

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

April 4, 2006 7:00 p.m.

Present were: Mayor Fred Costello, Commissioners Lori M. Gillooly, Troy Kent, Ed Kelley, and Bill Partington, City Manager Isaac Turner, Assistant City Manager Theodore MacLeod, City Attorney Randy Hayes, and City Clerk Veronica Patterson.

A G E N D A

- 1) Meeting call to order by Mayor Costello.
- 2) Invocation.
- 3) Pledge of Allegiance.
- 4) Approval of the Minutes of the March 21, 2006, meeting.
- 5) ***PRESENTATIONS:***
 - A) Employee-of-the-Quarter award to Donnie Brock, Police Department.
 - B) Proclamation by Mayor Costello in honor of Conservation Month.
 - C) Recognition of Bill Heiser, Southern Hills Kennels, and Janet Narushka, Daytona Beach Dog Fanciers Association, Inc., and the Obedience Club of Daytona, Inc.
- 6) ***AUDIENCE REMARKS:***
- 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. 2006-69 authorizing the submittal of a grant application to the U.S. Department of Homeland Security, Office of Domestic Preparedness, under the Assistance to Firefighters Grant, for funding assistance to purchase fire equipment; authorizing the execution of all documents incidental thereto. (\$363,120 total project; \$326,808 grant funds; \$36,312 local funds)
- B) Resolution No. 2006-70 authorizing the execution of an Installation and Access Agreement between the City and Bright House.
- C) Resolution No. 2006-71 authorizing the acceptance of a bicycle path easement as a condition of approval for the Chabad Lubavitch Synagogue Special Exception approved by Resolution No. 2005-232 on property located at 1079 West Granada Boulevard.
- D) Resolution No. 2006-72 authorizing the execution of Change Order No. One (1) to that contract awarded to A&M SI Construction Company, Inc., regarding the Central Park Multi-Use Trails project, by increasing the contract price by \$14,293.82.
- E) Resolution No. 2006-73 authorizing the execution of Change Order No. Two (2) to that contract awarded to D&W Paving, Inc., regarding the South Ridgewood Avenue, Lorillard Place and Live Oak Avenue Roadway and Drainage Improvements project, by increasing the contract price by \$27,250 and by increasing the contract time by 11 days.
- F) Resolution No. 2006-74 accepting the bid of PKC Roofing, Inc., for the provision of construction services regarding The Casements Roof Replacement project under Bid No. 2006-10; rejecting all other bids; authorizing the execution of a contract between the City and PKC Roofing, Inc., and payment thereunder. (\$75,217)
- G) Resolution No. 2006-75 authorizing the execution of a contract between the City of Ormond Beach and Hall Construction Company, Inc., regarding the Cassen Park Floating Dock Replacement project. (Not-to-exceed \$26,577)
- H) Resolution No. 2006-76 accepting the proposal of Jones Mechanical Corp., for professional services regarding the Eimco clarifier renovations at the Wastewater Treatment Plant; authorizing the execution of an agreement and payment therefor. (\$169,000)
- I) Resolution No. 2006-77 authorizing the execution of a Water, Sewer and Annexation Agreement between the City and Silver Creek Development, Inc.; providing for recordation. (MBA Business Center)
- J) Resolution No. 2006-78 authorizing the execution of a release and satisfaction of Special Master administrative fine/lien for code violations on property located at 904 Woodmere Circle.
- K) Approval of travel by the City Commission and the City Manager to attend conferences.

DISPOSITION: Approve as recommended in City Manager memorandum dated March 30, 2006.

- L) Review of FY 2005-06 budget status.

DISPOSITION: Approve as recommended in City Manager memorandum dated March 30, 2006.

9) **PUBLIC HEARINGS:**

- A) Resolution No. 2006-80 authorizing the execution and issuance of a Development Order for "Holy Cross Antiochian Orthodox Church" Special Exception on a site located at 375 Fleming Avenue, within the R-3 (Single-Family Medium Density) zoning district to allow a House of Worship consisting of an existing 5,000 square foot one-story building that includes a 99 seat church area and administrative office; approving a wall waiver; establishing conditions and expirations of approval.

- B) Ordinance No. 2006-03 vacating a portion of West Street, a platted public right-of-way lying west of 351 Cumberland Avenue.
- 10) **FIRST READING OF ORDINANCE** No. 2006-04 amending the annual budget for the 2005-2006 fiscal year relative to the General Fund; Downtown Redevelopment Fund; Airport Fund; Economic Development Fund; Federal Law Enforcement Trust Fund; Grants Fund; Facilities Renewal and Replacement Fund; North US1 Property Acquisition Fund; General Capital Improvements Fund; Transportation Improvement Fund; Water & Wastewater Utility Fund; Water & Wastewater Renewal & Replacement Fund; Wastewater System Impact Fee Fund; Water Treatment Plant Construction Fund.
- 11) **RESOLUTIONS:**
- A) Resolution No. 2006-79 of the City Commission of the City of Ormond Beach, Florida, authorizing the issuance of not-to-exceed \$9,000,000 in principal amount of its Water and Sewer Revenue Bond, Series 2006, for the purpose of financing the construction and acquisition of certain additions, extensions, and improvements to the water and sewer system of the City; determining certain details of said bonds; providing for the security of said bonds; awarding the sale of said bonds to the successful proposer for said bond; appointing a paying agent and registrar for said bonds; authorizing proper officials to do all things deemed necessary in connection with the issuance, sale and delivery of said bonds. (Fifth Third Bank - 3.89% fixed)
- B) Deer Creek Subdivision of Hunter's Ridge:
- 1) Resolution No. 2006-81 amending Resolution No. 2005-127 by approving a four phase development plan for the "Deer Creek" portion of the "Hunter's Ridge" Development of Regional Impact; approving the "Deer Creek Phase One" preliminary plat for the development; establishing conditions and expiration of approval.
 - 2) Resolution No. 2006-82 approving the preliminary plat for the "Deer Creek Phase Two," portion of the "Hunter's Ridge" Development of Regional Impact; establishing conditions and expiration date of approval.
 - 3) Resolution No. 2006-83 approving the preliminary plat for the "Deer Creek Phase Three," portion of the "Hunter's Ridge" Development of Regional Impact; establishing conditions and expiration date of approval.
 - 4) Resolution No. 2006-84 approving the preliminary plat for the "Deer Creek Phase Four," portion of the "Hunter's Ridge" Development of Regional Impact; establishing conditions and expiration date of approval.
- 12) **DISCUSSION ITEMS:**
- A) Continued WAV discussion (if necessary).
- B) A1A redevelopment / height limitations.
- 13) **REPORTS, SUGGESTIONS, REQUESTS:** Mayor, City Commission, City Manager, City Attorney.
- 14) Close the meeting.

Item #1 - Call to Order

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

Item #2 – Invocation

Mayor Costello gave the invocation.

Item #3 - Pledge of Allegiance

Mayor Costello led the Pledge of Allegiance.

Item #4 – Approval of Minutes

Mayor Costello advised the minutes of the March 21, 2006, regular meeting had been sent to the Commissioners for review and asked if there were any corrections, additions, or omissions.

Mayor Costello asked if there was any objection to approving the minutes as submitted. Hearing none, he declared the minutes approved as submitted.

Item #5(A) – Employee-of-the-Quarter Award

Mr. Isaac Turner, City Manager, announced that Police Officer Donnie Brock was selected as the Employee-of-the-Quarter. He noted Officer Brock had been in law enforcement since 1974 and had the distinction of being the youngest police chief in the nation serving in Bunnell, Florida, at the age of 19 for two years. Mr. Turner stated Officer Brock had been with Ormond Beach since 1986 and with the Criminal Investigation Division since 1989. He reported Officer Brock was very involved in the community by serving with the Espanola Volunteer Fire Department, serving as a member of the Citizens in Action for Volusia and Flagler counties, serving as an alumni member of the Future Farmers of America, volunteering with the Volusia County school system, and volunteering for the Ormond Beach Police Athletic League (PAL) "Read Program." Mr. Turner noted Officer Brock is spoken of as one of the most outstanding investigators in the State and maybe the country.

Mayor Costello congratulated Officer Brock and presented him with two plaques to be placed on display at City Hall honoring him as the Employee-of-the-Quarter, along with a watch with the City seal on its face. He thanked Officer Brock for doing an outstanding job for Ormond Beach.

Item #5(B) – Water Conservation Month

Ms. Deborah Green, Water Authority of Volusia, Water Conservation Coordinator, announced the Ormond Beach winners of the water conservation poster and writing contest were Brooke Anders, Chardai Anderson, Victoria Crawshaw, Megan George, WyndSOR Howard, Kaley Pettenger, and Katelyn West. The winning posters were displayed on the projector as she was announcing the winners.

Mayor Costello read a proclamation indicating clean, safe and sustainable water resources and supplies were vital to Volusia County's economy, environment, and its people. He stated the State of Florida Water Management District, the Water Authority of Volusia, and member governments are working together to increase awareness about the importance of water conservation. Mayor Costello noted the City of Ormond Beach and the State of Florida have designated April, typically a dry month when water demands are most acute, as *Water Conservation Month*, to educate citizens about how they can help save precious water resources. He proclaimed April 2006 as Water Conservation Month in the City of Ormond Beach and urged all residents and businesses to help protect the precious water resources by practicing water saving measures.

Item #5(C) – Police Department Recognition

Acting Police Chief Michael Longfellow presented two new canine police dogs: Dawny and Savannah.

Corporal Mark Walker stated Officer Lisa Rosenthal started with the Police Department in 1996 as a Community Service Officer, was hired as a police officer in 1998, and assumed her canine officer position in 1992. He reported in 2005 Officer Rosenthal and Savannah confiscated over 100 pounds of cannabis, 116 grams of cocaine with a street value over \$100,000, and assisted other police departments to search buildings. Corporal Walker explained that in November out of 45 canine teams from around the Country, Officer Rosenthal and Savannah earned the status of "Top Dog." He noted Officer Matt Karparis was the City's newest canine officer.

Corporal Walker reported in January former Police Chief Larry Mathieson presented the Commission with a request to proceed with a new canine unit. He recognized three companies and individuals who made this possible. Corporal Walker recognized Mr. Bill Heiser and Mr. Kevin Lang of the Southern Hills Kennels who donated Dawny to the Police Department. He presented a plaque to Mr. Heiser thanking him for his support. Corporal Walker reported Mr. Lang was one of Mr. Heiser's trainers.

Corporal Walker presented plaques thanking Ms. Hope Johnson of the Obedience Club of Daytona, Inc., and Ms. Joan Kapier of the Greater Dog Fanciers for teaming up to make a

donation of over \$1,000 for the implementation of the new canine and provide trauma kits to care for the dogs should a need arise.

Item #6 – Audience Remarks

Water Issues Meeting

Mr. Joe Bourassa, Daytona Beach, stated the Commission just ended a meeting on water issues, but what was not mentioned was that tomorrow at 6:00 p.m. the Water Management District would be holding its Projects and Lands Committee meeting in the City Hall chambers. He noted the Water Management District dictates a great deal of water issues making this meeting very important, and he recommended the Commission attend the meeting.

Reverse Osmosis Plant

Mr. Mike Chuyen, 144 South Halifax Avenue, stated it was ironic that the City was celebrating Water Conservation month when they were planning on building a reverse osmosis (RO) plant that would waste one-half million gallons of water per day straight from the aquifer into the river. He provided a timeline which he stated explained why the RO plant was first recommended and why it was no longer a viable option. Mr. Chuyen stated the cost was to be \$9 million for construction and the first year operations including the operation costs of the existing plant, and the lime softening plant was \$6.4 million with a difference of \$2.7 for the first year; but there was a water quality issue at the time the report came out. He reported in 2001 the St. Johns River Water Management District provided a new permit removing the requirement to pump the first three million gallons from the Division wellfields, thus increasing the quality of the water coming into the water plant because of the new wells and because more water could be pumped from the western wellfield and less from the Division wellfields. Mr. Chuyen stated the report from 2006 indicated the blend causes toxicity problems, and RO was discouraged except where absolutely necessary. He noted his new estimated cost was \$10.9 million, and the lime softening cost was \$7.7, with a difference of over \$3.2 million.

Mr. Chuyen stated that 12 of every 52 inches of rain would go into the aquifer making over 900 billion gallons that would go into the aquifer, and only 300 billion gallons are used in Volusia County. He questioned why the City would choose to spend more money to build and operate a plant with lower quality water when it was not necessary.

Fluoridation

Mr. Jim Schultz, 117 Harbor Drive, provided a handout from Lucier Chemical Industries (LCI) which he stated was available at the website fluoridealert.org. He stated this was a toxicology report, but it was not new standards on what could be in the water, although recommendations were made. Mr. Schultz reported fluorosis was now considered a medial effect, making it illegal to cause fluorosis. He noted the maximum contaminant level goal must be lowered. Mr. Schultz stated the EPA would do a review process taking a couple of years before a new evaluation of the number would be provided. He recommended studying the aforementioned website for information on the effects of fluoride.

Mayor Costello stated the National Academy of Sciences indicated four times the current limit was too much, and that level would be lowered.

Building Height Limitation

Mr. Glenn Jaspers, 160 Ocean Terrace, stated he was intrigued by the question and answer session between Commissioner Gillooly and Planning Director Clay Ervin at the last meeting in that the total emphasis was on the processes in place and designed to allay the fear of high rises in the future. He noted Mayor Costello indicated he would trade height, but not density, for a park. Mr. Jaspers reported another Commission member was quoted as saying he would mix 20-story buildings along with five-story buildings. He noted another Commission member indicated he would honor the 75-foot limit in the Land Development Code, but refused to support a Charter amendment outlining the same limit. Mr. Jaspers stated some have postulated that the 75-foot limit only would apply to the living area, which would allow a few levels of parking raising a building to 100-feet.

Mr. Jaspers reported he sent an e-mail to the legal office on March 29 indicating his intent to ask Mayor Costello at this meeting the following questions: under all current rules, may the City Commission, by majority vote, permit structures to exceed the height of 75-feet, and if the 75-foot height limit be included in the City Charter, would it empower the voters to determine future height limits on a case-by-case basis? He reported he received an answering e-mail from the legal department, Commissioner Kelley, and Chief Planner Michael Boucher. Mr. Jaspers noted Mr. Hayes's reply was that a majority of the City Commission could change anything. He stated he asked a straight forward question and after a long time and a great deal of paper he obtained an answer, but he never did receive a direct answer. Mr. Jaspers reported the height question

was of such import that it must be put to the voters in a straight forward manner, which was the main reason the petition has enjoyed the support of 90% of the electorate.

Mr. Dave Bates, 204 Ormond Parkway, stated that last month the Commission indicated they had not seen any plans for a high rise, but two weeks ago his children went to shell shop on the corner of Seminole Drive and A1A and was told a high rise was replacing the Surfside as well as a multistory parking garage on the Zaxby's and shell shop location, including a crossover from the garage to the high rise. He reported a high rise would amplify the road noise into the neighborhood. Mr. Bates stated a garage would bring undesirables into the area and become a skateboard ramp for those now using the hospital receiving dock. He challenged the Commission to go to the Daytona Beach parking garage to witness the undesirables roaming around. Mr. Bates pointed out the latest fire truck would only reach seven stories and questioned who would pay for a truck with a longer ladder.

Mr. Jeff Boyle, 614 North Halifax Drive, representing Citizens and Neighbors Devoted to Ormond (CANDO), reported CANDO collected petitions in excess of those necessary to achieve a Charter referendum on building heights, and they would be submitted to the elections supervisor this week for validation. He stated the drive would continue until that validation process was complete.

Mr. Boyle reported the petition had been signed by hundreds of high-profile people who have and would continue to support the sitting Commission. He stated Mayor Costello made the statement that he was "tired of lies," but that statement disrespects the CANDO petitioners and thousands of people asking to vote on that issue. Mr. Boyle pointed out that Flagler Beach had its Charter referendum a month ago, and 96% of the people voted to restrict building heights to 35 feet, but this was never printed in any *News-Journal* article. He stated Flagler Beach voters were not misled, and petition signers in Ormond Beach have not been misled. Mr. Boyle reported the City Commission can make no decision without a public hearing process, but after that process they do have the power to waive the building height limit.

Mr. Boyle noted the past year had many controversial issues such as the replacement of many citizen advisory board members and the recent attempt to restrict citizen comment at Commission meetings, and this may have eroded confidence in the public hearing process. He stated citizens have been told this issue was about beach access, but not told how taller buildings would provide access to the only beachfront park in Ormond Beach or that 51 off-beach parking spaces at the Harvard approach were taken by Seabreeze High School students every school day. Mr. Boyle pointed out these problems have never been addressed while County government spends millions on land acquisition and off-beach parking in other coastal cities, but not in Ormond Beach. He reported Mayor Costello had referenced previous Commissions that refused to compromise the City's wetland rules to accomplish a large annexation. Mr. Boyle noted the issue with the wetland rules at that time and building heights issue now was selling an important community standard for money, which threatens the quality of life and the principle of equity between large rich property owners and small property owners, and this principle of equity was priceless. He reported that despite the negativity of the last meeting, CANDO remains positive with positive goals, which he stated were carefully defined in a mission statement he provided to the Commission.

Mr. Gregory Avakian, 161 Heritage Circle, stated word was being spread that the politicians could not be trusted to make decisions on behalf of the people, but he noted that the people elected the Commission into office. He pointed out the Commission had major decisions to be made tonight regarding hundreds of thousands of dollars. Mr. Avakian rhetorically stated rather than allowing three of the five Commission members to make that decision, all of the voters should have come and voted by a show of hands. He reported he was acting as the chairman of FACTS Political Action Committee (PAC) which was formed prior to the last municipal elections. Mr. Avakian noted FACTS helped defeat three candidates they opposed during the last election, and its website at obfacts.com had recently been reconstituted to address the building height limit issue. He advised FACTS opposed the CANDO campaign to place the existing height restrictions into the City Charter. Mr. Avakian requested permission to continue to speak on this issue at end of meeting.

Item #7(A) Metropolitan Planning Organization and Item #7(B) Volusia Council of Governments

Mayor Costello stated the bullet points on the Metropolitan Planning Organization (MPO) and Volusia Council of Governments (VCOG) meetings were sent to the Commission. He asked if there were any questions, and none were voiced.

Item #7(C) – Water Authority of Volusia

Commissioner Kelley stated that by tomorrow evening there would be a more accurate sense of where Water Authority of Volusia (WAV) was headed. He expressed appreciation to staff for the report and assistance they had provided. Commissioner Kelley thanked the members of the Commission for their input at the previous Special City Commission meeting, and advised he would e-mail the Commission a summary after the meeting tomorrow evening.

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.

Mayor Costello reported that Item #8(I) would be tabled to the next meeting.

Commissioner Gillooly asked that Item #8(F) be pulled for discussion.

Commissioner Kelley moved, seconded by Commissioner Gillooly, for approval of the Consent Agenda minus Item No. 8(F) and tabling Item No. 8(I).

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

Item #8(F) – The Casements Roof Replacement Project

RESOLUTION NO. 2006-74
A RESOLUTION ACCEPTING THE BID OF PKC ROOFING, INC., FOR THE PROVISION OF CONSTRUCTION SERVICES REGARDING THE CASEMENTS ROOF REPLACEMENT PROJECT UNDER BID NO. 2006-10; REJECTING ALL OTHER BIDS; AUTHORIZING THE EXECUTION OF A CONTRACT BETWEEN THE CITY AND PKC ROOFING, INC., AND PAYMENT THEREUNDER; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Kelley moved, seconded by Commissioner Partington, to approve Resolution No. 2006-74, as read by title only.

Commissioner Gillooly stated that in her position as executive director for the Halifax Habitat for Humanity (Habitat), that Habitat does business with PKC Roofing, doing business as Wayne's Roofing. She pointed out that Habitat works through the generosity of the community and Wayne's Roofing has, for many years, been a strong supporter of Habitat. Commissioner Gillooly asked the City Attorney to publicly advise her if she should abstain from this vote even though her job did not depend upon this company's donation, and she would realize no personal gain.

Mr. Randall Hayes, City Attorney, advised this would be an individual decision. He noted he did not note an obvious conflict, but someone may suggest that the award of the contract could serve as an incentive for PKC to continue to make donations to Habitat. Mr. Hayes stated should Commissioner Gillooly wish to avoid the appearance of a conflict, she could abstain; but he did not see an actual conflict of interest.

Mayor Costello pointed out this bidder came in \$45,000 lower than the next lowest bidder.

Commissioner Gillooly noted accepting this bid was a staff recommendation. She pointed out that Halifax Habitat for Humanity was not the only group that this organization supported.

Commissioner Kent expressed concern regarding the large discrepancy in the bid, but Mr. Turner informed him that much of the work on the roof had previously been completed.

Mayor Costello stated it was not his practice to call a contractor, but he called PKC Roofing and learned this company knew this roof, and they would be using upgraded architectural 40-year shingles. He reported he conveyed to PKC that this was an incredible bid.

Call Vote:	Commissioner Kent	yes
	Commissioner Kelley	yes

	Commissioner Partington	yes
	Commissioner Gillooly	yes
Carried.	Mayor Costello	yes

Mayor Costello expressed appreciation to Commissioner Gillooly for voting and noted he believed she had every right to do so.

Item #9(A) – Holy Cross Antiochian Orthodox Church

RESOLUTION NO. 2006-80

A RESOLUTION AUTHORIZING THE EXECUTION AND ISSUANCE OF A DEVELOPMENT ORDER FOR “HOLY CROSS ANTIOCHIAN ORTHODOX CHURCH” SPECIAL EXCEPTION ON A SITE LOCATED AT 375 FLEMING AVENUE, WITHIN THE R-3 (SINGLE-FAMILY MEDIUM DENSITY) ZONING DISTRICT TO ALLOW A HOUSE OF WORSHIP CONSISTING OF AN EXISTING 5,000 SQUARE FOOT ONE-STORY BUILDING THAT INCLUDES A 99 SEAT CHURCH AREA AND ADMINISTRATIVE OFFICE; APPROVING A WALL WAIVER; ESTABLISHING CONDITIONS AND EXPIRATIONS OF APPROVAL; AND SETTING FORTH AN EFFECTIVE DATE.

Mr. Clay Ervin, Planning Director, explained a condition identified by the Development Review Board was that the existing basketball court be retained and the facility be upgraded to meet minimum standards for a typical City park. He stated staff received a notice today indicating the church would not be able to obtain insurance to cover this in that it would create a public liability. Mr. Ervin reported this would negate the entire purpose of the shared use facility. He stated the church requested this condition be removed from the Development Order and they be permitted to either remove the basketball court or it be restricted to private use only.

Mr. Brad Bauknecht, Upham Engineering, offered to answer questions.

Mr. Ervin reported staff originally recommended removing the basketball court because the structure did not meet setbacks, and the Development Review Board was trying to keep the basketball courts as a recreational facility open to the public. He noted if this recommendation would not be supported, staff would recommend the structure be removed to regain compliance. Mr. Ervin advised there was also an issue relative to parking, and this area could be identified for parking.

Commissioner Kelley noted the Development Review Board also recommended using portable basketball goals to eliminate the parking problem. He stated if the church could not comply making the court for public joint use, there was no reason to require them to keep the court.

Commissioner Kelley moved, seconded by Commissioner Partington, to approve Resolution No. 2006-80, as read by title only, removing the requirement to keep the basketball court.

Mr. Ervin questioned if the pad should be required for additional parking.

Commissioner Kelley noted that unless staff would have a different recommendation, he would prefer to allow the church to make their own decision as to the use of the pad.

Mr. Ervin advised staff was maintaining its recommendation in order to be consistent with how other non-conforming sites and structures were being treated; however, the Commission may consider it appropriate to allow for the continuance of that non-conforming concrete structure.

Commissioner Kelley recommended the pad remain, but the basketball court not be required.

Mr. Hayes stated number four of the Development Order could be revised to reflect that the use would not be for basketball hoops and would be utilized for parking.

Commissioner Gillooly questioned if the citizens’ acceptance of this project was dependent upon this public facility.

Mr. Ervin noted the majority of the comments at the Development Review Board meeting pertained to traffic and safety of the children playing in the streets as well as the lack of parking. He reported the basketball court was looked upon favorably, but there were no specific comments delineating a need.

Commissioner Kent stated he attended the Development Review Board meeting and shared citizens' concerns with the board. He noted it was unfortunate that the church was willing to provide a basketball court, but liability insurance would prevent this great mixed use. Commissioner Kent reported the only other concern voiced from the residents was the change from a masonry wall to a wood fence with plantings on the church's side of the fence. He noted a good gesture for the church would be to place some plantings on other side of the fence as well.

Commissioner Partington stated he was concerned about the proximity of the basketball court to the homes, but the church could use the court with a permanent or portable basketball hoop for their own use, and Central Park I would have a basketball court for citizens to use less than a quarter mile away.

Commissioner Kent stated traffic was a concern, more specifically that Fleming would open up, but he did not see how that could occur because of the railroad.

Mayor Costello concurred there was no risk Fleming would open up because of the railroad. He stated he supported masonry walls in general, but he could support the fence in this instance. Mayor Costello noted he did not wish to bottle anyone in so they could not grow; therefore, should there be an event, perhaps on a monthly basis, the overflow parking could go onto the street. He stated should the church grow to that extent, they could come back to the Commission with that request.

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

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

Item #9(B) – 351 Cumberland Avenue Vacation

ORDINANCE NO. 2006-03
AN ORDINANCE VACATING A PORTION OF WEST STREET, A
PLATTED PUBLIC RIGHT-OF-WAY LYING WEST OF 351
CUMBERLAND AVENUE; REPEALING ALL INCONSISTENT
ORDINANCES OR PART THEREOF; AND SETTING FORTH AN
EFFECTIVE DATE.

Commissioner Kelley moved, seconded by Commissioner Kent, to approve Ordinance No. 2006-03, as read by title only.

Commissioner Partington stated the way this item was written, it seemed that this property was submerged; however, upon inspection he noted it had green grass with a concrete wall and was not submerged.

Mr. Ervin stated the actual portion of the right-of-way on West Street was 100% under water with a transitional area identified as "no man's land," and this ordinance would provide a clear title to vacate the entire area to provide unity and clarity of the title on the right-of-way. He noted this was a right-of-way that was de facto submerged where a majority of the land was inundated by Strickland Creek with portions that include some land.

Commissioner Partington stated this was a good triangle of property that could have a dock for people to fish, and it had value; but the City would be giving it away. He noted to be consistent, considering Fluhart Drive, property should not be given away without asking something in return. Commissioner Partington stated a realtor would have to assign a value, as he was not aware of the value of the property.

Commissioner Kent noted he was also uneasy giving away any City land, and he stated he also immediately remembered the situation at Fluhart Drive. He explained he called Mr. Turner immediately asking if the City could build a dock for fishing, and Mr. Turner or Mr. Ervin informed him the land did not actually belong to the City in that the City did not pay for the land, and there was no monetary value because it was a right-of-way and not an easement.

Mr. Ervin explained the issue was how the right-of-way was obtained. He stated on a subdivision plat, the right-of-way was identified as being dedicated to the public for public

purposes. Mr. Ervin noted that when the City identified it no longer had a public purpose for that property, the City could not merely take the land because it was given for a specific public intention, and it would transfer back to the people granting the City that property. He reported in subdivisions it would go to the mid point of the right-of-way and would go equally to the partners because as property was assigned, the City's interest in the property dissipates. Mr. Ervin stated if the property was specifically deeded outside of the subdivision plat, whoever deeded the land had the right for that property. He reported relative to the Commission's concern regarding Fluhart, all of the properties have been identified where the City has easements, rights-of-way, and accessibility to the City's water features, and staff was now finalizing what could and could not be done. Mr. Ervin explained in this situation there was a dead-end street developed for residential purposes, and Strickland Creek was by the property line of the two residences. He stated the availability of parking and accessibility was an issue, and he pointed out this was close to Sanchez Park with facilities already available for fishing. Mr. Ervin noted for this 14-foot strip with its question of ownership, staff did not see this as a significant impact to the City's recreational needs.

Commissioner Kent asked if the City could build a dock on this location.

Mr. Ervin reported he was not certain if this was City land and if others have prescriptive rights to the land.

Mr. Isaac Turner, City Manager, stated staff would provide explanations on the difference between easements, rights-of-way, and fee-simple ownership, and the Commission could then consider specific global policies. He explained in this instance, the right-of-way was dedicated to the City for a specific public purpose, and if that specific public purpose was not being utilized, it would revert to the prior owner. Mr. Turner indicated he was unaware if the property could be utilized for another public purpose or what process would be involved. He stated the list of properties should be available for the Commission shortly.

Commissioner Gillooly stated the staff report made it appear that the entire strip was submerged. She reported if the City could use it as a public dock, it may be available to the owners, which would enhance the value of their property. Commissioner Gillooly clarified that if the City could no longer use the land for the intended purpose, it would revert back to the prior owner. She asked if that owner could then deed the land back to the City at that point.

Mr. Hayes stated that hypothetical could occur, but typically if there was not a valid public purpose to utilize the right-of-way, most government bodies would adopt an ordinance vacating the right-of-way. He concurred that everything has some value, but historically, he was unaware of another instance where property was of such value that an appraisal would be done. Mr. Hayes noted in this instance, staff's recommendation was that because of close proximity to Sanchez Park, the obvious uses would not be needed, lessening the public need to retain the property.

Commissioner Partington noted he was now learning there may be a legal problem as to the owner of the property, which was not mentioned in the report. He stated he wanted to be consistent and gain value for these properties. Commissioner Partington noted this was a great place for a public dock. He expressed concern that staff was looking at the properties and making the determination as to who would obtain free property and who would be charged for the property. Commissioner Partington noted the value would be greater to the person living adjacent to the property in question. He asked staff to determine the value of the property, requested a copy of the Board of Adjustment and Appeals minutes, and requested a history as to what property was given away and what was charged.

Commissioner Kelley reported this was 600 or 700 square feet and would allow the owners of Lot 6 to construct a dock. He questioned how anyone could be on this 20 by 30 foot section without bothering the neighbors on Lot 6. Commissioner Kelley noted the City could not sell it, and the alternative would be to keep it merely to not allow adjacent property owners to use it.

Mr. Hayes clarified the City could allow the property owners to clean up the title by adverse possession or a claim for prescriptive rights, but it was more from the interest of lenders to the property to be certain there were no encumbrances.

Mr. Ervin stated he did not remember any vacation of right-of-way where the City sold the property; therefore, the City has not been inconsistent in how they dispose of the rights-of-way when being vacated. He explained the basic premise was that the land was basically donated to the City; and if not being utilized for the purpose intended, it would not be appropriate for the City to capitalize on a gain that was not funded.

Mr. Turner stated he understood the Commission's question of a policy. He noted staff would clarify the current policies relative to the rights the City would have with different pieces of property. Mr. Turner stated staff would provide additional information.

Commissioner Partington stated the value of the property was the riparian rights associated, which would provide waterfront access, thus increasing the value. He noted adding this strip to the 66-foot right-of-way would be adequate area for a dock.

Commissioner Kent applauded Commissioner Partington for bringing this before the Commission. He noted he was shocked staff did not have these answers since he asked these same questions but was not satisfied with staff's response. Commissioner Kent noted the Commission was to set the policy. He reported people do not want public land given away, especially on a waterway, except for emergency use.

Commissioner Gillooly asked who was maintaining the property.

Ms. Andrea Anderson, 351 Cumberland Avenue, reported she and the previous owners since 1973 have been maintaining the land. She expressed concern that were a City dock to be built, they would have people on their property on a daily basis. Ms. Anderson reported she pays a great deal of money in taxes to be on waterfront property.

Commissioner Partington stated Ms. Anderson made good points. He stated Ms. Anderson was free to e-mail or call the Commission as well as speak at the second reading of the ordinance. He stated the sign announcing the public hearing was down.

Ms. Anderson reported she replaced the sign numerous times when it fell down.

Commissioner Partington concurred with Commissioner Gillooly's previous request for a larger sign or a better way to post notices for public hearings.

Mr. Ervin stated Ms. Anderson had a variance pending to construct a dock on this property, which was why the notice was posted. He reported properties were not posted for vacations of rights-of-way; and should the Commission want this to be done, staff would need to be informed so amendments to the code could be prepared.

Mr. Turner clarified the rights-of-way are normally properties donated to City for a specific purpose such as a road, and traditionally, if a city was not planning to use that donation for the intended purpose, it was returned to the original owner. He reiterated it was important to remember this was a donation.

Commissioner Gillooly asked if the implication was that the property would end up either split or revert to the adjacent property.

Mr. Turner stated he was not certain what the City could do with this property because the City did not purchase the property.

Mayor Costello asked if land came to the City for a specific purpose and the City wanted to use it for an alternate public purpose, if the City would have that option, or if it would need to be returned to the previous owner.

Mr. Hayes stated that unless there was a specific dedication for a specific purpose, the City would typically have latitude on how to use the property. He noted a right-of-way was intended to be used for vehicular purposes, and there are some restrictions.

Mayor Costello reiterated his question as to whether the City had the option of changing the public purpose on any potentially surplus land not needed for its original intent.

Commissioner Partington requested including Fluhart Drive in that analysis so the City could stay consistent.

Commissioner Kent stated people are requesting access on Fluhart Drive to the river. He noted these people are offering to mow the 35-foot strip of hedge.

Call Vote:	Commissioner Partington	yes
	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(B).

Mayor Costello pointed out merely because the Commission member voted “yes” at the first public hearing did not necessarily mean they would vote “yes” at the second reading.

Item #10 – Amending the Annual Budget

ORDINANCE NO. 2006-04
AN ORDINANCE AMENDING THE ANNUAL BUDGET FOR THE 2005-2006 FISCAL YEAR RELATIVE TO THE GENERAL FUND; DOWNTOWN REDEVELOPMENT FUND; AIRPORT FUND; ECONOMIC DEVELOPMENT FUND; FEDERAL LAW ENFORCEMENT TRUST FUND; GRANTS FUND; FACILITIES RENEWAL AND REPLACEMENT FUND; NORTH US1 PROPERTY ACQUISITION FUND; GENERAL CAPITAL IMPROVEMENTS FUND; TRANSPORTATION IMPROVEMENT FUND; WATER & WASTEWATER UTILITY FUND; WATER & WASTEWATER RENEWAL & REPLACEMENT FUND; WASTEWATER SYSTEM IMPACT FEE FUND; WATER TREATMENT PLANT CONSTRUCTION FUND; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Kelley moved, seconded by Commissioner Gillooly, to approve Ordinance No. 2006-04, as read by title only.

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

Item #11(A) - Additions, Extensions, and Improvements to the Water and Sewer System

RESOLUTION NO. 2006-79
A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF ORMOND BEACH, FLORIDA, AUTHORIZING THE ISSUANCE OF NOT-TO-EXCEED \$9,000,000 IN PRINCIPAL AMOUNT OF ITS WATER AND SEWER REVENUE BOND, SERIES 2006, FOR THE PURPOSE OF FINANCING THE CONSTRUCTION AND ACQUISITION OF CERTAIN ADDITIONS, EXTENSIONS, AND IMPROVEMENTS TO THE WATER AND SEWER SYSTEM OF THE CITY; DETERMINING CERTAIN DETAILS OF SAID BONDS; PROVIDING FOR THE SECURITY OF SAID BONDS; AWARDED THE SALE OF SAID BONDS TO THE SUCCESSFUL PROPOSER FOR SAID BOND; APPOINTING A PAYING AGENT AND REGISTRAR FOR SAID BONDS; AUTHORIZING PROPER OFFICIALS TO DO ALL THINGS DEEMED NECESSARY IN CONNECTION WITH THE ISSUANCE, SALE AND DELIVERY OF SAID BONDS; AND PROVIDING AN EFFECTIVE DATE.

Commissioner Kelley moved, seconded by Commissioner Gillooly, to approve Resolution No. 2006-79, as read by title only.

Commissioner Gillooly noted people discussed the water issues and planned improvements in the “Audience Remarks” portion of the agenda. She stated a great deal of money was being considered, and the project had been under discussion for many years. Commissioner Gillooly thanked these people for their interest and concern, but pointed out that staff did not have the opportunity to respond to issues mentioned during that portion of the agenda. She assured everyone that staff had addressed comments and provided a great deal of detailed explanation as to why they made each recommendation. Commissioner Gillooly stated that a great deal of work went into making these decisions, and she reiterated this was a seven year process.

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

Mayor Costello noted the Commission acted on a \$9 million bond issue in less than a minute and spent 30 to 40 minutes discussing a small sliver of land. He explained a reason for this was that detailed staff reports were provided to help the Commission make decisions quickly.

Item #11(B)(1) - Deer Creek Phase One of the Hunter's Ridge Subdivision

RESOLUTION NO. 2006-81

A RESOLUTION AMENDING RESOLUTION NO. 2005-127 BY APPROVING A FOUR PHASE DEVELOPMENT PLAN FOR THE "DEER CREEK" PORTION OF THE "HUNTER'S RIDGE" DEVELOPMENT OF REGIONAL IMPACT; APPROVING THE "DEER CREEK PHASE ONE" PRELIMINARY PLAT FOR THE DEVELOPMENT; ESTABLISHING CONDITIONS AND EXPIRATION OF APPROVAL; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Kent moved, seconded by Commissioner Gillooly, to approve Resolution No. 2006-81, as read by title only.

Commissioner Kent stated the developer could build 392 units and was only planning on building 346, or 46 less sites than they could have developed. He noted he hoped the development did not have the same issues as were present in Hunter's Ridge.

Mayor Costello stated this was one reason this project was being phased in, to force improvements to be made up front.

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

Mayor Costello noted Commissioner Kelley stepped out of the room for a moment.

Item #11(B)(2) - Deer Creek Phase Two of the Hunter's Ridge Subdivision

RESOLUTION NO. 2006-82

A RESOLUTION APPROVING THE PRELIMINARY PLAT FOR THE "DEER CREEK PHASE TWO," PORTION OF THE "HUNTER'S RIDGE" DEVELOPMENT OF REGIONAL IMPACT; ESTABLISHING CONDITIONS AND EXPIRATION DATE OF APPROVAL; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Partington recommended taking a short break until Commissioner Kelley returned in that this development was in Commissioner Kelley's zone, and he may have comments.

Mayor Costello called for a break at 8:40 p.m. and reconvened the meeting at 8:45 p.m.

Commissioner Kent moved, seconded by Commissioner Partington, to approve Resolution No. 2006-82, as read by title only.

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

Item #11(B)(3) - Deer Creek Phase Three of the Hunter's Ridge Subdivision

RESOLUTION NO. 2006-83

A RESOLUTION APPROVING THE PRELIMINARY PLAT FOR THE "DEER CREEK PHASE THREE," PORTION OF THE "HUNTER'S RIDGE" DEVELOPMENT OF REGIONAL IMPACT; ESTABLISHING CONDITIONS AND EXPIRATION DATE OF APPROVAL; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Kelley moved, seconded by Commissioner Partington, to approve Resolution No. 2006-83, as read by title only.

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

Item #11(B)(4) - Deer Creek Phase Four of the Hunter's Ridge Subdivision

RESOLUTION NO. 2006-84
A RESOLUTION APPROVING THE PRELIMINARY PLAT FOR THE "DEER CREEK PHASE FOUR," PORTION OF THE "HUNTER'S RIDGE" DEVELOPMENT OF REGIONAL IMPACT; ESTABLISHING CONDITIONS AND EXPIRATION DATE OF APPROVAL; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Kelley moved, seconded by Commissioner Gillooly, to approve Resolution No. 2006-84, as read by title only.

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

Item #12(A) – Continued WAV Discussion

Mayor Costello stated in that the WAV discussion was completed in the special meeting prior to this meeting, this item need not be discussed.

Item #12(B) – A1A Redevelopment/Height Limitations

Mr. Turner stated staff answered a myriad of questions and there were still questions for which staff was trying to obtain answers. He stated information was compiled regarding current ordinances, the Comprehensive Plan, and the Land Development Code, but more research was needed. Mr. Turner offered to provide an overview of the information in the packet or to answer questions. He urged the Commission to provide their final decisions as to the community forum currently scheduled for April 17 at 6:00 p.m. Mr. Turner noted staff hoped to present some background information and have a representative of Bray and Gillespie available to present their master plan at that meeting. He stated the audience would then be encouraged to make comments or ask questions.

Mayor Costello reported he was proud of staff's attempt to answer questions today, but was incredulous at the reception the answers received. He noted Mr. Hayes researched and did a diligent job in an attempt to provide accurate answers to questions that could have gone in multiple directions. Mayor Costello reported while he may not always like Mr. Hayes' answers, he appreciated the fact Mr. Hayes attempted to provide good answers that are legally supportable.

Commissioner Kent noted that on page two the report indicated: "Please note that the Land Development Code includes provisions that allow for these structures to exceed the maximum building height." He asked if the Comprehensive Plan specified no buildings were permitted over 75 feet.

Mr. Ervin stated there was currently no specific height restriction tied to a specific land use, but in the directive text, it did tie height limits to specific zoning classifications. He advised the language stated a building shall not exceed seven stories or 75 feet in the B6 zoning district, four stories or 45 feet in the B-7 zoning district, and other language for other zoning districts. Mr. Ervin clarified a structure could go higher than 75 feet if the additional footage was not habitable portions of the structure. He stated the Land Development Code indicated this limit could be exceeded for non-habitable structures used as screening elements for mechanical equipment or architectural embellishments.

Commissioner Kent asked if it were normal for the Land Development Code and the Comprehensive Plan to be different.

Mr. Ervin reported the Land Development Code and Comprehensive Plan must be consistent by State law, but he considered the Land Development Code and Comprehensive Plan to be consistent. He stated the embellishments would not be considered a story, and the additional height was being used as a screening element.

Commissioner Kent stated the developer could make the structure 60 feet and add the 15 feet for architectural embellishments if they chose to do so. He reported he considered the citizen petition and the Comprehensive Plan to be the same.

Mr. Ervin reported a general planning principal held throughout the State of Florida and a concept behind the growth management law indicated that the Comprehensive Plan should not be the Land Development regulations since the Land Development regulations must implement the general concepts identified in the Comprehensive Plan. He stated he and Mr. Hayes had a discussion regarding the provisions in the Comprehensive Plan that allowed for a Planned Business Development (PBD) to 90 feet. Mr. Ervin noted the issues of vagueness and interpretation have plagued Comprehensive Plans, and some local governments opted for flexibility while other communities identified a need for specificity. He stated regardless of what would occur relative to the initiative for the height restrictions, the City's Comprehensive Plan needed to be "cleaned up." Mr. Ervin expressed concern, as the official interpreter of the Land Development Code, regarding Policy 1.1.8 which stated: "the City shall maintain a low rise character." He stated there was no definition for "low rise"; therefore, he had been providing what was done in 1992 with certain projects such as the Ormond Heritage, the Tidesfall, and other projects. Mr. Ervin pointed out the original authors of the Comprehensive Plan from 1989, the original Land Development Code that implemented it, and approval by the Department of Community Affairs (DCA) have indicated these were acceptable standards. He noted after the issue of the referendum was cleared up, staff would come back to the Commission regarding clarification to make certain there was consistency in the Comprehensive Plan and the Land Development Code to eliminate these ambiguities.

Commissioner Kent asked if Mr. Ervin would consider the Charter to be the "golden law" for the City; whereby, Mr. Ervin referred Commissioner Kent to Mr. Hayes, and Mr. Hayes replied in the affirmative. Commissioner Kent stated the report stressed the fact that changes could not occur overnight and would take nine to 12 months, but he considered this irrelevant because it could still happen. He again stated he may not support some of the people, but he did support the movement and the petition.

Mr. Hayes explained one of the challenges staff had was identifying the many issues involved, analyzing each, providing answers, and breaking it down to its most simple form. He noted that the problem was depending on how the circumstances change, the analyses change, the answers change, and the different standards that apply for citizens' initiatives and Commission initiatives. Mr. Hayes stated a citizens' initiative could bypass the process a Commission initiative would have to comply with to amend the Comprehensive Plan and/or the Land Development Code. He noted Mr. Ervin had a difficult job in that he must look at the history and how the Comprehensive Plan and Land Development Code fit in order to make a determination. Mr. Hayes stated it was helpful to understand the hierarchy of authority in municipal law. He advised in municipal law the Charter basically was the "golden rule" with the ordinance being the laws that implemented the policies set forth in the Charter. Mr. Hayes reported the ordinances must be consistent with the Charter; therefore, if there were a change to the Charter that affected an existing law, that law must be changed including the Land Development Code because the Land Development Code was an ordinance. He stated the Comprehensive Plan occupied a slightly different status in that it was a piece of local legislation that the Commission adopted, but it was also reviewed and approved by the State. Mr. Hayes noted should the Commission wish to propose a ballot question and it had an impact of the Land Development Code and Comprehensive Plan, the Commission would have to consider initiating the process to amend them before placing it on the ballot; however, citizens are not so constrained. He stated staff must try to determine what would be implicated in the Comprehensive Plan to determine if it would have to be amended or not. Mr. Hayes explained his first memorandum sent was intended to answer the most common basic questions, but not all of the other questions that had been raised. He noted he was now examining the propriety of the ballot language, and another memo would be sent covering these issues. Mr. Hayes stated the Comprehensive Plan set forth a 75-foot limit, but the Land Development Code set forth a PBD process that allowed the Commission to set exceptions through a public hearing process for up to 90 feet.

Mr. Ervin clarified the Comprehensive Plan set forth a 75-foot limit in the B-6 zoning district, and the PBD was an alternative zoning classification allowed in that same land use; therefore, the limitation of 75 feet would not apply to the PBD zoning. He stated the Comprehensive Plan had policies that allow for planned developments to grant flexibility through broad-based goals,

objectives, and policies which was why the Land Development Code had specific implementation through the PBD and exceptions to the height standards.

Mr. Hayes reported this was one of the issues that would be addressed more definitively in the second set of questions he would answer in addition to questions that revolve around the ballot language and what options the Commission would have regarding sponsoring a ballot question should they wish to do so. He noted staff was trying to provide as much information as possible to make an informed decision.

Mayor Costello stated whatever would occur, the Commission would ask Mr. Ervin, Mr. Turner, and Mr. Hayes to make certain the Comprehensive Plan and Land Development Code would be as concurrent as possible. He noted the next question was how to allow the residents to best weigh in on whether they would prefer to continue with a wall of 75-foot or 90-foot structures or allow a developer to go higher if they donate land in return for other concessions. Mayor Costello stated the Commission must decide the best way to fully inform the residents, and the Commission may want to provide some information to educate the public about the options, about a potential plan the Commission may see at the April 17 meeting, and the possibility that the Commission may decide to provide an alternate amendment. He noted he was incredulous regarding the Zaxby comment in that he did not hear about any specific plans as outlined. Mayor Costello noted this was an example of the misinformation being generated.

Commissioner Kent pointed out the resident stated the person at the gift shop provided this information.

Mayor Costello stated that was exactly his point, that the residents should make a decision based on facts, and it was the duty of the Commission to inform the public.

Commissioner Kelley agreed it was incumbent upon the Commission to provide the residents with accurate information.

Mayor Costello reported he spoke to many people, and when they understand what they would be giving up by keeping the 75-feet, they changed their opinion, noting no one informed them of the implications. He advised that a note that was passed to him asked what information Bray and Gillespie could provide on April 17.

Mr. Doug Kosarek, Bray and Gillespie, stated over the past few weeks they had pressed their urban planners and architects hard. He reported Bray and Gillespie has acquired quite a bit of land on Ormond Beach's oceanfront and had ideas as to what they would like to do with the property. Mr. Kosarek noted at the 2020 visioning session a year ago he was on the public record as stating that Bray and Gillespie would be happy to "paint by the numbers" and follow current codes; however, throughout the last year various parties have asked questions regarding offering a park, increasing oceanfront access, providing off-beach parking, and being creative. He stated he replied last year that with flexibility, they may be able to "create a work of art" in Ormond Beach; therefore, they did not move forward with projects that they could have brought to the City under the current Land Development Code because they were "in a listening mode." Mr. Kosarek pointed out Bray and Gillespie was caught when asked for their plans because they did not have a plan. He reported the planners and architects were now working on site plans for their landholdings in a myriad of ways in order to deliver the requests the citizens of Ormond Beach have requested. Mr. Kosarek noted rather than working for a couple of months on site plans for a single project, their architects were working on site plans for 12 to 20 different variations of projects within a three-week timeframe. He advised he could not candidly state what they could bring to the meeting on April 17, but some information was coming in on how buildings would have to be configured in order to deliver the oceanfront parks, off-beach parking, a community center, and they were hoping to have renderings soon. Mr. Kosarek reported he could answer some questions with factual information, but could not promise to make a presentation at the meeting. He assured the Commission they were working as fast as possible especially in this post-hurricane environment for Florida and the Gulf Coast where professionals were being stretched thin.

Mr. Turner stated the community would have the opportunity to make decisions that would have a fairly immediate impact on an area that would help to define Ormond Beach as a community. He noted this would also provide people an opportunity to express different viewpoints, which could help define a community and determine the vision of the community, allowing it to grow in a way that would maintain its quality of life.

Mr. Kosarek concurred that creative conflict brings about the best result.

Mr. Turner stated that this was difficult to do without a concept. He noted Bray and Gillespie made a tremendous investment in property in Ormond Beach, and the community needed concepts and renderings to examine. Mr. Turner reported he understood some of the risks Bray and Gillespie would be taking in terms of exposing possible plans and opening the company to criticism prematurely. He asked Mr. Kosarek when these could be provided.

Mr. Kosarek explained Bray and Gillespie was not being resistant in any way, but he did not want to over-promise. He stated work has been coming in, but he could not promise a full presentation. Mr. Kosarek noted whatever they have at that time would be brought to the meeting.

Mayor Costello noted he would not oppose scheduling this original meeting with a follow-up meeting a month later. He stated Bray and Gillespie had been very responsive listening to his requests, and they recommended a community center and underground effluent because of the requests of people in the area. Mayor Costello reported he wanted to allow Bray and Gillespie to put their best foot forward, but also had to look at the politics that the people need to have their worst fears quelled. He noted he wanted people to know what was real and not real. Mayor Costello stated the meeting should go on even if Mr. Kosarek could only answer questions.

Mr. Turner noted the major portion of the presentation would be provided by Mr. Kosarek, and he suggested a great deal of time be set aside for community questions and responses.

Mayor Costello noted the best tool would be the murals showing what would be allowed per code and what was envisioned to scale.

Commissioner Kent stated underground utilities and effluent were great ideas. He noted he and Mayor Costello were not very far apart. Commissioner Kent reported he was pleased to hear Mr. Kosarek say Bray and Gillespie was committed to Ormond Beach and they wanted to give back to the community, but he would prefer it be at 75 feet. He concurred that Bray and Gillespie had made a tremendous investment in Ormond Beach, but it was no greater than any other property owner.

Mr. Kosarek concurred with Commissioner Kent and stated what they want above all was the protection of property rights for all as equals.

Mr. Turner expressed appreciation to Mr. Kosarek that he would be at the April 17 meeting, but he considered it important to have a date when renderings showing what would be permissible under the existing code and alternatives would be available.

Mr. Kosarek advised he would update Mr. Turner tomorrow.

Commissioner Partington suggested setting the April 17 meeting as a tentative date until Mr. Turner was informed when the renderings would be available. He noted he would prefer one meeting rather than two separate meetings, if possible.

Commissioner Gillooly stated she would not object to two meetings since this topic would require a great deal of input. She concurred it would be important to see the renderings.

Mayor Costello suggested keeping the April 17 meeting and whatever was missing could be brought to the next meeting. He stated Mr. Kosarek must understand that they did not want people to think the Commission was doing anything to delay any information being provided.

Mr. Turner stated he was hoping for a fairly full presentation for the April 17 meeting along with public reaction. He reported Bray and Gillespie listened and made changes based on feedback they had received from members of the public. Mr. Turner supported having two meetings where the first meeting would have feedback, comment, discussion, and dialogue, and changes and modifications could be made for the second meeting. He advised staff would provide information for the first portion of the meeting, Bray and Gillespie would make their presentation, and then citizen comment would be encouraged.

Commissioner Kelley asked how a Commission could request a change to a Comprehensive Plan if the 75-foot limit was in the Charter. He stated the Commission would have to request a change in the Comprehensive Plan before it could go to a vote of the people to change the Charter.

Mr. Hayes stated that was correct and therein lay a potential problem. He reported options would be provided for the Commission to consider. Mr. Hayes explained it was unclear at this point as to whether a change to the Comprehensive Plan would be necessary.

Commissioner Kelley stated, rhetorically, the Commission could invoke the Thompson Rule tonight and vote to build a 150-foot building with four Commission votes; whereby, Mr. Hayes stated that could not be done. Commissioner Kelley reported he asked that question to assure people that the Commission could not make a change by three or four votes at a Commission meeting. He stated he completely understood Mr. Hayes' response to this question in the aforementioned e-mail and expressed appreciation for Mr. Hayes' prompt response. Commissioner Kelley noted some people were indicating that it was a simple process if the 75-foot limit in the Charter did not meet the City's needs, the Charter could be again amended and exceptions could be added; but that could not easily be done.

Mayor Costello stated this was one of the falsehoods being spread that after the stipulation was in the Charter that exceptions could be made on a case-by-case basis, but that was not true.

Mr. Hayes concurred that Mayor Costello was correct in that it would be an improper delegation of legislation.

Commissioner Kelley stated while the people have the right to push for a citizens' initiative, he urged they be honest and not tell people he favored or opposed an issue; and he encouraged the people to talk to him personally if they want to know his position rather than hearing from someone passing out a petition.

Commissioner Gillooly stated it would require another Charter amendment to make any changes if this language were placed in the Charter. She pointed out in the "Audience Comments" portion of the meeting Mr. Jaspers mentioned a question he asked Mr. Hayes, bringing up a visual demonstration of all of the answers from various people from the legal and planning issues, and this was why it was not a good idea for this to be in the Charter. Commissioner Gillooly reported this issue had so many dimensions with nuances, and there were many questions that could not be answered in a "back or white" manner. She noted it would be a better situation where there was ample opportunity for public opinion, discourse, and discussion. Commissioner Gillooly pointed out the Charter amendment, as it stands by this petition, would totally cut out any of that. Commissioner Gillooly thanked Mr. Turner for all the information in the packet, which included her question relative to process which was clearly explained in a narrative format; but she requested for the April 17 meeting to take a scenario where a developer came to the City with an alternative project and explain the process on a step-by-step basis in a checklist format, including what would have to occur for such a project to be approved. She also requested the legal ramifications of the proposed Charter amendment be presented in a bulleted format. Commissioner Gillooly noted two other issues were important, but not addressed in the report: the issue of how shade would be impacted by building height and public safety issues. She urged the City to move ahead with the April 17 meeting even if another meeting would be necessary. Commissioner Gillooly questioned what would be done to advertise this meeting. She recommended something more be done than a meeting notice to inform people of this important meeting.

Commissioner Kent concurred the Commission could not invoke the Thompson Rule and approve a 100-foot structure tonight, but that could occur over a length of time. He stated people are frightened of going over 75 feet; they want definitives; and they want to be heard. Commissioner Kent noted he may not agree personally on some issues, but as a voice of the people, he would do what the people wanted. He stated while he understood Mayor Costello's concern that people should hear the entire story, he questioned sending out narratives. Commissioner Kent reported the people elected this Commission, and they should be smart enough to read the newspaper.

Commissioner Kelley stated this was not the question. He reported the actual question was whether or not the Land Development Code restrictions should be moved to the Charter.

Commissioner Kent stated the people should have a voice on that decision. He noted people want assurances.

Mayor Costello stated he did not believe this belonged in the Charter, but a vote would be taken to determine if it should go into the Charter. He reported the Commission must make certain people were informed so they know exactly what they were choosing. Mayor Costello stated he never advocated getting rid of the 75-foot height limit, but he had advocated using that as a maximum cap and moving density on top of another building to trade for open space. He explained what that means was that for every building over 75 feet, there would also be a

beachfront park and open space. Mayor Costello noted he raised the issue of a trade, but this was not what was being discussed by the proponents of the Charter amendment. He reported he wanted people to know that he was willing to exceed 75 feet anytime the City could get a beachfront park, which was not being articulated. Mayor Costello reiterated he wanted total accuracy, and then allow the people to decide.

Commissioner Kent stated he also wanted the people to know everything. He asked Mayor Costello if he would approve a 14-story building.

Mayor Costello reported he was willing to approve a 14-story building if the developer would give land to the City. He noted he would do what it took to get beachfront parks and parking unless someone could offer a better suggestion. Mayor Costello explained some people do not live a few blocks from the beach so they could not walk to the beach. He pointed out the rest of the community could not even see the beach or are able to find a place to park; therefore, Ormond Beach needed beachfront parks, open space, and off-beach parking. Mayor Costello noted he recommended a Community Redevelopment Agency (CRA) to purchase land only, but that was rejected; therefore, he would be willing to consider anything to get the things that were needed.

Commissioner Gillooly advised she had never been a proponent of tall buildings, but it was very important to have all of the information and understand the ramification and know what the people may be giving up, such as Ormond Crossings or a hospital in the future, if an opportunity would present itself.

Mayor Costello noted he concurred with Commissioner Gillooly, and he added churches as a possible exception. He summarized that Mr. Hayes would provide a report on the ramifications of the Commission sponsoring an amendment; the Commission would decide if they would send out an informational brochure with pros and cons on the various aspects of the issue; the Commission could make a recommendation; and the Commission would work diligently so anyone interested could obtain all of the information possible to make an informed decision. Mayor Costello asked if the April 17 meeting would be an advertised meeting where the Commission could speak.

Mr. Turner noted it would be an advertised meeting.

Building Height Limitation - Continuation from Audience Comments

Mr. Gregory Avakian, 161 Heritage Circle, echoed Commissioner Kelley's statement that it was the Commission's duty and obligation to provide as much information as possible to make an informed decision, which was what the FACTS Political Action Committee (PAC) was all about. He stated many emotions surround this issue, and fear was the most pertinent emotion. Mr. Avakian reported the fears were that the politicians are corrupt, that Ormond Beach would be another Miami or Daytona Beach, and fears of fires in high rises. He stated Ormond Beach was not the same as other cities. Mr. Avakian noted FACTS PAC did not want to be another Ponce Inlet, which had a 75-foot height limit, although their Charter stipulated a 35-foot limit, and he questioned how they were able to build 75-foot buildings. Mr. Avakian advised there were photographs on obfacts.com of the CANDO canyons using Ponce Inlet to show what could occur. He pointed out Ponce Inlet had a beachfront park, but Ormond Beach did not. Mr. Avakian noted after years of trying to obtain beachfront lots to be purchased by the County by this and prior Commissions, the fact remained that Ormond Beach did not succeed. He pointed out Ormond Beach's Land Development Code was extremely strict by design. Mr. Avakian stated hurricanes trashed the beachfront, but this may have provided Ormond Beach with an opportunity. He noted Ormond Beach was fortunate to have a group of developers who are creative, flexible, and willing to accommodate the City's wants and needs.

Mr. Avakian reported CANDO says the elected officials cannot negotiate, become creative, and provide options; but that was what the people elected the Commission to do. He stated seeking deals to come before the Commission was part of the Commission's job; therefore, the accusations being made regarding corrupt politicians offended him since the people elected the Commission to serve the City and should trust them to do the right thing. Mr. Avakian reported that the Charter amendment appeared great, but it had so many flaws that the legal challenges would overwhelm the savviest attorneys. He pointed out there were no provisions for non-conforming structures, and all structures over 75-feet would become non-conforming. Mr. Avakian explained that if a hurricane caused over 50% damage, the owner would not be able to rebuild. He offered the Ormond Heritage as an example and questioned what would happen to the residents of the two top floors since those floors would have to come down to comply with the ordinance. Mr. Avakian noted the Julian's building would have ten floors that would have to come down. He questioned what would happen to these property owners. Mr. Avakian asked if the property owners could obtain insurance for a non-conforming structure,

and how much more would that insurance would cost. He stated the proposed amendment was thoughtless and cruel for the residents of these buildings.

Mr. Avakian stated the Commission expressed concern regarding what was being said on local radio talk shows, but he found them humorous. He stated the slanderous remarks and insinuations made on these shows were amazing and urged the Commission not to allow these types of comments to bother them.

Item #13 – Reports, Suggestions, Requests

Chamber of Commerce

Commissioner Gillooly reported she attended the farewell to Peggy Farmer and welcome to the new executive director of the Chamber of Commerce. She publicly thank Ms. Farmer for all she had done for Ormond Beach and for exemplifying the concept of partnership.

Herb Society

Commissioner Gillooly stated she attended the Herb Society's fair which was another partnership with the City. She reported there was a great outpouring of people, and it was a great asset to the City that made a difference for the people.

Ormond Beach Middle School Partnership

Commissioner Gillooly reported the City had an opportunity to partner with Ormond Beach Middle School for its renovation. She asked if she was correct in assuming the School Board came up with a third concept today, but there was not currently an opportunity for input from the residents.

Mr. Ervin stated this was reported in an e-mail sent this afternoon. He reported since the start of this meeting he received another e-mail from the superintendent of the School Board who was concerned about this information coming out; therefore, there may be a change tomorrow. Mr. Ervin advised staff would update her on any new information.

Mr. Turner stated if the Commission had an opinion, staff would express its view to the School Board.

Commissioner Gillooly stated that if the School Board would not have the opportunity to hold another public meeting, she questioned if the City could hold a public meeting and present that feedback to the School Board through staff.

Mr. Turner stated the School Board meeting would be held on April 12. He noted the City could certainly host a forum where the School Board could present information, but he was concerned for staff to try to present the School Board's plan. Mr. Turner reported if it would be the Commission's desire for the School Board to have a public meeting with the residents, staff would discuss the possibility with the School Board.

Mayor Costello reported he received a call from a School Board member between the special meeting and this meeting, and he urged the Commission to act carefully. He stated Ormond Beach had more input than most communities, and he expressed concern that the Commission may be in danger of inadvertently offending the School Board members by talking about a plan they have yet to see. Mayor Costello pointed out municipalities do not normally even see plans, and Ormond Beach has gone beyond normal procedures. He urged care be taken to not alienate people who have reached out for input. Mayor Costello stated he was appreciative of their efforts and wanted to continue to work with them.

Mr. Ervin stated the item that was to have been on the School Board agenda was being pulled by staff for further review.

Mayor Costello asked for an update in the Friday letter, and the Commission could discuss it at the next meeting on April 18.

Commissioner Gillooly agreed with Mayor Costello's recommendation.

Height Limit Meeting

Commissioner Gillooly asked that the Commission be made aware of what would be done to advertise the height limit meeting on April 17.

School Board

Commissioner Kent noted he was unaware Ormond Beach had a problem with the School Board. He reported he thought Ormond Beach was a gracious host and good friend of the School Board, working together.

Mayor Costello clarified he did not mean to indicate there was a problem, but there was a concern that the Commission was asking and expecting to see a plan before the School Board had the opportunity to see the plan. He noted there were protocols, and some people were very concerned about protocol. Mayor Costello reported it was not appropriate for the Commission to weigh in on a plan before the School Board; whereby, Commissioner Kent agreed, but stated he did want a public discussion on the proposal, if possible.

Consistency

Commissioner Kent thanked Commissioner Partington for bringing up the issue of consistency with the Fluhart right-of-way, and he looked forward to the information being provided. He noted he favored posting signs for vacating rights-of-way to inform the public of the public hearing.

Coffee with the Commissioner

Commissioner Kent stated there was a great “Coffee with the Commissioner” held yesterday.

Radio Program

Commissioner Kelley reported while he was cautioned not to listen to the WELE talk shows, he did listen and from time-to-time called in to clarify his views when people misinterpret them. He stated he was shocked last week when a question was asked regarding storage tanks at the Ormond Beach Airport, and a comment was made referencing Fire Chief Barry Baker that he did not find amusing. Commissioner Kelley stated this incident bothered him a great deal.

Summer Meetings

Commissioner Kelley recommended the Commission bring in their schedules at the next meeting to determine any conflict they may have with the summer meetings so the Commission could consider making adjustments to the schedule.

Equity

Mayor Costello replied to Mr. Boyle’s reference of equity by stating that equity was making sure all of the residents understand what was being proposed.

Economic Development Summit

Mayor Costello reported the Economic Development Summit on Saturday was fantastic, and he looked forward to hearing the summaries of all of the groups.

Smart Growth

Mayor Costello stated he participated in the Central Florida Regional Leadership Academy’s, “How Shall We Grow” forum regarding smart growth. He noted many issues Ormond Beach faced were universal, and it was interesting to see how other entities were handling them.

Beach Redevelopment

Mayor Costello stated the entire Commission has showed their passion on issues and asked staff to provide further information on certain items. He noted when the Commission had all of the information, it made good decisions. Mayor Costello stated he was proud of the way the Commission worked and proud of all of the citizens. He noted while he may not agree with all aspects of everyone’s point of view, the residents can help the Commission make a decision that would impact the redevelopment of the beach.

Item #14 – Close the Meeting

The meeting was adjourned at 10: 05 p.m.

APPROVED: _____ April 18, 2006

BY: _____
Fred Costello, Mayor

ATTEST:

Veronica Patterson, City Clerk