

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

December 2, 2008

7:00 p.m.

Present were: Mayor Fred Costello, Lori Gillooly, Troy Kent, Ed Kelley, and Bill Partington, Acting 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 Rabbi Barry Altman, Temple Beth El.
- 3) Pledge of Allegiance.
- 4) ***AUDIENCE REMARKS:***
- 5) ***APPROVAL OF THE MINUTES*** of the November 18, 2008, meeting.
- 6) ***INTERGOVERNMENTAL REPORTS:***
 - B) Metropolitan Planning Organization
 - C) Volusia Council of Governments
 - D) Water Authority of Volusia

- 7) **CONSENT AGENDA:** The action proposed is stated for each item on the Consent Agenda. Unless a City Commissioner removes an item from the Consent Agenda, no discussion on individual items will occur and a single motion will approve all items.
- A) Resolution No. 2008-222 authorizing the execution of an easement in favor of Florida Power & Light Company, granting a 220' long by 5' wide easement between the existing power pole to the newly installed transformer at the reuse pumping and storage facility on North Orchard Street.
 - B) Resolution No. 2008-223 authorizing the execution of a Memorandum of Understanding for Establishing an Emergency Point of Distribution between the City and Wal-Mart Corporation.
 - C) Resolution No. 2008-224 authorizing a cost-of-living increase in the rate paid by the City to Flair Air Conditioning and Heating for heating and air conditioning services. (\$1,500 annually)
 - D) Resolution No. 2008-225 authorizing an increase in the rate paid by the City to Shelley's Environmental Systems for treatment and removal of wastewater services. (\$39.75 per ton)
 - E) Resolution No. 2008-226 accepting a proposal from Zev Cohen & Associates, Inc., to provide engineering services regarding the Hand Avenue Collector Road Upgrade project; authorizing the execution of a Work Authorization thereto. (\$163,000)
 - F) Resolution No. 2008-227 pursuant to Section 14-98, Liens, of the City of Ormond Beach Code of Ordinances, authorizing the imposition of a lien against the real property owned by Charles M. Kidd and Diana P. Kidd and located at 1405 North Beach Street, Ormond Beach, Volusia County, Florida (Parcel ID No. 3242-21-01-0770) for costs incurred by the City to terminate or abate a site maintenance violation. (\$80.00)
 - G) Resolution No. 2008-228 pursuant to Section 14-98, Liens, of the City of Ormond Beach Code of Ordinances, authorizing the imposition of a lien against the real property owned by Michael R. Bretzel and located at 37 Standish Drive, Ormond Beach, Volusia County, Florida (Parcel ID No. 4210-12-00-0070) for costs incurred by the City to terminate or abate a site maintenance violation. (\$225.00)
 - H) Conversion of pension plans.

DISPOSITION: Approve as recommended in City Manager
Memorandum dated November 26, 2008

- 8) **RESOLUTION:**
- A) Resolution No. 2008-229 reducing and satisfying a code enforcement lien on property located at 190-192 South Washington Street.
 - B) Resolution No. 2008-230 authorizing the execution of an employment agreement between the City and Joyce Shanahan.
- 9) **DISCUSSION ITEMS:**
- A) Purchasing policies and internal control measures.
 - B) Auction of property at Granada and South Ridgewood.
- 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 7:00 p.m.

Item #2 – Invocation

The invocation was given by Rabbi Barry Altman, Temple Beth El.

Item #3 - Pledge of Allegiance.

Mayor Costello led the Pledge of Allegiance.

Item #4 – Audience Remarks:

Ms. Laura Jones, 59 Amsden Drive, stated that she would like a report on what is happening with the Surfside Motel. She suggested Bray and Gillespie donate the property to the citizens of Ormond Beach.

Mr. Ted MacLeod, City Manager, explained that senior staff and the City's legal department met with representatives of Bray and Gillespie about a week and a half ago, in an attempt to reach a resolution regarding the property, but nothing can be done at this point due to the bankruptcy proceedings in progress.

Mr. Jim Schultz, 117 Harvard Drive, stated that he has an unpublished study by Levy regarding children and fluoridation, and the dosing that they are receiving from multiple sources. He stated that he will deliver a copy of the study to the Commission.

Item #5 – Approval of the Minutes

Mayor Costello advised the minutes of the November 18, 2008, regular meeting had been sent to the Commission for review and asked if there were any corrections, additions, or omissions.

Mayor Costello stated that the minutes would stand approved as submitted.

Item #6(A) - Metropolitan Planning Organization

Mayor Costello stated that at the last meeting, the discussion was about State Road 40 between Nova and Tymber Creek and that it could someday be widened. He stated if the Commission, as a body, wanted to tell Florida Department of Transportation its preferences, it needed to do so. Mayor Costello recommended that the City go on record as opposed to the widening of State Road 40.

The Mayor stated that the Metropolitan Planning Organization is taking the position that if any development does not follow the Traffic Impact Analysis Study protocol, which is supported by fifteen of the sixteen cities in the county and the County, the Metropolitan Planning Organization will deny requests for funds and recommend to the Florida Department of Transportation that they deny state and federal funds.

Mayor Costello reported the Florida Department of Transportation representative said that FDOT is investigating moving the barriers on the Granada Bridge to include the bike lanes and pedestrian lanes.

Mayor Costello stated the Metropolitan Planning Organization has no funds for roads and that, although the City doesn't have any projects on the deferred list of projects, on the possible deferrals list was the widening of State Road 40 from US17 to State Road 11. He stated that widening from State Road 11 to Cone Road is being moved from fiscal year 2013 to "not known at this time." The Mayor stated his intention to lobby, if the project is deferred, that the proposed Wal-Mart distribution center in Putnam, just north of the Volusia County line on US17, should not be allowed to happen until State Road 40 is four-laned from US17 to the existing four-lanes. He asked if anyone had a different position on this issue to let him know.

Item #6(B) - Volusia Council of Governments

Mayor Costello advised that Ken Parker, Port Orange City Manager, had related a number of things Port Orange is doing, some of which the Mayor wanted to relate because they impacted the City. He quoted Mr. Parker, "our current (retirement) programs are not sustainable. We need, as elected leaders, to remember that the city appointments to the pension board represent the taxpayers." The Mayor stated that the pension board has a lot of authority and, too often, elected officials don't value that appointment as much as they should. Mayor Costello stated that Mr. Parker said, "...you can exclude vacations; you can exclude sick pay; you can exclude overtime; you can exclude any or all of those things from pension calculations. but you need to do that in the open." The Mayor stated that Mr. Parker explained that with the general

employee's pension plan, it can be required to increase the employee's contribution without increasing the benefit, and the increased contribution may be used to make up for the losses. Mayor Costello explained that Port Orange held a lot of money aside from the good years; they did not give it to the pension boards for enhancements, so they are in a better position. The Mayor stated that Mr. Parker said that we can modify benefits by negotiating out benefits at negotiation time, and the employees can "buy" them back, if they want them. Mayor Costello explained that in the contract negotiations, Port Orange is putting the percentage of the contribution as well as the dollar amount of the City's contribution in contracts with the unions; therefore, if it takes more than that in the future, they would have to go back to the bargaining table.

Mayor Costello stated that because he would be unable to attend the meeting for the Volusia delegation of the Florida League of Cities, he was sending Commissioner Kelley. The Mayor asked the Commission for any items that they would like Commissioner Kelley to discuss on behalf of the Commission. He suggested the following items be presented: tax reform with the goal of creating a more equitable distribution of the tax burden, which the Florida League of Cities asked that the tax burden be divided between taxation based on wealth and consumption; pension reform by asking the State Legislature to allow local and state government to use the 175 and 185 plan funds for the shortfall in plan funding and/or existing benefits, rather than only for enhancements; eliminate the district cost differential that penalizes Volusia County because our schools are having problems partly due to this; amend the sales tax distribution formula to allow limited revenue sharing for up to four weeks annually for special events to cover increased costs of holding such events, possibly allowing up to fifty (50%) percent of the increase above the normal sales tax for the four weeks chosen from the year to come back to the community, which would help the City defray the costs of the special events; although it won't be funded, include Hidden Hills infrastructure improvements so it's not forgotten; and to use Florida Forever or whatever funds could be used for the purchase of beachfront lands.

Mayor Costello asked for any changes, removals, or additions to the list.

Commissioner Kelley stated that the formula for determining sales tax distribution should be more, but he would accept four weeks as the minimum.

Item #6(C) - Water Authority of Volusia

Commissioner Kelley stated he had sent the Commission a copy of the latest change to the proposed irrigation changes. He expressed his thanks to Ann Moore and the three representatives from the District, who explained that the classification of reuse, which would force the City to dump the overage into the river rather than use it, was being withdrawn from the irrigation formula.

Item #7 – Consent Agenda:

Mayor Costello advised that the action proposed for each item on the Consent Agenda was so stated on the agenda. He asked if any member of the Commission had questions or wished to discuss any one or more of the items separately.

Mayor Costello advised that Items F and G would be unnecessary due to foreclosure proceedings on the properties and, therefore, would be pulled.

Commissioner Kelley requested to speak on Item H after the vote.

Commissioner Partington moved, seconded by Commissioner Kelley, for approval of the Consent Agenda absent Items F and G.

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

Item #7(H) – Hard Conversion of Pension Plan

Commissioner Kelley suggested money could be saved by starting new hires on the Florida State Pension Plan.

Mayor Costello stated that the City would no longer consider a hard conversion for the current pension plan members as it would be very expensive and there are not enough funds available for a hard conversion, but options for new hires were still being considered.

Commissioner Gillooly stated that it was necessary to stay on the issue of a conversion for new hires.

Mayor Costello asked Finance Director Kelly McGuire when the actuarial calculations would be available.

Ms. Kelly McGuire stated that she would have the numbers by December 15, 2008.

Item #7(E) – Engineering Services for the Hand Avenue Collector Road Upgrade Project

Mayor Costello expressed his excitement that the engineering services proposal for the interconnect of the north and south sides of Hand Avenue was on the agenda, because it meant the project was moving forward.

Item #8(A) – 192 South Washington Street

RESOLUTION NO. 2008-299

A RESOLUTION APPROVING AN OFFER TO REDUCE AND SATISFY ALL OUTSTANDING CODE ENFORCEMENT LIENS IMPOSED UPON PROPERTY OWNED BY DIAMOND DEVELOPMENT, LLC., 192 SOUTH WASHINGTON STREET; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Kelley moved, seconded by Commissioner Gillooly, for discussion of Resolution No. 2008-229.

Commissioner Kelley stated that the mortgage holders could have foreclosed on the property, whereby the City would have received nothing; but as it was, when the mortgage holder became aware of the code violations, they fixed the violations quickly. He asked if there was something that could be done to notify the mortgage holder of code violations instead of a \$100 fine, which increased by \$200 a day until it was a \$90,000 fine when the violation was fixed for \$2,500. Commissioner Kelley suggested that the City's costs be repaid rather than the entire \$90,000 fine.

Commissioner Gillooly stated that she was not in favor of reducing the lien and believed in the sale of a property, the municipal and tax liens superseded the first mortgage. She commented that if a mortgage holder takes a deed in lieu of foreclosure, it benefits the mortgage holder. She stated that the mortgage holder had to be aware of the \$90,000 lien. Commissioner Gillooly stated that the key points to this issue were: if the lien was rescinded, the City was rewarding those who don't follow rules; she didn't believe that no one knew about the lien but felt it was part of the negotiations; and she was concerned about setting a precedent by rescinding a lien.

City Attorney Randy Hayes commented that this was a code lien which did not have the same standing as a tax lien with priority standing. He stated that in most foreclosure or bankruptcy proceedings, inferior liens such as a code lien, would most likely not have been satisfied; there was a high probability that the lien would not have been satisfied had the property gone through foreclosure proceedings; but it was entirely at their discretion to show leniency or not.

Commissioner Partington stated that he would vote for a fine of two and one-half (2.5%) percent of the lien or approximately \$2,250, which should cover the staff expenses, because as soon as the mortgage holder became aware of the violation, they acted quickly to correct it. He stated the City should be reimbursed for the cost of the staff hours for enforcing the rules.

Mayor Costello asked the Acting City Manager what the City's costs were.

Ted MacLeod stated that it might be around \$500, but the City didn't keep meticulous records on this type of issue.

Commissioner Kent expressed that he also does not want to set a precedent but was more comfortable with the staff recommendation of a reduced lien of \$1,600.

Mayor Costello spoke to Fred Share, as the mortgage holder, asking if he was willing to pay a reduced lien.

Mr. Fred Share stated that he was comfortable with reimbursing the City's costs in a range from \$1,600 to \$2,250. He further explained that the deed in lieu of foreclosure does not close out the City's lien as a foreclosure action would; therefore, the City could simply release the property from the lien while maintaining the lien against the violating party.

The City Attorney confirmed the information was correct.

Mayor Costello expressed that he looked at this as not a precedent setting issue because this was a mortgage holder taking back property that they held rather than the purchase of the property; whereas, the purchaser would have negotiated a reduced purchase price due to this lien.

Commissioner Kent moved, and Commissioner Partington seconded, for approval of Resolution No. 2008-229, amended to reduce the fine to \$1,600, to release the property to current owner and maintain the lien against the former owner.

The City Attorney confirmed that the language of the Release of Lien would be amended to reflect the Commission's directions.

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

Mr. Share stated that the correct recording date of the lien was April 23, 2008, rather than the information supplied to the Commission, which erroneously indicated the lien was recorded in April of 2007.

Item #8(B) – City Manager Employment Agreement

RESOLUTION NO. 2008-230
A RESOLUTION AUTHORIZING THE EXECUTION OF AN EMPLOYMENT AGREEMENT BETWEEN THE CITY AND JOYCE SHANAHAN; AND SETTING FORTH AN EFFECTIVE DATE.

Mayor Costello asked City Attorney Randy Hayes to update the Commission on the status of negotiations with Ms. Joyce Shanahan.

The City Attorney relayed that he and Ms. Shanahan had been in contact, and the contract they had provided was a joint effort on behalf of both parties and that certain preferences of both sides were worked into the contract. He stated the Commission would need to give him direction as to their wishes. Mr. Hayes stated that the issues were: Ms. Shanahan's preference for the starting salary was to be \$136,000 with no bonus program; six months severance was her minimum acceptable terms which, according to Mr. Miller, was the standard for the industry; she wanted the same pension contribution as the previous City Manager, which was a ten point eight (10.8%) percent to a defined contribution plan; she requested that she be allowed to participate in the City's General Employee's Pension Plan, whereby she would contribution the requisite four (4%) percent of her salary and the City would contribution their requisite four (4%) percent of her salary to the plan; and she requested participation in a defined contribution plan whereby the City would contribute five (5%) percent. He said that he spoke with her about participating in a straight defined contribution plan, but the numbers to make it work for her would be about a fifteen (15%) percent contribution by the City, which was above where the City wanted to be but below where she currently was. Mr. Hayes stated that regarding personal leave time: she agreed to the 520 hour cap; she would start with the status of an employee with eleven years of service, which was twenty-four days per year; upon starting employment she would have twelve days of accrued leave time, then accrue twenty-four days so at the end of her first year, she would have earned thirty-six days; and thereafter she would enjoy the same adjustments as other employees. He stated that as for car allowance, she had agreed to accept the \$350 a month car allowance but requested the amount be adjusted every two years, up to five (5%) percent. The City Attorney said that he spoke with the Mayor earlier, when the Mayor suggested tying the adjustment into either the CPI or no more than five (5%) percent, which would be acceptable to her. Mr. Hayes conveyed to the Commission that the severance package would allow no severance should the termination be voluntary, but a forced termination would trigger the six month salary payment along with the City's contribution to the pension fund on the six months of salary; she would, at her own expense, be allow to continue on the City's insurance program for six months; and she would receive a lump sum payment for any accrued personal leave time, which she would be entitled to even if the termination was voluntary. He

stated that there were some other miscellaneous issues in the contract that needed to be discussed.

Mayor Costello suggested that he state his position on the terms of the contract, as presented by the City Attorney, to be used as a framework for starting the discussion. He stated that he was comfortable with \$136,000 without a bonus plan; he was willing to go with six months of severance pay; he felt the pension package should be ten point eight (10.8%) percent only with Ms. Shanahan personally contributing four (4%) percent she wanted to do; there would be a 520 hours cap on accrued personal leave time, and a \$350 per month car allowance with a five (5%) percent increase every two years. He stated that she should be allowed to teach if she comes before the Commission for approval and pursue her PhD at her own expense, and any changes to the general employee benefits would impact her without triggering the severance package.

Commissioner Gillooly expressed that it was difficult to discuss these issues in a public forum, but she hoped that the public would be allowed to comment. She suggested a counter offer with the salary at \$130,000 without a performance bonus; with a specific, defined annual performance review plan; with no cost-of-living increase received by other employees; with a severance package of six months for the first four years, and thereafter, four months; modification to the severance language to clearly define the trigger for the severance package; with the language "termination for any reason" to be defined as other employees had in their employment arrangement, such as theft.

The City Attorney stated that there was a provision that cover, reasons such as a conviction of a crime.

Commissioner Gillooly stated that the City must make sure there are grounds for termination listed for the City Manager and other employees. She stated the pension contribution should be ten (10%) percent to a defined contribution plan; the 520 hour cap for accrued leave time was acceptable; she should start with the status equal to eleven years of service; the insurance coverage should be for the employee only; she agreed with the car allowance at \$350 per month, and thereafter, an adjustment tied to the CPI or a maximum of five (5%) percent increase every two years; and the moving expenses were acceptable. She stated that while she agreed with the professional development; and would encourage anyone to pursue furthering their education she was concerned that with the duties of the City Manager, would Ms. Shanahan have the time to pursue teaching and/or a PhD. She stated Ms. Shanahan had the educational credentials advertised for the City Manager position; therefore, she did not support the citizens paying for fifty (50%) percent of the cost for a PhD program.

Commissioner Kelley stated that he researched the websites of the cities currently employing the candidates and reviewed the requirements advertised for the position, which required five years of experience with a city larger than or comparable in size to Ormond Beach. He stated that Ft. Walton Beach, where Ms. Shanahan was the city manager, had 360 employees with a budget of \$36,000,000 and an Assistant City Manager. He said that the employees' benefits include an annual cost-of-living increase, and they were given a raise each year on their birthday. He expressed that the Commission was short-changing our community because she would require a lot of help for the first few years, through no fault of her own. He stated that he was going to vote against the entire contract because he thought that what she was asking for was way out of line for her experiences. He expressed that he wanted someone who wanted to come here for the opportunity, but he did not want to educate someone who would then go somewhere else with a doctorate degree. He stated that he didn't think she met the requirements, and he wanted the best for our community.

Commissioner Partington stated that this contract should not be about greed, and the taxpayer should get value for their tax dollars, and his comments would be framed with that in mind. He agreed that the salary of \$130,000 was reasonable, although he would have preferred \$125,000; he was impressed with the fact that she negotiated face-to-face to start and didn't just accept the initial offer; he didn't have a problem with a performance bonus plan of about ten (10%) percent that was based on reductions in the overall budget in a manner that would not reduce services or safety to the citizens; if the services of the City Manager were no longer desired, the City would pay an amount of the base annual salary as a severance payment; the pension should be the same as everyone else; the accrued leave cap should be 480 hours but he would accept the 520 hour cap; an initial credit of twelve days personal leave was fine but with only twelve days accrued for the rest of the year; a car allowance with no more than a five (5%) percent increase; there should be no outside activities such as teaching due to the city manager position being a full time job; her education should not be funded by the City or acquired on City time; a cost-of-living increase tied to the annual review was fine; and insurance coverage should be for the employee only.

Commissioner Kent expressed he would agree to a salary of \$130,000 with no cost-of-living adjustment; the car allowance was acceptable at \$350 per month with a CPI increase every two years for a maximum of five (5%) percent; personal leave should be twenty four days for the first year; the insurance coverage should be for the employee only; the pension contribution should be ten point eight (10.8%) percent; professional dues should be paid for by the City; she should not be allowed to teach because this was a full time job; he was totally against reimbursement for her pursuing a PhD; and he was concerned that no one would accept less than a six month severance package.

Mayor Costello summarized the comments as a starting salary of \$130,000; no automatic cost-of-living adjustment; a severance package of six months of the annual base salary with no ongoing pension contribution and six months of insurance coverage at her expense; a defined pension contribution of ten point eight (10.8%) percent; a credit of twelve days upon starting employment; twenty four days of accrued leave at the end of the first year as the status of an eleven year employee; a cap of 520 hours on accrued leave; no teaching, consulting, or businesses; no reimbursement for a doctorate degree, but she did not need the Commission's approval to pursue her doctorate; and a car allowance of \$350 per month plus an increase based on the CPI or a maximum of five (5%) percent.

Commissioner Gillooly stated the language regarding Ms. Shanahan's business hours needed to be clarified to indicate that she keep generally accepted hours of business and that she be required to live in the City. Commissioner Gillooly expressed that she was adamant that Ms. Shanahan needed to come to the Commission for approval to pursue a doctorate; the contract absolutely must include language that there be a formal vote in favor of termination before the severance package was triggered; the option of a six month notice of termination should remain in the contract; and Ms. Shanahan would face the same grounds for dismissal as other City employees.

Mayor Costello asked for and received agreement from the Commission regarding leaving the language in the contract as to the option of a six month notice of termination.

The City Attorney asked for clarification of the Commission's position regarding language in the contract that would state that if there was a change in benefits for all employees, that change would not trigger the severance package.

Mayor Costello confirmed that the language should be in the contract.

Mayor Costello stated that he thought what the Commission had done was, effectively, to tell Ms. Shanahan that the Commission did not want her to work for them due to all the changes to the provisions of the contract, and he felt that she would not accept it as presented. He expressed hope that she would and asked if she did want to continue negotiations, if it was more important to get every provision the Commission wanted in the contract or more important to get the best manager.

Commissioner Gillooly stated she disagreed with the Mayor's statement, and the Commission did want Ms. Shanahan. She stated that our taxpayers had expressed what they wanted, and the Commission had responded.

Commissioner Kent commented that the commission was not saying that we didn't want her but that they were negotiating. He questioned if Ms. Shanahan turned down this counter offer, if the Commission was directing the City Attorney to start negotiations with the number two choice, Scott Morgan.

Mayor Costello explained his experiences indicated if there were that many changes to a contract, it didn't usually work out. He stated that if Ms. Shanahan counter offered, the Commission could have a special meeting or wait until the next meeting to consider it. He questioned if the Commission want to give the City Attorney direction, now, in case she didn't accept.

Commissioner Kelley asked if anyone would reconsider the vote on the second choice.

Commissioner Kent stated that he would absolutely not consider changing the second choice.

Commissioner Partington stated that he was not interested in reconsidering the vote and felt that any of the five could do the job. He stated he did not have a problem with a special meeting.

Commissioner Kelley disagreed with negotiating with someone who worked for a city of 9,000 people because the Commission needed to do what was best for the City. He explained that the City needed someone who had managed a full service community of at least 25,000 to 40,000 people; Scott Morgan had not had that experience, and he didn't know Florida law; whereas, Ron McLemore had done all the things the City needed; would save the City more money; would be worth more because he didn't need a Assistant City Manager; and had already done what the City was trying to do by consolidating and saving money with the fire department and the pension plan. Commissioner Kelley stated he did not want to teach someone. He stated that his desire was to have someone who had already done what was needed, and because this was not the time to be pennywise and pound foolish, he strongly asked that the second choice be reconsidered.

Commissioner Kent stated that the Commission didn't know if Ms. Shanahan would take the contract or not and hoped she did, but he could support Joyce Shanahan or Scott Morgan, who he felt were very qualified, but would not support Ron McLemore.

Commissioner Gillooly stated she would like to believe that Ms. Shanahan would accept the contract as it was presented; therefore, she did not advocate giving the City Attorney permission to start negotiations with a second candidate. She stated that the entire process was incredible, and she was willing to work with any of the five candidates because her job was to adapt to any City Manager chosen. Commissioner Gillooly agreed that Commissioner Kelley was justified in bringing up the question to reconsider the decision on the second choice because she, Mayor Costello, and Commissioner Kelley had originally supported Ron McLemore as their second choice. She asked that the Commission rethink this issue, not necessarily that evening. She stated she was hopeful that Ms. Shanahan would accept the counter offer.

Mayor Costello expressed that he had wanted the Commission to get the candidate with which all of the Commission could work; however. He felt that Ron McLemore could do what needed to be done; that all the Commission would have to do would be to tell him what the Commission wanted done, and Mr. McLemore would do it.

Commissioner Kent stated that the Commission was telling the number one choice, by negotiating with number two, that this was the contract; therefore, it would be the contract for the number two choice and he felt strongly that the contract should not be changed for another candidate.

Mayor Costello explained that employees were hired at different rates due to different qualifications. He stated that he wanted someone who would be focused on the City, not somewhere else, such as working for a doctorate. He stated that he wanted the strongest leader, and the strongest, most competent leader did not work for the same salary as an entry level candidate. He stated, however, he did not have a problem supporting whomever the Commission chose. He expressed that he wanted the Commission to authorize the City Attorney to negotiate with the second choice, Scott Morgan, and was unaware of how that choice could be changed.

The City Attorney explained that in order to reconsider the decision of second choice a member of the Commission on the prevailing side of the vote would have to make a motion to reconsider, but any member of the Commission could second the motion.

Commissioner Kent asked how the Commission members felt about the second choice getting a different contract offer than the first choice.

Commissioner Partington stated that he felt it was wrong; he felt that Scott Morgan was number two for good reason and the Commission should move forward. He urged Mayor Costello not to change his vote. He expressed that he felt that both number one and number two were the best choices for the City.

Commissioner Kelley commented that Ron McLemore had a unanimous vote from his commission to create a fire fee, but when he created a fire fee, the public went ballistic, which was what the uproar was about. Commissioner Kelley pointed out that Mr. McLemore was just doing his job and was later praised for resolving the situation by merging fire service with Seminole as a means to save, as Ormond Beach would have to do. He expressed that it was appropriate to pay employees depending upon their qualifications and experience, and every employee was not paid equally at the same time; therefore, the Commission should approach each candidate differently.

Commissioner Gillooly stated that she was not advocating negotiating with anyone else. She stated that out of respect for Ms. Shanahan, the negotiations should continue with her.

Commissioner Gillooly explained that if Ms. Shanahan didn't accept the contract, then negotiations would start over with the second choice. She stated that she would prefer Mr. McLemore as the second choice.

Mayor Costello passed the gavel to Commissioner Kelley as the Deputy Mayor.

Mayor Costello moved to reconsider the vote for the second choice, and Commissioner Gillooly seconded the motion.

Commissioner Gillooly stated that it was premature to start negotiating the contract with any other candidate at this point and suggested the Commission wait until Ms. Shanahan had decided to accept or not.

Commissioner Kent expressed that he felt strongly about Mayor Costello changing his decision.

Mayor Costello stated that he always believed that Mr. McLemore was the better choice for what the City needed, and he looked forward to working with Scott Morgan but hoped Ms. Shanahan would sign the contract. He clarified that he did not say that he would give Mr. McLemore more, but rather he would not necessarily expect the second person to get the same contract. He expressed that he was not afraid of a strong leader; and as proven tonight, the Commission would have no problem telling the City Manager what the Commission wanted. He stated he wanted someone who had experience with our issues, not someone who had never done it that the Commission would have to train.

Commissioner Partington stated that he would not support Ron McLemore as the number two or support a contract with more dollars than what was being offered to Joyce Shanahan.

Commissioner Kent stated that he strongly echoed Commissioner Partington's views regarding Ron McLemore. He expressed support for Joyce Shanahan as number one, was hopeful that she accepted the contract, and supported Scott Morgan as number two.

Ms. Laura Jones, 59 Amsden, stated that she had heard the language of the Commission and if the City changes its choice, the City would lose face.

Mr. Phil Maloney, 117 Atwood Lane, stated that he was really impressed with the negotiations, but if he was moving to a new community to start a new job, he would expect at least a fifteen (15%) percent increase in salary; therefore, he respected the decision for the salary offer at \$136,000. Mr. Maloney stated that as to the second choice, although Ron McLemore was one of his favorites, he felt that the Commission needed to negotiate with Scott Morgan as the second choice. He stated he did not believe the Commission need offer the second person the same as the first person, and, as a citizen, he appreciated the discussions.

Mayor Costello asked the City Attorney if he could move to continue this discussion to the next meeting.

The City Attorney recommended the Commission dispense with any motion on the floor before the meeting was adjourned; he felt that it was not appropriate, procedurally, to make a motion, then continue it to some subsequent meeting, but the Commission could vote, continue or withdraw the motion as they chose. He stated that his direction from the Commission was to continue to negotiate with Ms. Shanahan, and hopefully, they could refine the agreement to bring back to the Commission.

Mayor Costello stated that he would withdraw his motion on the table to reconsider the second choice.

Mayor Costello expressed he was not concerned about losing face because he would rather get the right person for the City Manager. He stated he would tolerate people accusing him of changing his vote if he was doing what he thought was the right thing, and didn't feel that was losing face.

Commissioner Kelley expressed that he does not want to take the same contract to the second person should Joyce Shanahan not accept the contract.

Mayor Costello called for a five minute break at 10:05 p.m.

Mayor Costello reconvened the meeting at 10:10 p.m.

Item #9(A) – Purchasing Policies and Internal Control Measures

Commissioner Kelley asked Finance Director Kelly McGuire to research specific items in the report presented to them: the Creative Playthings; Fluid Control Specialties; Dyer Riddle Mills & Precourt, Inc.; Lee & Cates Glass Inc.; Lucas Technologies Inc.; Water Treatment & Controls Co.; and Water Risk Management.

Commissioner Gillooly requested Thadcon LLC be researched as well.

The Finance Director explained that the amount on the report was the amount of the payment, not necessarily the amount of one invoice but possibly payment for several invoices. She stated that she would research their requests.

Commissioner Gillooly expressed that because the issue was about purchasing policies and the ability for the City Manager's office to make a decision on an expenditure of \$25,000 or less, she expressed that it was a total error in judgment to give the employees a \$50 Christmas bonus; that it was unconscionable due to what the City's residents and businesses were facing in this economy; and she was concerned about the judgment and allowing the City Manager to make decisions on purchases for \$25,000 or less.

Commissioner Partington pointed out that the Commissioners did not receive the \$50 bonus. He suggested the Commission speak with the new City Manager about the issue of bonuses for next year.

Commissioner Kent stated that he thought that no government employee should receive a Christmas bonus and the appreciation luncheon at Outback was more than sufficient.

Commissioner Kelley stated that he believed it was a tradition going back a number of years, starting with a ham or turkey in the 70s and switching to cash in the 90s, and the decision was a matter of following the policy the Commission had determined.

Mr. Ted MacLeod stated that the Commission had budgetary control over this issue. He explained that he thought about not doing it this year, but the employees had been under the gun all year; the Employees Appreciation Lunch at Outback this year was eliminated; and it seemed to him that this was a very good way of showing the employees the Commission really did appreciate them. He stated that this was something the City had done; it was something good; it was something the employees needed now; and so he did it.

Mayor Costello stated that the Commission should decide if this was something that should be done in the future; he wholeheartedly agreed that it was the right thing to do this year because the employees needed to have that little bit of tangible appreciation; and it was money well spent. He stated that Mr. MacLeod did what had been done before and suggested the Commission give direction as to what the Commission desired be done in the future.

Item #9(B) – Auction of Property at Granada and South Ridgewood

Mayor Costello asked if the Commission wanted a private appraisal done on the property and then send someone to the auction with an amount to bid.

Commissioner Gillooly expressed that she thought the market and private development should handle it as she was concerned about getting involved with a property that potentially might have environmental concerns; there was currently a park a few feet away; this would remove another property from the tax rolls; and this was an opportunity for the downtown to have a viable business there.

Commissioner Partington stated that he agreed and asked Planning Director Ric Goss if the Commission could approve not having another gas station on the property.

Ric Goss explained that there were only two uses allowed on the property, which were redevelopment or a gas station. He stated the property was too small to redevelop, and the gas station was considered abandoned; he advised, therefore, the City would have to notify the property owner in writing that the use had been abandoned according to the City's code, and the property owner would have ask the City to reconsider the non-conforming use for a gas station.

Commissioner Partington stated that he agreed with Commissioner Gillooly about not bidding on the property.

Commissioner Kelley stated that he also agreed with Commissioner Gillooly and would prefer to concentrate on some where else.

Commissioner Kent stated that he understood why the staff brought this to the Commission but thought it would not be a wise use for the City to make a park at that location.

Mayor Costello stated that the City could get TIF funds and make a beautiful bus park, but the Commission gave direction not to pursue this property. He asked if the Commission could go on record as not allowing a gas station on the property.

The Planning Director explained that if the use was a permitted use at that corner, such as a gas station, the property owner would have to meet code to redevelop the property.

The Mayor asked Mr. Goss to research the situation and have the results reported in the Friday Letter.

Item #9(C) – Proposed Legislative Change to the Florida Statutes regarding Outside Utility Rate Surcharge.

Commissioner Kelley stated that he was asking for the Commission's support with a letter or just support to add to the Legislative agenda asking them not to accept the proposed amendments regarding the prohibition of outside utility rate surcharges.

Mayor Costello asked that support opposing the amendment changes be added to the items being presented to the Volusia Delegation of the Florida League of Cities.

Item #10 – Reports, Suggestions, Requests

Commissioner Kent

Commissioner Kent asked Mr. MacLeod if there was any way that solid waste could be picked up between the normal Monday pick-up before Christmas and the following Monday, and he would appreciate him looking into that.

He thanked the City staff and the offices of Mayor Costello and Rick Boehm for their support for the City's Bubba Gump's Building Block Party, which won honorable mention. He noted the fun event raised a lot of money.

Commissioner Kelley

Commissioner Kelley asked Mr. MacLeod if the City had submitted a formal letter to the delegation to Florida League of Cities with the City's legislative requests.

Mr. MacLeod stated that he had prepared something before the Mayor's requests were added, which Mr. MacLeod will email to Commissioner Kelley.

Commissioner Partington

Commissioner Partington stated that he thought the City should adopt digitally recorded minutes as the official minutes for the meetings because the recordings were the best representation of what actually happened at a meeting, and the City should push with our legislative delegation for a change in the laws to allow that.

Commissioner Partington stated that he would press for a local preference ordinance for businesses such as the one in Port Orange. He stated he would accept what Port Orange has where a three (3%) percent premium would be paid for providing the same product, or he would accept, all things being equal, going with a local business and not paying the premium.

Mayor Costello asked Commissioner Partington if he would accept an ordinance that would allow a local company that was within three (3%) percent of the lowest bid to match the lowest bid and choose the local business.

The City Attorney stated that he would research the issue and bring something to the Commission for their consideration.

Mayor Costello stated that there were people who read the minutes and would not listen to the audio recording; therefore, he would like the audio to be the official record but have the minutes available to the public. The Mayor asked Commissioner Partington to clarify his request.

Commissioner Partington stated that he did not know if state law allowed the audio to be the official minutes, but it should. He stated that it was a waste of time for elected officials to read the written minutes every two weeks when, if they really want to get the true flavor, they could listen to the audio or read a properly transcribed version of the event.

City Attorney Randy Hayes stated that he would research the Florida Statutes for what was required, but he explained that written minutes were required, although it did not have to be verbatim.

Commissioner Gillooly

Commissioner Gillooly stated she agreed with Commissioner Partington on both of the issues he brought up, particularly purchasing from local businesses, and that Mayor Costello’s proposal allowed the local businesses to compete without costing the citizens more.

Commissioner Gillooly inquired about the purchasing plan the City had used in the past where local businesses were given preference.

Mr. MacLeod explained that some time ago, the City used a point system for proposals awarding professional services bids, whereby Ormond Beach businesses received so many points and businesses within the county received so many points, which was one of several criteria used to judge the awarding of bids. He advised that the City no longer uses the point system relative to location as it was against state law to use a point system when the price was part of the awarding criteria.

Commissioner Gillooly acknowledged Commissioner Kent for his leadership of the Ormond Beach team for the Bubba Gump Building Block Party who did such a good job and should have won for team spirit. She stated the event netted \$12,000 for Habitat for Humanity’s home building projects.

Commissioner Gillooly remarked that Ric Goss had provided her with a great deal of information regarding his involvement with the County in the beginning of the neighborhood stabilization program, a program with extra funds coming from Housing and Urban Development that are based on Community Development Block criteria designed to re-enforce neighborhoods and to quell foreclosures. She stated that she participated in a conference call with the Department of Community Affairs, speaking officially on behalf of Habitat for Humanity and unofficially as a Commissioner in the City, discussing what was happening in the City. She stated that she would pursue the issue with the County on behalf of Habitat for Humanity and felt that the City should be at the table with the County to discuss the opportunities for Ormond Beach.

Mayor Costello

Mayor Costello discussed that existing home sales were up only because of foreclosures, and the hurricanes and the housing industry would cause Florida to lag behind in the economic recovery.

Mayor Costello stated that Port Orange presented the water rates on their billing as “availability charge of X”, then a number for the range of how many thousands of gallons of usage, and at bottom of the bill was an energy charge that varied. He suggested the City may want to consider that for our billing.

Item #11 – Close The Meeting.

The meeting was adjourned at 11:00 p.m.

APPROVED: December 16, 2008

BY: Fred Costello, Mayor

ATTEST:

Veronica Patterson, City Clerk