

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

March 18, 2008 7:00 p.m.

Present were: Mayor Fred Costello, Lori Gillooly, Troy Kent, Ed Kelley, and Bill Partington, City Manager Isaac Turner, 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 Polly K. Deppen, Christ Presbyterian Church.
- 3) Pledge of Allegiance.
- 4) **PRESENTATIONS:**
 - A) Proclamation in honor of the Universalist Unitarian Society.
 - B) Accepting the donation of "The Palms of Highbridge" painting by Barry Barnett.
- 5) **AUDIENCE REMARKS:**
- 6) **APPROVAL OF THE MINUTES** of the March 4, 2008, meeting.
- 7) **INTERGOVERNMENTAL REPORTS:**
 - A) Metropolitan Planning Organization
 - B) Volusia Council of Governments
 - C) Water Authority of Volusia
- 8) **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. 2008-68 authorizing the execution of a lease agreement between the City and Halifax Urban Ministries, Inc., for the "Old Housing Authority Building" located at 164 West Granada Boulevard.
 - B) Resolution No. 2008-69 authorizing the acceptance of an easement deed from Surety Bank for property located north of the Tomoka River bridge and adjacent to North US1 (SR5). (Gateway sign)
 - C) Resolution No. 2008-70 authorizing the acceptance of an easement deed from Brian P. Share as Manager of Phoenix Investment Properties, LLC, and JPMC, LLC, satisfying a condition in the North Orchard Center Planned Business Development rezoning Development Order, allowing access to maintain a public fire hydrant located on property located at 150 North Orchard Street.

- D) Resolution No. 2008-71 approving and authorizing the allocation of repaid Community Development Block Grant Lien Funds to the Volusia/Flagler Coalition for the Homeless. (\$10,000)
- E) Resolution No. 2008-72 ratifying the execution of an agreement between the State of Florida, Office of the Attorney General, and the City regarding funding for the City's Victim's Advocate position. (\$30,269 position cost; \$22,110 grant funds; \$5,528 matching City funds)
- F) Resolution No. 2008-73 authorizing the execution of a Water, Sewer and Annexation Agreement between the City of Ormond Beach and J.R. Laguna Properties, Inc.; providing for recordation. (Laguna Spas, 600 block of South Yonge Street)
- G) Resolution No. 2008-74 authorizing the execution of a Water, Sewer and Annexation Agreement between the City and Florida East Coast Railway, LLC; providing for recordation. (Rinker site, north of Hull Road, west of the FEC railroad)
- H) Resolution No. 2008-75 accepting a proposal from Kimley-Horn and Associates, Inc., for engineering review services regarding the I95/US1 Interchange Modification Report, authorizing the execution of a Work Authorization and payment therefor. (Not to exceed \$55,000)
- I) Resolution No. 2008-76 approving a settlement agreement between the City and Sabrina Potter; authorizing the execution of a settlement agreement and any and all documents incidental thereto; authorizing payment relative thereto. (\$34,000)
- J) Servello & Son, Inc., maintenance contract rate adjustments:
 - 1) Resolution No. 2008-77 authorizing a cost of living increase based on the Consumer Price Index pursuant to the Grounds Maintenance Services Agreement between the City of Ormond Beach and Servello & Son, Inc. (\$14,323 annually)
 - 2) Resolution No. 2008-78 authorizing a cost of living increase based on the Consumer Price Index pursuant to the Grounds Maintenance Services Agreement for highway medians between the City of Ormond Beach and Servello & Son, Inc. (\$6,169 annually)
 - 3) Resolution No. 2008-79 authorizing a cost of living increase based on the Consumer Price Index pursuant to the Right-of-way Mowing Services Agreement between the City of Ormond Beach and Servello & Son, Inc. (\$2,514 annually)
 - 4) Resolution No. 2008-80 authorizing a cost of living increase based on the Consumer Price Index pursuant to the Right-of-way Mowing Services for State Roads Agreement between the City of Ormond Beach and Servello & Son, Inc. (\$267 annually)
- K) Request to continue allowing the East Volusia Mosquito Control District to perform low-level flights over the City of Ormond Beach to apply insecticides for the control of mosquitoes.

DISPOSITION: Approve as recommended in City Manager memorandum dated March 13, 2007.

- L) FY 2007-08 budget results for the General Fund and the Water/Wastewater Fund.

DISPOSITION: Approve as recommended in City Manager memorandum dated March 13, 2008.

- M) Approval of travel by the City Manager to the National Hurricane Conference in Orlando, Florida.

DISPOSITION: Approve as recommended in City Manager memorandum dated March 13, 2008.

9) **PUBLIC HEARINGS:**

- A) Ordinance No. 2008-15 amending Subsection A, Zoning Map, of Section 2-03, Official Zoning Map and District Boundaries, of Article I, Establishment of Zoning Districts and Official Zoning Map, of Chapter 2, District and General Regulations, of the City of Ormond Beach Land Development Code, by amending the Official Zoning Map to rezone certain real property totaling 4.80 acres located at 600 West Granada Boulevard, from B-9 (Boulevard) to PBD (Planned Business Development); establishing boundaries; authorizing revision of the Official Zoning Map; approving a Development Order for “Ormond Beach Medical Center” Planned Business Development; establishing conditions. (First Reading)
- B) Ordinance No. 2008-16 amending Subsection A, Zoning Map, of Section 2-03, Official Zoning Map and District Boundaries, of Article I, Establishment of Zoning Districts and Official Zoning Map, of Chapter 2, District and General Regulations, of the City of Ormond Beach Land Development Code, by amending the Official Zoning Map to rezone certain real property totaling 2.18 acres located at 1670 West Granada Boulevard, from B-7 (Highway Tourist Commercial) with a Planned Business Development Overlay (Southwest I-95 Complex) to PBD (Planned Business Development); establishing boundaries; authorizing revision of the Official Zoning Map; approving a Development Order for “RaceTrac Service Station at Southwest I-95 Complex” Planned Business Development; establishing conditions. (First Reading)

10) **SECOND READING OF ORDINANCES:**

- A) Ordinance No. 2008-13 amending Chapter 2, Administration, Article VII, Code Enforcement, of the Code of Ordinances, by amending Section 2-258, Administrative Fines and Liens; amending Section 2-262, Schedule of Civil Fines.
- B) Ordinance No. 2008-14 amending Chapter 14, Offenses-Miscellaneous, of the Code of Ordinances, by adding Article IX, Performance Standards, and Section 14-101, Nuisance Odors, and Section 14-102, Glare and Heat, thereunder; by establishing terms and conditions relative thereto.

11) **DISCUSSION ITEMS:**

- A) Update on early retirement options.
- B) Update on inmate labor program.
- C) Realtor disclosure regarding height limits.

12) **REPORTS, SUGGESTIONS, REQUESTS:** Mayor, City Commission, City Manager, City Attorney.

13) **CLOSE THE MEETING.**

Item #1 - Call to Order

Mayor Costello called the meeting to order at 7:00 p.m.

Mayor Costello introduced Mr. Ric Goss, Planning Director, who was greeting citizens coming into the meeting this evening.

Item #2 - Invocation

Reverend Polly K. Deppen, Christ Presbyterian Church, gave the invocation.

Item #3 - Pledge of Allegiance

Mayor Costello led in the Pledge of Allegiance.

Item #4(A) - Universalist Unitarian Society Proclamation

Mayor Costello proclaimed March 30, 2008, as a day to honor the Unitarian Universalist Society. He stated the Unitarian Universalist Society was retrofitting their building for solar energy, planting an organic garden and native plants, and protecting the rare coastal hammock

in the rear of their property, as well as instilling green values in their school children. Mayor Costello reported the Unitarian Universalist Society was commemorating their commitment towards “saving our planet” with a special ceremony.

Pastor Bud Murphy reported the Unitarian Universalist Society attempts to foster connections and nurture the empowering nature of the connection. He thanked the Commission for the proclamation.

Item #4(B) - “The Palms of Highbridge” Painting by Barry Barnett

Mr. David Abee, Leisure Services Director, introduced Mr. Barry Barnett and his mother. He advised that Mr. Barnett introduced the concept of the “Yellow Flag,” which now flies outside City Hall. Mr. Abee showed the artist’s proof entitled “The Palms of Highbridge” and valued at \$65,000, which Mr. Barnett is donating to the City. He reported the City planned to hang the picture on the second floor in City Hall.

Mr. Barnett noted he was born and raised in Daytona Beach, and his art education came from that school system. He advised this donation was in honor of his mother and late father and every citizen of the City. Mr. Barnett stated the art comes with a requirement that the Commission continue what they were doing and pass on a legacy to those who follow.

Mr. Barnett reported the “Yellow Flag” now flies in seven cities and Marion County. He explained the flag honors those who serve and their families and makes no political statement.

Item #5 - Audience Remarks

Seabreeze High School

Mr. Doug Thomas, 132 Riverbluff Drive, stated he has worked with the City and the youth since coming to Ormond Beach in 1973. He expressed concern relative to the Airport Sports Complex. Mr. Thomas advised the School Board has been using the City’s facilities for years; the City entered negotiations with the School Board; but those negotiations have now taken a backwards step. He stated it was time for the City to inform the School Board that the City would like them to utilize the facilities, but they must pay their fair share. Mr. Thomas advised he has been in negotiations with the school system over the years. He stated Seabreeze High School was the only school where the School Board has not provided athletic fields. Mr. Thomas noted he understood these were Ormond Beach children, but the City must consider what was right for Ormond Beach and its taxpayers. He urged the line to be drawn now.

Mayor Costello reported he was of the opinion that if the School Board wanted to partner with the City, Ormond Beach would be a willing partner, but Ormond Beach would no longer provide equipment and allow these children to increase the wear and tear on Ormond Beach facilities without compensation. He explained the School Board wanted to pay on a per use basis, but he would favor the School Board put the same type of investment into the facilities whether they be on the Seabreeze High School campus or at the Ormond Beach facility.

Commissioner Kent reported he completely agreed with Mr. Thomas and asked Mr. Turner to send a letter and “be nice but firm.”

Commissioner Kelley stated the system the School Board has been operating under was not fair to the citizens of Ormond Beach. He advised he believed Ormond Beach’s representative, Judy Conte, has turned her back on Ormond Beach in that the School Board refuses to share the cost when they put millions of dollars in other facilities such as DeLand, Spruce Creek, and Mainland. Commissioner Kelley expressed agreement that it was time to draw the line, indicating that as of the end of this school year, it must end or the School Board must negotiate a fair deal.

Commissioner Gillooly stated the School Board’s response seemed to be taking a step back. She reported it was vitally important the City point out in the letter that Ormond Beach was being extremely fair to the school district particularly in that the City was reevaluating all the user fees in Leisure Services. Commissioner Gillooly reported she agreed Ormond Beach was a willing partner, but the City must be firm.

Mayor Costello summarized Ormond Beach gives the taxpayers a break and the School Board does not pay taxes in Ormond Beach, but they want to pay the same fee without providing the capital improvements.

Item #6 - Approval of Minutes

Mayor Costello advised the minutes of the March 4, 2008, meeting had been sent to the Commissioners for review and asked if there were any corrections, additions, or omissions. Seeing none, Mayor Costello stated that the minutes were approved as submitted.

Item #7(A) - MPO and Item #7(B) - VCOG

Mayor Costello stated there would be a meeting of the Metropolitan Planning Organization (MPO) and the Volusia Council of Governments (VCOG) next week, and he would send the Commission an update.

Item #7(C) - Water Authority of Volusia

Commissioner Kelley stated there would be a meeting of the Water Authority of Volusia (WAV) tomorrow, and he would send the minutes of the meeting to the Commission.

Item #8 - 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.

Commissioner Gillooly requested removing Item Nos. 8(H), 8(I), and 8(J) for discussion.

Commissioner Partington moved, seconded by Commissioner Kelley, for approval of the Consent Agenda, minus Item Nos. 8(H), 8(I), and 8(J).

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

Item #8(H) – Engineering Review Services - I95/US1 Interchange Modification Report

RESOLUTION NO. 2008-75

A RESOLUTION ACCEPTING A PROPOSAL FROM KIMLEY-HORN AND ASSOCIATES, INC., FOR ENGINEERING REVIEW SERVICES REGARDING THE I95/US1 INTERCHANGE MODIFICATION REPORT, AUTHORIZING THE EXECUTION OF A WORK AUTHORIZATION AND PAYMENT THEREFOR; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Kent moved, seconded by Commissioner Kelley, to approve Resolution No. 2008-75, as read by title only.

Commissioner Gillooly questioned why the work was given to the second bidder in the original project. She noted there was speculation the bidding process for that project was not done in a fair manner; therefore, for fairness, competitiveness, and to obtain the best possible price, there may be an opportunity to obtain a bid by all of the engineering firms.

Mr. Ric Goss, Planning Director, stated in a competitive negotiation the City would typically go out for a Request for Proposal (RFP), bring in the firms, and then negotiate a price with the best firm rather than negotiate with the four firms for four prices. He noted the Competitive Negotiation Act does not allow the City to “shop for a price.” Mr. Goss reported the City would select the best engineering firm based on qualifications and begin negotiations; however, if it was impossible to negotiate a fair price, the City would then either go to the second or third ranked bidder or go back out for another bid. He stated, in this case, the City has a continuing services contract, and the best firm other than the firm that received the bid was Kimley Horn. Mr. Goss explained there was a drastic difference in scoring between the top two firms of Kimley Horn and Reynolds, Smith, and Hill (RS&H) and the other two firms in the lower category, particularly regarding project understanding, project approach, and relevant experience. He advised that given the critical importance of this project, he selected the second firm, which he considered to be the best. Mr. Goss pointed out this was not a lump sum contract and had a range. He stated he had the range reviewed by FDOT who considered it to be reasonable considering the work effort involved.

Mayor Costello clarified the highest ranking firm was awarded the original contract, and the second highest scoring firm was being discussed.

Commissioner Gillooly stated she was aware the City would not merely seek the cheapest price, and she understood there was an element of professionalism and education to be considered. She stated, however, she believed there could have been an opportunity to bring all of the firms in, which would afford a better perception of fairness.

Mayor Costello reported he just spoke to Mr. Turner a few hours ago regarding the exact same questions that Commissioner Gillooly verbalized. He stated a friend of his was a bidder and did not receive the ranking, but he was comfortable staff handled this situation professionally.

Commissioner Kelley noted several people questioned the ranking previously, and he questioned why the City could not negotiate for a better price; but he realized that was the system the government set up and required cities to follow.

Mayor Costello explained he would like it if the City could change the process to find out who was qualified to bid and then negotiate the best price, but that was not the way the system was established.

Mr. Isaac Turner, City Manager, reported the requirements were derived from State statutes, and cities do not have the opportunity to change the process. He stated he would provide the rationale for the process to the Commission.

Mayor Costello stated he understood the rationale; but in this era of tax reform, the cities should have the option of finding all qualified bidders and taking the lowest bid.

Commissioner Kelley reported he did not need any justification.

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

Item #8(l) – Settlement Agreement with Sabrina Potter

RESOLUTION NO. 2008-76

A RESOLUTION APPROVING A SETTLEMENT AGREEMENT BETWEEN THE CITY AND SABRINA POTTER; AUTHORIZING THE EXECUTION OF A SETTLEMENT AGREEMENT AND ANY AND ALL DOCUMENTS INCIDENTAL THERETO; AUTHORIZING PAYMENT RELATIVE THERETO; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Kelley moved, seconded by Commissioner Partington, to approve Resolution No. 2008-76, as read by title only.

Commissioner Gillooly stated the outside counsel memo states: “The City has steadfastly maintained that it did not engage in unlawful discrimination against Ms. Potter for any reason. Rather, the City has asserted that any and all actions were for legitimate, non-discriminatory reasons.” Commissioner Gillooly reported she strongly objected to settling employment claims when the City has done everything correct and above board; and if this could be documented, she recommended the case go forward. She explained she understood the City would have to incur the legal fees and the jury may make an award, but Ms. Potter has the burden of proof; therefore, she questioned why the City would want to settle. Commissioner Gillooly noted that if the City does settle, it should examine what the City was doing in its employment practices that make the Commission believe it has to settle. She stated she understood the potential gamble, but the City did not want to get a reputation that the City settles all its claims.

Mayor Costello stated Ms. Potter’s own physician stated she could no longer do the job.

Mr. Randal Hayes, City Attorney, explained staff must bring the Commission the best business package possible, and it would be up to the Commission to make a decision whether they wanted to accept the recommendation or choose something different. He reported he could not assure the Commission what would occur should this go to trial, but it was staff’s duty to gauge the risk versus the cost and make a good business decision for the Commission to consider. Mr. Hayes advised attorney fees to date paid to labor counsel have been approximately \$45,000

and could go to \$100,000. He reported should the jury find in favor of the claimant, the court would award damages to be paid to the claimant as well as attorneys' fees for the claimant's attorneys. Mr. Hayes assured the Commission no one on the claims committee or management likes making decisions for business purposes, but sometimes that was the prudent thing to do.

Commissioner Kelley agreed there comes a time to draw a line, but he did not believe this was the time. He noted he saw this as a business decision, but it was probably one of the last cases he would be willing to settle when there was a strong belief nothing was done wrong. Commissioner Kelley reported the City could spend another \$100,000, the settlement costs, and her attorney fees; therefore, while the City could win, he questioned what it would cost the City to win. He noted hiring practices may have played a part, and he believed those have been corrected.

Commissioner Gillooly questioned should the Commission decide to proceed and win the case, if the City could sue for attorneys' fees; whereby, Mr. Hayes stated the City would not ordinarily be entitled to recover fees without proving the claim was fraudulent or without any possible merit, which was very difficult to do.

Mayor Costello asked how many of these cases, as a percentage, Mr. Hayes had been involved with and how often he had recommended settling verses proceeding to trial.

Mr. Hayes stated as a lawyer it was easy for him to urge litigation and fight, but he must also consider the business portion of this equation and bring a recommendation to the Commission that was fair to the taxpayers and the City while not developing a reputation of giving in without a fight. He reported as budget discussions occur, he will provide numbers for litigation costs. Mr. Hayes noted civil litigation costs were minimal, but labor and employment were very expensive. He stated while there has been a rash of cases in the past few years, in the 15 years he had been with the City, he considered this an anomaly, not a trend.

Mayor Costello asked if Mr. Hayes believed this case would send a message if settled or not settled; whereby, Mr. Hayes stated he did not believe so as litigation was addressed strictly on a case-by-case basis.

Mr. Turner stated if the City made a management mistake he would own up to it; but in this instance, the City tried to do everything possible to accommodate the employee to make the situation work. He advised that staff must bring the Commission what they believe to be the best recommendation.

Commissioner Kent reported he understood staff's conservative position. He stated on the last case, he voted not to settle because the City did nothing wrong. Commissioner Kent questioned why Ms. Potter was willing to settle for \$34,000. He stated he could not support this settlement.

Commissioner Partington stated due to the uncertainty of what the judge may do regarding summary judgment, he would approve this settlement. He noted Ormond Beach has won trials and also settled in the past.

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

Mayor Costello stated he hoped this did not send a message, but Commissioner Partington had convinced him to settle.

Item #8(J) – Servello & Son, Inc., Maintenance Contract Rate Adjustments

Commissioner Gillooly asked if this would re-obligate the City to a contract.

Mr. Judy Sloane, Public Works Director, stated this provides a retroactive increase from October to the present. She clarified if the City would decide to terminate one of the four contracts due to the use of inmate labor, that would be discussed later in the agenda; the contract would be terminated at this adjusted rate.

Commissioner Gillooly asked if this could be retroactive to January 1.

Item #8(J)(1) – Grounds Maintenance Services Agreement

RESOLUTION NO. 2008-77
A RESOLUTION AUTHORIZING A COST OF LIVING INCREASE
BASED ON THE CONSUMER PRICE INDEX PURSUANT TO
THE GROUNDS MAINTENANCE SERVICES AGREEMENT
BETWEEN THE CITY OF ORMOND BEACH AND SERVELLO &
SON, INC.; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Kelley moved, seconded by Commissioner Kent, to approve Resolution No. 2008-77, as read by title only.

Mr. Turner advised that the contract was specific to October 1.

Commissioner Gillooly noted the contract required a request for the increase.

Mr. Turner stated if granted, the increase must be retroactive to October 1.

Commissioner Gillooly asked if the provision could be modified.

Mr. Hayes stated the contract would have to be modified; therefore, the Commission would have to approve or not approve this request.

Commissioner Gillooly stated it may be more in Servello’s favor to allow for a modification.

Mr. Hayes advised Servello could voluntarily agree to a modification, but the City could not impose such a restriction on them.

Mr. J. Robbin Bigelow, 2900 Rapidan Trail, Winter Park, Operations Manager for Servello & Son, Inc., stated this was the first time Servello has asked for an increase. He noted since the inception of this contract fuel prices have increased 40% to 42%; there have been three fertilizer increases since the beginning of this year; Roundup increased 100% in the past month; and labor costs, insurance costs for workman’s compensation, liability, auto, and health costs have all increased. Mr. Bigelow reported considering this, the percentage of increase being requested was small compared to the cost of doing business.

Commissioner Kent stated a few years ago something similar occurred, and he strongly opposed the increase; but he was comfortable with this tonight. He stated Servello would not be aware a 42% fuel increase would occur when bidding the project.

Mayor Costello stated Servello was doing a great job, and he considered the 2.69% increase very reasonable in this climate.

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

Item #8(J)(2) – Grounds Maintenance Services Agreement for Highway Medians

RESOLUTION NO. 2008-78
A RESOLUTION AUTHORIZING A COST OF LIVING INCREASE
BASED ON THE CONSUMER PRICE INDEX PURSUANT TO
THE GROUNDS MAINTENANCE SERVICES AGREEMENT FOR
HIGHWAY MEDIANS BETWEEN THE CITY OF ORMOND
BEACH AND SERVELLO & SON, INC.; AND SETTING FORTH
AN EFFECTIVE DATE.

Commissioner Kent moved, seconded by Commissioner Kelley, to approve Resolution No. 2008-78, 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(J)(3) – Right-of-way Mowing Services Agreement

RESOLUTION NO. 2008-79

A RESOLUTION AUTHORIZING A COST OF LIVING INCREASE BASED ON THE CONSUMER PRICE INDEX PURSUANT TO THE RIGHT-OF-WAY MOWING SERVICES AGREEMENT BETWEEN THE CITY OF ORMOND BEACH AND SERVELLO & SON, INC.; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Kelley moved, seconded by Commissioner Kent, to approve Resolution No. 2008-79, as read by title only.

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

Item #8(J)(4) – Right-of-way Mowing Services for State Roads Agreement

RESOLUTION NO. 2008-80

A RESOLUTION AUTHORIZING A COST OF LIVING INCREASE BASED ON THE CONSUMER PRICE INDEX PURSUANT TO THE RIGHT-OF-WAY MOWING SERVICES FOR STATE ROADS AGREEMENT BETWEEN THE CITY OF ORMOND BEACH AND SERVELLO & SON, INC.; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Kelley moved, seconded by Commissioner Partington, to approve Resolution No. 2008-80, as read by title only.

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

Item #9(A) - "Ormond Beach Medical Center"

ORDINANCE NO. 2008-15

AN ORDINANCE AMENDING SUBSECTION A, ZONING MAP, OF SECTION 2-03, OFFICIAL ZONING MAP AND DISTRICT BOUNDARIES, OF ARTICLE I, ESTABLISHMENT OF ZONING DISTRICTS AND OFFICIAL ZONING MAP, OF CHAPTER 2, DISTRICT AND GENERAL REGULATIONS, OF THE CITY OF ORMOND BEACH LAND DEVELOPMENT CODE, BY AMENDING THE OFFICIAL ZONING MAP TO REZONE CERTAIN REAL PROPERTY TOTALING 4.80 ACRES LOCATED AT 600 WEST GRANADA BOULEVARD, FROM B-9 (BOULEVARD) TO PBD (PLANNED BUSINESS DEVELOPMENT); ESTABLISHING BOUNDARIES; AUTHORIZING REVISION OF THE OFFICIAL ZONING MAP; APPROVING A DEVELOPMENT ORDER FOR "ORMOND BEACH MEDICAL CENTER" PLANNED BUSINESS DEVELOPMENT; ESTABLISHING CONDITIONS; REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; AND SETTING FORTH AN EFFECTIVE DATE.

Mayor Costello reported this was a public hearing for a rezoning and development order for the Ormond Beach Medical Center Planned Business Development that received unanimous approval from the Planning Board, including the waiver of six parking spaces, hedges along Tomoka Avenue, extra landscaping if needed, and money going into the sidewalk fund.

Ms. Jean Wright, 598 Tomoka Avenue, expressed concern regarding the additional traffic that would be produced due to the proposed exit onto Tomoka Avenue. She recommended the entrance and exit be placed on Granada Boulevard. Ms. Wright stated the property was not being taken care of properly. She conceded the medical building was a beautiful building, but she requested a buffer wall and the exit placed on Granada Boulevard. Ms. Wright reported the

trees that would be taken down formed the buffer, and it would be noisier without them. She urged the exit be a circle drive.

Mr. Jeff Sweet, 595 West Granada Boulevard, stated he was the project attorney, and a four unit medical office condominium was being proposed. He reported the parcel was bordered by Granada Boulevard and Tomoka Avenue. Mr. Sweet advised great lengths were taken to locate the project on the site to preserve the specimen trees and reduce the footprint. He stated the big issue to the homeowners was the access point on Tomoka Avenue. Mr. Sweet advised City code required this exit, which was good planning, and the project meets City codes. He stated citizens' concerns were that traffic would meander through the neighborhood to avoid the traffic lights on Nova Road and Granada Boulevard; however, he did not believe that would be an issue. Mr. Sweet advised the parcel was currently zoned for many uses, and a medical office would only be open from eight to five for five days each week and closed in the evening, on weekends, and holidays. He noted two out of four doctors were active surgeons who would be spending a great deal of time in the hospital. Mr. Sweet stated this would create the lowest impact possible when a restaurant could be located on this parcel.

Mr. Joe Hopkins, Project Engineer with Zahn Engineering, 240 South Palmetto Drive, Daytona Beach, stated the Transportation Element of the Comprehensive Plan clearly encourages the Tomoka Avenue entrance on this concentrated compact planned commercial project. He advised the development was concentrated mainly due to the environmental aspects. Mr. Hopkins reported the building only occupies 6% of the overall site, and the pavement and building combined only occupy 37% of the site. He pointed out the Comprehensive Plan suggested considering the green belt corridor for medical uses and suggested driveway entrances on Granada Boulevard should be held to the minimum necessary to provide adequate access and include shared entrances where practical and be in compliance with the State Highway System Management Act. Mr. Hopkins stated the management act encourages optimal utilization of the area roadway network as opposed to DOT's roadway. He advised they minimized the access on SR40, have an access across from Mr. Sweet's office, and provided for shared access to the property to the east. Mr. Hopkins reported this project has met the goals and objective. He stated without the waiver of the wall and the sidewalk, historic and specimen trees would be destroyed. Mr. Hopkins pointed out there were approximately 40 trees on the line or within the Tomoka Avenue right-of-way. He noted the building was positioned as far to the north as possible, in excess of 100 feet off Tomoka Avenue, in an effort to screen the project, and the goal was to utilize a vegetative buffer rather than the concrete wall. Mr. Hopkins stated a six parking stall waiver was being requested. He pointed out 125 stalls were being provided, and these six stall would equal 5% of the requirement. Mr. Hopkins reported he did not anticipate a great amount of traffic on Tomoka Avenue.

Ms. Sameera Kasim, 602 Tomoka Avenue, stated when she moved into her home she thought the area across the street would be a small strip mall or a small doctor's office, but the proposal was for a large medical building. She expressed concern relative to the traffic in that there were children in the neighborhood. Ms. Kasim requested a wall be built as well as save the trees, which could be done. She urged the Commission not to allow the residents' quality of life to be diminished.

Mr. Robert Belluscio, 556 Woodgrove Street, stated Tomoka Avenue was only 17 feet wide at the point of the access road, and the widest portion of Tomoka Avenue was only 25 feet wide. He stated the neighborhood directly south of this parcel had limited sidewalks. Mr. Belluscio disagreed that there would not be a great deal of additional traffic. He noted this was a 25,000 square foot building with five doctors and 125 parking spaces producing hundreds of patients every day. Mr. Belluscio reported the building was designed with a large overhang for a drop off area; therefore, there would be deliveries, and the building was designed to promote traffic. He questioned why the City finds it to be a good idea to have a second exit on a small road, particularly because it was not necessary for the business. Mr. Belluscio recommended leaving open space for emergency vehicles if necessary, but not opening the road. He reported before a decision was made the Police Department should study the issue and make a determination if this would be safe.

Mayor Costello assured Mr. Belluscio the Police Department does have input relative to the safety of a development project.

Mr. Diego Handel, 110 South Palmetto Avenue, Daytona Beach, attorney speaking on behalf of the residents of 602 Tomoka Avenue, stated the level of traffic on Tomoka Avenue was unknown in that there has been no traffic analysis. He reported the traffic would be considerable due to the large structure proposed. Mr. Handel advised there would also be vendor and delivery traffic on this small narrow street. He reported additional traffic on this street with children was a grave concern of the residents, and the noise would increase

dramatically, impacting the quality of life of the residents. Mr. Handel stated the masonry wall would provide greater protection from noise. He summarized the main issues were undue crowding affecting the public health, the safety and welfare of the people, and a dramatic change in the quality of life.

Mr. Wayne Stoner, 17 Spiveys Court, expressed concern that Tomoka Avenue does not meet the requirements of a City neighborhood street, but he noted he would prefer this building to a strip mall with odors and trash cans in the rear. Mr. Stoner cautioned allowing this entrance may cost the City money to upgrade Tomoka Avenue. He noted Tomoka Avenue was defined as a connector road. Mr. Stoner advised the road was very narrow with no curbs. He questioned if the City's requirement to have two entrances was overruling another State ruling for that connector road. Mr. Stoner pointed out Tomoka Avenue was part of Ormond Beach's history.

Ms. Debbie Ryan, 56 South Center Street, stated there was a nursing home in the area with patients in wheelchairs. She noted guests park on the side of the road; therefore, additional traffic would be a hazard. Ms. Ryan reported the building was beautiful, but the entrance should only be on SR40.

Commissioner Kelley moved, seconded by Commissioner Gillooly, to approve Ordinance No. 2008-015, on first reading, as read by title only.

Mr. Goss stated this project has been in the Planning Department for 11 months and was originally going to be a special exception. He reported on this 4.8 acre site, much of the site was in the floodplain with over 800 trees, and 47% of the trees were saved. Mr. Goss advised staff and the developer tried to fit the development into the natural site. He reported it was clear trees would have been lost had the six parking spaces been required, and there was adequate parking on the site. Mr. Goss noted the code requires a wall, but many trees would have to be removed for the wall. He stated staff always urges sidewalks be constructed, but since there was a sidewalk on the other side of the street and it would damage the root structure of the trees, staff recommended the waiver of the sidewalk. Mr. Goss pointed out staff tried to preserve the site to the greatest extent possible with trees being a top priority. He explained the City has access management policies in the Comprehensive Plan which are consistent with Florida statutes regarding access management that indicate there should be access to a lower classification street. Mr. Goss pointed out this project actually had three entrances; the project generates approximately 900 average daily trips; and the distribution was 8% to the lower classification street, which was minimal. He advised he understood the neighbors' concerns, but this project exceeded the architectural standards offering larger caliper trees, additional hedges, and a ten-foot setback off Tomoka Avenue and the lake.

Commissioner Partington reported he did not have a problem with the project; however, he expressed concern regarding ingress-egress on Tomoka Avenue. He noted there was a similar project west of this project, the Sweet offices across the street and the Moose Lodge, which had no rear access, and he did not believe this secondary access was needed. Commissioner Partington recommended closing off the access or lightly landscaping it to allow emergency vehicles access if necessary. He stated the project was aesthetically great, and he appreciated the efforts made by staff and the developer to make it aesthetically pleasing.

Commissioner Kent stated he was also planning on mentioning that at Mr. Sweet's office, the Moose Lodge, and the funeral home there was only one entrance, and it was on Granada Boulevard. He concurred with Commissioner Partington relative to closing off the ingress/egress on Tomoka Avenue. Commissioner Kent thanked Mr. Goss for working so diligently to save the trees. He advised he did not see the need for a masonry wall in that there would be a hedge and a large retention pond. Commissioner Kent urged the ingress/egress not be paved, but it should be left available for emergency use.

Commissioner Kelley reported the difference on this site compared to the other area sites was that the other sites do not have access to a secondary road. He stated the Comprehensive Plan requires this; and if staff could indicate it would not be necessary and if it would not be violating any State law to eliminate the access, he would agree to delete the access.

Mr. Goss explained the policy governs the way staff reviews site plans and makes recommendations. He reported in that the policies are an expression of the Commission, he would believe the Commission had the right, if the access was deemed to be not appropriate in this case, to not implement that policy; however, staff did not have that option.

Mr. Hayes stated this was a policy objective in the Comprehensive Plan, not a strict regulation within the Land Development Code. He noted he was not aware of any statute requiring the access; therefore, the Commission would have some discretion.

Mr. Goss stated this had no bearing on emergency management; it was rather an access management strategy as part of FDOT's rule for access management in that FDOT wants traffic distributed throughout the road if adjacent to a lower classification street.

Commissioner Kelley recommended utilizing the additional area for parking considering the six space parking waiver.

Mr. Goss stated if the Commission wanted to maintain the area as an emergency access, it could not have shrubs and trees planted.

Commissioner Kelley stated in that the Commission had the discretion, he recommended removing the access on Tomoka Avenue.

Commissioner Gillooly noted most of the residents agree the building was aesthetically pleasing. She asked if there was any reason for an emergency access.

Mr. Hopkins replied there was a single access point on Granada Boulevard, which was a stressed out thoroughfare, and the secondary access on the east would be provided in the future. He advised the Tomoka Avenue access was of paramount importance for emergency vehicles, and it was sound planning. Mr. Hopkins expressed concern that the Commission was debating whether or not the goals and objectives of the Comprehensive Plan that they adopted may not be warranted and the City may not abide by the Future Land Use Element. He pointed out these are the rules the City adopted, and the owner was entitled to this access. Mr. Hopkins stated he designed the project down the road, and it has two access point connected to a residential street, which has worked very well. He recommended public safety officials comment on a single access off Granada Boulevard.

Commissioner Gillooly stated this was an unusual street.

Mr. Hopkins noted there has not been a complaint about this street in the past, and he doubted the 8% additional traffic would cause problems. He reiterated staff has supported this; he has gone through a lengthy and cumbersome review process; and the access road is very important.

Commissioner Kelley reported after hearing Mr. Hopkins he could support the access road because he also doubted people would prefer to meander through the streets. He noted due to the safety issue and the City abiding by the Comprehensive Plan, he would support the access road.

Commissioner Gillooly stated this was warranted by the City's own Comprehensive Plan. She noted when the other access opens up, the City could possibly examine the issue again. Commissioner Gillooly reported this was not being done to inconvenience the residents, but it was safer to allow access on the side road. She advised this was one of the least intrusive commercial development projects that could be permitted in the area. Commissioner Gillooly reported this helps the City keep the taxes lower in that the City has been trying to obtain these types of value added jobs. She noted while she understood the concept of the masonry wall, after having the beauty of the natural trees, she believed it would be preferable to have the additional plantings in that it would probably still have the same look that the residents have enjoyed for a long time. Commissioner Gillooly stated if issues arise, the residents should call the City; but she considered the access necessary.

Mr. Sweet stated the property owner believes the access was important, but more importantly, he asked the City to abide by its own Comprehensive Plan. He reported in developing the site they made adjustments to the site depending on the access. Mr. Sweet reported the water feature had been expanded.

Mayor Costello asked Mr. Sweet what was the last project proposed for this land.

Mr. Sweet stated a Publix Super Market was proposed for this land.

Mayor Costello stated he opposed the super market, but favored this proposal. He reported this was the type of development the City wanted for the gateway; and while some people may be unhappy, he supports this project. Mayor Costello urged them to remember this was not a

Publix. Mayor Costello advised he believed in a secondary access whenever possible, and the 8% increase was not significant.

Mr. Handel stated considering vendors and deliveries, the 8% figure may not be correct. He urged this be weighed against residents concerns regarding children's safety. Mr. Handel pointed out if 92% would be going on Granada Boulevard, the additional 8% would be minimal. He asked that the access be restricted only for emergency access.

Mayor Costello commended staff and the developer for integrating the development into the environment. He noted concern the area was not being kept clean; and while he understood this was a different owner, he asked the area be kept clean.

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

Hearing no objection, Mayor Costello closed the public hearing on Item #9(A).

Mayor Costello called for a break at 8:52 p.m. He reconvened the meeting at 9:02 p.m.

Item #9(B) – “RaceTrac Service Station at Southwest I-95 Complex”

ORDINANCE NO. 2008-16

AN ORDINANCE AMENDING SUBSECTION A, ZONING MAP, OF SECTION 2-03, OFFICIAL ZONING MAP AND DISTRICT BOUNDARIES, OF ARTICLE I, ESTABLISHMENT OF ZONING DISTRICTS AND OFFICIAL ZONING MAP, OF CHAPTER 2, DISTRICT AND GENERAL REGULATIONS, OF THE CITY OF ORMOND BEACH LAND DEVELOPMENT CODE, BY AMENDING THE OFFICIAL ZONING MAP TO REZONE CERTAIN REAL PROPERTY TOTALING 2.18 ACRES LOCATED AT 1670 WEST GRANADA BOULEVARD, FROM B-7 (HIGHWAY TOURIST COMMERCIAL) WITH A PLANNED BUSINESS DEVELOPMENT OVERLAY (SOUTHWEST I-95 COMPLEX) TO PBD (PLANNED BUSINESS DEVELOPMENT); ESTABLISHING BOUNDARIES; AUTHORIZING REVISION OF THE OFFICIAL ZONING MAP; APPROVING A DEVELOPMENT ORDER FOR “RACETRAC SERVICE STATION AT SOUTHWEST I-95 COMPLEX” PLANNED BUSINESS DEVELOPMENT; ESTABLISHING CONDITIONS; REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Kelley moved, seconded by Commissioner Partington, to approve Ordinance No. 2008-16, 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

Hearing no objection, Mayor Costello closed the public hearing on Item #9(B).

Item #10(A) – Schedule of Civil Fines

ORDINANCE NO. 2008-13

AN ORDINANCE CHAPTER 2, ADMINISTRATION, ARTICLE VII, CODE ENFORCEMENT, OF THE CODE OF ORDINANCES, BY AMENDING SECTION 2-258, ADMINISTRATIVE FINES AND LIENS; AMENDING SECTION 2-262, SCHEDULE OF CIVIL FINES; REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Kelley moved, seconded by Commissioner Gillooly, to approve Ordinance No. 2008-13, on second reading, as read by title only.

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

Item #10(B) – Adding Nuisance Odors and Glare and Heat

ORDINANCE NO. 2008-14
 AN ORDINANCE AMENDING CHAPTER 14, OFFENSES-MISCELLANEOUS, OF THE CODE OF ORDINANCES, BY ADDING ARTICLE IX, PERFORMANCE STANDARDS, AND SECTIONS 14-101, NUISANCE ODORS, AND SECTION 14-102, GLARE AND HEAT, THEREUNDER; BY ESTABLISHING TERMS AND CONDITIONS RELATIVE THERETO; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Partington moved, seconded by Commissioner Kelley, to approve Ordinance No. 2008-14, on second reading, as read by title only.

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

Item #11(B) – Update on Inmate Labor Program

Commissioner Gillooly stated the report was extremely conservative. She questioned the use of equipment as noted in the report and the cost of the in-house staff to support and assist in the operation for this contract. Commissioner Gillooly reported the Commission must start looking to supplement what was occurring in staff. She stated conservatively projected over a five-year period, the potential contact savings could be \$200,000 to \$250,000 or an annualized savings of \$40,000 to \$50,000 per year, yet staff has described this as minimal savings. Commissioner Gillooly expressed disagreement with that description and pointed out the Commission must start looking for these types of savings. She stated the report stated Servello indicated that if their median contracts were terminated, their profit base would decrease, and they may increase their other contracts with the City to make up that profit base; however, she would recommended at that point the City should then rebid all of the contracts. Commissioner Gillooly urged the Commission to be aware that they must begin considering savings of \$40,000 or \$50,000. She noted she was disappointed in staff’s reaction to this and urged more creative thinking.

Commissioner Kelley stated the report was conservative. He stated in 1994 to 1996 the City was saving \$150,000 by contracting out the maintenance of one section of Granada Boulevard. Commissioner Kelley noted some issues were getting the City back into the business with their equipment; training personnel; changing personnel; personnel would not work during inclement weather; emergency situations would exist; personnel would not work from 7:00 a.m. to 7:00 p.m.; personnel would not work to get the job done; there would need to be at least two additional employees to make sure the inmates were working; and special work would need to be contracted out. He advised he opposed using inmate labor.

Commissioner Partington and Commissioner Kent agreed they were also opposed to using inmate labor for now, but may consider it sometime in the future.

Mayor Costello summarized the Commission was willing to consider using inmate labor in the future, but at the moment, Servello was doing a great job.

Ms. Sloane stated staff would continue to use the inmate labor program for special projects.

Item #11(A) – Update on Early Retirement Options

Commissioner Kelley questioned why eligible employees cannot be asked individually if they would take the early retirement option in advance.

Ms. Lorenda Volker, Human Resources Director, stated Mr. Paul Lane, Finance Director, would know the answer to his question, which she believed was a pension rule concerning discriminating against people in a class who would meet certain requirements. She noted the option must be offered to anyone within the class who would meet the criteria set by the Commission.

Mr. Turner stated staff would provide that information to the Commission. He noted staff has had extensive discussions regarding this issue. Mr. Turner stated while Ms. McGuire was conservative on the assumptions provided, he has known of times where pension investments did not come in at the assumed percentage. He advised he asked if the plan could be offered only to those who answered the survey with a "yes," but he was informed that could not be done.

Commissioner Kelley reported the requirements set by the Commission could be stated that anyone who answered the survey with a "yes" would be eligible.

Mr. Turner advised he would provide the Commission with the official ruling on this question.

Mayor Costello stated he did not see enough information at this point that would make him comfortable that the City could predictably save money. He reported if there were positions that should be cut, they should be cut.

Commissioner Gillooly reported she asked the City Manager if he had made any progress in identifying the positions that he would eliminate from this exercise, because it was her understanding that upon leaving the last meeting when this issue was discussed, the Commission gave a direction to provide more substantial data. She noted she understood not every position could be eliminated; however, by approving this, there may be a position under that position that could be eliminated. Commissioner Gillooly pointed out that data was not in this report.

Mr. Turner stated what he thought was being requested was a specific analysis. He reported the Commission gave him clear direction to consider eliminating at least four management positions and reducing staffing as a cost savings. Mr. Turner advised that would be brought to the Commission as part of the budget process. He noted he was not looking at an early retirement plan as an incentive for that effort. Mr. Turner stated he was not saying this would not help reduce positions but was indicating he would go after positions.

Mayor Costello reported he wanted to know what positions would not be filled if the early retirement would pass and all eligible would accept it. He stated he would then want to eliminate those positions if an early retirement program were offered or if it was not offered. Mayor Costello advised the community demands the Commission be as frugal and efficient as possible; and if an excellent employee fills a position, but that service was no longer needed, the City needs to eliminate the position.

Mr. Turner stated the easiest way to do that would be to inform the Commission of the positions that staff was considering eliminating in the next year or two.

Commissioner Gillooly clarified the Commission wanted specifics.

Mayor Costello reiterated he wanted these positions to be eliminated whether there was an early retirement or not rather than using early retirement as a vehicle to accomplish that until he was convinced it would save money.

Commissioner Kelley stated there would be savings by combining positions alone that were greater than had been indicated in the report.

Commissioner Gillooly stated the reality of human relations must be considered. She reported from a management and human resources position, it would be much more palatable and easier to accomplish the goals if an early retirement could be offered without having to lay off that employee.

Commissioner Kelley stated he could find 10 positions where the positions could be combined or eliminated.

Mayor Costello recommended Commissioner Kelley give Mr. Turner those positions. He stated in Option A, the Support Services Director was also the Airport Manager and Public Information Officer; and when the chart indicated it would save the City a certain amount of money if he retired, it did not take into account what it would cost to replace him.

Commissioner Kelley stated the position of Airport Manager, Public Information Officer, and Support Services Director could be given to three current employees; the Support Services Director offered an early retirement; and the City would save money.

Mayor Costello stated if that could be done, he suggested the Support Services Director could apply for a City Manager position elsewhere; and if the position was not needed, it could be eliminated. He stated it does not need to be done through early retirement. Mayor Costello stated some employees were currently doing multiple duties, and they were not the positions he would want to eliminate; but he would want to eliminate as many positions as possible while maintaining the current service level.

Mr. Turner reported he would present staffing reductions regardless of the outcome of the early retirement issue; it was incumbent upon staff to justify the remaining positions; and the Commission would have the opportunity to discuss this during the budget process. He stated he believed the Commission was obligated to listen to staff as to the impact of eliminating positions. Mr. Turner pointed out the Commission instructed staff that an Airport Manager position was not needed; and he believed someone needed to be responsible for the airport, and it was his job to include this in the organization. He noted he would provide staff reductions and would not have a problem discussing specific positions in private and finding some way to discuss it in public; however, he did not want to speak about individual employees.

Mayor Costello stated whatever positions could be eliminated, he would be willing to offer those positions some sort of early retirement; but he did not know how to structure that to make the offer.

Commissioner Kelley suggested offering it to those who answered “yes” in the survey as well.

Commissioner Gillooly reported she believed there should be a way to craft criteria to include those employees Commissioner Kelley mentioned.

Commissioner Kelley noted David Abee, Leisure Services Director’s position, could not be given to a number of employees.

Mayor Costello clarified the Commission did not have sufficient information to make a decision at this point.

Item #11(C) – Realtor Disclosure Regarding Height Limits

Mr. Goss stated staff processed the amendments to the Comprehensive Plan regarding the height limit, but there was more to do than survey the buildings in that every file must be investigated to determine the vesting language, which takes an extensive amount of staff time that they do not have considering the two vacant positions. He explained he did not foresee this could possibly be accomplished within the next 12 to 24 months.

Mr. Turner stated he asked Mr. Goss to focus on getting the Planning Department automated, the process issues the Commission selected as a major goal of getting people through the system in an expeditious manner, and handling the day to day issues. He noted Mr. Goss had three planners, including himself, while trying to accomplish a major change. Mr. Turner reported he was responsible for helping Mr. Goss prioritize the projects. He explained that for this issue a great deal of individual research must be done for each property to determine the height, what the development standards were at that time, and what records were available.

Mayor Costello recommended a blanket disclaimer on all of the buildings and not select specific buildings. He noted he did not want to spend staff time selecting the buildings, which may open the City up to potential liability. Mayor Costello suggested a blanket statement as follows: “If your building was found to exceed 75 feet and does not have a development order that would exempt it from the current charter amendment, it would not be able to be rebuilt.” He stated people have told him the value of their condominiums would plummet if that disclaimer was added to one building and not another building.

Mr. Mark Dougherty, 8 Ormond Green Boulevard, Executive Director of the Daytona Beach Area Association of Realtors, stated the current law reads that the buildings have a height limitation and there was no enabling language relative to grandfathering. He explained a realtor who would list a property or bring a buyer to a unit would have a potential outstanding liability if a disclosure was not made. Mr. Dougherty stated while this was a public record, the realtor could be sued without the disclosure. He advised the Realtor Attorney Committee decided to develop a disclosure form indicating what the law states; and should they have any questions

regarding whether this would have a material effect on the value of their property, that they would need to consult with their attorney. Mr. Dougherty reported he was asking the City to examine this issue. He noted he believed some of those who voted for this law did not understand the impact it would have on their individual property. He pointed out it was not known how many properties this may affect.

Mr. Philip Maroney, 119 Atwood Lane, reported this was a question of equity and fairness to the residents in those properties that if damaged to a significant extent would be in limbo. He noted there could be a potential decrease in values of the property and noted ad valorem taxes were related to property values. Mr. Maroney stated cataloging and knowing the specifics of the properties was ultimately important, but the amendment did not make specifications as to which particular buildings were involved. He recommended a blanket waiver stating that any building that existed prior to adaptation of the new Charter amendment that was damaged to the appropriate degree may be reconstructed up to its former height subject to any conditions of the current code regulations. Mr. Maroney advised the voters approved the height restrictions without specifically considering the existing buildings, and the City could just as easily approve the grandfathering of those same unspecified buildings, which would provide immediate assurance to residents and allow staff adequate time to obtain the information on the buildings.

Mayor Costello clarified that Mr. Maroney was asking for a Charter amendment.

Mr. Maroney concurred that he was asking for a Charter amendment and noted he believed the residents would see this as a fairness issue.

Commissioner Kelley stated that Land Development Code indicates that if 50% or more of the total square footage of a non-conforming structure was destroyed by any means so that the area was rendered unusable at the time of construction then it shall not be reconstructed except in conformance with the provisions of the Land Development Code. He noted the Tidesfall condominium did not have a value other than \$1, and if destroyed beyond 50%, technically, could not be rebuilt if it was on the seventh floor due to the verbiage regarding 50% of the value of the structure. Commissioner Kelley stated he did not believe there was anyone who wanted to kick someone out of their home by their vote.

Mayor Costello stated this was the unintended consequence of the recklessness of those who drafted the amendment.

Commissioner Kelley noted if the Commission had not switched the language there would be a question in the Charter, and this would not be an issue.

Commissioner Kent concurred with Commissioner Kelley that he did not believe it was the intent of the voters to kick anyone out of their home. He asked if there were no height limit vote and the side yard setbacks were different than what was required today and the building had 50% damage, would they be able to rebuild in the same footprint.

Mr. Hayes stated there were a number of components to the question Commissioner Kent asked. He noted an easier fix than trying to determine which structures may be nonconforming would be to propose a referendum that would grandfather in those previously existing structures. Mr. Hayes advised the general rule of law indicates that developments must comply with development standards, and exceptions must be found in some law or other document providing vesting of rights. He stated the task of trying to determine who may or may not have vesting of rights was an enormous project. Mr. Hayes stated boards of adjustments were a development of the common law to provide equity to inequitable situations; and a few years ago, the City codes were amended to allow the Ormond Beach Board of Adjustment and Appeals to grant flexibility through the form of variances. He pointed out the height issue was a completely different issue than the side yard setback issue.

Commissioner Kent expressed appreciation to Mr. Goss for trying to accomplish this task, but agreed that he was short staffed and would probably have to contract the job out to accomplish the task should the Commission want it done.

Mayor Costello asked if the Commission could pass a resolution stating that any building exceeding 75 feet as of January 1, 2008, was deemed to have a development order whether they could find it or not; and it could be rebuilt but could not be enhanced.

Mr. Hayes stated he did not believe that would be possible because the Charter amendment states "all buildings," leaving no exceptions.

Mayor Costello stated if a development order changes that ruling, could the Commission deem that the existing structures have development orders whether a record could be found or not.

Mr. Hayes advised this would be creating an exception, and he would prefer for the electorate to accomplish the goal by way of another amendment.

Mr. Maroney stated he was not trying to go further than his suggestion to try to get it back to where it was from a grandfathering standpoint.

Mr. Dougherty advised he was seeking some certainty so the realtors would know what to tell sellers and buyers. He noted after reading the legislation, he expected to see cranes knocking down the tops of buildings because the law stated no building can exist above 75 feet, but this has not occurred. Mr. Dougherty reported he did not foresee a problem going to the electorate because the intent was not that Ormond Beach cannot have a building taller than 75 feet, because some do exist.

Mr. Hayes stated the realtors group may want to simply advise a prospective buyer or seller that Ormond Beach has a height limitation regulation, it may or may not affect their rights; and the client may want to consult with an attorney. He reported this would allow the realtor to comply with the disclosure requirement, but it does not take the burden off of the City. Mr. Hayes advised staff does not have the ability to do a comprehensive review.

Commissioner Gillooly stated the problem with a disclosure alone was that it would be doing a disservice to the property owner and tax payer looking to the City to come up with an answer. She reported she agreed with the consensus that the intent was not to displace homeowners even though the Commission discussed the consequences of the vote, but it was incumbent upon the Commission to come up with some solution. Commissioner Gillooly stated while the homes built in the 50s with smaller lots may not have the frontage, should the homes be destroyed over 50%, they do have the mechanism of going to the Board of Adjustment and Appeals. She noted her thought was to come up with a cursory list, and then later on obtain the necessary information. Commissioner Gillooly expressed she also would like to come up with the presumption of a development order as Mayor Costello recommended or something else to that effect. She asked if the development orders were ever recorded with the court.

Mr. Hayes stated merely because a development order existed would not necessarily create a vesting of rights, and unless there was specific language or it could be tied to some other statute or exemption, there was no vesting of rights. He noted there was no clear answer, and each would have to be evaluated on a case-by-case basis. Mr. Hayes stated a sure fix was another Charter amendment.

Commissioner Gillooly stated she believed the City owed the taxpayers a fix because to ask the realtor to draft a disclosure would immediately devalue the property. She thanked Mr. Maroney and the Area Association of Realtors for bringing this to the Commission's attention in that she believed this must get done.

Mr. Hayes stated the Commission can, by ordinance, place a question before the voters, and there were some models on grandfathering that could be used for guidance. He noted he could start preparing this if directed by the Commission.

Mr. Turner questioned what obligation the City would have to structures that would later be determined to have vested rights if a Charter amendment failed; however, he noted the answer to that question was not known.

Commissioner Kelley asked if the unit value or building value was the determination.

Mr. Hayes stated his position would be that it was the value of the entire building not the unit.

Commissioner Kelley reported the building value of the Tidesfall, according to the tax assessor, was \$1.

Mr. Goss explained the code specifically stated 50% or more of the floor area.

Mr. Hayes stated this indicated the entire property would be nonconforming, not an individual unit.

Mr. Turner recommended compiling all of the questions and staff would provide the answers.

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Mr. Goss advised the code specifically indicated “50% or more of the total square footage of a nonconforming structure,” and there would not be any valuation in the nonconformity.

Mayor Costello noted the memo referred to valuation.

Mr. Goss reported there was a revised memo that did not refer to valuation that the Commission should have received.

Mayor Costello asked Mr. Hayes to do some creative research to determine if there could be some way to legislatively state that buildings that were built prior to a specific date had vested rights.

Mr. Hayes stated he has already supplied his answer to that scenario and offered to prepare an ordinance for a Charter referendum, but he would not recommend the option Mayor Costello suggested.

Mayor Costello summarized Mr. Hayes would bring an ordinance for a Charter amendment for the Commission to consider.

Item #12 – Reports, Suggestions, Requests

Central Park Dock

Commissioner Kelley stated the City should scrutinize any future dealings with any continuing contractor who would try to take advantage of the City by charging \$5,000 to replace a 10-foot section of a walkway.

Water Plant

Commissioner Kelley thanked this Commission and the previous Commission for the decision to provide the water plant. He noted an environmental engineer, who examined thousands of water plants, stated the City came from 19th century technology to the 21st century. Commissioner Kelley stated the citizens should be proud of this plant. He noted it may be helpful if there were photographs of what the plant was like previously to see the difference. Commissioner Kelley advised the City has created something to provide adequate, safe, and better tasting water for the next 25 years and possibly beyond.

Mayor Costello stated the pumps and the lines were better.

Commissioner Kelley noted he has discontinued using his water filters, and people can also discontinue using water softeners.

School Board Decision

Commissioner Kelley stated Ormond Beach has had a School Board representative for 16 years that has not supported Ormond Beach in the recreation programs, and he was livid over the School Board response.

Summer Attire

Commissioner Kelley recommended going back to summer attire at the April 1 meeting.

Fire Fee Meeting

Commissioner Partington informed the public the Commission would discuss a possible fire fee tomorrow evening at 6:00 p.m.

School Board Decision

Commissioner Gillooly concurred with Commissioner Kelley that the response from the School Board was very disheartening, particularly when the members of the Recreation Advisory Board and volunteers have urged the Commission to draw a line in the sand.

Chief Longfellow

Commissioner Gillooly stated her prayers and thoughts were with Police Chief Michael Longfellow and his family.

Birthplace of Speed

Commissioner Gillooly thanked the Birthplace of Speed representatives, and the antique automobile enthusiasts, particularly Mr. Dan Smith, for their efforts on the Birthplace of Speed events. She reported there were people from all over the country and the world who were staying in Ormond Beach hotels, eating at restaurants, and purchasing memorabilia. Commissioner Gillooly advised there was a quality of life and economic development component to be considered, and she thanked everyone, including staff, that make this happen.

Commissioner Kent thanked Dan Smith and Motor Racing Heritage group for all they have done for Ormond Beach.

School Board Response

Commissioner Kent concurred with Commissioner Kelley relative to the School Board response regarding the Airport Sports Complex.

Donation

Commissioner Kent requested the City send a letter thanking Mr. Barnett for the gracious donation of the picture that the entire Commission could sign.

Mayor Costello stated he would have sent a letter, but would prefer it be signed by the entire Commission as Commissioner Kent recommended.

Modified Interchange Recommendation

Mr. Turner reported he and Commissioner Partington visited five elected official's offices in Washington D.C. to attempt to pave the way for the funding for the modified interchange recommendation. He stated this was a multi-year process, and they were trying to keep it in front of certain legislators and introduced to others. Mr. Turner reported he discussed the process in more detail with Congressman Mika's staff. He stated it was approaching the time, within a year or two, of getting into a funding cycle. Mr. Turner advised he and staff would have a follow-up meeting with one of Congressman Mika's staff members.

Chief Longfellow

Mr. Turner solicited prayers for Chief Longfellow and his family.

Judy Sloane's Impact on Ormond Beach

Mr. Turner commended Ms. Judy Sloane, Public Works Director, for her work with Ormond Beach. He advised she would be working with Volusia County. Mr. Turner stated there was hardly a place one could go in Ormond Beach that Ms. Sloane's impact on the quality of life could not be seen.

Litigation Regarding Alan Burton

Mr. Hayes reported a brief shade meeting would be set up to discuss the litigation regarding Mr. Alan Burton.

Item #13 - Close the Meeting

The meeting was adjourned at 10:14 p.m.

APPROVED: _____ April 1, 2008

BY: _____
Fred Costello, Mayor

ATTEST:

Veronica Patterson, City Clerk