

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

**February 17, 2009**

**7:00 p.m.**

Present were: Mayor Fred Costello, Lori Gillooly, Troy Kent, Ed Kelley, and Bill Partington, City Manager Joyce Shanahan, Assistant City Manager Ted MacLeod, City Attorney Randal Hayes, and City Clerk Veronica Patterson.

**A G E N D A**

- 1) Meeting call to order by Mayor Costello.
- 2) Invocation by Reverend Doug Hautz, Alliance Community Church.
- 3) Pledge of Allegiance.
- 4) **PRESENTATION:** Comprehensive Annual Financial Report for the fiscal year ended September 30, 2008 (Audit Report).
- 5) **AUDIENCE REMARKS:**
- 6) **APPROVAL OF THE MINUTES** of the February 3, 2009, meeting.
- 7) **INTERGOVERNMENTAL REPORTS:**
  - A) Metropolitan Planning Organization
  - B) Volusia Council of Governments
  - C) Water Authority of Volusia
- 8) **CONSENT AGENDA:** The action proposed is stated for each item on the Consent Agenda. Unless a City Commissioner removes an item from the Consent Agenda, no discussion on individual items will occur and a single motion will approve all items.
  - A) Resolution No. 2009-11 authorizing and directing all financial institutions which hold funds of the City of Ormond Beach to delete the name of Theodore S. MacLeod as Acting City Manager from their records and to add the name of Joyce Shanahan as City Manager thereto.
  - B) Resolution No. 2009-12 appointing a member to serve on the Historic Landmark Preservation Board; setting forth term and conditions of service. (James Stowers)
  - C) Resolution No. 2009-13 supporting Volusia County School District recommendations for legislative action on school funding.
  - D) Resolution No. 2009-14 authorizing the execution of the Third Amendment to the Interlocal Agreement Providing for the Establishment of the East Volusia Government Fire-Rescue and Emergency Medical Services Automatic Aid and Closest Unit Response System between the cities of Ormond Beach, Daytona Beach, Edgewater, Holly Hill, New Smyrna Beach, Port Orange, South Daytona, Daytona Beach Shores, Ponce Inlet and County of Volusia for the purpose of extending the agreement.
  - E) Purchase of vehicles:
    - 1) Resolution No. 2009-15 authorizing the approval and execution of four purchase authorizations (Requisition Nos. 5657, 5658, 5659, 5660) for the purchase of seven (7) vehicles under Florida Sheriff's Association Bid Number 08-16-09080, declaring certain vehicles to be surplus property and authorizing the disposition thereof. (\$174,867)
    - 2) Resolution No. 2009-16 accepting quotations from Nichols Truck Bodies for the purchase of three (3) utility bodies; authorizing the execution of a purchase authorization (Requisition No. 5664); rejecting all other quotations. (\$36,528)
  - F) Resolution No. 2009-17 accepting a bid from Worsham Underground Utilities, Inc., for construction services regarding the 2008 Lift Station Replacement Program project under Bid No. 2008-36; authorizing the execution of a contract and payment therefor; rejecting all other bids. (\$885,598.04)

- G) Resolution No. 2009-18 accepting a proposal from Quentin L. Hampton Associates, Inc., for construction administration and inspection services regarding the Lift Station Replacement project; authorizing the execution of a Work Authorization and payment therefor. (Not to exceed \$60,020)
- H) Resolution No. 2009-19 accepting the fee estimate of Quentin L. Hampton Associates, Inc., for engineering services regarding the Airport Road Force Main Extension project; authorizing the execution of an agreement and payment therefor; rejecting all other qualifications. (Not to exceed \$377,990)
- 9) **PUBLIC HEARING:** Resolution No. 2009-20 authorizing the transmittal of amendments to the Conservation, Coastal, Cultural Affairs, Recreation and Open Space, and Intergovernmental Coordination Elements of the City of Ormond Beach Comprehensive Plan.
- 10) **SECOND READING OF ORDINANCE** No. 2009-02 amending the Future Land Use Element of the Comprehensive Plan by amending the Future Land Use Map to change the designation of one (1) parcel of real property totaling 4.51 acres located at 1360, 1362, 1364, 1366, 1368 and 1370 North US1 from Volusia County "Commercial" to Ormond Beach "General Commercial."
- 11) **RESOLUTION** No. 2009-21 of the City Commission of the City of Ormond Beach, Florida, recommending certain changes to the rules of procedure for the Volusia County Growth Management Commission (VGMC) as set forth herein; providing for severability; providing for conflicting resolutions.
- 12) **DISCUSSION ITEMS:**
  - A) Request by John Filor for a reduction in the fees paid by All-Star College Baseball Jamboree, Inc.
  - B) Purchase of property at 100 W. Granada Boulevard.
- 13) **REPORTS, SUGGESTIONS, REQUESTS:** Mayor, City Commission, City Manager, City Attorney.
- 14) **CLOSE THE MEETING.**

Item #1 - Meeting Call to Order

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

Item #2 – Invocation

The invocation was given by Reverend Doug Hautz, Alliance Community Church.

Item #3 - Pledge of Allegiance

Mayor Costello led the Pledge of Allegiance.

Item #4 – Presentation – Audit Report

Mike Sibley, James Moore and Company, explained the details in the unqualified opinion or highest level of opinion, which means the financial statements, were prepared properly using generally accepted accounting principles. He reported the general fund balance was \$6,302,000; of that the unreserved amount was \$5,478,000 which was 17%, well above the City's goal; revenues were less than budget by \$484,000 due to reductions in state revenue sharing funds; and expenditures were under budget by \$392,000. He stated that due to staff efforts to cut spending, the City's deficit was actually improved. He reported there were no incidents of non-compliance in the grants area. He complimented staff that in spite of the personnel changes in the Finance Department, staff put extra effort into the process to address prior audit comments, correct internal issues they elected to change, to improve efficiency, and to handle the current audit in a very professional manner, which resulted in an A+ rating. Mr. Sibley commented he was available to meet individually with any of the Commission members if they had questions or desired more details.

Mayor Costello remarked to City Manager Joyce Shanahan that she must realize she had an outstanding staff. He explained to the audience that the favorable comment as compared to other peer cities was outstanding, and in his experiences on the Commission, he does not remember the City ever receiving an A+ rating.

Item #5- Audience Remarks

Tommy Bozeman, 1319 N. Beach Street, stated that firefighters were concerned about the safety of the citizens and asked the Commission to listen to input about Fire Department issues from all sources to gather as much information as possible before making a decision.

Laura Jones, 59 Amsden Road, stated she was on a crusade or campaign to have the Stanley Steamer returned to Ormond Beach and displayed at the City.

Irene Todora, 340 Cumberland Avenue, addressed the flood problems, which she attributed to the construction of a home directly behind her property, and potential future problems to her neighbors' property should Mr. and Mrs. Whitley at 350 Cumberland Avenue get a City permit to elevate their home. She stated that in 2003, the property at 357 Putnam Avenue was cleared for construction and fill was brought in to elevate the home, which contributed to considerable flooding after the storms in 2004. She stated at that time, the City Manager and City Planner reviewed the situation and informed her the permit should never have been issued. She reported that in August, 2007, a meeting with neighbors and Commissioner Gillooly was held to discuss a stilt home being built on Putnam Avenue that would negatively affect the neighborhood. She explained that after Mr. Whitley remodeled his home, including adding a master bath and changing the roof line, it caused her property to flood a second time. She stated FEMA suggested to her the City should take a preventive measure, such as a FEMA sea wall grant. She informed the Commission the Volusia County Plans Coordinator agreed a FEMA grant sea wall would be beneficial to the whole neighborhood.

Mayor Costello asked her to meet with the City Manager to further discuss this issue.

Leroy Grasso, 330 Cumberland Avenue, with the same neighborhood group, stated the concern was that Mr. Whitley was applying for a City permit to elevate his in-ground swimming pool, which would require a large amount of fill dirt, creating more flood problems. He expressed there was a major flood problem on Putnam Avenue and Cumberland Avenue and asked the Commission to please consider a resolution to this problem.

Mayor Costello stated the Commission was looking forward to the report the City Manager and staff would present.

Jim Schultz, 117 Harvard Drive, stated that many children could have dangerously high level of fluoride in their bodies from eating foods high in fluoride, such as mechanically deboned hot dogs, chicken, or turkey distributed through government food programs, and then they get even more fluoride in their drinking water.

Item #6 – Approval of the Minutes

Mayor Costello advised the minutes of the February 3, 2009, regular meeting had been sent to the Commission for review and, with no corrections, additions, or omissions, the minutes would stand approved as submitted.

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

Mayor Costello stated he had sent a summary of the meetings for the Metropolitan Planning Organization and the Volusia Council of Governments to the Commission members and asked if anyone had any questions or comments.

Item #7(C) – Water Authority of Volusia

Commissioner Kelley reported that twenty-two residents applied for the \$100 rebate for the purchase of an energy efficient washing machine, and he hoped to get the members to approve extending the program.

Item #8 - Consent Agenda

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

**Commissioner Kelley moved, seconded by Commissioner Kent, for approval of the Consent Agenda.**

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

Commissioner Gillooly asked if there was not a way to work with sister cities to make joint purchases locally to keep the money local.

Mayor Costello stated this had been discussed numerous times but someone needed to establish a mechanism to accomplish this.

Item #9 – Transmittal of Comprehensive Plan Amendments

RESOLUTION NO. 2009-20

A RESOLUTION AUTHORIZING THE TRANSMITTAL OF AMENDMENTS TO CONSERVATION, COASTAL, CULTURAL AFFAIRS, RECREATION AND OPEN SPACE, AND INTERGOVERNMENTAL COORDINATION ELEMENTS TO THE CITY OF ORMOND BEACH COMPREHENSIVE PLAN; AND SETTING FORTH AN EFFECTIVE DATE.

Mayor Costello stated the Environmental Advisory Board and the Planning Board unanimously approved the resolution.

**Commissioner Kelley moved, seconded by Commissioner Partington, for approval of Resolution No. 2009-20, as read by title only.**

Mayor Costello asked the Commission members for any comments or questions and upon hearing none, he called for the vote. The Mayor pointed out that a sign up sheet was in the back of the Chambers for anyone wishing to receive any follow-up on this item.

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

Mayor Costello stated that with no objection, he closed the public hearing.

Item #10 - Rezoning of 1360, 1362, 1364, 1366, 1368 and 1370 North US1

ORDINANCE NO. 2009-02

AN ORDINANCE AMENDING THE FUTURE LAND USE ELEMENT OF THE COMPREHENSIVE PLAN BY AMENDING THE FUTURE LAND USE MAP TO CHANGE THE DESIGNATION OF ONE (1) PARCEL OF REAL PROPERTY TOTALING 4.51-ACRES LOCATED AT 1360, 1362, 1364, 1366, 1368, AND 1370 NORTH US1, FROM VOLUSIA COUNTY "COMMERCIAL" TO ORMOND BEACH "GENERAL COMMERCIAL" REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; AND SETTING FORTH AN EFFECTIVE DATE.

**Commissioner Partington moved, seconded by Commissioner Kelley, for approval of Ordinance No. 2009-02 on second reading; as read by title only.**

Mayor Costello asked for any comments, hearing none, he called for the vote.

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

Item #11 – Changes to the Rules of Procedure for Volusia County Growth Management

RESOLUTION NO. 2009-21

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF ORMOND BEACH; FLORIDA RECOMMENDING CERTAIN CHANGES TO THE RULES OF PROCEDURE FOR THE VOLUSIA COUNTY GROWTH MANAGEMENT COMMISSION (VGMC) AS SET FORTH HEREIN; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTING RESOLUTIONS; AND SETTING FORTH AN EFFECTIVE DATE.

The item failed due to the lack of a motion.

Item #12(A) – Florida All Star College Baseball Jamboree Request for Reduction of Fee

Commissioner Gillooly stated the City should do what they have always done and she appreciated the staff report.

Commissioner Partington stated he had met with Mr. Filor and reviewed what Mr. Filor had done over the years and what he was requesting. Commissioner Partington explained that while the City could not do everything Mr. Filor requested, the City should be able to work with him. Commissioner Partington expressed hope that staff could suggest changes that would allow the event to continue.

Commissioner Gillooly stated she had the impression the event would happen because many schools already had this on their schedules. She stated this was a for-profit organization and for-profit organizations made great things happen. She agreed there were a lot of intangibles involved with this Jamboree.

Commissioner Partington stated his impression was there was a possibility it might not happen or it would happen on a reduced scale.

Mayor Costello asked Barry Ward to come to the podium, as Mr. Filor's representative, to explain why the City should make an exception to the fee schedule for the Jamboree, when other entities did not get a reduction in fees.

Mr. Ward explained that Mr. Filor was not in attendance due to impending surgery and asked to read a statement prepared by Mr. Filor, including the following: "Mr. Filor moved to the area twenty-four years ago and started the Jamboree in 1989, using the City's facilities since 1995. He appreciated the use of the facilities and the assistance provided by the City. He stated the Jamboree paid an average of \$5,500 per year for the two-week period of the Jamboree, more than \$85,000 over the years for rental of the fields. He explained the Jamboree had a financial impact to the City of over \$7 million during that time, or \$475,000 per year. He explained, due to the economy, many colleges could not afford to send teams to the Jamboree this year, resulting in a profit of only \$400 this year. He qualified Commissioner Gillooly's statement that the Jamboree was a for-profit organization, explaining that although there was a profit, the Jamboree really was for promoting wholesome family activity and the local community. He expressed appreciation for any encouragement the City could offer, such as a slight reduction in fees, to assist in the continuance of this program."

Commissioner Kent supported staff's recommendation to bill Mr. Filor at the 2008 revised fee schedule and thank Robert Carolin for all of his hard work.

Commissioner Kelley expressed his support for the program and understood the intangible benefits of the program. He commented the City takes great strides in maintaining the condition of the fields in a manner that was as good as any of the players would play on unless they go beyond the college level. He suggested the only way to assist would be a reduction in the number of games, which might result in a reduction of staff overtime hours involved in the required maintenance to ready the fields each day. Commissioner Kelley asked the Leisure Services Director what the charges were based upon, per game or per day.

Robert Carolin, Leisure Services Director, stated the overtime costs were for each hour after 3:30 p.m., the normal quitting time for staff, and the weekends, for staff to re-line the fields. Mr. Carolin explained that all parties had attempted to determine the costs for this year based on the proposed number of games, and he felt the assessment presented to the Commission was fair.

Mayor Costello asked staff to work with Mr. Filor in an attempt to facilitate the continuance of the event. The Mayor suggested possibly Central Florida Sports Authority could assist, but the Commission could not make an exception in the fee schedule for the Jamboree and not make concessions for all the deserving programs.

Commissioner Kent stated he was hesitant when Mayor Costello directed staff to work on an issue by talking to someone or some entity. He stated he felt the direction might pressure staff to get involved in coordinating efforts for outside entities.

Mr. Carolin explained his staff was extremely diligent in providing services to assist events such as the Jamboree, but there were limits regarding the fee schedule and the City's costs.

Item #12(B) – Purchase of Property at 100 West Granada

Mayor Costello agreed with staff's position to just let things happen and asked if anyone had any comments.

Commissioner Gillooly stated she had attended the Main Street meeting where they expressed some of the same concerns as the City and were hopeful that a private developer would take an interest in the property.

Item #13 – Reports, Suggestions, Requests:

Commissioner Kelley

Commissioner Kelley stated that if no one was planning to attend the March 25<sup>th</sup> Legislative Day event in Tallahassee, he would go.

Mayor Costello stated that he was going to attend the first day of the event.

Commissioner Kelley reported he had met with Maggie Sacks to discuss some ideas for temporary advertising methods. He stated both owners of the shopping centers that had signs placed on their property had leases, which did not allow that to happen. He said they were working on some ideas to present to the Commission, but the main issue was how to handle the legalities. Commissioner Kelley stated he was hopeful that something could be done in a tasteful manner to assist the local business owners and asked the Commission to please be open to suggestions.

Commissioner Kelley stated he would be having surgery to correct his voice on March 11 and would be vacationing with his family out of town until March 2.

Commissioner Partington

Commissioner Partington stated he was excited about the audit, and after meeting with Mr. Sibley, he had a strong positive feeling about the City's financial position. He commented that Mr. Sibley's comparison of Ormond Beach to other cities was favorable, and he was encouraged by what this team had been able to accomplish. He expressed that although there would be significant obstacles to face in the next few years, Mr. Sibley said the City was in the position to weather the storm, and Mr. Sibley was very positive in regards to the staff and the new City Manager. Commissioner Partington expressed huge kudos to staff for a great job.

Commissioner Gillooly

Commissioner Gillooly stated the Putnam Avenue and Cumberland Avenue flooding issue was a result of homes built level to the road. She reported that when the residents contacted her in 2007, they were concerned about a home proposed to be built using a tremendous amount of fill. She stated she was disconcerted that Mr. Whitley had received preliminary approval from FEMA for his plans that might adversely impact the neighbors, although he needed City approval to move forward. She stated she would like to explore what could be done for the entire neighborhood.

Commissioner Gillooly stated she appreciated that the Commission tabled the Volusia Growth Management Commission (VGMC) issue. She expressed concern that with all the regional planning for school concurrency and traffic, the regional input would be lost by only allowing adjacent properties to have a voice in the planning process. She reported there was a court ruling on who had standing regarding the process.

Planning Director Ric Goss explained the issue was who had standing before the VGMC; and once the VGMC determined standing, there was another hearing to address the specific issue before them. Mr. Goss stated the draft rules suggested that standing should be limited to the jurisdictions involved in the issue, but that anyone could have input, but no standing in a court action.

Mayor Costello stated for the record that he wanted the VGMC to be involved any time a governmental agency had standing, which to him means someone who could show a verifiable unified methodology the Metropolitan Planning Organization adopted where everyone used the same method for calculating

the impact of a project on their jurisdiction. The Mayor acknowledged Mr. Gerald Brandon from the audience who had serviced the City at VGMC since 1993 and thanked him for the excellent representation.

Commissioner Gillooly stated there were times when the Commission discussed issues where they did not have jurisdiction. She discussed a call she received from Mr. Mike Marstaller, Chairman of the Firefighters' Pension Board, who clarified some things for her. She stated she understood that if the issue of the Fire Chief's pension had been handled correctly initially, it would have been handled administratively, and she understood the pension board's authority in the matter but wanted to address that at the pension board meeting there was a specific attorney to advise the board. She stated she felt the Commission should have some input because the firefighters' union came to the Commission to ask for enhancements to which the Commission replied, "no enhancements unless the union accepted any unfunded liability." She stated the whole decision hinged on Mr. Eugene Miller's letter, which was received just before the pension board meeting. She questioned the City Attorney as to who he served at the pension board when he attended a pension board meeting.

City Attorney Randy Hayes explained he had no role at the pension board. He asked to address a couple of points she made, explaining the issue of enhancements was a totally different issue than what was discussed at that meeting, which was whether there was going to be a cost to the City. The City Attorney explained had there been a cost to the pension board, they could have used state funds.

Commissioner Gillooly stated although there was nothing in the records, Mr. Miller's letter was allowed to enter into the decision. She questioned the validity of allowing the letter as documentation and that a former employee was permitted to come back after they were no longer employed and make a statement regarding something that happened while they were employed by the City. She asked the City Attorney if he was at the pension board to make the case for the letter or to represent the Commission.

The City Attorney explained he was at the meeting as the City's representative. He explained the issue of the letter was an evidentiary issue regarding the validity of the evidence, and he was there to explain his legal analysis of the issue as related to Chief Baker's request to become a member of the firefighters' pension.

Commissioner Gillooly questioned who he was representing at the pension board meeting.

The City Attorney explained he was there to listen and responded when board members questioned the Commission's authority on the membership issue. When he addressed the pension board, he stated that only the pension board had jurisdiction to determine membership based on the evidence.

Commissioner Gillooly stated that if he was going to represent the City at a board meeting, he had an obligation to come to the Commission beforehand to determine the Commission's position. She stated that she did not understand how the City Attorney could make that analysis on his own that resulted in the current situation where Mr. Miller's letter was the determining evidence.

City Attorney Randy Hayes suggested she speak with former Chief Baker because he had nothing to do with the letter; his purpose was to analyze the issues and provide a legal analysis, which was something that he did on a daily basis. He stated that it was unfortunate that he did not have time to come before the Commission prior to the pension board meeting, and he was sorry that Commissioner Gillooly did not agree with his analysis or his comments at the meeting.

Commissioner Gillooly asked if the letter had been from a City Manager who had just been terminated if it would have held the same credibility.

The City Attorney reiterated that it was an evidentiary issue for that board. and the Commission did not have any jurisdiction in the matter.

Mayor Costello asked if any guidelines could be established for the City Attorney to represent the City by advocating against allowing any evidence from previous employees of the City.

The City Attorney stated that it was an issue of standing, and the Commission did not have standing to interfere with that board.

Commissioner Gillooly asked if the Commission did not have any jurisdiction, why was he there giving an opinion and suggested that he was there supporting the validity of the letter.

The City Attorney stated that was absolutely incorrect, and the pension board decision was based on their discussion with their legal counsel. He stated that the issue of membership had been established,

and the current issue was one of funding; therefore, the Commission could direct staff not to fund the liability, although that was not the best position for the Commission.

Mayor Costello stated that the decision had been made by the pension board to allow Chief Baker as a member of the Firefighters' Pension Fund, and he was comforted with that decision because Ted MacLeod had confirmed that Mr. Miller had wanted Chief Baker in the firefighters' pension. The Mayor summarized by requesting an ordinance regarding an option for the Fire Chief or Police Chief to opt out of the firefighters' or the police pension fund, respectively and to include that it was the responsibility of the employee to insure their membership in the appropriate pension plan.

Commissioner Kent

Commissioner Kent stated he thought the sandwich board signs were great, and the pictures of the superimposed signs were a real eye opener for him and he hoped for others.

Commissioner Kent complimented Commissioner Partington's suggestion at the Community Development Block Grant workshop and stated it was the best he had heard in at least twelve months. He hoped that it would be implemented.

Commissioner Kent stated that as a teacher, he was excited for Kelly McGuire for getting an A+ on the audit and congratulated her. He thanked the City Manager and remarked that she was a huge asset to the City.

Commissioner Kent expressed his appreciation for all the work the City Attorney does, such as reviewing all the items that come before the Commission, as well as handling citizen's visits and concerns on a daily basis. Commissioner Kent stated the City Attorney was a man of extreme integrity and thanked him for what he did for the City.

Mayor Costello

Mayor Costello stated he does not know how the flooding situation on Putnam Avenue and Cumberland Avenue happened, and he supported anything that could be done to assist, such as grants. The Mayor stated the City can not allow building that adversely affects neighbors' property, such as stormwater run-off. He challenged staff to insure there was no way anybody could scientifically prove the City allowed permits that caused run-off onto another property.

Mayor Costello stated there would be about \$1,500,000 shortfall in the budget this year that would require some decisions. He stated the Commission would need to consider whether to raise the tax rate, which no one wanted, or other ideas. He stated he was not advocating, but was willing to consider, a one time use of fund balance for recurring expenses to cover the shortfall.

City Manager Joyce Shanahan stated she and staff had been working on options that would be presented at the Financial Trends workshop.

Item #14 – Close the Meeting.

The meeting was adjourned at 8:46 p.m.

APPROVED: March 3, 2009

BY: Fred Costello, Mayor

ATTEST:

Veronica Patterson, City Clerk