

**MINUTES  
CITY OF ORMOND BEACH  
CITY COMMISSION  
SIGN CODE WORKSHOP**

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**December 5, 2017**

**5:00 p.m.**

**City Commission Conference Room**

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**I. CALL TO ORDER**

Mayor Bill Partington called the meeting to order at 5:10 p.m.

Present were Mayor Bill Partington, Commissioners Dwight Selby, Troy Kent, Rick Boehm, and Rob Littleton, Planning Board members Doug Thomas, Harold Briley, Al Jorczak, Lori Tolland, Lewis Heaster and Angeline Shull, City Manager Joyce Shanahan, City Attorney Randy Hayes, Planning Director Ric Goss, and Catherine Reischmann, partner with Garganese, Weiss & D'Agresta, P.A.

Mayor Partington stated that the workshop was regarding the Supreme Court case decision from Reed versus Town of Gilbert ("Reed") on signage and that he appreciated the Planning Board attending the meeting.

Mr. Randy Hayes, City Attorney, introduced Ms. Catherine Reischmann, partner with Garganese, Weiss & D'Agresta, P.A., as the guest speaker.

**II. SIGN AMENDMENTS AFTER REED DECISION**

Mr. Hayes stated that the purpose of the workshop was to discuss changes to the sign code regulations and the Land Development Code (LDC) because of the Supreme Court decision in the Reed case about three years prior. He stated that the case had spurred many lawsuits since that time and that everyone involved was grappling with the language. He noted that most of the Commissioners had a good history on what had been discussed at prior meetings and that he would not get into a lot of the background that evening, but offered to provide information if needed. He stated that it had been an interesting process as every time staff reached a point of providing an update, there had been a change to the landscape. He noted that the changes shown were made with current Constitutional requirements. He stated that the Reed case had long reaching arms, noting that it would have an impact on upcoming decisions in the city such as the mural ordinance. He stated that the main question at that point involved risk continuum, or window of risk, and wondered how wide open or closed the city wanted that risk factor to be. He stated that any adjustments suggested would be made to the ordinance and brought back for final review at a later date. He noted that since it involved the LDC, the Planning Board had been invited to participate and that this would be their first look at the information.

Ms. Catherine Reischman, partner with Garganese, Weiss & D'Agresta, P.A., stated that it was a pleasure to meet with the City of Ormond Beach again. She stated that at the prior meeting, she and city staff were tasked with keeping the updates to a limited number of amendments, noting that they attempted to do that. She stated that she had passed out a packet that had the sign code in context, which included details of what currently existed, and the actual ordinance which had a fair number of findings. She noted that they had tried to keep it succinct so that it would be easy to understand. She

stated that the Reed case seemed revolutionary in many aspects but that there was not a single prior case that was repealed or overturned, noting that that fact had to be reconciled with the strict standard that came out of it. She noted that numerous cities were navigating the details and had mixed success, such as North Redington Beach, who made an attempt to comply with Reed and was told by the federal court that they had not. She read a quote from Justice Elena Kagan that was a suggestion with the most understanding of the sign law, as a consequence of the confusing broad decision:

*“Our communities will find themselves in an unenviable bind: they will have to either repeal the exemptions that allow for helpful signs on streets and sidewalks, or else lift their sign restrictions altogether and resign themselves to the resulting clutter.”*

Ms. Reischmann stated that the part about lifting sign restrictions was not possible in Florida, due to a law that stated that everyone must have a sign code. She stated that Florida also had a scenic beauty constitutional provision, so that there was some basis to try and make the fine distinctions. She warned that exemptions were often not content-neutral. She explained that if a distinction was made that all signs had to have a permit, but an exception was made for all Save the Whales signs, in that those did not need a permit, that would regulate the individual’s fundamental right of free speech. She stated that issues were common with exemptions on sign permits and requirements, and that the city had to be careful that they were not favoring commercial speech over non-commercial speech. She stated that the highest honors and treatment went into political speech, but that sometimes political speech was inadvertently burdened without intent to do so. She explained that a city could allow realtors to put an “open house” sign in the right-of-way on weekends only, but that by opening up the city’s rights-of-way to that, they would have to open it up to “Mothers of Al Qaeda Bake Sale” or “Neo-Nazis Rule”, allowing anyone to put up whatever temporary sign they wished because the city could not favor commercial over non-commercial. She noted that the city had to attempt to regulate the medium, not the message and that they were not the same thing. She stated that content-neutrality was difficult and not always sufficient, noting that the city had to look at types of dimensional restrictions using the Time, Place, and Manner (TPM) rules, such as separation between signs. She noted that that was a big tool for the local governments.

Ms. Reischmann stated that the Supreme Court looked favorable upon government speech as being an area of that concept to the first amendment. She stated that private speech should not be allowed on public property and that the sign codes were specifically for private speech on private property. She stated that there were groups of lawyers that preyed on particularly small cities, litigating the sign cases, and that the cities almost always lost if there was any merit to the complaint. She explained that defining categories in the code, such as “political sign”, “directional sign”, or “garage sale sign”, would be an issue as that would be targeting a sign based on its content and that was where the challenge came in, as the city could not be 100 percent effective in limiting those categories. She stated that the basis for making the distinctions between types of signs had to be for safety and not aesthetics. She stated that when a challenger won a lawsuit the attorney’s fees were often huge, noting that in the Reed case she thought that the amount was \$1,000,000 that the Town of Gilbert, AZ had to pay. She stated that the challenger was usually an entity putting up a non-commercial sign, such as a church or citizen advocate, noting that a public interest law firm would take the case having good motives, but knowing that it would also be a good payday.

Ms. Joyce Shanahan, City Manager, stated that it was not unlike what had happened with the bus benches previously. She stated that the group might remember that there were some areas that the benches were not compliant with the Americans with Disabilities Act of 1990 (ADA), that people were looking at sign laws in cities across Florida, and that information was sent about ADA compliance. She noted that there had been some movement in the legislature to stop that, but did not think the bill passed.

Commissioner Selby stated that it had been Representative Tom Leek's bill and that it did pass. He stated that the threshold had been raised and that one could not send out a letter without giving the property owner an opportunity to respond or correct the situation.

Ms. Reischmann stated that there were different options available when looking at the risk continuum, based on level of risk. She noted that the most important item was that the code had to have a substitution clause, highlighting that the city already had one in theirs. She explained that a substitution clause meant that a commercial sign could be switched to a non-commercial sign at any point, emphasizing that a burger place could change the sign from "Bob's Burgers" to "Stop the War" at any time. She noted that the city had to allow the change and in doing so, treated non-commercial signs as the top priority.

Ms. Reischmann stated that in looking at the options with the least amount of risk, the rules were not strict in that they had generic numbers of feet per sign, no permit was required, it applied to commercial and non-commercial, and it allowed billboards and electronic signs. She noted that on the other end involving more risk, the rules were stricter in not allowing any billboards or electronic signs, certain restrictions for temporary signs, requiring permits for non-commercial signs, and the city would use strict enforcement. She wondered where the City of Ormond Beach wanted to be on that scale, noting that the best place was somewhere in the middle where permits would be required for commercial signs only and limiting them based on an "event".

Ms. Reischmann stated that content-based distinctions, such as commercial versus non-commercial, off-site versus on-site, and temporary versus permanent, were probably still allowed and noted that a federal circuit court had stated that those distinctions were acceptable. She stated that she hoped for continued validity of the prior sign case law which allowed certain distinctions. She noted that the Reed case had many ripple effects outside of sign law that included allowing donation boxes, and overturning solicitation and panhandling regulations. She stated that other cities had to repeal their regulations in those areas after Reed.

Ms. Reischmann stated that Florida Statutes Section 553.79(20) was new and that businesses could argue that it would preempt a city's sign code in Florida. She explained that it was backed by a gentleman in South Florida that owned many gas stations across the state and was told by Boca Raton that he had to paint his gas station pink. She stated that he was angry about the city's rule and insisted that that was not right. She stated that this statute preempted the local code and that cities could not enforce an ordinance that contained any aesthetic requirements which would conflict with or impair corporate trademarks, noting that Shell and RaceTrac gas stations did not have pink included in their paint schemes. She noted that the second part of the statute restricted cities from imposing any requirement on signage for retail prices of gasoline and that it should apply retroactively. She stated that she thought the statute was created to apply only to gas stations, but that other businesses were trying to use it to their advantages.

She noted that there were many steps involved to fight the preemption if a business did decide to use that against a city.

Ms. Reischmann stated that the main changes in the sign code were administrative in nature, which would not be interesting to the Commissioners, and emphasized that Reed was about changes to temporary signage. She stated that all changes made to the code were suggestions only and that Planning Director Ric Goss, Mr. Hayes, and Ms. Shanahan had a lot of input as to what went into those suggestions.

Ms. Reischmann referenced a table on page 51 of the agenda packet that listed the proposed amendments to the sign code. She noted that they attempted to make the wording as clear as possible in removing labels, noting that the first two sign types had to do with sites under construction. She explained that instead of using "construction signs" they suggested using "signs on property with an active building permit or unexpired site plan", and that they attempted to keep the code requirements almost the same. She explained that the third sign type, temporary commercial sign in non-residential district, was fairly consistent with what the city already had in place, i.e. allowing banners 14 days for 4 times a year and a required permit.

Ms. Shanahan stated that the table on page five of the agenda packet, which showed the proposed amendments on the left side and the current LDC code on the right side, did a good job of showing all of the numbers for comparison. She noted that it was a good time to pause and see what kind of questions, comments, or concerns the group had.

Ms. Reischmann added that the attempt with the changes was to allow businesses as much signage as they had in the current code.

Mayor Partington stated that he would like to go around and get an idea of what level of risk each person was comfortable with. He stated that he thought some individuals would be in the medium to low risk area, noting that that would be where the city would want to be overall in protecting the aesthetic as much as possible.

Mayor Partington referenced the list of 11 items for discussion in the agenda packet and stated that he agreed with them. He wondered if anyone wanted to comment on the exceptions to the proposed amendments.

Mr. Doug Thomas stated that he had not received the agenda packet and asked for one; whereby, Ms. Shanahan stated that she thought the Planning Board had been sent the agenda packet separately from the City Commission and apologized for any misunderstanding.

Mr. Hayes stated that Ms. Reischmann would go through the details, but that if the Planning Board had any questions after the meeting, they could always ask a staff member. He reminded them that the issue would come to them again at a future Planning Board meeting before going to the City Commission for approval, so they would have more time to grasp the information and understand it.

Ms. Reischmann stated that number one on the discussion list was deleting content-based definitions and replacing them with new location-based qualifiers. She explained that getting rid of the terms "political signs" and "garage sale signs" qualifiers and using location-based qualifiers instead would be the obvious immediate cure. She noted that it

was basically a play on words to keep the content neutral. She stated that number two on the discussion list was that purpose and intent had been expanded to support and help in the defense of the sign ordinance, but did not think it was controversial.

Mayor Partington asked Ms. Reischmann to explain why that was important.

Ms. Reischmann stated that the city only had one chance to make their case in the event of a lawsuit, and that they needed to have their findings on the record because they could be challenged. She stated that the city would then defend themselves based on what they said that they were trying to do, and that there would need to be a clear basis for what they were doing in safety and aesthetics. She explained that if the city had a provision in their code that a court said was content-based, for example "U-turn directional signage", there would be the chance that it might be looked at with strict scrutiny. She noted that if that happened, the city could only justify it with a safety purpose and that the aesthetic purpose would not help. She stated that there was a saying that strict scrutiny was like having a stomach wound in the Civil War; one would basically not survive it. She noted that if the city got to that point, their code would go down. She stated that they did have the ability to amend the code so that if they got into a situation where the code was challenged, everyone could regroup and amend it. She stated that someone pointed out at the prior meeting that the Town of Gilbert chose not to amend right before they went to the Supreme Court, despite being told to do so, and that the city needed to be on guard and ready to make a change.

Mr. Hayes stated that the purposes had been laid out on the first four pages of the proposed ordinance and under Section 3-38 at the bottom of page seven. He noted that those areas were specifically for the city's lawyers to rely on, in the event that they had to prove that the city complied with all of those findings.

Mr. Doug Thomas asked Ms. Reichmann if she was saying that if someone opposed the ordinance that the city would have an opportunity to revisit and change it; whereby, Ms. Reichmann stated that was the case.

Mr. Thomas stated that he thought the city should take a more moderate approach until they were challenged and then change it before any severe action was taken.

Ms. Reischmann stated that that was an option; however, once a lawsuit was filed, there could be political fallout and attorney's fees would start to accrue. She stated that the city could amend whatever deficiency immediately, but that they might still have to pay the attorney's fees for everyone involved and that those numbers could be large. She stated that the city might not have the huge liability, but that there would still be some. She noted that at that point, the city would be under the gun, stressed, not able to speak with constituents and businesses, or to proceed in the correct fashion.

Mr. Hayes agreed with Ms. Reischmann that the code could be updated at any time, but that it might not get the city off the hook for paying attorney's fees for having put the other side through the hassle of the process.

Mr. Thomas stated that his understanding of what Ms. Reischmann and Mr. Hayes had said was that the code could not be changed in a timely manner once a lawsuit was filed.

Mr. Hayes stated that after a suit was filed there would always be an amount of attorney's fees that had to be paid. He stated that it was easy for lawyers to say that if the city wanted to eliminate their risk that they should just close that window, use the TPM restrictions, and get rid of all labels, distance requirements, etc. He stated that option was on the higher risk end and that most did not like to do that, but that the city did not want to go in the opposite direction of being open ended and having no restrictions. He noted that the challenge was trying to find a common middle ground, with a little risk, that might be a workable solution for the community, specifically residences, commercial, individuals, and businesses. He stated that the city might go 20 or 30 years and not get sued. He stated that the tough choice was for everyone to tell them what was acceptable in terms of risk management.

Commissioner Boehm stated that what he was hearing was that if sued, the city was going to lose, that all lawyers that had ever sued had always been right and that the city was always wrong. He emphasized that that was not always the case. He stated that if the code was crafted correctly, then the city should be fine. He explained that there were 400 cities in Florida and that if he were one of the lawyers suing cities over the code, he would look for the low hanging fruit, meaning the ones like the Town of Gilbert that did not take action, making them an easy target. He noted that a city with a good and solid code would be ignored by the lawyers. He noted that Ms. Reischmann, Mr. Hayes and staff had done a great job thus far. He pointed out that not every judge would rule in favor of anyone complaining about a sign. He stated that if everyone was comfortable with the ordinance that they had and then the city ended up getting sued, that did not mean that ipso facto the ordinance had to be amended. He noted that the city would need to look at it and potentially fight the claims, if they felt that they were in the right.

Mr. Thomas stated that the filing of a lawsuit normally was not a surprise, and did not fall out of the sky without a precursor that would give time to collect thoughts and make adjustments before it became severe.

Mr. Hayes stated that that was the case sometimes, but that it depended on the type of lawsuit. He noted that cases like that were generally cottage industry lawsuits. He stated that the city's current model was pretty solid and that staff was pretty comfortable with it. He stated that after the Reed decision, everyone across the United States was having the same issues, noting that some areas were being more proactive in trying to evaluate their current regulations and making adjustments where needed. He explained that it was his obligation as the city's counsel to advise on the legal environment, noting that it not only affected signs but other issues as well that time, and to let them make the decision, knowing that he had done his due diligence.

Ms. Reischmann stated that the city needed to be careful when code enforcing for a sign violation, that they needed to know what they were doing, the importance of it, and the need to be ready for a lawsuit just in case. She referenced a case in North Redington Beach where the city was code enforcing a restaurant, which sparked publicity, and the lawyers came to help them and challenge the code prosecution.

Ms. Reischmann stated that number three on the discussion list was that government signs were no longer regulated by the city sign code, noting that it was found on page nine of the ordinance just before Section 3-39, and explained that the city did not have to regulate government signs on government property anymore since they were erected for the purposes of public safety.

Ms. Shanahan asked about removing a certain code from the LDC and putting it only under code ordinances. Mr. Hayes and Ms. Reischmann discussed some possible options. Mayor Partington asked if it could be put under both areas; whereby, Ms. Reischmann stated that could be a possibility.

Mr. Lewis Heaster stated that at the beginning of the meeting, Ms. Reischmann had mentioned off-color signage or statements that the city could end up dealing with, such as “Neo-Nazis”, and that the Reed decision stated that the city could not regulate those signs. He asked for confirmation that his understanding was correct.

Ms. Reischmann stated that the city could not regulate them directly, but that they could limit the number of signs and the size, so that effectively they put the nuisance effect on an off-color sign. She noted that there was an obscenity law in the statutes that individuals had to comply with.

Mr. Heaster wondered where the city would draw the line if someone put a sign up that offended different types of people, creating an environment where individuals would be upset and react.

Mr. Hayes stated that the city did receive those inquiries from time to time and that it depended on where the sign had been placed. He stated that if it were in the city’s right-of-way and the city had an ordinance that banned those signs in the right-of-way, then the city would have cause for the sign to be removed. He noted that if it were on private property though that was a bigger issue. He stated that a group like the Klu Klux Klan (KKK) wanted to have a rally or parade, and that they had to be treated the same as someone who wanted a permit for a garage sale, noting that the bottom line was that it could not be based on context. He noted that he thought there might be a cottage industry that went around testing markets to find out what the reactions would be, as that group never came back to get the permit and no parade was held. He pointed out that the city would have to evaluate each situation on a case-by-case basis based upon circumstances and then had to be smart about it.

Mr. Hayes stated that there was some unrest at the time that involved political signs, noting that the political climate in general was very divisive. He stated that individuals were allowed to have political message signs on private property during campaigns, but that once political season was over it was no longer considered a political sign and did not adhere to the city’s code. He wondered whether it was a political sign that the city should make them get rid of or if it was conveying a personal message. He stated that if the city had to read the content to determine what it was, they would be targeting the content. He stated that the smartest way to deal with that was to let it go and that most of the time, no one complained. He stated that the Legal Department was aware of those situations and that once someone complained, it would be evaluated on a case-by-case basis.

Ms. Shanahan noted that the city did have complaints from citizens about certain types of religious signs and that they appeared at a certain time of year. She stated that the answer to those individuals was that the others were allowed to do it because the signs were on personal property.

Ms. Reischmann highlighted that most people were offended in residential areas. She referenced a case where a man painted “Screwed by the town of Cary” on his house in red paint; the town stated that his sign was too big, not that he had used a bad word,

and won the case. She stated that if the city was careful, not drawn in by emotion, and looked purely at TPM, that they could alleviate most of the nuisances.

Ms. Shanahan asked Ms. Reischmann to address HOA issues and regulation in communities; whereby, Ms. Reischmann stated that the HOA had authority over common areas and that under Chapter 720 of the Florida State Statutes they had a right to regulate the number of signs to a certain extent.

Commissioner Selby stated that he wished to go back to the issue of government signs. He stated that the statement above Section 3-39 mentioned that government signs were for the purpose of public safety. He noted that there were certain signs, historic markers or public parking signs, that had nothing to do with safety. He asked if it had to be for public safety; whereby, Ms. Reischmann stated that the vast majority of government signs were for safety, including the parking signs.

Commissioner Selby stated that street signs were for safety in making sure that fire trucks knew where to go for an emergency. He stated that there were many other signs that the city would need to give a reason as to why they were exempt.

Ms. Reischmann stated that that part could be taken out of the code. She noted that the concern was that Justice Clarence Thomas mentioned in the Reed decision that cities would have to back up the reason why they had reference to directional signs and things like that. She stated that the thinking was for the fire department, the police department, and others like that with many of the government signs. She noted that historic markers did not fall under that.

Commissioner Selby referenced the signs at Andy Romano Beachfront Park and City Hall and asked about them; whereby, Ms. Reischmann stated that those were considered directional signs that had a public safety purpose.

Commissioner Boehm stated that the city could only regulate government signs on government property, but wondered about private signs on government property. He wondered if someone could put a Nazi swastika sign on the Granada Boulevard Bridge and whether or not the city could do anything. He noted that that would be breaking the city's own rule about private signs on government property.

Commissioner Selby compared it to allowing political signs during a political campaign season in certain areas, but not allowing other signs.

Commissioner Boehm stated that all of the political signs were on public property and noted that it had to be all or nothing. He stated that once exceptions were made by the city, the code seemed to be subject to a challenge. He noted that both he and Commissioner Selby had addressed exceptions that existed at that time.

Mr. Hayes stated that that was true and that there had been considerable debate over the details for years.

Ms. Reischmann agreed with Mr. Hayes and noted that the debate continued constantly.

Mr. Hayes stated that the city could allow government speech on government property as much as they wanted. He explained that the city tried to make sure that all signage on the bridge was sponsored by them, and that the same held true for banners above the

traffic along Granada Boulevard. He stated that in doing so, the city gave some parameters to avoid having sign litter and only had signs that served a government purpose, such as the farmers market that was sponsored by the city. He stated that the parameters had worked out pretty well in the past, but agreed that it could be a dicey area.

Commissioner Selby asked about political signs on government property during campaign time or early voting; whereby, Ms. Shanahan stated that the city had turned its head in the past.

Commissioner Selby wondered if there was a way to regulate those as well.

Mr. Hayes stated that the State of Florida had a statute with regulations that applied to political signs, such as the number of feet away from a polling location, when they had to go up or be taken down, etc. He stated that if the polling place was on private property, like an HOA, that it was pretty easy to regulate; however, if the polling place was on public property and next to City Hall, for example, it would be more difficult to regulate. He emphasized that it could be enforced if required. He noted that that discussion came up during every campaign season. He stated that they preferred to handle it with the custom usage practice, noting that the idea was to be fair and reasonable to everyone, including being sensitive to an individual's fundamental rights. He stated that if the city did confiscate those signs, the people who placed the signs would show up at a City Commission meeting in the Commission Chambers and complain to the Commission directly. He noted that if that was what they wanted to do, they could do it.

Commissioner Selby stated that the city could allow political signs, but wondered about allowing religious, objectionable, or other types of signs.

Mr. Hayes stated that the area outside of City Hall was traditionally public and allowed all forms of speech. He stated that the law had not changed and that the city could exclude all signs, or they could designate certain places and allow all signs. He stated that Commissioner Selby's point about religious signs could occur, but that he was not sure how to regulate that based on the traditional use of that area. He noted that it would depend on the circumstances, so the city would need to evaluate and be smart in their decision.

Ms. Reischmann stated that the city did have discretion in what they could enforce, noting that some cities had sign anarchy during election periods and that anything was allowed. She stated that on the risk continuum that allowed the city to feel comfortable about not enforcing the code, but noted that due to issues and exceptions, that area of the law would not give them the warm fuzzies. She stated that in reality, the city would have to pick their battles.

Mr. Thomas stated that he wanted to discuss signs on the bridge and what qualified as a government sign. He noted that all Leisure Services Department activities relied on bridge signage for various program announcements. He wondered if an independent group, that was an arm of Leisure Services, put a sign up about baseball registration on the bridge, would that be construed as a government sign even if the group was not directly part of the city.

Mr. Hayes stated that it was a government sign, as the service was provided by and for the city itself. He explained that if New Smyrna Beach wanted to put a sign on the city's

bridge about an event in New Smyrna Beach, that would not be considered Ormond Beach government speech and would not be allowed.

Mr. Thomas wondered how far that could be extended, giving an example that a church wanted to have a fish fry or fundraiser, place their sign on the bridge, and that the money would be donated to the city.

Mr. Hayes stated that it had to be a nonreligious event, and emphasized that if it was sponsored by or on behalf of the city that that was the connecting piece and the sign would be allowed. He explained that he could not put all questions into the same hole though, as all situations were different but that there were common themes. He stated that each situation needed to be evaluated in the context presented and then the best determination decided, noting that case law was ever changing. He stated that once the City of Ormond Beach passed their ordinance, there would be other cases that arose and that the city would have to meet and evaluate it again at that time. He noted that signage seemed simple, but that it was not due to all of the issues involved.

Mr. Thomas stated that he had a problem with the city running scared in response to a lawsuit. He reiterated that he thought they might have the time to make any adjustments, IF someone came out of the woodwork to create an issue.

Mr. Hayes stated that the city was self-insured and had been since the 1980s, which had worked well for them. He stated that he could almost guarantee that Ormond Beach was not viewed as easy pickings, and that they had fought pretty hard in prior cases. He asked them to notice how extensive the legislative findings were on the first four pages of the ordinance and explained that that was to lay the foundation for any potential lawsuits. He stated that once the city was sued, they would not have the time to put that part together, noting that once a summons of complaint was served they had to worry about the suit itself. He noted that in his experience, judges were smart but came from their own experience and whatever specialties they dealt with prior to becoming a judge. He stated that when the city had been sued, most times they had to educate a judge since the city dealt with all issues, where the judge might not have that experience. He noted that it depended on who they drew and how technical the issues were, among other factors.

Mayor Partington stated that it would not be running scared, but instead running smart.

Commissioner Boehm wondered if a private property or church became a polling place, whether that would make the location government property in terms of an election. He asked if a church could say that they did not want "Dwight Selby" signs on their property because they did not like him, prohibiting him only, even though it was a polling place and he wanted to put signs there; whereby, Ms. Reischmann stated that they had to abide by the restrictions set by the statute, but that even though they were a polling location, they did not have to allow any political signs, noting that they did not become government property in that situation.

Commissioner Boehm stated that they could stop him from posting signs if they wanted.

Mr. Hayes reiterated that the polling place had to do whatever the statute allowed, noting that if they allowed political signs that they could not pick and choose which ones and would have to allow all of them.

Commissioner Boehm asked whether they could prohibit all signs; whereby, Mr. Hayes stated that they could if the statute allowed for that.

Ms. Lori Tolland wondered if the sign code applied to signs held by people, noting that that had become common in the area.

Ms. Reischmann stated that those types of signs were dealt with separately from the sign code. She stated that if the city did not do that, they would have to make the distinction between commercial and non-commercial, noting that someone had the fundamental right to walk along a sidewalk with a sign that said "Ormond Beach is the pits", but did not have a fundamental right to walk along with a sign that said "Two hot dogs for \$1." She recommended that the city handle those issues separate from the sign code and put them under the regular code. She noted that a sign holder could create a nuisance situation by waving the sign around, and that they needed to be further up the right-of-way, so that there would be no safety concerns.

Mr. Al Jorczak wondered what the city's cost was to enforce the existing sign codes in the prior few years, and whether the cost would increase or decrease in enforcement with the new code. He also wondered how the city controlled all of the enforcements with the current resources.

Mr. Hayes stated that the cost was administrative staff time. He noted that the main residential issues were "garage sale" signs and did not anticipate a big enforcement issue with the updated code. He stated that the code they had was working well, but that the city was trying to be proactive with a few areas.

Ms. Reischmann stated that a huge issue was that the city did not want to make it hard on code enforcement, noting that they wanted to make it as clear as possible to everyone what was allowed and what was not allowed. She noted that real estate signs enjoyed constitutional protection. She stated that they were identified in the city's code as "real estate signs", even though she said not to use labels. She stated that a specific Supreme Court case stated that real estate signs must be allowed in residential and commercial areas, noting that they were not making any change to that. She stated that those signs were not allowed in the right-of-way and that if some were found there, they might be overlooked.

Ms. Shanahan stated that the city's code enforcement was mainly on a reactive basis and complaint driven. She noted that they did not catch everything, especially on weekends.

Commissioner Littleton stated that number four of the discussion items mentioned a sign permit application review process, and he wondered why that was needed when giving out a permit, when the breakdown in the table included was easy to read.

Ms. Reischmann stated that they added that section to pages ten and 11 of the ordinance to place deadlines on sign permits, which did not usually create a problem. She stated that the city needed to have time constraints included and worked deadlines into the review process for their protection.

Mr. Hayes stated that it was a constitutional due process issue and that it ran through that subject and any form of expression. He stated that if the city did not have a process

in place for a reasonably quick decision, the argument would be that it operated as a restraint on expression or speech, and that the city was sensitive to those issues.

Ms. Reischmann stated that language was included to protect against a surprise lawsuit, requiring advance notice.

Mayor Partington thanked Mr. Hayes, Mr. Goss, and Ms. Shanahan for their hard work, and the time that had been spent working on the information for the previous year and a half at the staff level. He noted that they provided a product that would protect the city and provide reasonable limitations, but still allowed people to operate legally under Reed. He thanked Ms. Reischmann for everything that she had done on the project and that he appreciated the protections that were included in the code.

Mr. Ric Goss, Planning Director, reiterated that the table shown provided a comparison of the current LDC with the proposed one next to it.

Ms. Reischmann referenced the table and noted that certain sign types would increase in number, but that separation between the signs would become of key importance.

Commissioner Boehm asked numerous detailed questions about specific numbers of signs, height requirements, and maximum square footage; whereby, Ms. Shanahan stated that those numbers could be whatever the Commission wanted them to be.

Mayor Partington wondered whether the addition of a severability clause made the city nimble on making changes; whereby, Ms. Reischmann stated that he was correct.

Ms. Angeline Shull asked if the height listed for the signs was off the ground or the exact height of the sign; whereby, Ms. Reischmann stated that height was defined as from the ground.

Mr. Jorczak stated that the city had made a deal to get rid of junky billboards and had them changed to electronic signs, noting that it was a one-time deal to clean up the area, and wondered if that set a precedent for others in the future; whereby, Ms. Reischmann stated that was not the case.

Mr. Hayes confirmed that Mr. Jorczak meant the signs on Nova Road and noted that that situation happened during the 1998 fires, when sign regulations were different. He stated that seven or eight signs burned to the ground, those individuals rebuilt the signs, the city said that they could not do that, and then those individuals sued. He stated that the city was able to negotiate a settlement that removed the signs that had burned and were rebuilt, plus four additional ones in exchange for getting two electronic signs. The individuals wanted the new signs on Granada Boulevard, but the city code would not allow that at the time. He confirmed that it would not set a precedent for others.

Mayor Partington thanked staff and Ms. Reischmann again, and thanked the Planning Board for everything that they did.

### **III. ADJOURNMENT**

The meeting was adjourned at 6:31 p.m.

Transcribed by: Wendy Nichols