no need for supervisors to supervisor themselves. He stated it was incumbent upon the Commission to put the reclassifications into effect, and he questioned what difference the ISO rating would make on the decision. He remarked that Chief Baker was always straight forward with the Commission; therefore, the Commission should follow Chief Baker’s recommendations.

Commissioner Partington stated he was relying on the same reasoning he expressed at the last meeting and continued to support Option 3.

Commissioner Gillooly stated Chief Baker's recommendation to wait for the ISO rating was based on a lot of research and experience, as well as being supported by Acting Chief Irby. She stated she wanted to wait for the ISO report to assure there were no changes in the rating. Commissioner Gillooly explained to the firefighters that the City had to make cuts throughout the City, but no one wanted to cut services; and Chief Baker maintained that service would not be cut due to this plan. She reminded the firefighters that no positions would be lost; some demotions, but no eliminations. She expressed concern about the scare tactics used by the firefighters' union to misinform the community to promote a particular point of view. She stated she was ready to move forward with the demotions.

Commissioner Kent stated he, along with staff and Commissioner Partington, was in favor of Option 3.

Mayor Costello explained the reason he was in favor of Option 3 was not just to wait for the written ISO rating, but because he heard from someone who was not an official of the firefighters' union that the union intended to blame the Commission if there were no early retirements, which would possibly avoid the necessity of the demotions. The Mayor stated the Commission would not approve going from a 3.37 multiplier to a 4.0 multiplier for early retirements that the union was requesting. Mayor Costello stated he felt the same options for early retirements should be offered to firefighters that were offered to other employees because early retirements, hopefully, would open some positions in the fire department, negating the necessity for demotions. He said the Commission needed, supported and appreciated the firefighters; but if there were no early retirements that created open positions in the higher ranks, the Commission was not forcing the demotions; rather there simply was no room at the higher rank.

Greg Avakian, 161 Heritage Circle, stated he felt the postcard was disappointing and would scare citizens. He expressed trust for Chief Baker's recommendation because he would not do anything to harm his reputation or the City. He stated the firefighters were compensated very well, and he felt services would not be harmed.

Phil Maroney, 117 Atwood Lane, stated the postcard and the Hometown News article about Chief Baker brought him to meeting. He expressed that Chief Baker was probably the best qualified and the least likely to be bias; therefore, he believed Chief Baker's recommendation was appropriate because the Quint Concept would improve the fire insurance rating without reducing the number of personnel. He stated the firefighters' contract contemplated the possibility of layoffs, reorganization and changes by giving specific guidelines as to how to handle demotions so the proposed action was not a surprise but part of an agreement. He stated that to maintain the impacted personnel at the same salary when the model showed it was not necessary to maintain personnel at that rank was inefficient and not in the best interest of the taxpayers. He agreed with the position of Commissioner Kelley and Commissioner Gillooly which was not to wait for the report but to institute action now to start saving money for the taxpayers because personnel could be reinstated and paid back pay if the report was different than expected. Mr. Maroney commented the scare tactics used by the union would hurt their credibility. He stated, although it was important to keep the people the City had, if three people saw a salary reduction, it was unfortunate, but there were no guarantees in business or life. He stated if new equipment could be used that cut down on personnel needs with increased efficiency, it would be a win-win savings for the taxpayers.

Commissioner Kelley asked why the early retirement was tied to Option 3 only. He said he supported early retirement from the first time the concept was presented. He remarked that if early retirement was put into effect, it would save the City over \$750,000 and would be in lieu of layoffs and provide potential promotions. He questioned why early retirement could not be discussed separately. He explained there was nothing in the ISO report that would effect the classification of personnel.

Mayor Costello clarified that he supported delaying action to give the union time to offer options for the Commission to consider. He expressed he would be willing to offer the same early retirement package to the firefighters that was offered to the rest of the employees, but he was willing to consider options presented by the firefighters' union.

Commissioner Gillooly stated the demotions should be instituted due to the cost savings, and discussion of an early retirement option could be presented at a later time.

Mayor Costello summarized that three Commission members wanted to delay the demotions and still come back with some early retirement options. He stated one service option was rather than have four personnel at the station, put two at the station and two in the field to provide an increased level of service. He commented to the Acting Fire Chief that the Commission needed to look at all service options.

Item #9(D) – Donation to Volusia County Schools.

Commissioner Gillooly expressed her appreciation of Mayor Costello's spirit and the idea of the donation but had several concerns that by doing this, it would negatively impact other issues, such as the firefighters and the youth programs. She stated the taxpayers were concerned about how every tax dollar was being spent and felt the City already did enough; therefore, she could not agree with the donation at this time.

Mayor Costello noted that there seemed to be no support for the idea.

Item #9(E) – Date for Upcoming Focus Meeting

City Manager Joyce Shanahan suggested a Focus meeting to be held within the next four to five weeks, preferably on a week that had no regular Commission meeting scheduled.

Following discussion by the Commission as to everyone's availability, Mayor Costello confirmed Tuesday, March 10, 2009, at 5:30 p.m. to be the date of the Focus meeting.

Item #10 – Reports, Suggestions and Request

Commissioner Kent

Commissioner Kent welcomed Joyce Shanahan to the City and thanked Ted MacLeod for what he did in the absence of a City Manager.

Commissioner Kent stated that he received a letter from the Neighborhood Improvement Advisory Board asking the Commission to reconsider the tree planting on Ormond Parkway and Arlington. He reported that he had held a meeting at his home with residents of the neighborhood where the consensus favored sabal palms trees on both sides of the four streets impacted. He stated that staff determined that Magnolia Drive and Valencia Drive could not handle the trees because of the lack of public right-of-way, and Ormond Parkway and Arlington Way could only handle the trees on one side of the street. He related staff's recommendation that Magnolia Drive and Valencia Drive needed to have some beautification such as pavers. He remarked that he had heard mixed requests from the residents, so he did not think that any plan would satisfy all the residents. Commissioner Kent read into the public record, questions he received from Bonnie Johnson and his responses:

*Question: "Do the property owners have to take care of the right-of-way property?"*

*Answer: "Well, you don't have to take care of it but I mow my little strip of grass because I want it to look good. It's sort of like, Bonnie, if I gave you a car, are you going to tell me, who's going to pay for the gas and who's going to give you the insurance for it."*

*Question: "Who's going to take care of these trees, the pruning, etc.?"*

*Answer: "Well, at the Neighborhood Improvement Advisory Board, they said, the residents are welcome to prune the trees. I told her I would prune them if they were in front of my home; but if you don't want to prune them, you don't have to. Mother Nature has a way of doing that."*

*Question: "Who is responsible if a tree falls on a car or person?"*

*Answer: "This one really baffled me because my response was, and I'm not being a smart aleck, my response was, I have yet to hear of a story where a tree just unilaterally falls down on somebody. It's usually in the middle of a hurricane or tropical storm; and if you are dense enough to stand next to the tree during that storm, I'm sorry."*

*Question: "What if a child or pet is hit because they run out from behind the trees?"*

*Answer: "Well what if my kid falls down the stairs? What if I stub my toe walking out of here? What if? What if? I can what if you all night long."*

*Question: "Code is every fifty feet. Why do they want to put them every twenty feet?"*

Commissioner Kent stated that he just wanted to put this information in the public record. He read a letter he received in response to a letter he delivered to the neighborhood residents:

*"Reply to information letter of 12-22-08 delivered (sic) to only certain or few home owners. First let us look at the facts and have some concern for the missing truth on (the) issue. A neighbor is one who is friendly and helpful to the rest of the neighbors. Explain the supposedly improvements and requests opinions at (as) to the issue. With the use of Federal Dollars, everyone should be treated fairly. As it is very clear that the program is not understood by the commission and staff, an education program is needed. Property Owners, not tenants, have no say in the matter. No voice on the advisory board, with no member from the area. Delays & not meeting program requirements.s (sic) Delays have restricted the use of the funds. Coffee catch with out of the area people, is no way to make decisions. Reviewing all minutes of the advisory board is interesting. Other proposal received little attention. Generally the whole program has been a mess since the early 90's/ (sic) Cancelling of meetings is not in the best interest of the people. What is a hard working person? One who really spends the time with the people and works with all of them. A major change is being made to the street and area that most would not agree to. How can anyone justify safety with this issue. On the other hand the opposite is the true*

*condition. What was done to survey the area in including the number of trees already on the streets. As the state highway is working on the A1A with a master plan, has this plan been considered? What effect will this plan have on the Hospital Property/ (sic) if improvements are made, go east and look at the mess at 251 A1A. Bottom line is that if improvements can not be made with the consent of the neighborhood, why make any??????Sent \$ back to feds.....1-4-09 Director Volusia County Community Assistance Director Deland, Florida.....*

Commissioner Kent read his December 22, 2008 letter into the record: *“Dear Neighbor, I wanted to take a moment and write a letter explaining the streetscape improvements that are planned for your street using Community Development Block Grant funds (CDBG). CDBG funds are given to the City from the federal government through the County of Volusia, based upon census data that calculates everyone’s household income and is completed every ten years. Then a priority area is mapped out and the money is dispersed to the City. I feel strongly that the money we receive from the federal government should stay within the priority district that earned the needed funds. Like it or not, our neighborhood is considered “in need” by the federal government. We are one of the oldest neighborhoods in Ormond Beach and in my opinion, “One of the Best!” The money we receive can be used on a variety of issues, all of which enhance our lives. The \$50,000.00 that is being used for our streetscape was a carry over from a couple of years ago and, unfortunately, can **only** be used for safety or beautification enhancements. With that in mind, I held a meeting concerning this very issue at my house during one of my monthly “Coffee with Commissioner Kent” meetings. We discussed the issue and the majority consensus was to use the money to streetscape Ormond Parkway, Valencia Drive, Magnolia Drive and Arlington Street, with sabal palms on both sides of our streets. Unfortunately, we don’t have enough right-of-way on Magnolia and Valencia to plant the palm trees. The issue then went to the Neighborhood Improvement Advisory Board (NIAB), where the board members recommended the palms only be planned on Ormond Parkway and Arlington Street, and only on one side of the street due to the placement of the sidewalk and the limited right-of-way. They also recommend that Valencia and Magnolia not be left out of any type of streetscape because those streets are also part of the priority CDBG area. A board member recommended that those streets get decorative pavers at the ends of their street and, eventually, at the intersection of Orlen Way. The NIAB then voted unanimously to send their recommendations to the City Commission. This issue has been before the City Commission and the Commission decided to take the NIAB’s recommendation and spend the money on streetscape improvements. As your Commissioner, I have worked hard to keep our neighborhood a healthy and vibrant place to live and raise a family. If you have any questions concerning this project, please feel free to contact me, my home telephone number is listed above. I also want to remind you that I hold a monthly meeting open to the public at my home, 130 Magnolia Drive. The meetings take place on the first Monday of every month and start at 4:30 p.m. You are invited to join us at any of the meetings. Happy Holidays and Happy New Year. Sincerely, Troy Kent”*

Commissioner Kent stated that he read this for the record because he received one phone call from one part-time resident who had been receiving misinformation but after reading his letter said, “That changes everything. That makes a ton of sense.”

Commissioner Kent expressed he felt the tree planting was the right thing to do and that there was no one solution that would please everyone.

Mayor Costello suggested Commissioner Kent’s letter and the summary of events be sent to the Volusia County Council.

Commissioner Kent stated the idea of fumigation of the Surfside Motel before it was demolished was a great idea, and he was wholeheartedly in favor of that.

#### Commissioner Kelley

Commissioner Kelley stated the word “transparency” had been used a lot lately. He said that it was suggested to him that the City’s salaries should be posted on the website. He related that he emailed the City Attorney about the idea to determine if any law precluded the posting of the salaries on the website. He stated he had requested a compilation of the salary of Volusia County employees. He suggested the Commission could consider the idea at the Focus meeting.

Commissioner Kelley stated he, as well as, City Manager Joyce Shanahan and Assistant City Manager Ted MacLeod, attended a meeting with Representative Suzanne Kosmos. He explained that it was going to be difficult to receive any of the stimulus money due to the restrictions of the federal government design to which our roads will not comply.



Commissioner Partington

Commissioner Partington welcomed Joyce Shanahan and expressed excitement about her joining the City. He stated he had the names of a cross segment of people for her to meet with to learn about the City.

Commissioner Partington spoke about a letter from Ike Leary who leased the Granada Pier Bait and Tackle Shop and asked if the City could do anything to work with the lessees of the City who find themselves in a difficult financial situation due to the current economy. He stated any consideration the City made for one would have to be the same for all. He requested if something reasonable could be done, he would like to find a way to work with Mr. Leary, possibly an abatement of lease payments with repayment after an economic recovery was achieved.

Commissioner Partington offered condolences to the family of Mr. Bostrum and would like to find some way to honor his memory due to the huge contributions he made to the City over his lifetime.

Commissioner Gillooly

Commissioner Gillooly welcomed Joyce Shanahan and stated she looked forward to working with her.

Commissioner Gillooly stated she had not seen the letter on the bait shop Commissioner Partington mentioned. She stated she had received a staff email regarding the chronic delinquency of lease payments for the bait shop and would like to see a copy of the letter.

Commissioner Gillooly stated that the Community Block Development Grant money should be used for the needs of the community, and she felt Commissioner Kent did an excellent job explaining the issue.

Commissioner Gillooly spoke about a VCARD meeting she attended where Patrick Slevin, spoke about "NIMBYism." She explained there was a changing value system, and participation from the community was how you made projects happen in a way that makes everyone feel it was a good service for the community. Commissioner Gillooly stated the City was on the right track with meetings of residents and the developer to outline the problems and the solutions in an attempt to resolve issues in an informal setting.

Commissioner Gillooly commended the Development Review Board (DRB), the Planning Director Ric Goss and his staff for their part in a neighborhood meeting regarding a special exception application for a bed and breakfast on Beach Street. She stated that staff handled the situation perfectly at a meeting to address the concerns of the neighbors who requested the applicant not attend. Commissioner Gillooly explained the neighbors were concerned the neighborhood would become a commercial district with the inclusion of a bed and breakfast. She stated the perception by the neighbors was if the owner of the bed and breakfast resided in the dwelling it was not a commercial enterprise. She reported that after the neighbors went to the DRB and explained their concerns, the Board determined they would not recommend the special exception; and the applicant has withdrawn the application.

Commissioner Gillooly reminded the Commission that had been the last meeting of the DRB due to the consolidation of the DRB with the Planning Board; and she thanked Phil Maroney and the entire board for all their hard work.

Commissioner Gillooly asked City Attorney Randy Hayes for an update on the pension issue for Chief Baker.

The City Attorney stated the issue was one of membership and who had the authority to determine membership. He explained the Firefighters' Pension Board was vested with that authority under the pension code, as well as Chapter 175, Florida Statutes, and was basically an autonomous board with the sole and exclusive authority to administer the plan and to determine who became a member of the plan. He said at the time of his employment, former Chief Baker was enrolled in the general employees' plan due to his lack of certification; after his certification, he should have been converted to the firefighters' pension, which was still an administrative issue under the jurisdiction of the Firefighters' Pension Board. The City Attorney explained this case was odd because of the expanse of time that occurred after certification until the time the request was made to convert Chief Baker to the firefighters' plan. He stated the fundamental issue was who had the authority to determine which plan the employee joined; it was not an issue where the Commission had any jurisdiction. The Firefighters' Pension Board decided to accept Mr. Miller's letter; therefore, Chief Baker was officially in the Firefighters' Pension Plan. He stated the City would have to make an \$86,000 contribution, which was the amount the City would have contributed had Chief Baker been in the firefighters' plan following his certification. The City Attorney explained that if the Commission decided not to approve the conversion, Chief Baker might have a legal action against the City to compel the funding.

Commissioner Kelley stated he thought the Pension Board decision was made upon the statement that the issue was cost neutral.

Finance Director Kelly McGuire explained the issue was revenue neutral to the pension board, not cost neutral to the City.

Commissioner Gillooly asked if the funding request came to the Commission, if the Commission could negotiate the issue of responsibility for the funding.

The City Attorney stated the Commission could decide to fund it or not; but it would be an issue of equity principles such as laches, estoppels or statute of limitations, which would not be a position of good standing for the City.

Mayor Costello asked if the contributions for Chief Baker were being transferred from the General Employees' Pension Plan to the Firefighters' Pension Plan; and if so, there was an additional \$86,000 to be paid by the City. He questioned if the pension board knew that.

The Finance Director stated she pointed out the additional contribution for the City to the Board several times, and they were aware of the additional \$86,000 the City would be required to contribute.

Mayor Costello asked that a memo be sent to the pension board to insure their decision was based on the fact that while knowing it was cost neutral for the board, it was not cost neutral for the City, which had to pay an additional \$86,000.

The City Attorney stated the Commission could be provided a copy of the minutes from the meeting but felt the pension board's decision was not based on whether it was "cost neutral" or not. He stated that it was based on the circumstances of whether Chief Baker was in the appropriate plan.

Commissioner Gillooly asked if the pension board would have decided differently if they were aware of the additional contribution required of the City.

The City Attorney stated the issue of an additional contribution would not have mattered in the pension board's vote, and the evidence showed that the certification was required for him to keep his job. He reported the pension board concluded that Mr. Miller required Chief Baker to be certified; therefore, he should have been converted to the Firefighters' Pension Plan.

The Finance Director stated the pension board knew there was an additional \$86,000 the City would have to contribute. She explained when the pension board was discussing "cost neutral." it was cost neutral to the plan. Ms. McGuire stated if the Commission was going to have an issue about the funding of the \$86,000, the Commission needed to make it known now, because while the City would be required to make the contribution, it was in the next fiscal year as part of the general required contribution.

The City Attorney stated that Chief Baker could legally force the City to make the contribution because Chief Baker had been accepted into the Firefighters' Pension Plan, so if the City refused to make the contribution, Chief Baker could file a Writ of Mandamus to compel the City to fund the plan.

#### City Manager Joyce Shanahan

The City Manager stated she was delighted to be with the City. She thanked Ted MacLeod for the wonderful job he did. Ms. Shanahan remarked that Ted was well respected by his peers, department directors and the community.

#### Assistant City Manager Ted MacLeod

Mr. MacLeod reported that Buzz McKim, the Historian for the NASCAR Hall of Fame that would be opening in Charlotte, North Carolina, in April, requested the loan of some of the racing artifacts at the Casements for display at the opening of the NASCAR Hall of Fame. He explained, in order to display the artifacts, they would need to build a display cabinet that would properly display the artifacts; therefore, they needed approval of a loan agreement before authorizing the building of the cabinet. He stated the Leisure Services Department and the Historic Trust were in favor of the loan. Mr. MacLeod stated he needed authorization for the Mayor to sign the loan agreement, which would require a waiver of the Thompson Rule and approval for the Mayor to sign the agreement. Mr. MacLeod reported the City Attorney had reviewed the indemnification clause and had no objection.

**Commissioner Kelley moved, and Commissioner Partington seconded, to waive the Thompson Rule.**

Mayor Costello asked for a voice vote of all in favor of a waiver of the Thompson Rule which resulted in a unanimous vote.

**Commissioner Kelley moved, and Commissioner Gillooly seconded, to take the action, as directed by Assistant City Manager Ted MacLeod, in loaning the artifacts with the conditions he explained, and authorizing the execution of the loan agreement.**

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

Mr. MacLeod thanked the Commission for all the support shown to him in the brief time he lead them. He stated he did enjoy it and hoped he never had to do it again.

Mayor Costello

Mayor Costello stated he would like to change procedure to allow public discussion, with the same three minute time limit, when an item was being discussed by the Commission. He suggested the Commission discuss the issue at the Focus meeting.

Mayor Costello reported he and Ric Goss attended a meeting about water issues with a group considering annexation. The Mayor stated the City needed a policy directing how potential annexation areas could upgrade their infrastructure to meet compliance and avoid a large expense to the property owners at the time of annexation.

Mayor Costello suggested the Commission consider establishing a “Founders’ Day” as a way to recognize citizens.

Mayor Costello reported that at the Legislative Conference on Intergovernmental Relations, it was pointed out that Florida was well behind on per capita funds projected to be received from the stimulus package. He stated the City needed to do a better job in getting grant funds.

Item #11 - Close The Meeting.

The meeting was adjourned at 9:35 p.m.

APPROVED: February 17, 2009

BY: Fred Costello, Mayor

ATTEST:

Veronica Patterson, City Clerk