

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

**August 1, 2006      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 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 July 11, 2006, and July 18, 2006, meeting.
- 5) **AUDIENCE REMARKS:**
- 6) **INTERGOVERNMENTAL REPORTS:**
  - A) Metropolitan Planning Organization
  - B) Volusia Council of Governments
  - C) Water Authority of Volusia
- 7) **CONSENT AGENDA:** The action proposed is stated for each item on the Consent Agenda. Unless a City Commissioner removes an item from the Consent Agenda, no discussion on individual items will occur and a single motion will approve all items.
  - A) Resolution No. 2006-148 of the City Commission, also acting as the Community Redevelopment Agency of the City, authorizing the execution of a Property Improvement Grant Agreement between the City of Ormond Beach Community Redevelopment Agency and Randy's Auto Body, Inc. (86 South Yonge Street - \$50,000)
  - B) Resolution No. 2006-149 authorizing the execution of a Supplemental Local Agency Program Agreement between the City and the Florida Department of Transportation regarding the construction of turn lanes and traffic signals on SR40 and Orchard Street.
  - C) Resolution No. 2006-150 authorizing the submittal of a grant application to the St. Johns River Water Management District for funding assistance relative to the installation of baffle boxes along Hand Avenue as part of the City's Stormwater Management Plan; authorizing the execution of all documents incidental thereto. (\$140,000 in funding assistance)
  - D) Art for Fire Stations 91 and 92.

- 1) Resolution No. 2006-151 authorizing the execution of an agreement between the City of Ormond Beach and Elsie Shaw regarding the acceptance of and payment for an original piece of art commemorating Fire Station #91. (\$40,000)
- 2) Resolution No. 2006-152 authorizing the execution of an agreement between the City of Ormond Beach and Linda Howard regarding the acceptance of and payment for an original piece of art commemorating Fire Station #92. (\$32,000)

- E) Request to close Riverside Drive for the Ormond Main Street “Soup R’ Chili/Chowder Cookoff” on Saturday, October 14, 2006.

DISPOSITION: Approve as recommended in City Manager memorandum dated July 27, 2006.

- F) Status report on City Commission goals for 2006.

DISPOSITION: Accept report as recommended in City Manager memorandum dated July 27, 2006.

- G) Appointing a delegate to serve at the Florida League of Cities Annual Conference.

DISPOSITION: Accept report as recommended in City Manager memorandum dated July 27, 2006.

8) **PUBLIC HEARINGS:**

- A) Ordinance No. 2006-08 amending Subsection A, Zoning Map, of Chapter 1, Article II, of Section 2-03, Official Zoning Map and Zoning District, of Article I, Establishment of Zoning Districts and Official Zoning Map, of the Land Development Code, by amending the Official Zoning Map to rezone a 25.13-acre parcel of real property from SR (Suburban Residential) to PRD (Planned Residential Development), said real property being located approximately one mile north of Airport Road on the east side of Tymber Creek Road, north of the Southern Pines subdivision; establishing boundaries; authorizing revision of the official zoning map; approving a Development Order for “Enclave at North Pointe” Planned Residential Development (PRD). (Second Reading)
- B) Ordinance No. 2006-10 amending Chapter 13, Municipal Elections, of the Code of Ordinance of the City of Ormond Beach, Florida, by amending Section 13-54, Ballots, of Article V, Election Administration; by amending Sections 13-60, Canvassing Board, and 13-61, Recounts, of Article VI, Canvassing, Protests and Contests; by amending Section 13-71, Signs, of Article VII, Election Code: Violations, Penalties; by amending the form of ballots, the composition of the canvassing board; references to primary elections, the time allowed for certification of an election, a reference to the Land Development Code relative to political signs. (Second Reading)

9) **DISCUSSION ITEMS:**

- A) Firefighter Fair Labor Standards Act (FLSA) overtime.
- B) Water Authority of Volusia.

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- 10) **REPORTS, SUGGESTIONS, REQUESTS:** Mayor, City Commission, City Manager, City Attorney.
- 11) 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 July 11, 2006, and July 18, 2006, meetings had been sent to the Commissioners for review and asked if there were any corrections, additions, or omissions.

**Mayor Costello stated that hearing none, the minutes are approved as submitted.**

Item #5 - Audience Remarks

Public Safety Issues

Ms. Patti Barker, 1105 Overbrook Drive, reported last week she received a copy of the Camp Dresser McKee's (CDM) investigation report into the management and operation of the City's water treatment facility and read the City's internal disciplinary review which led to the termination of Chief Operator Stephen Scully, a 17-month employee who pointed out continuing problems to the Volusia County Health Department during its 2006 sanitary survey. She provided the Commission with sections of the reports. Ms. Barker stated if the Commission, after reading this report, would continue to allow the same individuals to remain responsible for the safety of the drinking water and Mr. Turner to manage the City, the Commission would be derelict in its responsibilities to the citizens because this was a crisis of frightening proportions and immediate steps must be taken to insure that those who were truly responsible were held accountable.

Ms. Barker noted this incident was similar to the issues in the Police Department where Mr. Turner and Chief Longfellow quashed any further investigation. She stated when Sergeant Mike Lowe went outside of the department to report sexual harassment and gross mismanagement he was retaliated against, and he will now never have his name cleared.

Ms. Barker stated the CDM report indicated a systemic pattern of mismanagement, years of neglect, lack of a written emergency plan, and other examples of gross incompetence reaching the highest levels of this administration, yet the only person held responsible was a short-term

employee who found the courage to point out long term maintenance and management issues to a regulatory authority. She noted even Judy Sloane, Public Works Director, blamed the current crisis at the water plant on a failure of management and a lack of accountability, which confirmed that Mr. Turner's method of insulating himself by leaving the same people in charge was unconscionable. Mr. Barker reported she filed a formal complain with the Florida Department of Environmental Protection who had the regulatory and law enforcement authority to investigate the operation and management of the water treatment facility.

Mayor Costello stated that some of the events described by Ms. Barker regarding the review of the Police Department were not exactly accurate. He stated that last fall the City was about to contract with two former police chiefs to serve as consultants to conduct a review of the Police Department's management practices. Mayor Costello reported a formal outside investigation that looked into the sexual misconduct issue had already been conducted during the summer of 2005 by the Volusia County Sheriff's Office with the assistance of the Ormond Beach Police Internal Affairs Division. He noted City-wide sexual harassment training was conducted in July 2005 by Ms. Linda Bond. Mayor Costello reported the review of the Police Department's management practices was halted after a citizen filed a complaint with the State of Florida Department of Agriculture and Consumer Services, questioning whether the consultants needed an investigator's license, and the State agreed a license was needed; therefore, the consultants were not able to conduct the review. He advised that the City Manager, with the concurrence of the City Commission, decided to have the Commission for Florida Accreditation (CFA) expand its comprehensive re-accreditation assessment to study the City's internal affairs operating procedures used to investigate the personnel cases that were in the news. Mayor Costello reported a July 23 article in the *News-Journal* made it seem this was Chief Longfellow's decision, when that decision was made by the City Manager and City Commission when Larry Mathieson was still the Police Chief. He noted the article did not mention the re-accreditation review, which included inviting the public to submit comments about their concerns to the CFA officials, and many citizens provided comments during that process. Mayor Costello explained the voluntary process for accreditation required compliance with more than 250 professional standards designed specifically for Florida law enforcement agencies. He reported that in February the Commission was proud to announce the CFA officially approved the three-year re-accreditation of the Ormond Beach Police Department by a unanimous vote. Mayor Costello noted the CFA officials indicated they were particularly impressed with the professionalism of internal affairs after reviewing the recent cases in depth and finding the actions of the department were fully in compliance with accreditation standards, departmental policies, and State law. He pointed out that only approximately one-third of Florida's law enforcement agencies have earned the CFA accreditation, and only one quarter have earned re-accreditation. Mayor Costello announced that he was proud of the Ormond Beach Police Department.

#### Building Heights

Mr. Daniel Pace, 923 Riverside Drive, urged Ormond Beach not to copy Daytona Beach's building height code.

Mr. Rick Fraser, 92 Wildwood Avenue, stated he and his wife were opposed to the intent of the CAN DO petition because it would remove the flexibility of the Commission. He pointed out height restrictions were an issue prior to the last election. Mr. Fraser noted three candidates were contested, and two were not contested in that election, and of the three candidates that had the height restriction in their platform, all three candidates lost the election, which said a great deal about the attitude of the residents of Ormond Beach. Therefore, he urged the Commission to stay strong in their beliefs. He pointed out the Land Development Code called

for projects to go before as many as three City boards before coming to the Commission, which would hold two public hearings. Mr. Fraser noted there was a process already in place for public input. He reported he and many other people trust the Commission to do what was best for Ormond Beach now and in the future.

Mr. Mike Delninno, 10 Sand Dollar Drive, stated an assumption being made by the CAN DO proponents was that all individuals who support flexibility with height restrictions have some direct connection to a financial gain related to the beachside redevelopment; however, he had no direct connection, would not benefit in any way, and he supported this only because it made good sense. He explained another misconception was that he was one of a very few individuals that supported building height flexibility; however, he refuted that belief because he had spoken to many people who support building height flexibility. Mr. Delninno advised that while he supported building height flexibility, he did have questions such as: did the developer have financial backing to complete the project, would the developer deliver on the initial design, what was the risk of the developer selling the property in any stage, and would the new developer be obligated to fulfill the previous commitments to the City. He noted that should the Commission be satisfied with their investigation of these questions, he saw no reason the process should not continue. Mr. Delninno reported this fight was actually an interpretation of “old school” versus “new school,” which had nothing to do with the length of time people live in Ormond Beach, but whether they had a progressive attitude. He urged moving forward; however, being progressive was not abandoning the local historic assets in the City. Mr. Delninno noted the only way to advance would be to not hamstring the local land use planners with fixed Charter conditions, but allowing for continued flexibility. He reported if this was done right, it would last the test of time, and it could be something of which the community should be proud.

Mayor Costello stated he appreciated these types of questions to help the Commission do a good job. He reported he had indicated previously that the first action would be that the land would be deeded to the City and phases would be established; and should the developer not fulfill their obligations, they would not be permitted to move on to the next phase.

#### Commission Response to Complaints

Ms. Linda Kane, 78 Ivanhoe Drive, stated during the water issue meetings citizens who believed the City was being unresponsive came to the Commission only to be chided by a Commissioner and told by Mayor Costello that no one could predict when a water main would break. She stated, however, that good leadership had emergency procedures reviewed on a regular basis to reduce major events from impacting residents. She reported while these issues have been addressed by the City Manager, it showed the beginning of a non-proactive mentality.

Ms. Kane noted last week a developer came back and changed his proposal after the first public reading. She commended Commissioner Partington for stating he was uncomfortable that the residents who came to the previous meeting to speak on the issue may not be aware of the new proposal, and the process should start again. Ms. Kane stated the City Attorney offered advice that the process need not be repeated unless there was a significant change, which he indicated did not occur; however, she considered the change in the proposal to be extremely significant. She reported the resident’s best interests were not represented nor was the meeting professionally facilitated.

Ms. Kane noted relative to the CAN DO issue, the petition speaks only to having the height limit incorporated in the Charter and removing exemptions in the Land Development Code to preserve the City’s low-rise character. She stated based on the Commission’s decision-making process, she could understand why the people wanted the power to vote on the major decisions

facing the City. Ms. Kane noted she understood the reference to the Costello, Bray and Gillespie proposal because of Mayor Costello's constant promotion, writing position papers, radio appearances, and newspaper articles. She stated Mayor Costello never addressed the hardships and negative impacts to citizens nor addressed solutions to these hardships. Ms. Kane reported these instances show a pattern of unfair representation, and the meetings show a lack of professionalism. She noted citizens have lost confidence in this Commission to vote on important matters objectively and with representation for all citizens.

#### CAN DO Amendment

Mr. Ron Nowviskie, 1320 Oak Forest Drive, reported he supported the Commission's prudent steps to determine the full impact and legal effect of the proposed CAN DO amendment that would limit the building heights in the City. He stated he considered the amendment to be burdensome, unfair to many property owners, and it would open the City to years of costly and unproductive legal action while limiting the City's ability to competitively redevelop. Mr. Nowviskie advised he was particularly troubled by placing the height limit in the Charter—a document that should be reserved for how the City governs itself, and he considered the CAN DO amendment an intellectually dishonest approach to handling land development related topics. He stated the government was a representative republic with elections every two to four years where the representatives are asked to rule with prudence, justice, temperance, and fortitude, making decisions for all citizens, not just those present on any given night or who may have signed petitions. Mr. Nowviskie reported in the past few years when a party, faction, or politician lost an election, they wanted to change the constitution or Charter; and he believed this issue was less about height limits and more about pure politics. He congratulated the Commission for protecting all of the citizens of Ormond Beach.

Mr. Glenn Jaspers, 160 Ocean Terrace, stated many months ago it appeared that if something was not done, high rises would exceed the Land Development Code, so he and others got involved with CAN DO who wanted a voice to vote. He noted at some time there would be a vote; and if that did not occur, the Commission would be destroying their political careers. Mr. Jaspers reported the vote may have three options: the CAN DO amendment, the Bray and Gillespie plan, or leaving the Charter unchanged.

#### Fluoridation

Mr. Jim Schultz, 117 Harvard Drive, stated in 2000 the National Treasury Employees' Union entered evidence from three court cases into the congressional record court cases. He noted in 1978 an injunction was filed against water fluoridation which was overruled on jurisdictional grounds, but his conclusion that the addition of sodium fluoride to the public water supply at one part per million was extremely deleterious to the human body was never overturned on fact. Mr. Schultz reported a similar finding was made that the record was barren of any credible and reputable epidemiology study which would support the Illinois legislation determination that fluoridation in water supplies was safe and effective. He noted a third judge found artificial fluoridation may contribute to the cause of cancer, genetic damage, intolerant reactions, and chronic toxicity. Mr. Schultz explained he believed in a precautionary principal. He stated the Environmental Protection Agency (EPA) regulated fluoride as a contaminant and acknowledged there had not been a single long-term study for the chronic effects of what was placed in the water. Mr. Schultz noted the Food and Drug Administration (FDA) never approved a single ingested fluoride product.

#### Parking Garage

Ms. Sharon Frontauria, 104 Ormond Parkway, explained she and her neighbors felt threatened by the proposed parking garage because the first home to the west of A1A would be within

100 feet of the proposed facility, robbing the resident of any hope for privacy. She pointed out the only entrance/exit proposed was through Ormond Parkway. Ms. Frontauria noted the first rendering outlined this as a four to six story facility with retail shops on the ground level, several levels of parking, and townhomes/condos somewhere on the property. She stated she heard the developer was revamping this plan to include ground floors for retail, four stories in the center for the parking garage, and two stories for condos and townhomes, and they have assured the public that they would not be able to tell there was a parking garage due to the camouflaging techniques they would use. Ms. Frontauria advised she was concerned about the traffic this would create. She questioned if Osceola Elementary School, located one street north, was notified of this garage since they cater to ADHD students. Ms. Frontauria stated a flyer was received by the principal the last week of summer school showing the proposed hotel and park, but it made no mention of the parking garage. She urged all the facts be provided to the schools so they could make plans for security. Ms. Frontauria reported she would not expect access to the parking garage be gained via Seminole Avenue. She asked if DOT was contacted for a traffic light request because it would take years to acquire the light, and studies needed to be done now to warrant the need. Ms. Frontauria noted it had been stated there would be no increase in density; however, the Quality Inn had been closed two years, and any activity would seem like an increase to the residents. She asked if the proposed walkover would be in lieu of a traffic light, noting Daytona Beach had the walkover and traffic light. Ms. Frontauria reported she assumed the answers would depend on the number of parking spaces provided and if they would be for the public's use. She reported the current parking designation houses 31 spaces for Zaxby's and 28 for the gift shop with an additional five behind the gift shop, and the parking garage would provide more than 59 to 64 spaces; therefore, this was an increase in density.

Mayor Costello stated Ms. Frontauria made some great points, and he wanted to hear these types of concerns from everyone. He reported he expected all entrances and exists to be from A1A, and the structure would not be any taller on the west side than the current code would allow. Mayor Costello pointed out the proposal was far too preliminary to answer some of Ms. Frontauria's specific concerns at this point.

#### Police Department Issues

Mr. Larry Mathieson, 32 River Ridge Trail, stated that as Ormond Beach's former police chief, he was elated by the decision made by Chief Longfellow, the City Manager, Mayor Costello, and the City Commission not to proceed with an internal audit of the Police Department. He reported the department had an internal audit in February by outside assessors from the Commission on Florida Accreditation and passed without difficulty. Mr. Mathieson advised the report concluded the department was well run, well led, and that the issues, including a "sex scandal," had been handled by administration in a manner consistent with policy, procedures, law, and accreditation standards. He pointed out the report was equally clear that much of the turmoil affecting the organization was contrived by a few people internal and external to the department who were bent on disrupting the organization for personal reasons. Mr. Mathieson noted that in his closing comments team leader Robert Garlo stated any additional review of the department was "a waste of time and money." He stated the team found the department's internal affairs procedures and other policies and procedures applied were amongst the best they had ever seen. Mr. Mathieson reported that if there was an indication that the Ormond Beach Police Department had a serious systemic issue, he would have been the first to request more be done, but that was not the case. He stated regarding a reported miscommunication between the Police Department and the Fire Chief, there was a miscommunication which was his responsibility; however, that was not the reason as alluded to in the *News-Journal* article for officers not carrying road flares. Mr. Mathieson pointed out that decision was made long ago

with the input of a vast majority of police supervisors in the agency who concluded that flares were difficult to maintain and created fire hazard issues at accident scenes. He expressed agreement with the Police Chief, the City Manager, and the City Commission that the past should be put behind the department and the organization should move on for the benefit of all concerned because it was the right thing to do.

Item #6(A) - Metropolitan Planning Organization and Item #6(B) Volusia Council of Governments

Mayor Costello stated he had nothing new to report on the Metropolitan Planning Organization (MPO) and Volusia Council of Governments (VCOG).

Item #6(C) - Water Authority of Volusia

Commissioner Kelley stated he would wait to report on the Water Authority of Volusia (WAV) until Item #9(B) was discussed.

Item #7 - Consent Agenda

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

Commissioner Gillooly requested Item No. 7(D) be removal from the Consent Agenda for discussion.

**Commissioner Kent moved, seconded by Commissioner Kelley, for approval of the Consent Agenda, minus Item No. 7(D).**

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

Item #7(D)(1) - Art Commemorating Fire Station #91 - Elsie Shaw and Item #7(D)(2) - Art Commemorating Fire Station #92 - Linda Howard

RESOLUTION NO. 2006-151

A RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT BETWEEN THE CITY OF ORMOND BEACH AND ELSIE SHAW REGARDING THE ACCEPTANCE OF AND PAYMENT FOR AN ORIGINAL PIECE OF ART COMMEMORATING FIRE STATION #91; AND SETTING FORTH AN EFFECTIVE DATE.

**Commissioner Kent moved, seconded by Commissioner Partington, to approve Resolution No. 2006-151, as read by title only.**

Commissioner Gillooly explained this item related to a decision made by a prior Commission and while she certainly supported public art, she considered the cost of \$72,000 for these two

works of art to be excessive for art at these locations. She noted this decision involved a group of citizens and staff who worked hard to find the appropriate type of art, and she appreciated their efforts. Commissioner Gillooly questioned if the value of spending this sum for art at these locations was worthy of the art in that on Nova Road and A1A people travel at a minimum of 35 miles per hour. She stated she supported public art at the Performing Arts Center, parks, and City Hall because art was important to the people's quality of life; but she questioned the value with people traveling past the art at a fast rate of speed. Commissioner Gillooly pointed out that last evening the Commission concluded the budget workshops and debated hiring an additional police officer; therefore, she could not support this when she believed the money could be better spent elsewhere.

Mr. Isaac Turner, City Manager, stated the dollars being spent were from the bond dollars. He noted it had been the practice of the City to provide money for public art for new public facilities.

Mr. David Abee, Leisure Services Director, stated for some time the City had been an advocate of public art in public places. He reported a number of recommendations were provided by several groups who felt that as the City built new facilities, public art would be exhibited outside those new facilities. Mr. Abee pointed out the art was large and could be seen. He stated Ormond Beach set the pace in public art in Volusia County, and he urged the Commission to keep that momentum going.

Ms. Ann Burt, 900 John Anderson Drive, Director of Ormond Memorial Art Museum, stated that in 1998 the citizens were so thankful for the work of the firefighters that they expressed a desire to have some type of art as a method of thanking them for their service to the community. She reported the committee approached over 200 people and reviewed over 50 submissions. Ms. Burt stated the art at Nova Road was entitled "Flame of Hope," and the art on A1A depicted a firefighter with a child dressed as a firefighter. She pointed out the site on A1A was also a children's park. Ms. Burt explained both pieces of art were weather and hurricane resistant. She reported while \$72,000 was not insignificant, both artists discounted their work considerably. Ms. Burt stated Ormond Beach was a special and unique City because Ormond Beach spent money not only for necessities, but also for items that enhance the quality of life of its citizens. She reported both pieces of art would be lighted at night and visible at all times of the day or night.

Commissioner Gillooly reported while she respected Ms. Burt and her work, she could not support the funding of this project.

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

Item #8(A) - "Enclave at North Pointe"

ORDINANCE NO. 2006-08  
AN ORDINANCE AMENDING SUBSECTION A, ZONING MAP,  
OF CHAPTER 1, ARTICLE II, OF SECTION 2-03, OFFICIAL  
ZONING MAP AND ZONING DISTRICT, OF ARTICLE I,  
ESTABLISHMENT OF ZONING DISTRICTS AND OFFICIAL  
ZONING MAP, OF THE LAND DEVELOPMENT CODE, BY

AMENDING THE OFFICIAL ZONING MAP TO REZONE A 25.13-ACRE PARCEL OF REAL PROPERTY FROM SR (SUBURBAN RESIDENTIAL) TO PRD (PLANNED RESIDENTIAL DEVELOPMENT), SAID REAL PROPERTY BEING LOCATED APPROXIMATELY ONE MILE NORTH OF AIRPORT ROAD ON THE EAST SIDE OF TYMBER CREEK ROAD, NORTH OF THE SOUTHERN PINES SUBDIVISION; ESTABLISHING BOUNDARIES; AUTHORIZING REVISION OF THE OFFICIAL ZONING MAP; APPROVING A DEVELOPMENT ORDER FOR “ENCLAVE AT NORTH POINTE” PLANNED RESIDENTIAL DEVELOPMENT (PRD); REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; AND SETTING FORTH AN EFFECTIVE DATE.

Mayor Costello advised that the only action the Commission took at the last meeting was to table the item at the end of the first reading; therefore, this development order would currently only allow 15 units to be constructed prior to the four laning of Tymber Creek Road, and it required a stormwater analysis.

**Commissioner Partington moved, seconded by Commissioner Kelley, to approve Ordinance No. 2006-08, on second reading, as read by title only.**

Mr. Clay Ervin, Planning Director, stated there was a question from Commissioner Partington regarding the status of the revised traffic study. He noted staff reviewed the technical memorandum that Sans Lassiter prepared, and basically, all of the assumptions regarding assignment and distribution were consistent with previous studies and models, and staff found the analysis was sound. Mr. Ervin explained staff received input at a zone meeting from Volusia County staff that the four laning of Tymber Creek Road between Airport Road and SR40 had been split into two separate projects and would be delayed from the originally identified date. He reported the first phase would be completed in 2008/2009 with the second phase completed in 2015. Mr. Ervin advised the reason given for the delay was that the additional cost for materials, right-of-way, and design had increased such that the original bond amount issued to cover the costs were insufficient, and the County needed to stagger some of the projects. He stated the segments that would be more greatly traveled would be done first, and when additional funds were obtained, the second phase would be completed.

Mr. Turner clarified that this was a County staff recommendation and City staff had not yet had the opportunity to respond to that recommendation. He stated a number of cities would probably have issues about this recommendation.

Mr. Ervin stated staff would be preparing a summary for the Commission to enable staff to provide comments to the County Council at a workshop in August.

Mr. Aiden MaGee, 352 Golf Boulevard, Daytona Beach, representing Volusia/Flagler Environmental Action Committee, stated Mr. Morris tried to convince the Commission that his client would in no way be responsible for any traffic problems now or in the future. He noted the developer would be able to increase his density from one to 1.4 houses per acre simply by annexing into Ormond Beach. Mr. MaGee questioned how the school board could possibly believe this development would not represent an increase in density. He noted Tymber Creek Road and the wetlands would be impacted by this development. Mr. MaGee stated the environmental study conducted by the applicant's consultant was inadequate in that it did not

address gopher tortoises or indigo snakes, which are endangered species; therefore, he requested the United States Army Corps of Engineers and Volusia County to become involved. He asked where the environmentally sensitive corridors were to allow the displaced wildlife to adapt and survive. Mr. MaGee stated these developments were not in keeping with the adjacent land uses. He objected to allowing this project and noted a particular objection to the additional five homes originally not being considered.

Mr. Sans Lassiter, Lassiter Transportation Group, provided a power point presentation that indicated the percentage distribution of project trips were based on the computer model of all of the land uses from Volusia County, indicating the percentage of traffic leaving the site going north was 14%, 30% east on Airport Road, 7% west on Airport Road, 49% south traveling further from the project with the trips attenuating as they are attracted to complimentary land uses. He explained that in the a.m. and p.m. peak hour the trips were 25 going out and nine coming in, and they split with a larger percentage going south and a smaller percentage going to the north; therefore, by the time they reach Tymber Creek Road, the numbers were single digits.

Mr. James Morris, representing the applicant, stated the intersection improvements at Airport Road and Tymber Creek Road are under construction. He noted the County staff's recommendation pertained to the northern half of Tymber Creek Road, but the southern half of Tymber Creek Road was funded. Mr. Morris highly recommended Ormond Beach, Daytona Beach, and Port Orange be very proactive regarding the County recommendations because the decision was not yet final. He pointed out the majority of the wetlands are protected. Mr. Morris noted Ormond Beach had more restrictive standards than the St. Johns River Water Management District or Volusia County; therefore, they were preserving the wetland corridors. He stated the Commission heard from Planning Board members subsequent to the Planning Board meeting indicating they were not comfortable with the way that meeting was handled or the decisions that were reached. Mr. Morris advised the Commission also had a very extensive staff report that supported approval of both requests, and rather than asking for everything as alluded to earlier, his client offered to delay consideration of Marshside and agreed to some of the requests made by the City. He noted the Commission was initially inclined to approve 15 homes in both the Enclave and Marshside developments; but due to issues of economy of scale, he requested the change for 35 homes in Enclave only. Mr. Morris advised regarding compatibility—the nearest developed property was Southern Pines to the south, and the density of this project was lower than the density of Southern Pines. He pointed out this was also within the urban growth boundaries that were considered to be the demarcation of where urban growth should or should not occur. Mr. Morris stated this was between two school facilities and near two Development of Regional Impact (DRI) developments; therefore, this was no longer a rural area. He pointed out he offered no objection to an additional public hearing, but he could see no need to draw this out any longer. Mr. Morris noted the traffic problems occurred only at the peak loading hours. He reported the impact would be considered minimal, and the improvements were in line for a substantial portion of the problem. Mr. Morris stated Marshside was not on the agenda, but he requested the ability to come back at a later date for Marshside.

Mr. Morris noted there was a recreational requirement as a portion of the subdivision, and the park was a subdivision park as opposed to a community recreation park. He stated the staff report indicated the possible suggestion of intensification of the parks, but the space was relatively small. Mr. Morris advised his client would be willing to work with staff on a park process; however, there were problems noted in the City Manager's report regarding proceeding with the one acre park on a 20 acre parcel. He reported his client would not move

away from the obligations he offered to undertake with the City, although it was not yet understood how the City would consider that obligation should be fulfilled, and it may change.

**Commissioner Partington moved, seconded by Commissioner Kelley, to approve the 35 lots for the Enclave project.**

Commissioner Partington noted the Commission had approved the 15 lots for the two subdivisions on first reading, and the recommendation changed to 35 lots for Enclave and to hold Marshside, which made more sense. He stated he appreciated everyone's patience in doing this the proper way so everyone could be heard. Commissioner Partington noted he considered the changes have been substantial. He stated this project had some procedural problems, but staff's recommendation was sound. Commissioner Partington noted he based his decision on all of the available information.

Mr. Randall Hayes, City Attorney, suggested the motion would be to delete paragraph seven and eight of the Development Order as amended on first reading. He clarified that there was no substantial change for the purpose of requiring a third reading because the applicant requested 35 units in its application, and the Commission approved that on a phasing plan; therefore, the Commission was merely removing the phasing element from the first reading. Mr. Hayes noted he understood Commissioner Partington was concerned about notification.

Commissioner Kelley thanked Commissioner Partington for his insight in handling this situation in this manner. He noted this was not the first issue that was very complex where the Commission decided to take the extra time to do the right thing for the community.

Commissioner Gillooly concurred with Commissioner Partington and Commissioner Kelley regarding bringing this issue back, particularly because the applicant was willing to have another reading. She requested assurance the sidewalk would be included in this development.

Mr. Morris assured Commissioner Gillooly the sidewalk from the Enclave project to the intersection of Airport Road and Tymber Creek Road as well as the leg west along the extension of Airport Road on the north side towards the school was included.

Mr. Hayes stated currently paragraph five only provided for a sidewalk along the east side of Tymber Creek Road.

Mr. Morris advised his presentation had been to include both legs coincidental with the Enclave project; whereby, Mr. Hayes requested that be included in the motion and second.

**Commissioner Partington, as the maker of the motion, and Commissioner Kelley, as the second, agreed to include a sidewalk from the Enclave project to the intersection of Airport Road and Tymber Creek Road as well as the leg west along the extension of Airport Road on the north side towards the school.**

Commissioner Kent stated Mr. Speno contacted him to discuss this project. He noted Mr. Speno made the following comment which he felt was very true: "If the schools opened thirty minutes apart, we wouldn't be having this discussion." Commissioner Kent reported he originally opposed that; but considering that it may be 2015 before the final phase was completed for the four laning project, he questioned why Mr. Speno should be punished for the lack of County funding. He thanked Mr. Speno for contacting him when he was probably aware he could have had the project passed on a four to one vote. Commissioner Kent noted today

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was his first day back at work, and he spoke to his coworkers and did not hear an outcry objecting to this project. He reported part of his decision also considered the number of residents from the community who came to the meeting tonight.

Mayor Costello explained he was comfortable supporting this because the applicant was advised that there was transportation concurrency available when the process was begun. He encouraged staff to let land owners in this area know that there was no concurrency remaining, particularly because Tymber Creek Road may not be completed until 2015.

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

Call Vote on the Motion as Amended:	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 #8(A).**

Item #8(B) - Election Code

Mayor Costello recognized Representative Joyce Cusak and thanked her for all she does for Ormond Beach.

ORDINANCE NO. 2006-10  
AN ORDINANCE AMENDING CHAPTER 13, MUNICIPAL ELECTIONS, OF THE CODE OF ORDINANCE OF THE CITY OF ORMOND BEACH, FLORIDA, BY AMENDING SECTION 13-54, BALLOTS, OF ARTICLE V, ELECTION ADMINISTRATION; BY AMENDING SECTIONS 13-60, CANVASSING BOARD, AND 13-61, RECOUNTS, OF ARTICLE VI, CANVASSING, PROTESTS AND CONTESTS; BY AMENDING SECTION 13-71, SIGNS, OF ARTICLE VII, ELECTION CODE: VIOLATIONS, PENALTIES; BY AMENDING THE FORM OF BALLOTS, THE COMPOSITION OF THE CANVASSING BOARD; REFERENCES TO PRIMARY ELECTIONS, THE TIME ALLOWED FOR CERTIFICATION OF AN ELECTION, A REFERENCE TO THE LAND DEVELOPMENT CODE RELATIVE TO POLITICAL SIGNS; REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; AND SETTING FORTH AN EFFECTIVE DATE.

**Commissioner Partington moved, seconded by Commissioner Kelley, to approve Ordinance No. 2006-10, on second 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 #8(B).**

Item #7(D)(2) - Art Commemorating Fire Station #91 - Linda Howard

Mr. Hayes advised Mayor Costello that Item #7(D)(2) had not been addressed.

RESOLUTION NO. 2006-152

A RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT BETWEEN THE CITY OF ORMOND BEACH AND LINDA HOWARD REGARDING THE ACCEPTANCE OF AND PAYMENT FOR AN ORIGINAL PIECE OF ART COMMEMORATING FIRE STATION #92; AND SETTING FORTH AN EFFECTIVE DATE.

**Commissioner Kent moved, seconded by Commissioner Kelley, to approve Resolution No. 2006-152, as read by title only.**

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

Item #9(A) - Firefighter Fair Labor Standards Act (FLSA) Overtime

Fire Chief Barry Baker stated at the June 13 Commission meeting, he and Mr. Paul Lane, Finance Director, were requested to review the Fair Labor Standards overtime to determine if there would be any savings achieved by reducing that overtime entirely and filling those positions with firefighters. He reported in the difference between the 53 and 56 hours, the City could save \$185,000; but it would have to acquire three additional firefighters, and the difference with the salary would be approximately \$46,000 in savings. Chief Baker pointed out that must be balanced with the fact that this was a mandatory bargaining subject, and the current contract does not have re-openers, so this would have to be discussed during the bargaining session next year. He also cautioned he had no idea what this would do to retention or acquiring firefighters, because there was no history behind this concept. Chief Baker noted the lay firefighter would lose approximately \$3,500 per year and work three hours less per week.

Mayor Costello thanked staff for the thorough report and noted that even if the Commission was in favor of this, it could not be done now but would have to wait until the contracts were negotiated with the union. He commended Chief Baker and Mr. Lane for the thorough report, but noted he had not made a decision as to what he would recommend at this point regarding this issue.

Item #9(B) - Water Authority of Volusia

Commissioner Kelley stated there would be a vote at the next Water Authority of Volusia (WAV) meeting to amend the interlocal agreement to change the voting requirements from unanimous to requiring 11 positive votes; and there appeared to be four votes opposed which would, for all intents and purposes, destroy WAV as it was currently created. He noted the legal ramifications were unknown. Commissioner Kelley reported WAV was created with great intentions, but it was not progressing as it should for parochial reasons. He stated WAV should exist, but one of the worst problems it faced was the funding mechanism. Commissioner Kelley reported a study done by a consulting group advocated adding this to a County-wide taxing mechanism that everyone would share in and be incremental, enabling enough funding to be generated without affecting anyone and allowing WAV to operate. He stated another proposal was to form separate sub-regional groups. Commissioner Kelley advised he hoped something could be salvaged. He noted another proposal was for WAV to go back to being a planning agency, but he questioned the need for that. Commissioner Kelley stated he questioned the makeup of the board—whether it should be made up of elected political people, utilities directors, or city managers. He advised he did not believe it would get the necessary 11 votes it would need to survive.

Mr. Ted MacLeod, Assistant City Manager, stated the original vision was that the board would represent the water users of Volusia County, not their particular jurisdictions. He stated this has evolved to the point where many of the board members do not want to make a decision without checking with their Commissions, which he considered was hampering the organization. Mr. MacLeod reported the city managers were meeting on August 8 to discuss the issues and possibly offer ideas for a direction WAV should be taking.

Mayor Costello noted he was proud of what Ormond Beach's Commission had done for WAV. He stated he hoped Commissioner Kelley always felt empowered to act as he felt would be best for Ormond Beach. Mayor Costello asked if the Commission could do something to facilitate the attempt to cooperate and further the efficient recruiting and distribution of water.

Mr. Bruce Mowry, WAV Executive Director, stated the 14 WAV board members would determine WAV's fate. He reported it would take 11 votes to dissolve WAV, but there would probably not be 11 votes. Mr. Mowry explained that even though there may not be enough votes to dissolve WAV, the question was whether it would still be a viable organization. He noted WAV was created after studies were completed, a transition team met; and the financial model was sound, but this was not the organization that was ultimately created. Mr. Mowry explained the plan was based on a sound concept of governance, financial modeling, and no one would need to give up ownership of their utilities or sell their wellfields, only that WAV would be the wholesale provider. He stated without a strong funding base, WAV would never be a strong organization, and it was never given that funding because the members could not agree on an ability to build an organization that could be funded. Mr. Mowry advised a requirement of the interlocal agreement was to do a master plan which referenced a model with a scientific base allowing for 16 million additional gallons of groundwater. He advised that the deficit in the entire County was only 22 million gallons leaving a six million gallon shortfall, which could have been dealt with by conservation, expanding additional plants, and other methods; however, the board did not even come together on a master plan. He noted another requirement was for a joint permit that would allow this concept, but that did not come to being. Mr. Mowry stated he had to put faith in his board, noting he did not have a vote and only provided counsel. He noted he moved here from California because he saw the benefit of a

true regional organization, but the fate of the organization was carried by the 14 board members.

Mayor Costello questioned if enough entities left WAV making it a non-viable organization, if it would be advisable for Ormond Beach to stay with WAV, go in on a partnership with other communities on the east, or stay independent. He reported Ormond Beach desired to cooperate with other communities.

Mr. Mowry mentioned the sub-region concept, questioning which sub-region each City should be in. He pointed out that water does not understand political boundaries, and it was not clear how to draw sub-regions. He reported in the next five years, the County utility that serves water to Debarry and North Deltona will not have enough water to support growth. Mr. Mowry stated when the water for that area was gone, there would be no additional water for the eastern cities. He noted it was stated a large capital project would be built on the west side of the County, and the eastern cities would have to help to pay for it; but the eastern cities did not believe they should. Mr. Mowry reported western cities could drop their wells next to the eastern cities, and it would result in spending millions of dollars in legal fees in court and no money for new water.

Commissioner Kelley noted he disagreed that Deltona would take all of the water. He explained Ormond Beach, Port Orange, and New Smyrna Beach were in good condition; Edgewater was not in bad condition; and some of the County areas would be in the worst condition. Commissioner Kelley report Ormond Beach would only grow approximately 1%, and the major growth would come from those areas with the worst conditions. He noted WAV should have been implemented two years ago, but the cost was not viable. Commissioner Kelley pointed out some did not believe they needed WAV, and within five years they would be desperate for it. He stated this was a complex situation, and he would welcome any input.

Mr. Turner stated Mr. Mowry had a challenging task working with 15 people in a diversity of areas. He noted Ormond Beach had always supported WAV and its predecessor. Mr. Turner stated he hoped WAV would continue to exist and be more than a planning organization. He stated there were mistrust issues and a lack of relationships with members that were inhibiting WAV's ability to form an alliance. Mr. Turner noted WAV must change, and a change in the composition of the board of directors may be helpful; and he recommended people with expertise in this area from the communities could made decisions based on the business aspects of WAV. He reported that in his discussions with area managers, the issue was delivering a product. Mr. Turner acknowledged there were benefits most communities enjoy because of the revenue produced by utilities and franchise fees, but that would not need to change if someone else would be operating the system. He reported the managers were concerned that the product was delivered reliably, but WAV does not have a track record. Mr. Turner stated the managers believed WAV would focus on future water sources and alternative water supplies, which may be the key to a solution. He note who would pay was an issue, and the managers determined those who benefit would be the ones primarily to pay although Ormond Beach took a step to spend \$600,000 to \$700,000 on their treatment facility for an additional two million gallons over the original two million gallons with the thought that it would be paid for by WAV or Daytona Beach. Mr. Turner stated there was a spirit amongst the managers of wanting to help and wanting WAV to be successful.

Commissioner Kelley stated the board could possibly be made up similar to the Growth Management Commission, which would assure more consistency as opposed to elected officials who could change after election.

Item #10 - Reports, Suggestions, Requests

Police Department Review

Commissioner Gillooly stated she appreciated former Chief Matheson's comments. She noted there was a letter to the editor in the *News-Journal* today which outlined specific facts why moving forward in the Police Department was the right decision. Commissioner Gillooly explained the re-accreditation review was expanded. She stated she was in total agreement with the decision not to further investigate the Police Department since it had been investigated, and she had confidence in Chief Longfellow to move forward.

Public Art

Commissioner Gillooly stated she favored public art and hoped to incorporate more private dollars in a public/private partnership for public art. She explained she appreciated the history of wanting to acknowledge the efforts of the Fire Department in the 1998 fires, but she could not support spending these funds at this time.

"National Night Out"

Commissioner Gillooly thanked the Police Department, Leisure Services Department, and Fire Department for their efforts in the "National Night Out." She stated having families and children involved was a tremendous credit to the City for having such events.

Halifax Habitat for Humanity

Commissioner Gillooly presented a Certificate of Appreciation to Mayor Costello from the Halifax Habitat for Humanity in grateful recognition of the City's support on the home of Rhonda Glenn and family at 247 Washington Place.

Controversial Issues

Commissioner Kent requested time with Police Chief Michael Longfellow because he was not completely certain the review was not necessary. He pointed out there have been numerous confrontational issues within the City that could have been avoided such as the issue concerning the Police Department, the golf course, the water plant, and airport appraisals.

Coffee with the Commissioner

Commissioner Kent stated the next "Coffee with the Commissioner" would be at his home on Monday, August 7, at 5:00 p.m. as opposed to the regular 4:00 p.m. time.

Apology

Commissioner Kelley apologized for his shortness at the last meeting during some of the discussion items.

Focus Meeting

Commissioner Kelley requested Commissioner Kent bring up some of the concerns he mentioned at the focus meeting.

Water Issues

Commissioner Kelley stated that at no time did the Florida Department of Health indicate that the water was unsafe to consume. He expressed frustration at hearing the water was unsafe because some people may actually believe that untruth.

“National Night Out”

Mr. Turner concurred with Commissioner Gillooly’s comments regarding the “National Night Out.” He noted this was a great event and every year it conflicted with a City Commission meeting; therefore, he suggested next year the Commission may consider moving the meeting so the Commission could participate in the “National Night Out” event.

Mayor Costello noted changing the meeting was on his list if items on which he wished to speak, and he asked for the Commission’s input on the matter. He stated this would also afford the Commission the opportunity to promote the event.

Mr. Turner indicated the Commission concurred by a nod of the head.

Water Issues

Mr. Turner stated he would share e-mails with the Commission sent from the former Chief Plant Operator to him and the Department of Health in June. He pointed out the e-mails were sent after the water plant incidents in May. Mr. Turner noted he would comment, but could not comment in any detail because a discipline action was taking place, and it was in an appellate stage at this point.

E-mails

Mr. Turner explained he receive e-mails on both his laptop and PDA. He noted his PDA sends messages from the Commission, department heads, and a few other key people, while his laptop receives everything—as many as 100 e-mails per day.

Tymber Creek Road

Mayor Costello reported he looked forward to the discussion on Tymber Creek Road. He asked staff to help form a strategy as to what he should be saying at the Metropolitan Planning Organization and the County Council in that he did not wish to be too parochial, yet he wanted to represent Ormond Beach. Mayor Costello reiterated that he contended commercial enterprises would help decrease the traffic at the Williamson Boulevard, SR40, and I-95 area, but he had concerns about any additional residential construction.

National Night Out

Mayor Costello thanked Mr. Turner for his recommendation for a schedule change to allow Commission participation at the next “National Night Out.”

Pace Center for Girls

Mayor Costello encouraged everyone to go to the Pace Center for Girls this Friday at 3:00 p.m. to bid Carol Wick farewell as she received a promotion and would be moving to the Orlando area, most likely due to the fine job she had done here in Ormond Beach.

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Item #11 - Close the Meeting

The meeting was adjourned at 9:18 p.m.

APPROVED: August 15, 2006

BY: Fred Costello, Mayor

ATTEST:

Veronica Patterson, City Clerk