

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

February 5, 2008 7:00 p.m.

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

A G E N D A

- 1) Meeting call to order by Mayor Costello.
- 2) Invocation by Reverend Charles Melvin, Ormond Beach Union Church.
- 3) Pledge of Allegiance.
- 4) ***PRESENTATION:*** Proclamation in honor of Ann Burt.
- 5) ***AUDIENCE REMARKS:***
- 6) ***APPROVAL OF THE MINUTES*** of the January 15, 2008, meeting.
- 7) ***INTERGOVERNMENTAL REPORTS:***
 - A) Metropolitan Planning Organization

- B) Volusia Council of Governments
- C) Water Authority of Volusia

8) **CONSENT AGENDA:** The action proposed is stated for each item on the Consent Agenda. Unless a City Commissioner removes an item from the Consent Agenda, no discussion on individual items will occur and a single motion will approve all items.

- A) Resolution No. 2008-44 authorizing the execution of a release and satisfaction of Special Master administrative fine/lien for code violations on property located at 280 South Center Street. (\$50.00)
- B) Resolution No. 2008-45 pursuant to Section 14-98, Liens, of the City of Ormond Beach *Code of Ordinances*, authorizing the imposition of a lien against the real property located at 454 South Beach Street for costs incurred by the City to terminate or abate a site maintenance violation. (\$180.00)
- C) Resolution No. 2008-46 urging members of the Florida Legislature to support certain issues during the 2008 legislative session.
- D) Resolution No. 2008-47 authorizing the execution of an Amendment to Easement Deed for public utility purposes between the City of Ormond Beach and Calvary Assembly of God of Ormond Beach, Florida, Inc.; providing for recordation.
- E) Resolution No. 2008-48 authorizing the execution of a quitclaim deed in favor of Stephen D. Haas and Andrea R. Haas releasing a portion of a ten foot utility and drainage easement located on Lot 44, Ormond Green Phase I Subdivision (5 Praireview Lane).
- F) Resolution No. 2008-49 authorizing the execution of a contract for the sale and purchase of Lot 1, Tower Circle Extension, Airport Business Park, Phase II. (Atlantic Central Enterprise, Inc. - \$435,500)
- G) Approval of FY 2008-09 budget calendar.

DISPOSITION: Approve as recommended in City Manager memorandum dated January 31, 2008.

H) Request to change the date to close Riverside Drive for the Birthplace of Speed Reception and Car Show.

DISPOSITION: Approve as recommended in City Manager memorandum dated January 31, 2008.

9) **PUBLIC HEARINGS:**

A) Ormond Beach Downtown Community Redevelopment Area:

- 1) Review by the Community Redevelopment Agency
 - a) Recess the City Commission meeting and convene as the City of Ormond Beach Community Redevelopment Agency.
 - b) Review Property Improvement Grant application for recommendation to the City Commission.
 - c) Adjourn as the Community Redevelopment Agency and reconvene the City Commission meeting.
- 2) Resolution No. 2008-50 of the City Commission of the City of Ormond Beach, also acting as the Community Redevelopment Agency of the City of Ormond Beach, authorizing the execution of a Property Improvement Grant Agreement between the City of Ormond Beach Community Redevelopment Agency and Dr. Thomas Cartledge. (Arby's Restaurant – 380 West Granada Boulevard - \$50,000)

B) Resolution No. 2008-51 authorizing the execution and issuance of a Development Order for a Special Exception to allow a Type "A" restaurant on property located at 600

South Yonge Street (US1), said property being within the B-8 (Commercial) zoning district; establishing conditions and expiration date of approval. (Saigon Bay Restaurant)

- C) Ordinance No. 2008-01 amending the Comprehensive Plan of the City of Ormond Beach by adding a Public School Facilities Element; amending the Intergovernmental Coordination and Capital Improvement Elements. (Second Reading)
 - D) Ordinance No. 2008-03 amending the zoning map of the City of Ormond Beach by rezoning a 2.8 acre parcel of real property located at 950 North Highway US1 from B-8 (Commercial) with a Planned Business Development Overlay to PBD (Planned Business Development); approving the execution and issuance of the Third Amended Development Order regarding the “River Grille” restaurant; authorizing live performers under specific conditions; ratifying and affirming the previous Development Order and establishing conditions therefore. (First Reading)
 - E) Ordinance No. 2008-04 amending Paragraph C, Official Zoning Map, of Section 2-01, Establishment of Zoning Districts and Official Zoning Map, of Article I, Establishment of Zoning Districts and Official Zoning Map, of Chapter 2, District and General Regulations, of the Land Development Code, by amending the Official Zoning Map to rezone certain real property totaling ±6.24-acres located at 1614 North Highway US1 from Volusia County B-8 (Tourist) to Ormond Beach B-7 (Highway Tourist Commercial); authorizing revision of the official zoning map. (Best Value Inn) (First and Only Reading)
- 10) **FIRST READING OF ORDINANCE** No. 2008-05 granting an economic development ad valorem tax exemption to Atlantic Central Enterprises, Inc.; requiring annual filings.
- 11) **DISCUSSION ITEMS:**
- A) Update on red light camera program.
 - B) Proposed 2009 election schedule.
- 12) **REPORTS, SUGGESTIONS, REQUESTS:** Mayor, City Commission, City Manager, City Attorney.
- 13) **CLOSE THE MEETING.**

Item #1 - Call to Order

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

Mayor Costello stated Police Chief Michael Longfellow was tonight's greeter.

Item #2 - Invocation

Reverend Charles Melvin, Ormond Beach Union Church, gave the invocation.

Item #3 - Pledge of Allegiance

Mayor Costello led in the Pledge of Allegiance.

Item #4 - Proclamation in Honor of Ann Burt

Mayor Costello read a proclamation indicating Ms. Ann Burt took over as the Director of the Ormond Beach Memorial Art Museum in 1996, and in her first year of service the museum had only 98 active members, an annual budget of \$54,000, a limited exhibition schedule, and restricted operating hours; however, since that time she has increased the membership to a remarkable 1,800 members with an annual budget of over \$250,000. He reported Ms. Burt's dedication to the museum and the Ormond Beach community has been invaluable over the past 12 years, and her presence at the museum will be sorely missed; but her service to the community will continue for years to come. Mayor Costello proclaimed February 5, 2008, as a day to honor Ms. Burt for her service and dedication to the Ormond Beach Memorial Art Museum and to the community.

City Commission – February 5, 2008

Ms. Ann Burt stated the Ormond Beach Memorial Art Museum was an oasis of culture and without the support of the community it could not have survived for 67 years. She thanked the Commission for this honor.

Mayor Costello also presented Ms. Burt with a plaque honoring her for her service.

Ormond Beach Police Department and Volusia County Sheriff's Department Cooperation

Lieutenant Jim Morgan, Volusia County Sheriff's Office (VCSO), stated on January 31, 2008, Volusia County and Ormond Beach were working at the same time on two violent home invasions. He noted due to the fact the two agencies had contact with each other and there were similarities in the cases, they responded together. Lieutenant Morgan advised that Ormond Beach Sergeant Doug Diamond recalled a stolen vehicle in the Ormond Lakes area that he thought could be involved; therefore, he notified Sergeant Turner of VCSO, and a search was instituted for this stolen vehicle. He reported, while off duty, Investigator Richard Fortin and his wife, Investigator Beth Fortin, parked directly next to the stolen car, realized that it was the stolen car, contacted the VCSO investigators and the Daytona Beach Police Department, and a take down occurred. Lieutenant Morgan explained the suspect was apprehended and confessed to the home invasions, and all of the perpetrators have now been apprehended. He stated the cooperation between the two agencies allowed for this successful conclusion.

Mayor Costello read a proclamation honoring Detective Donald Brock and Detective Tom Elkins of the Ormond Beach Police Department and Investigators Beth and Richard Fortin of the Volusia County Sheriff's Office. He noted the additional names (Sergeant Turner and Sergeant Diamond) would be added to the proclamation. Mayor Costello proclaimed February 8, 2008, as a day to honor the fine work of law enforcement officers.

Police Chief Michael Longfellow commended the Ormond Beach Police Department and the Volusia County Sheriff's Office for the cooperation displayed in this case.

Item #5 - Audience Remarks

Fire and Police Service

Mr. John Bornmann, 6 Windsor Drive, questioned who would be responsible for the fire and police service at Chelsea Place and at the proposed adult living facility on the north side of Hand Avenue near Williamson Boulevard. He asked if the City notified the residents when car break-ins occur.

Mayor Costello reported answers to Mr. Bornmann's questions would be provided in the Friday letter.

Electricity Usage

Ms. Laura Jones, 59 Amsden Road, questioned why lights and fans are left on in City Hall and the recreational facilities at night while the Police Department lobby lights are turned off.

Mayor Costello reported Mr. Turner would provide Ms. Jones with that information.

Item #6 - Approval of Minutes

Mayor Costello advised the minutes of the January 15, 2008, meeting had been sent to the Commissioners for review and asked if there were any corrections, additions, or omissions.

Mayor Costello stated that the minutes were approved as submitted.

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

Mayor Costello advised he sent updates previously regarding the Metropolitan Planning Organization (MPO) and Volusia Council of Governments (VCOG). He stated the primary issues were the Smart Growth Committee and the Tax Reform Committee.

Item #7(C) - Water Authority of Volusia

Commissioner Kelley reported he sent updates to the Commission regarding the water conservation efforts from the Water Authority of Volusia (WAV). He stated the insert in the water bills went well with the other information regarding WAV's cooperative effort with the School Board's calendar and the art contest. Commissioner Kelley advised he attended a

seven-county summit, at his own expense, in St. Augustine regarding the future of the St. Johns River and an alternative water supply.

Item #8 - Consent Agenda

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

Mayor Costello stated that Item No. 8(G) was being pulled regarding the budget calendar because the City can not have their meetings on the same day the School Board is having their budget meetings; therefore, adjustments in the City’s schedule must be made.

Commissioner Kelley moved, seconded by Commissioner Kent, for approval of the Consent Agenda, minus Item No. 8(G).

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

Item #9(A)(1) – Ormond Beach Downtown Community Redevelopment Grant

Mayor Costello recessed the City Commission meeting and convened a meeting of the City of Ormond Beach Community Redevelopment Agency at 7:29 p.m.

Commissioner Gillooly moved, as the Community Redevelopment Agency, seconded by Commissioner Partington, to recommend approval of the grant application based on staff’s observation and Ormond Main Street’s vote of approval.

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

Mayor Costello adjourned the Community Redevelopment Agency and reconvened the City Commission meeting at 7:35 p.m.

Item #9(A)(2) – Property Improvement Grant Agreement - Arby’s Restaurant

RESOLUTION NO. 2008-50
 A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF ORMOND BEACH, ALSO ACTING AS THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF ORMOND BEACH, AUTHORIZING THE EXECUTION OF A PROPERTY IMPROVEMENT GRANT AGREEMENT BETWEEN THE CITY OF ORMOND BEACH COMMUNITY REDEVELOPMENT AGENCY AND DR. THOMAS CARTLEDGE; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Gillooly moved, seconded by Commissioner Partington, to approve Resolution No. 2008-50, as read by title only.

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

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

Item #9(B) – Saigon Bay Restaurant Development Order

RESOLUTION NO. 2008-51
 A RESOLUTION AUTHORIZING THE EXECUTION AND ISSUANCE OF A DEVELOPMENT ORDER FOR A SPECIAL

EXCEPTION TO ALLOW A TYPE “A” RESTAURANT ON PROPERTY LOCATED AT 600 SOUTH YONGE STREET (US1), SAID PROPERTY BEING WITHIN THE B-8 (COMMERCIAL) ZONING DISTRICT; ESTABLISHING CONDITIONS AND EXPIRATION DATE OF APPROVAL; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Kelley moved, seconded by Commissioner Kent, to approve Resolution No. 2008-51, as read by title only.

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

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

Item #9(C) – Public School Facilities Element

ORDINANCE NO. 2008-01

AN ORDINANCE AMENDING THE COMPREHENSIVE PLAN OF THE CITY OF ORMOND BEACH BY ADDING A PUBLIC SCHOOL FACILITIES ELEMENT; AMENDING THE INTERGOVERNMENTAL COORDINATION AND CAPITAL IMPROVEMENT ELEMENTS; REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Kelley moved, seconded by Commissioner Gillooly, to approve Ordinance No. 2008-01, on second reading, as read by title only.

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

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

Item #9(D) – “River Grille” Restaurant

ORDINANCE NO. 2008-03

AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF ORMOND BEACH BY REZONING A 2.8 ACRE PARCEL OF REAL PROPERTY LOCATED AT 950 NORTH HIGHWAY US1 FROM B-8 (COMMERCIAL) WITH A PLANNED BUSINESS DEVELOPMENT OVERLAY TO PBD (PLANNED BUSINESS DEVELOPMENT); APPROVING THE EXECUTION AND ISSUANCE OF THE THIRD AMENDED DEVELOPMENT ORDER REGARDING THE “RIVER GRILLE” RESTAURANT; AUTHORIZING LIVE PERFORMERS UNDER SPECIFIC CONDITIONS; RATIFYING AND AFFIRMING THE PREVIOUS DEVELOPMENT ORDER AND ESTABLISHING CONDITIONS THEREFORE; REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; AND SETTING FORTH AN EFFECTIVE DATE.

Ms. Lucille Bornmann, 6 Windsor Drive, explained the River Grille Restaurant originally asked for music outdoors, and the request was denied. She stated they then asked for a second development order and were allowed music with speakers and an additional 65 person seating capacity; and now they again ask for the outdoor entertainment. She objected and stated allowing outdoor entertainment would depreciate the value of the property, and it would set a precedent.

Mr. Charles Valone, 1 Tomoka Meadows Boulevard, stated the River Grille was a fine establishment, and people are trying to erode the enjoyment that could be derived from outdoor entertainment.

Mayor Costello stated the Planning Board recommended approval five to one with limitations, such as a maximum of two live performers, a minimum number of tables and chairs on the deck, specific hours delineated, a one-year sunset provision with the need for an additional hearing, and sunset upon the sale of the restaurant.

Mr. Lou Lumaghi, 1 Cliftside Drive, Ormond Lakes, stated his home was one-half mile from the restaurant. He recommended the Commission send a questionnaire to determine what people living within one-half mile of the restaurant feel about this issue. Mr. Lumaghi advised a great deal of nearby residents were very upset about this proposal due to the noise.

Ms. Karen Dellecker, 316 River Bluff Drive, reported the airplanes and trains were in the area before the homes were built, and the residents must put up with loud music for ten days during Bike Week from County establishments; but the thought of live music all year long was disturbing. She stated sound travels along the water. Ms. Dellecker advised live music would attract the Spring Break, Bike Week, and the race crowds. She noted Tomoka Oaks was one of the oldest neighborhoods and located in the heart of the City with a diversity of residents, and it would be in the best interest of everyone to maintain the integrity of this established neighborhood.

Ms. Trish Mucciolo, General Manager for the River Grille Restaurant, pointed out the River Grille Restaurant was not the Iron Horse. She stated the River Grille Restaurant was responsible, and they were looking to make the River Grille Restaurant a destination and enhance outside dining. Ms. Mucciolo noted the restaurant was proud of the habitat; girl scouts and elementary school students come there to learn about the Tomokan Indians; they have fund raisers for the community; and they embrace the community.

Mr. Rafael Ramirez, 23 Eagle Court, stated the floor plan would not allow big bands blasting through the night. He noted sound testing was done, and it passed. Mr. Ramirez stated the owners were good people, and all of the conditions would have to be met. He pointed out businesses need the opportunity to flourish, and their record speaks for them.

Mr. Ray Blastic, 212 River Bluff Drive, stated this request was already heard twice and denied, and nothing has been changed to alter that position. He reported live entertainment outdoors was a loud activity and fosters crowd noise. Mr. Blastic advised noise at any level heard over a sustained period of time was intrusive, annoying, and distressing to anyone within hearing distance. He stated granting this exception would set a bad precedent. Mr. Blastic noted the City has been cooperative and accommodating to the needs and requests of the restaurant owners while the owners continue to press the City for live outdoor entertainment, showing the restaurant has no regard for the welfare of their neighbors, no appreciation for past concessions, and gross rapaciousness.

Mr. Randy Hendrix, 8 Waterfront Court, expressed objection to allowing outdoor music.

Ms. Marianne DeFiore, 206 Cardinal Drive, stated she would not favor any outdoor entertainment anywhere in Ormond Beach. She stated quality of life was an important issue; people should be able to come home to peace and quiet every evening; and outdoor music would have a negative impact on the neighborhood.

Mr. Richard Osterndorf, 48 South St. Andrews Drive, pointed out this was the third amended development order. He stated residents want a quiet community, and he urged the Commission to deny this request and listen to the people of the community.

Ms. Carolyn Lespi, 35 Pebble Beach Drive, stated her main objection was that the performances would not be regulated. She questioned how a complaint would be made. Ms. Lespi noted the River Grille expressed reluctance to providing sound barriers to protect the residents.

Mr. Victor Lohman, 31 Pebble Beach Drive, stated music and talking could be heard now at low levels, but it was not intrusive; however, outdoor music would be intrusive. He reported this music would also draw more people out on the deck, increasing the voices and laughter. Mr. Lohman noted this was a great restaurant and was what Ormond Beach needed, but he urged the Commission to not permit the outdoor music.

Commissioner Kelley moved, seconded by Commissioner Partington, to approve Ordinance No. 2008-03, on first reading, as read by title only.

Commissioner Kelley stated the closest house that would be able to hear anything from the River Grille was 425 feet from the deck. He noted he could hear the noise from the Iron Horse from his home; and if this was anything like the Iron Horse, he would not want it, and it would also run the River Grille's clientele away. Commissioner Kelley advised the conditions attached to the ordinance address most of the above-noted concerns. He noted with two complaints they would be closed down; the permit would not transfer to another owner; it would sunset in one year; and should anyone hear the music, he requested they call him and he would guarantee it would not recur. Commissioner Kelley advised he did not want the quality of life in the neighborhood disturbed. He stated he was told the testing that was done at the normal level that would be played if this were approved could not be heard in Mr. Lohman's yard. Commissioner Kelley stated when the volume was increased as loud as possible, the sound could then be heard. He advised comparing the River Grille to the Iron Horse was not fair. Commissioner Kelley reported the proposal was to allow music Monday through Thursday to 10 p.m. and on weekends to 11 p.m. He explained he spoke to three people who were opposed and two other people living in Tomoka Oaks that supported the proposal. Commissioner Kelley stated this was approved by the Planning Board on a five to one vote. He recommended giving the restaurant a chance; and if it did not work out, it would be shut down. Commissioner Kelley noted the restaurant certainly would not be heard during Bike Week because the Iron Horse would drown them out. He reiterated that if people can hear the music and it was proven there was a violation, they would be shut down. Commissioner Kelley advised his phone number was in the telephone book, and people could call him if there were a problem.

Mayor Costello noted he should have recognized the applicants before the Commission and offered to hear the applicants at this time.

Mr. Raymond Barshay, River Grille, stated many of the characterizations that have been made about the River Grille were not accurate. He advised he would be concerned about the neighborhood and his clientele if loud music were played. Mr. Barshay reported he lived in Tomoka Oaks and only wanted to run a casual family-style restaurant. He stated it was true they came back for an amendment to the development order; but their reasoning was that after almost five years in the neighborhood, people should now know how they operate; whereas, a few years ago they were an unknown entity. Mr. Barshay pointed out live outdoor music has never been put into place; and if there was a noise problem, he would personally shut it down.

Mr. Ed Schwarz, River Grille, stated building this restaurant on the Tomoka River was difficult. He advised the River Grille was all about being outdoors and quality of life. Mr. Schwarz noted he also lived in the neighborhood and did not want to disturb the resident's quality of life. He assured everyone the River Grille was not, and did not intend to be, a second Iron Horse. Mr. Schwarz pointed out their customers did not come to dine without being able to carry on a conversation due to loud music. He noted sound tests were done, and all indicated noise would not be an issue. Mr. Schwarz advised pre-recorded music was currently playing outside, and no complaints had been made. He reported the River Grille would agree to time tables for the hours of operation, penalties for noise nuisances, and limit performances to two performers. Mr. Schwarz pointed out they have demonstrated that they are responsible operators. He reported he sent many cards to Tomoka Oaks residents asking them to attend an open forum at the restaurant to discuss this issue, and he was disappointed more people did not attend.

Commissioner Gillooly stated the River Grille was a quality restaurant, and the Commission wanted to encourage this type of business in Ormond Beach. She advised she understood the value of music to add atmosphere and create a setting. Commissioner Gillooly asked what the business plan was and why they believed live outdoor music was necessary.

Mr. Schwartz stated live indoor music does set a restaurant apart from any other restaurant, and the River Grille has such a beautiful setting on the deck. He pointed out a majority of their square footage of the restaurant was outdoors, and people want to sit outside. Mr. Schwartz stated this music would enhance the patron's dining experience.

Commissioner Gillooly stated the appeal of the deck should be enough without the music.

Mr. Schwarz stated Florida was all about being outdoors, and all of the great restaurants have outdoor live entertainment. He noted two musicians would enhance the dining experience.

Mr. Barshay stated this was not an issue of a business plan, and it may work and it may not; but he believed they should have the opportunity to find out if it would work. He stated if it does not create a problem, he should be able to try it.

Commissioner Gillooly stated the compelling issue for her was those residents who came out tonight, including those who came to support the speakers but did not speak themselves. She

explained any noise heard on a long term basis could be disturbing to the residents. Commissioner Gillooly noted she supported business, and other Commissions have offered River Grille other concessions; however, she would have to oppose this request tonight.

Commissioner Partington stated he was a patron of the River Grille and received campaign funds from Mr. Barshay or Mr. Schwarz at some time in the past, but he would also oppose this request tonight due to the number of residents who expressed concern. He suggested he could possibly support a two month trial period in February and March with review from the residents at the end of that time period.

Commissioner Kent stated he was at the first sound test in Mr. Lohman's back yard, and the sound could be heard; but he was not invited to the second sound test. He reported a person's home should be peaceful and enjoyed every day, and he would oppose a two month trial for that reason. Commissioner Kent reported he loved live music and good food, and he thanked River Grille for employing Ormond Beach youth. Commissioner Kent stated Ms. Jennifer Casey of 408 Division Avenue spoke at the Planning Board meeting, and while he had no idea how valid or reliable her comments were, she indicated she worked in pubs and restaurants, and it was her belief that it was common to keep an eye out for police so the music could be turned down before a citation was issued. He noted the airport and train were there first; but in this case, the homes were present first. Commissioner Kent advised he would not want this type of change in his lifestyle, and he would have to deny this request for the residents.

Commissioner Kelley stated he spoke to Mr. Barshay who indicated his understanding of the test results were somewhat different in that when the music was played at normal levels, the sound could not be heard; but when the music was cranked up, it could be heard. He advised assumptions were being made that the sound would be too loud.

Commissioner Kent stated Mr. Lohman indicated he could hear people speaking even now.

Mr. Barshay stated all Commission members were invited to the sound tests at high and low levels; and when the music was played at the level that would be played, the music could not be heard at their property line of Mr. Lohman's back yard. He stated when the level was turned up, it could be heard. Mr. Barshay advised there was no second test. He reported on the ride back in the car Commissioner Kent commented that if that was all that it was, he did not see why anyone would have an objection. Mr. Barshay stated he understood this was a political issue, but if provided an opportunity, he believed they could prove there would not be a problem.

Mr. Schwartz stated if people had come to the open forum last night everything could have been explained. He advised the sound technician was present tonight if anyone had questions.

Mayor Costello noted he was not ready to support Commissioner Partington's recommendation at this time; but in response to the comment that if people could hear the music the applicant would stop the music, he asked if it were possible to permit outdoor music every Friday or Saturday night in April until 11 p.m. and the Commission would re-examine the issue in May. He stated if the music was heard, it would be shut down. He advocated informing all of the neighboring communities so they would be aware this would be occurring.

Mr. Hayes stated the Commission could impose any conditions it deemed to be reasonable by a motion to amend. He advised this was a rezoning application as well as an approval of an amended development order, and the rezoning issue was not being discussed.

Mr. Ric Goss, Planning Director, stated if the request for the additional entertainment was denied, the Commission could still proceed with the rezoning. He advised this was originally approved under an overlay district, and the overlay district no longer existed. Mr. Goss noted the two issues could be split, and the City proceed with the rezoning.

Mayor Costello asked if this entire issue could be held and not finalized tonight.

Mr. Hayes stated a motion could be made to amend the development order that would allow the request for live music for a period of two months by way of a motion to amend, at which time it would come back to the Commission.

Commissioner Gillooly asked if approving the zoning designation would require an amendment to allow the outdoor music.

Mayor Costello noted this was what he did not want to do.

Mr. Hayes advised if this were to be bifurcated out, it would be a substantial material change; and he recommended allowing staff to clean it up and bring the rezoning aspect back to the Commission for consideration.

Commissioner Partington recommended revisiting the entire issue in May after four tests were completed in April from 7 p.m. to 10 p.m.

Commissioner Kent stated he and the applicant had very different accounts of what was stated on the ride back from Mr. Lohman's house since he did not recall making the statement Mr. Barshay indicated he made. He reported he remembered hearing there was a second test.

Mr. Barshay stated four tests were done, but none after the test Commissioner Kent attended.

Commissioner Kent advised he thought he attended the first test. He reported he would investigate this further; and if he was incorrect, he apologized for the error.

Mr. Hayes reported he believed he misunderstood Mayor Costello's proposal and amended his opinion in that he now understood Mayor Costello was advocating permitting the live performances to be the test. He advised while there would probably be a way to allow that, it would be rather difficult. Mr. Hayes stated should that be the Commission decision, he would ask to be provided an opportunity to prepare proper language to bring it back to the Commission for consideration. He noted if additional testing were being requested, it could then be continued for a date certain.

Commissioner Gillooly stated she did not consider this to be a political decision. She noted she considered it to be a question of trying to balance supporting quality businesses while maintaining the quality of life for the residents. Commissioner Gillooly reiterated that the deck, the quality of food, and the service should be enough of a draw without adding the music that has the potential to adversely impact the residents' quality of life.

Commissioner Partington moved to continue this item to the first meeting in May.

Commissioner Partington requested the Commission and residents be invited to come to the testing. He advised there probably did not need to be more than one or two tests conducted.

Mayor Costello asked if testing needed to be part of the motion.

Commissioner Kent asked what kind of test was being contemplated.

Commissioner Partington stated he contemplated a test one afternoon and one evening so there would be different conditions at each test.

Mayor Costello stated if sound could be heard, he would want to "pull the plug"; but he would like to give the applicant the opportunity to prove that no sound could be heard.

Mr. Goss clarified that what currently existed until it was amended was a development order that indicated that no outdoor music was allowed; therefore, to allow for active testing for four weekends where music would be played would be inconsistent with the development order. He advised that testing with the decibel meter would be acceptable.

Mayor Costello stated this was a first reading. He stated he would vote in favor of this tonight and against it on the second reading if no test occurred or if they occur and tonight's 12 speakers object. Mayor Costello stated each of these residents were to be notified when the tests were to be held. He suggested delaying the second reading to allow time for the tests.

Mayor Costello reported Commissioner Partington's motion to continue died for lack of a second.

Commissioner Kelley withdrew his motion and Commissioner Partington withdrew his second.

Commissioner Kelley moved, seconded by Commissioner Partington, to approve Ordinance No. 2008-03, on first reading, as read by title only, with the stipulation that the second reading would be postponed until testing was completed.

Commissioner Kent stated he would oppose this tonight, and if the tests prove sound could not be heard, he may approve it on second reading.

Mr. Barshay questioned who would be doing the test.

Mayor Costello explained if the applicant wanted this to pass, they would do a test acceptable to the residents. He asked that the Commission and the 12 speakers be notified of the time of the testing.

Mr. Blastic recommended the test include the actual conditions, such as the instruments that would be used.

Mayor Costello reported the public could provide the applicant with any input they wished to offer.

Mr. Victor Lohman stated the test should be as it would occur if the amendment were approved, allowing them to play for two hour.

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

Mayor Costello called for a short break at 9:14 p.m. He reconvened the meeting at 9:26 p.m.

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

Item #9(E) – Best Value Inn

ORDINANCE NO. 2008-04

AN ORDINANCE AMENDING PARAGRAPH C, OFFICIAL ZONING MAP, OF SECTION 2-01, ESTABLISHMENT OF ZONING DISTRICTS AND OFFICIAL ZONING MAP, OF ARTICLE I, ESTABLISHMENT OF ZONING DISTRICTS AND OFFICIAL ZONING MAP, OF CHAPTER 2, DISTRICT AND GENERAL REGULATIONS, OF THE LAND DEVELOPMENT CODE, BY AMENDING THE OFFICIAL ZONING MAP TO REZONE CERTAIN REAL PROPERTY TOTALING ±6.24-ACRES LOCATED AT 1614 NORTH HIGHWAY US1 FROM VOLUSIA COUNTY B-8 (TOURIST) TO ORMOND BEACH B-7 (HIGHWAY TOURIST COMMERCIAL); AUTHORIZING REVISION OF THE OFFICIAL ZONING MAP; REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Kelley moved, seconded by Commissioner Partington, to approve Ordinance No. 2008-04, on first and only reading, as read by title only.

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

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

Item #10 – Granting an Economic Development Ad Valorem Tax Exemption

ORDINANCE NO. 2008-05

AN ORDINANCE GRANTING AN ECONOMIC DEVELOPMENT AD VALOREM TAX EXEMPTION TO ATLANTIC CENTRAL ENTERPRISES, INC.; REQUIRING ANNUAL FILINGS; REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Partington moved, seconded by Commissioner Kelley, to approve Ordinance No. 2008-04, on first reading, as read by title only.

Commissioner Kelley moved to amend the motion so that an amount would be set aside so the tax abatement money would be re-credited back to the General Fund to be charged to the fund from which the money originated.

Commissioner Gillooly clarified the amendment was to take the money as a credit from the sale of the property.

Mr. Isaac Turner, City Manager, stated the discussion referred to the tax abated amount on an annual basis that would be transferred from the Economic Development Fund into the General Fund. He explained, in that way, the General Fund would not lose any money, and the land would still be sold for a fair market price.

Mr. Joe Mannarino, Economic Development Director, stated the best way to handle the incentive being provided would be through the abatement program, and to compensate for the money that would be abated the City could take the sale funds placing them into the Economic Development Fund and set aside the money to pay the General Fund back.

Commissioner Gillooly seconded the motion.

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

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|-------------------------------------|-------------------------|-----|
| Call Vote on the Motion as Amended: | Commissioner Gillooly | yes |
| | Commissioner Kent | yes |
| | Commissioner Kelley | yes |
| | Commissioner Partington | yes |
| Carried. | Mayor Costello | yes |

Item #11(A) – Update on Red Light Camera Program

Commissioner Partington stated he was not ready to support this program at this time, but residents in his zone requested this be considered. He noted he favored staff's recommendation to monitor the situation at this time. Commissioner Partington commended staff for the thorough report.

Police Chief Michael Longfellow stated both the senate and house bills allow the home agency to maintain the funds, but there were amendments pending in the legislature that would transfer that revenue to the State.

Mayor Costello stated at one time he indicated he supported this without a fine as a safety improvement tool; however, he learned in this report that the cost would be \$30,000.

Chief Longfellow stated the cost was \$36,000 for the camera alone, and personnel time would be needed as well.

Mayor Costello stated he concurred with Commissioner Partington to wait for the legislature to make their decision in this regard.

Commissioner Gillooly thanked Commissioner Partington for recommending this discussion in that this issue has been in the news lately. She noted she also agreed with the staff recommendation. Commissioner Gillooly questioned the compelling reason for this as people would pay for this as a local ordinance issue, much work would be needed to collect the money if the fine was levied, and it would have no effect on the drivers' licenses.

Chief Longfellow stated the company installing the cameras would take care of all collections. He noted in at least one city, if a city resident did not pay the levy, the city would have their water cut off.

Mayor Costello stated he never favored this to produce revenue. He reported if statistics would prove this would make the roads safer, he could support it no matter where the money would go; but at this point he could not support it.

Commissioner Kelley noted it was unfortunate DeLand carried this forward due to an accident when the person went through a green light and portrayed it through the media that this was the cause of the problem. He explained the driver had the right-of-way, the green light, and was not

speeding; but this served as justification for the cameras. He stated he would favor cameras for speeding on the interstates because statistics have shown speeding has decreased where cameras were located.

Commissioner Gillooly stated some people believe the boxes on the traffic lights for the emergency vehicles were cameras, causing them to drive more safely.

Chief Longfellow noted the tags with the opaque covers were to negate the effect of the cameras being able to capture the tags.

Item #11(B) – Proposed 2009 Election Schedule

Ms. Veronica Patterson, City Clerk, stated the legislature has placed many new regulations on the Department of Elections; therefore, the Department is no longer willing to have elections 28 days apart.

Mayor Costello stated another alternative was to have the entire Commission resign after one year and have the City elections with the State and national election to obtain a better turnout. He reported if he were convinced that would provide a better turnout and save the City \$30,000, he would be willing for the Commission to resign to have an election in November of 2008 to be on the cycle with the federal election. Mayor Costello stated he believed all local elections should be at the same time.

Ms. Patterson stated she was not sure that could be done because the City would have to opt out of the Uniform Election Act by March 1, and all the Commission members would have to resign.

Mayor Costello reiterated he believed the City should be on the same cycle as the State and national elections to increase turnout because some people who do not vote in local elections do vote in State and nation elections.

Commissioner Gillooly reported she had initially agreed Ormond Beach should be on the same election cycle as State and national elections, but the City Clerk explained to her that when many races and issues are on a ballot, they are listed by hierarchy, and some voters do not vote on the entire ballot.

Ms. Patterson stated that occurs mostly when there are a number of questions, and the City would be last on the ballot.

Commissioner Gillooly advised while the voters may come out, they may not be voting locally.

Commissioner Kelley recommended appealing to the State legislature to fix the problem they created through early voting. He noted due to the early voting, the turnaround time decreased, causing the problem.

Ms. Patterson stated there was also a new audit required and additional security procedures making the 28 day time limit difficult. Ms. Patterson noted another recommendation was to have six rather than nine weeks between the elections, providing two additional weeks for the Department to meet the regulations.

Commissioner Gillooly stated in Scenario #7, the September 15 date was early for the first election. She recommended moving the date back, leaving September 22 for the primary with an election in November when people expect a general election.

Commissioner Kelley stated that would be the odd year. He noted the City had the elections that way before, and there was no greater turnout; and this method was selected because it was possible there would only be one person running. Commissioner Kelley advised it would make more economic sense to have the general election first, and there may or may not need to be an election in November. He stated if the first election was in September there would be six weeks for the runoff, giving the Department of Elections additional time.

Ms. Patterson stated the Commission may want to consider going back to the primary with the regular election in November, leaving less time between the elections and the date when the Commission would take office.

Mayor Costello recommended approving Scenario #4(B). He stated local elections should be at the same time in the Halifax area, but the other cities must also cooperate. Mayor Costello noted he favored moving the election to the even year cycle.

Commissioner Kelley stated VCOG should work on this with all of the cities because Ormond Beach could not act alone and be effective. He noted the City could have a single election, and the person with the majority would be the winner.

Ms. Patterson pointed out Scenario #4(B) would have the County canvassing the ballots and would require a Charter Amendment. She noted some scenarios may need to have the legislative act amended, and Mr. Hayes advised he would research that issue. Ms. Patterson reported all of the cities could possibly opt out of the uniform dates, and Ormond Beach's Charter stated Ormond Beach elections could be held with all of the other cities. She noted the City could have the September 22 date if the Supervisor of Elections would agree, and if she would agree to allow the City to canvass it; however, this was contingent upon all of the other cities agreeing to that scenario.

Mayor Costello recommended the September 22 date, the City would canvass the ballots, and Ormond Beach would try to get the other cities to agree.

Ms. Patterson advised that would be Scenario #7.

Commissioner Kelley noted Ormond Beach would then not need a Charter Amendment for the canvassing board.

Mayor Costello noted whenever the next charter amendments would be considered he recommended a charter amendment allowing either the City or the County to be the canvassing board.

Mayor Costello summarized the recommendation would be for September 22, keeping the canvassing with the City, having the first election as the major election, and having the second election being the runoff if necessary.

Item #12 – Reports, Suggestions, Requests

Sunshine Law at River Grille Testing

Commissioner Partington asked Mr. Hayes to prepare a memo for the Commission regarding Sunshine Law regulations during the sound testing for the River Grille Restaurant.

Proclamation

Commissioner Partington stated he was pleased the proclamation for the Volusia County Sheriff's Office (VCSO) was prepared so quickly. He expressed pride in the VCSO and the Ormond Beach Police Department and hoped the consolidated dispatch contributed to this achievement.

Dr. Cartledge's Remodeling Effort

Commissioner Partington congratulated Dr. Cartledge on the remodeling effort in the downtown and thanked him for trying to bring the area back to life.

Water Bill Insert

Commissioner Partington reported Ms. Pat Behnke asked for a copy of the information in the water bill relative to water conservation. He advised Bear Creek receives only one water bill for the entire development, which also occurs with Aberdeen and The Falls. Commissioner Partington urged this information be provided to these residents if it could be accomplished at a reasonable cost.

Ted Cyzycki Memorial

Commissioner Gillooly stated she attended the memorial service for Mr. Ted Cyzycki of Gray's Nursery. She reported Mr. Cyzycki was a treasure and left a legacy to the City. Commissioner Gillooly recommended planting a tree in his honor, if appropriate.

Marilyn Wilson

Commissioner Gillooly acknowledged Ms. Marilyn Wilson for donating a great deal of time at Ormond Beach Middle School. She reported Ms. Wilson was named Volunteer of the Year at Ormond Beach Middle School.

Volusia League of Cities Award Dinner

Commissioner Gillooly stated the Mayor and Commission attended the Volusia League of Cities Awards of Excellence Dinner where Mr. Rick Boehm received the "Citizen of the Year" award and Mayor Costello received the "Elected Official of the Year" award.

Ormond Main Street

Commissioner Gillooly stated she served as the Ormond Main Street Director for one year and was pleased to be representing the Commission on that board. She commended the current Director Maggie Sacks and the volunteer board members. Commissioner Gillooly pointed out the downtown of a community was the heart of the City, and everyone had a vested interest in the downtown and in the vibrancy of the area. She noted she looked forward to working with Ormond Main Street.

River Grille Testing

Commissioner Gillooly recommended sending notices to the Tomoka Oaks, Bear Creek, and Ormond Lakes homeowners' associations regarding the testing at the River Grille. She noted the process of having these hearings would provide people ample opportunity to express their concerns.

Gray's Nursery

Commissioner Kent described an incident where he went to Gray's Nursery and met Mr. Cyzycki.

Volusia League of Cities Award Dinner

Commissioner Kent reported he was so pleased Mayor Costello won the Volusia League of Cities "Elected Official of the Year" award, and Mr. Boehm received the "Citizen of the Year" award.

Pay Increases

Commissioner Kent stated he was concerned that Mr. Hayes and Mr. Turner were once again not getting a pay increase. He reported he spoke to Mr. Turner and noted every issue had been addressed. Commissioner Kent thanked both Mr. Turner and Mr. Hayes for their understanding of the budget issues and their willingness not to receive an increase while they were deserved.

American Legion Building

Commissioner Kent stated the American Legion uses the City's building for \$1 per year, but they must maintain the building. He reported the American Legion replaced the air conditioning, replaced the roof, and painted the building. Commissioner Kent stated there were now structural issues with this historic building. He explained after learning of the causes the American Legion supports and the charities they provide funding for, he requested more information be provided regarding the renovations needed.

Dangerous Dog Ordinance

Commissioner Kent requested meeting with Mr. Turner regarding the dangerous dog ordinance and explained an incident that recently occurred with a dangerous dog.

City Commission Greeter

Commissioner Kent stated he considered having someone greet citizens at City Commission meetings a great idea, and it was working well.

Scheduling Meetings

Commissioner Kelley stated the Commission has difficulties scheduling special meetings. He advised that he tries to schedule personal items and vacations for weeks other than scheduled City Commission meeting weeks. Commissioner Kelley recommended having additional meetings on the Monday prior to a City Commission meeting or the Wednesday after the City Commission meeting rather than on a week when there was no scheduled Commission meeting.

Budget

Mr. Turner stated as the City approaches this budget season, he has been rejecting most funding requests.

Mr. Hayes expressed his appreciation for the kind remarks regarding a salary increase. He stated he understood the Commission had difficult decisions to make, and everyone would have to make sacrifices. He stated difficult circumstances force people to work harder.

Volusia League of Cities Award Dinner

Mr. Turner congratulated Mayor Costello and Mr. Boehm for receiving their awards at the Volusia League of Cities dinner. He stated Mayor Costello exhibits the spirit of working with other entities in an attempt to promote Ormond Beach and in cooperation. Mr. Turner noted the only issues he had ever had with Mr. Boehm were methodology, and he immensely appreciated him and what he has been able to accomplish.

Salary Increases for the City Manager and City Attorney

Mr. Turner stated he considered his job a calling, and it was his goal and objective to take care of the Commission and the community and to serve. He thanked Commissioner Kent for his remarks.

City Manager and City Attorney's Office

Mr. Turner stated when he arrived in Ormond Beach there were challenges between the City Manager's office and the City Attorney's office; but as years passed, he and Mr. Hayes have been able to work closely together.

Volusia League of Cities Award Dinner

Mayor Costello thanked the Commission for their support at the Volusia League of Cities awards dinner.

American Legion

Mayor Costello recommended the American Legion provide a structural engineering inspection indicating the building was in good condition, other than specific items, and provide a specific cost to make those corrections. He asked the Commission if they would consider providing half of the funds necessary for the renovations. Mayor Costello noted the City wanted to preserve historic buildings.

River Grille

Mayor Costello requested being informed as to how he should be handling the zoning portion of the River Grille ordinance when the issue comes back to the Commission.

Tax Rate

Mayor Costello stated an article in the February 3 Orlando Sentinel indicated Ormond Beach had approximately the 13th lowest tax rate of 89 communities in Central Florida. He stated the quality of life in Ormond Beach was extremely high after some very difficult decisions were made. Mayor Costello stated someone on the radio was talking about the new palm trees on Nova Road, indicating it was part of a CRA and funded through the General Fund, which was not accurate; but people hearing the radio believe what was said to be true. He noted the host suggested the trees may have been funded by a grant from the State, which was accurate.

Commissioner Gillooly thanked Mr. Turner for making a call to the Bernier radio show to clarify that misinformation.

Mayor Costello noted he was not speaking of the Bernier show. He expressed frustration regarding the large amount of misinformation that was being spoken to the point that he did not want to make the calls to correct the information. Mayor Costello pointed out Ormond Beach had the 13th lowest tax rate and still was working hard on obtaining grants. He noted grant money was still tax money; but it would go somewhere, and he would prefer it go to Ormond.

Eleanor Village Shopping Center

Mayor Costello stated there was an opportunity to obtain land at the Eleanor Village Shopping Center. He asked for information on this issue for a discussion item at the next City Commission meeting. Mayor Costello noted the owners were well aware that prices have dropped significantly. He advised there was probably an opportunity to form a partnership with Volusia County. Mayor Costello reported there were 200 parking spaces and an opportunity for a park. He noted people have indicated they wanted off-beach parking on the east side of A1A, but they have not produced any available land. Mayor Costello advised he was informed the County Manager did not wish to discuss the issue until Ormond Beach indicated they wished to pursue the issue.

Item #13 - Close the Meeting

The meeting was adjourned at 10:26 p.m.

APPROVED: February 19, 2008

BY: Fred Costello, Mayor

ATTEST:

Veronica Patterson, City Clerk