

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

September 4, 2007

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.

- 1) Meeting call to order by Mayor Costello.
- 2) Invocation by Father Richard Grasso, Prince of Peace Catholic Church.
- 3) Pledge of Allegiance.
- 4) **FIRST PUBLIC HEARING - FY 2007-2008 PROPOSED MILLAGE RATES AND BUDGET:**
 - A) Resolution No. 2007-129 adopting proposed millage rates for the 2007-2008 fiscal year; establishing a date, time and place for a public hearing to adopt final millage rates and final budget. (3.01100 operating millage rate; debt service millage rates of 0.4000 and 0.03250)
 - B) First Reading of Ordinance No. 2007-31 adopting the Annual Budget for the 2007-2008 Fiscal Year beginning October 1, 2007, and ending September 30, 2008; repealing all inconsistent ordinances or parts thereof. (\$105,639,661)
- 5) **AUDIENCE REMARKS:**
- 6) **APPROVAL OF THE MINUTES** of the August 21, 2007, 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. 2007-130 authorizing the execution of an interlocal agreement between the City and the State Attorney of the Seventh Judicial Circuit.
 - B) Resolution No. 2007-131 approving the Capital Improvements for Fiscal Year 2007-2008 to Fiscal Year 2011-2012.
 - C) Resolution No. 2007-132 authorizing the submittal of a grant application to the Florida Department of Environmental Protection under the Florida Recreation Development Assistance Program for funding assistance relative to installation of new field lighting at the South Ormond Neighborhood Center; authorizing the execution of all documents incidental thereto, including any contract necessary for the City to accept the grant award.
 - D) Donation of \$1,094 to the County of Volusia toward the purchase of a van for use by Volusia County disabled veterans.

DISPOSITION: Approve as recommended in City Manager memorandum dated August 30, 2007.
 - E) Selection of a canvassing board member to attend the public testing of the election equipment to be used for the October 9, 2007, Regular Election.

DISPOSITION: Approve as recommended in City Manager memorandum dated August 30, 2007.

9) **PUBLIC HEARINGS:**

- A) Ordinance No. 2007-29 amending the zoning map of the City of Ormond Beach by rezoning a 9.49-acre parcel of real property located at 1545 Hand Avenue from B-1 (Professional Office) to PBD (Planned Business Development); approving a Development Order for a Planned Business Development to be known as the “Professional Offices for Dr. Kohen & Dr. Rubin” and establishing conditions therefore. (Second Reading)
- B) Ordinance No. 2007-30 annexing certain real property into the City of Ormond Beach located at 211 North Tymber Creek Road; setting forth zoning, privileges, and obligations of said property; providing for transmission; and setting forth an effective date. (McBride Property) (First Reading)

10) **RESOLUTION** No. 2007-133 affirming the nonconforming use determination of the Planning Director regarding the structures located at 734 Alcazar Avenue.

11) **DISCUSSION:** Regulations regarding the camouflage of telecommunication towers.

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.

Item #2 - Invocation

Father Richard Grasso, Prince of Peace Catholic Church, gave the invocation.

Item #3 - Pledge of Allegiance

Mayor Costello led in the Pledge of Allegiance.

Item #4(A) – Adopting Proposed Millage Rates

RESOLUTION NO. 2007-129

A RESOLUTION ADOPTING PROPOSED MILLAGE RATES FOR THE 2007-2008 FISCAL YEAR; ESTABLISHING A DATE, TIME AND PLACE FOR A PUBLIC HEARING TO ADOPT FINAL MILLAGE RATES AND FINAL BUDGET; AND SETTING FORTH AN EFFECTIVE DATE.

Mayor Costello reported that per Florida Statute, he was required to state the proposed millage rate for the City of Ormond Beach necessary to fund the FY 2007-2008 budget was 3.01100 mills. He reported this was a 9.0% tax decrease from the rolled back tax rate of 3.30885. Mayor Costello advised the proposed debt service millage rates are 0.40000 for the 2002 General Obligation Bond Sinking Fund and 0.03250 for the 2003 General Obligation Bond Sinking Fund. He reiterated this was 9% less dollars than was collected last year plus growth of approximately \$235,000 and revenue from annexations of \$6,017.

Mayor Costello stated this was a public hearing. He asked if there were any members of the public who wished to speak or ask questions prior to adoption of the tentative millage rate and budget.

Ms. Pam Connor, 1010 John Anderson Drive, stated she was the vice-president of the Ormond Beach Senior Show Club, which was a group of over 75 seniors who perform in the annual follies show. She reported the follies, which were self-sufficient, paying the Performing Arts Center to rent the stage, would bring in an audience of 18,000 people. Ms. Connors offered assistance to suggest cost-reduction programs or revenue-increasing programs in the future; however, the goal for tonight was to make the Commission aware that there were a great deal of people in Ormond Beach to whom the Performing Arts Center was very important. She noted many people volunteer working for the follies and pay \$120 monthly taking dance classes at the Performing Arts Center to improve their skills to perform in these follies. Ms. Connor advised 14 of the follies dancers competed in an international dance

contest and took top honors. She stated the average age of the 400 other competitors was 18 years of age and this group averaged age 67. Ms. Connor urged the City to allow the Ormond Beach residents keep the enjoyment they get from the Performing Arts Center.

Ms. Lois Miller, 436 South Nova Road, #81, stated she was a playwright and director of the Theatre Workshop, which was affiliated with the Friends of the Performing Arts Center. She pointed out these shows benefit the Performing Arts Center, and last year they were able to give over \$9,000. Ms. Miller stated the countless hours of voluntary work can not be overlooked. She reported the Friends of the Performing Arts Center and the Theatre Workshop group have provided more than \$150,000 to the Performing Arts Center over the past 20 years, and donations are also provided to the Senior Center upon request. Ms. Miller reported any city needed to provide cultural stimulation for all ages. She noted if a decision was made to privatize the Performing Arts Center, Ormond Beach would damage a vital cultural link to its community. Ms. Miller expressed the importance to maintain the Performing Arts Center as a hometown venue and community theatre.

Mayor Costello reported he had attended a number of shows, and no Commission member wanted to do away with anything; however, if 50% of the budget was public safety and the entire budget had to be decreased by 9%, the remaining 50% must be decreased by 18%, and this has been accomplished this year. He advised that if the constitutional amendment passes on January 29, staff estimates a larger decrease would be needed next year. Mayor Costello noted if another 10% needed to be cut next year, 20% would need to be cut from the 50% not public safety related, which would include the Performing Arts Center, recreation, beautification, and the Senior Center. He advised many people chose to live in Ormond Beach because of these amenities, but the state was mandating the cities to roll back the taxes. Mayor Costello accepted Ms. Connor's offer to provide proposals through input through the Budget Advisory Board or sending e-mails to the Commission. He stated the Commission wanted to keep the amenities that make Ormond Beach what it was, and this budget would allow that, but more cuts may be needed next year. Mayor Costello noted it was not in the current budget to privatize, but it was in the plan to seek proposals because the Commission was tasked to examine everything.

Commissioner Kelley moved, seconded by Commissioner Gillooly, to approve Resolution No. 2007-129, to adopt the proposed operating millage rate of 3.01100 and the debt service millage rates of 0.40000 and 0.03250.

Mayor Costello stated the proposed operating millage of 3.01100 mills was 9.0% less than the rolled back millage rate. He noted the resolution also included adoption of the proposed debt service millage rates of 0.40000 for the 2002 General Obligation Bond Sinking Fund and 0.03250 for the 2003 General Obligation Bond Sinking Fund.

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

Mayor Costello advised the proposed operating millage rate was set at 3.01100 mills, which was 9% less than the rolled back millage rate.

Item #4(B) – Adopting the Annual Budget

Mayor Costello asked the City Clerk read Ordinance No. 2007-31 which would adopt a budget of \$105,639,661.

ORDINANCE NO. 2007-31
 AN ORDINANCE ADOPTING THE ANNUAL BUDGET FOR THE
 2007-2008 FISCAL YEAR BEGINNING OCTOBER 1, 2007, AND
 ENDING SEPTEMBER 30, 2008; REPEALING ALL
 INCONSISTENT ORDINANCES OR PARTS THEREOF;
 REPEALING ALL INCONSISTENT ORDINANCES OR PARTS
 THEREOF; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Kelley moved, seconded by Commissioner Gillooly, to approve Ordinance No. 2007-31, on first reading, as read by title only.

Commissioner Kelley stated this would give the City a net budget of 20.4% or 20.6% less than last year's budget.

Mayor Costello stated at the first budget workshop there were five or six out of seven speakers asking to keep the amenities; at the second budget hearing 17 out of 19 asked the amenities be kept; and tonight two people asked to keep the amenities. He advised 25 out of 27 or 28 people asked the Commission to keep the amenities that make Ormond Beach special. Mayor Costello explained the Commission was committed to cutting any extras that can be cut; but with subsequent cuts, decisions will need to be made.

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

Mayor Costello advised the Commission just adopted a budget of \$105,639,661.

Hearing no objection, Mayor Costello closed the public hearing on Item #4.

Item #5 - Audience Remarks

Police Station

Ms. Laura Jones, 59 Amsden Road, stated tomorrow was National Caring Day, which was important considering what would occur at the police station. She reported the City was considering placing a combination lock on the door at the police station. Ms. Jones stated that should she need help it would take time for the operator to ask her where she was located, and she would be given a number at that point; but people using the phone would be nervous and would not be able to remember the number given. She requested a better solution be found.

Ms. Linda Kane, 78 Ivanhoe Drive, stated a simple solution was being made complicated. She reported there was a request to open the lobby for the 911 phone. Ms. Kane questioned how adding another step and increasing the possible points of failure could be a solution. She requested the Commission overrule staff's position and give them a clear message to place the phone in the lobby and add a deadbolt. Ms. Kane asked any candidate running for office to publicly state their position regarding opening the doors.

Mayor Costello stated if any Commission member wished to discuss this at the end of the meeting they could do so. He explained the City was shifting dispatch to the County. Mayor Costello pointed out the door to the police station had not been staffed by a police officer previously. He stated the question was what was the best way to have the police station a "safe haven." Mayor Costello reported he listened to Police Chief Michael Longfellow because he has the expertise on the issue.

Mayor's Golf Tournament

Mr. Chas Folcik, 3 Crescent Lake Way, asked if the Mayor's Golf Tournament cost the taxpayers any money, and if so, how much.

Mayor Costello advised the Mayor's Golf Tournament was a fundraiser for the Chamber of Commerce and does not cost the taxpayers anything.

Candidate's Forum

Ms. Rita Press, 875 Wilmette Avenue, reported the Citizens for Ormond Beach would be holding their Candidate's Forum on September 19 at 7:00 p.m. in the Commission chambers.

Mayor Costello thanked Ms. Press and the Citizens for Ormond Beach for performing this great service to the City.

Police Station

Ms. Pat Behnke, 15 Malayan Sun Bear Path, stated she heard Mayor Costello state on the radio that the police station would have a telephone on the inside with a deadbolt lock.

Mayor Costello advised he believed he stated that was his understanding; however, he was incorrect. He reported that was his preference, but he would yield to Chief Longfellow.

Mayor Costello stated he would be willing to discuss this issue at this time if the Commission wished to do so.

Commissioner Kent advised he voted to keep dispatch in house and was excited to hear Mayor Costello's preference was to open the lobby and have a deadbolt lock. He stated he would agree with Mayor Costello on this issue. Commissioner Kent reported while

Chief Longfellow was the expert, the people placed the Commission in their positions, and it was their decision. He stated the deadbolt would make the people feel safer and was common sense.

Commissioner Partington stated he spoke to experts in domestic violence who fear the deadbolt lock could make the victim even more vulnerable, particularly one with a gun. He advised he would prefer to rely on the experts who deal with these situations. Commissioner Partington reported he believed staff had come up with the better solution that would have the best chance of protecting a victim.

Commissioner Kelley stated the Commission should listen to the experts rather than making a decision “on the fly.” He noted he certainly hoped this would never be needed. Commissioner Kelley questioned how many people would run to the police station as a safe haven rather than use a cell phone or other means. He pointed out the person may go to the wrong door of the police station and noted the glass was not bullet proof. Commissioner Kelley noted the dispatchers that were located at the police station were not sworn officers, and they would have had to call for help.

Commissioner Gillooly reported she spoke to Chief Longfellow regarding this issue. She questioned what could be done to keep the lobby door open. Commissioner Gillooly reported there was security for the police station beyond that door. She pointed out people in law enforcement did not wish to publicize issues that the perpetrators could use against the victims. Commissioner Gillooly reported while the deadbolt sounded like a great idea it could create a very volatile situation and become even more of a problem for the victim. She clarified the phone did not need to be dialed as it would immediately connect to a 911 dispatcher. Commissioner Gillooly reported she was hesitant and urged continuing to review this situation to make it safe and accessible to a victim. She noted this had occurred only once in years, but it could happen at any time. Commissioner Gillooly noted that today most people have access to a cell phone, but she recommended re-evaluating this to provide the feeling of a safe haven.

Mr. Isaac Turner, City Manager, stated there was a difference between a perception and a reality of security. He concurred with Commissioner Partington that the Commission should prevent a situation where the perception of security could be turned against a victim. Mr. Turner noted it was not the best course of action to go to a police station, but to call 911. He clarified this was not a change of security in that there were no sworn officers at the police station at night. Mr. Turner stated a phone and deadbolt could be installed, but he would recommend the Commission explore the consequences before such a decision was made. He urged the group of concerned citizens to speak with Chief Longfellow tomorrow to better understand his perspective.

Commissioner Gillooly assured everyone that Chief Longfellow cared deeply about this community. She noted the system would enhance the technical abilities of the officers to better protect the people. Commissioner Gillooly stated when a 911 call comes in all officers would have access to the information; and if backup would become necessary, the additional officers would have the needed information. She reported the phone would have a direct connection to 911, and the closest officer would respond should that be an officer inside the building or one patrolling in the sector where the police station was located. Commissioner Gillooly noted there would be an officer on light-duty in the building for the first four days inside the police station until at least midnight. She recommended Chief Longfellow review this for the next few days and determine if there would be an opportunity to leave the door open.

Mayor Costello requested this be placed on the next meeting agenda for discussion.

Commissioner Kent asked Mr. Turner to request someone to work the 6 p.m. to 6 a.m. shift until the Commission could straighten out this situation.

Mayor Costello stated he was not ready to add increased security since that security did not currently exist.

Commissioner Kent stated dispatch was currently in the police station, and they have a view of the lobby.

Mayor Costello clarified there were no officers on duty on the premises.

Commissioner Kent reported there were a minimum of two dispatchers in the room, so if someone needed help, one of the dispatchers could bring the person into the room.

Division Chief Mark Walker stated a dispatcher could leave the room and provide access to another room, but they would not take them to the dispatch center. He reported the actual response time for a police officer would be the same in that the officer would be summoned to the police station to assist.

Commissioner Kent concurred the police station was not staffed with a police officer, but there was an opportunity for help.

Mayor Costello stated he spoke to the Daytona Beach Police Chief who stated the beachside station closed at 10:00 p.m., and it was not manned. He noted Commissioner Kent made a suggestion that there be an officer on duty; however, unless another Commission member expressed agreement he would move on. Mayor Costello advised he made a suggestion, which received support, to have a discussion item at the next Commission meeting.

Commissioner Gillooly expressed agreement to have a discussion at the next meeting. She stated while she understood Commissioner Kent's concern she was confident in what Chief Longfellow indicated, which was that police officers come in and out of the building and an officer was already assigned to that precinct.

Commissioner Kelley stated any system was subject to review and improvement. He noted he and his family lived in Ormond Beach, and if he believed this would adversely affect the safety of his family or the community, he would not have supported this. Commissioner Kelley advised Chief Longfellow had 33 to 34 years of experience in police work, and the Commission should be able to trust his judgment.

Mr. Turner stated if anyone wanted to speak to Chief Longfellow they could call him, and he would be glad to answer any questions.

Mayor Costello requested an update by Chief Longfellow at the next meeting. He stated the Commission was passionate about the safety of the community even though they may disagree as to how that should be accomplished.

Item #6 - Approval of Minutes

Mayor Costello advised the minutes of the August 21, 2007, 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 reported he sent updates relative to the Metropolitan Planning Organization (MPO) and Volusia Council of Governments (VCOG) meetings to the Commission.

Item #7(C) - Water Authority of Volusia

Commissioner Kelley reported he sent copies of the minutes of the last Water Authority of Volusia (WAV) meeting to the Commission.

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.

Commissioner Kelley moved, seconded by Commissioner Partington, for approval of the Consent Agenda as submitted.

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

Item #8(D) – Donation for a Van for Use by Volusia County Disabled Veterans

Commissioner Gillooly stated she spoke to Mr. Skip Keating who was a volunteer who drives the van taking the disabled veterans to the hospital in Jacksonville and Gainesville. She reported Mr. Keating advised there was a desperate need for this van, and she considered it an excellent opportunity to partner with Ormond Beach’s sister cities and Volusia County. Commissioner Gillooly stated this was greatly appreciated and tax dollars well spent. She noted she was informed that if it were not for this van, some individuals would forego needed treatment.

Mayor Costello stated this cost was based on the population percent rather than the usage percent as was stated in the report, which saved the City some funds.

Item #8(B) – Capital Improvements Project

Mayor Costello reported he was surprised not to hear any comments from the audience regarding the Capital Improvements Project. He advised approval of the Capital Improvements Project plan does not represent a binding commitment to pursue any of the projects, and only the projects that have sufficient funding appropriated would be undertaken.

Item #9(A) – “Professional Offices for Dr. Kohen & Dr. Rubin”

ORDINANCE NO. 2007-29
AN ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF ORMOND BEACH BY REZONING A 9.49-ACRE PARCEL OF REAL PROPERTY LOCATED AT 1545 HAND AVENUE FROM B-1 (PROFESSIONAL OFFICE) TO (PBD) PLANNED BUSINESS DEVELOPMENT; APPROVING A DEVELOPMENT ORDER FOR A PLANNED BUSINESS DEVELOPMENT TO BE KNOWN AS THE “PROFESSIONAL OFFICES FOR DR. KOHEN & DR. RUBIN” AND ESTABLISHING CONDITIONS THEREFORE; REPEALING ANY INCONSISTENT ORDINANCES OR PARTS THEREOF; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Kelley moved, seconded by Commissioner Partington, to approve Ordinance No. 2007-29, on second reading, as read by title only.

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(A).

Item #9(B) – McBride Property Annexation

ORDINANCE NO. 2007-30
AN ORDINANCE ANNEXING CERTAIN REAL PROPERTY INTO THE CITY OF ORMOND BEACH LOCATED AT 211 NORTH TYMBER CREEK ROAD; SETTING FORTH ZONING, PRIVILEGES, AND OBLIGATIONS OF SAID PROPERTY; PROVIDING FOR TRANSMISSION; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Kelley moved, seconded by Commissioner Gillooly, to approve Ordinance No. 2007-30, on first reading, as read by title only.

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

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

Item #10 – Nonconforming Use Determination at 734 Alcazar Avenue

RESOLUTION NO. 2007-133

A RESOLUTION AFFIRMING THE NONCONFORMING USE DETERMINATION OF THE PLANNING DIRECTOR REGARDING THE STRUCTURES LOCATED AT 734 ALCAZAR AVENUE; AND SETTING FORTH AN EFFECTIVE DATE.

Ms. Veronica Patterson, City Clerk, swore in those who would be speaking on this issue.

Mr. Michael J. Woods, attorney at Cobb and Cole, speaking on behalf of Mr. Tom Gegaj and Mr. John Gegaj, showed an aerial map of the area at issue. He noted the property consisted of a single-family primary structure and an accessory structure. Mr. Woods reported the issue was not the use of the primary structure, but the accessory structure. He explained the property was located in a single-family R-3 residential zoning district, and the issue related to his client using the accessory structure as a rental facility. Mr. Woods reported for over 20 years his client had been renting the main structure, which he was permitted to do by right, and he had two additional residential units for rent on the accessory structure. He noted that after consultation with the Planning Department they recognized the third residential unit in the rear of the accessory structure was probably not justifiable, but they requested being allowed to continue to use one of the residential units on the accessory structure as well as the rental on the primary structure.

Mr. Woods explained Mr. Tom Gegaj purchased the property in March 1987 for income property, and based upon representations he relied upon, the property included three separate rental units. He noted the listing information from the realtor specifically referenced the apartment over the garage and the efficiency behind the garage. Mr. Woods displayed the contract for purchase, which referenced three unit residential properties. He advised that Mr. Gegaj managed the property as three separate units from 1987 to the present without incident; however, due to health issues, he turned management over to a third party company. Mr. Woods reported the management company did not screen the tenants as well as he did, and the tenant was disruptive; however, the property management company was replaced and the disruptive tenant was gone. He explained Officer Mason correctly recognized that three residential rental units were not typically in a single-family residential neighborhood. Mr. Woods reported a notice of violation was issued and brought before the special magistrate. He noted the special magistrate was willing to continue the hearing until there was a resolution to the issue on the nonconforming use from the Commission. Mr. Woods advised Mr. John Gegaj worked hard to work with Officer Mason and the Planning Department to come to some resolution. He stated all documentation available was provided to staff for review.

Mr. Woods reported staff made a determination that garage apartments were once allowed in the R-3 district so long as they were occupied by more than one family. He noted the ordinance that allowed that apartment garage style unit in an accessory structure was amended in 1981 to change it from the occupant not be related to the occupant needing to be related to the owner of the primary structure or a mother-in-law suite, which was in place today. Mr. Woods explained that staff's position was that in order to retain the use of the property for rental purposes, the accessory structure was a separate residential rental unit, and Mr. Gegaj needed to be able to show the structure was utilized as a rental apartment from 1981 to the present, causing a problem in that Mr. Gegaj did not purchase the property until 1987. He noted this was a very heavy burden considering this was 26 years after the fact. Mr. Woods stated it was known that certain records are to be kept; but if there was no notice to keep certain information, those documents are rarely kept, and it could be very difficult to locate the documentation. He noted typically any action or document that impacts the entitlements on a property are recorded on the title; however, this does not exist in this instance because this concerns a revision to the Land Development Code, leaving the property owner to provide justification of a nonconforming use. Mr. Woods pointed out Mr. Gegaj kept fairly detailed records during his ownership, which established the use of the accessory structure as a rental unit for the main structure and the two residential units. He noted this documentation in conjunction with the contract for purchase and the leasing agent's documentation provided a presumption that prior to Mr. Gegaj's purchase in 1987 the property was being used as a residential rental unit with three units on the property. Mr. Woods stated he believed he provided enough information to satisfy the burden to make the determination that the issue to nonconformity could be reasonably inferred and the Commission could reasonably support this request to allow for the continued nonconforming use. He asking for a common sense approach in this instance in that this property was run for 20 years with no complaints. Mr. Woods reiterated he understood Mr. Gegaj would not be able to rent the third unit in the back, but urged Mr. Gegaj be permitted to rent the primary structure and the upstairs unit on the secondary structure. He noted the metering issues could be addressed.

Mr. Ric Goss, Planning Director, stated this case came to the City's attention as a result of the Neighborhood Improvement Department complaint. He reported there was no specific information showing this was a legal or illegal nonconforming use, but in examining the preponderance of evidence he made his determination. Mr. Goss advised there was no evidence these units existed prior to 1981 and no evidence the units were continuously rented, but they did find a receipt from Wade's Air Conditioning in 1987 which indicated the one unit was an office. He pointed out if it was an office, it would be nonconforming because it changed. Mr. Goss reported there was no letter on record asking for previously outstanding code violations or a zoning determination to determine if these units were legal, which would typically be found for income-producing properties. He noted staff examined the Volusia County Property Appraiser's office records, which indicated the rear unit was added in 1990 and the upstairs unit in 1998. Mr. Goss questioned how the property received a meter from Florida Power and Light (FP&L) in 1995 when the City had a regulation in effect at that time that a separate meter could not be obtained. He stated the water meter provided was for water reuse and somehow became the water meter for the two units. Mr. Goss reported staff concluded they could not recommend this was a legal nonconforming use of the property. He noted the applicant would still have use of the unit, but it would have to be used by a family member related to the owner of the principal structure.

Mr. Lowell Cobb, 742 Alcazar Avenue, stated he lived next door to this property since 1999. He reported when he purchased his home he was told the area was for single-family residences. Mr. Cobb expressed his desire for the area to be cleaned up and brought back to single-family residential.

Mr. Woods explained the air conditioning bill was prior to purchasing and inspecting the property, and staff's interpretation was it referred to an office unit upstairs in contrast to a residential efficiency unit downstairs; but he interpreted this as referring to the residential efficiency unit downstairs and office space upstairs. He pointed out many people do not obtain a zoning determination, particularly regarding the representations that were made on the contract for purchase. Mr. Woods stated Mr. Gegaj indicated the units were in place prior to the dates indicated by the property appraiser, and the property appraiser's page should not be the sole reference point because that information was not regularly updated. He explained FP&L installed a secondary meter on the property in 1995, which was in violation of the code; but Mr. Gegaj was under the mistaken belief that he had the right to use this property for the three rental units. Mr. Woods pointed out FP&L did not raise an issue at that time. He noted the water meter was installed in 1997 and does not provide for sewer, but was more of an irrigation meter. Mr. Woods reported that here again, in 1997, the City did not recognize any problem. He advised Mr. Gegaj had no malice or intent to defraud the City. Mr. Woods agreed this area was meant to be single-family, but the question was whether at any time an apartment rental unit could have been in place for this property.

Commissioner Kent disclosed he met with the appellant's son to discuss this issue. He noted he could see both sides of this issue in that Mr. Gegaj purchased the property in 1987 and it was being used as three separate rental units. Commissioner Kent noted codes were changed in 1981, but Mr. Gegaj was unaware of that change. He stated Mr. Gegaj probably should have researched the issue, but there had been no problem for 20 years until recently. Commissioner Kent noted he sympathized with Mr. Gegaj because he believed he could use this as rental income. He stated Mr. Cobb also had a point that this was a single-family residential community, and an apartment should not be next door. Commissioner Kent reported Mr. Gegaj received 20 years of income; and he was sorry it may not be able to continue, but it was not fair for anyone to have to live with this situation. He noted Mr. Woods did an excellent job, but he could not allow this to continue.

Mayor Costello asked if Commissioner Kent was indicating that he did not see a preponderance of evidence that since 1981 this nonconforming use had been consistent, so the Commission would have to uphold allowing it to continue.

Commissioner Kent confirmed Mayor Costello was correct.

Commissioner Gillooly commended Mr. Gegaj for providing all of the information and for managing this property with such diligence for many years. She noted when Mr. Gegaj applied for a separate water meter, there was a conscious decision made, because had he called for a full water line, it would have caused staff to investigate this issue ten years ago. Commissioner Gillooly concurred with Commissioner Kent that Mr. Gegaj received 20 years rent; and for whatever the reason, the issue had now come to the City's attention and it had to be addressed. She noted that Mr. Gegaj would now only be able to rent the main structure. Commissioner Gillooly asked if there was any provision that would allow the accessory structure to be rented to a family member of the person renting the main structure.

Mr. Goss stated the apartment could only be rented to a relative of the owner of the principle structure, even though that party may not live in that dwelling.

Commissioner Gillooly expressed agreement that the appellant did not make a case for her to change staff's determination.

Commissioner Kelley and Commissioner Partington concurred with Commissioner Gillooly.

Mayor Costello reported the Commission unanimously agreed that a case was not made that subsequent to 1981 there had consistently been the nonconforming use that would cause the Commission to maintain the nonconformity. He reported that several Commission members have indicated that the City was looking at ways to create affordable housing and adjust the codes to allow some uses that are not now approved in the code to be acceptable to create affordable housing, and Mr. Gegaj may eventually be able to use that structure as a rental unit. Mayor Costello noted these issues would be well advertised and discussed, but some changes may be made in the future.

Commissioner Partington moved, seconded by Commissioner Kelley, to approve Resolution No. 2007-133, as read by title only.

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

Mayor Costello called for a break at 8:40 p.m. He reconvened the meeting at 8:42 p.m.

Item #11 - Regulations Regarding Camouflage of Telecommunication Towers

Mr. Ric Goss, Planning Director, stated staff was asked to examine the ordinance regarding telecommunication towers. He reported there were 22 zoning districts and 17 zoning districts do not permit telecommunication towers. Mr. Goss stated there were six areas in five zoning districts that allow telecommunication towers by special exception or conditional use. He noted in the B-5 zoning district telecommunication towers are allowed by a special exception or the conditional use for a tower based upon it being in excess of 300 feet or less than 300 feet, with the more stringent being the special exception which would be for the higher tower. Mr. Goss reported camouflage antennae are permitted in 17 zoning districts, and they are not allowed in five districts. He stated the City only required a telecommunication tower to be camouflaged in the rural residential districts. Mr. Goss reported camouflaged or non-camouflaged towers or antennae are not allowed in the industrial district. He advised the only standards Ormond Beach does not require that other cities require was a propagation analysis, which sets out the need for the tower, and a visibility impact analysis, which would determine what impact a tower would have in a residential area. Mr. Goss noted the definition of a camouflage tower or antennae was examined. He explained the code does not require anything to be camouflaged except for rural residential, and there were no standards provided. Mr. Goss provided three possible alternatives for the Commission's consideration.

Mayor Costello asked if there was support for Option 2, which required a propagation analysis in the industrial zone, and everywhere else the towers would be required to be camouflaged.

Commissioner Kelley stated the industrial zone was the most likely place for a tower. He noted if the Commission tried to change everything now, the existing towers would be grandfathered. Commissioner Kelley advised he was not certain there would be many more towers in that satellites would replace them. He questioned the advisability of retrofitting every tower.

Mayor Costello noted this was not concerning retrofitting.

Commissioner Kelley noted the towers are only permitted in limited areas.

Mr. Goss explained they are only allowed in five districts and six areas.

Commissioner Kelley advised he did not see a real problem with the current policy. He pointed out the City was probably limited as to the restitutions it could place by the Federal Communications Commission (FCC), and the City may find itself in a lawsuit.

Commissioner Partington advised he preferred Option 3.

Commissioner Gillooly asked if there was any reason not to require camouflage.

Mr. Goss stated if the towers would need to be camouflaged, they should be allowed in more zoning districts. He recommended permitting them by conditional use rather than a special exception, which was a more stringent review coming to the Commission, while a conditional use would be reviewed by staff after completing certain criteria.

Mayor Costello stated the down side may be that a company may not erect the tower because they did not wish to spend the money to camouflage it, leaving the people with service that would not be as good as it could be. He noted if a company wanted to do business in Ormond Beach, they could camouflage the tower. Mayor Costello stated he was willing to make it easier in the industrial zone; however, he would concur to camouflage everywhere if that was the will of the Commission.

Commissioner Gillooly agreed with Commissioner Partington. She pointed out she hoped Ormond Crossings would have a higher aesthetic standard.

Commissioner Kent stated he agreed with Option 3.

Mayor Costello advised the Commission selected Option 3.

Mr. Goss asked if there should be an “out” if it was not feasible to camouflage.

Mayor Costello advised he would demand a very high threshold to determine it was not feasible.

Mr. Goss suggested if the applicant could meet camouflage it would be a conditional use; and if they could not, it would be a special exception, which would go to the City Commission.

Mayor Costello advised the Commission concurred with Mr. Goss's recommendation.

Mr. Goss asked if the Commission would consider opening more zoning districts for the camouflaged towers.

Mayor Costello advised he would support opening up more zoning districts if they were camouflaged.

Commissioner Kelley noted he believed there was a mistake when towers were not permitted in the industrial districts.

Mayor Costello and Commissioner Gillooly concurred with Commissioner Kelley; therefore, the consensus was to allow the towers in more zoning districts if they were camouflaged.

Item #12 – Reports, Suggestions, Requests

Pop Warner Opening Ceremony

Commissioner Kent stated he attended the opening day ceremony for the Pop Warner Seabreeze Nation which was a wonderful experience where the children had a terrific time.

Commissioner Kelley stated he also attended the opening ceremony and noted the investment the City was making in the future of the community was well worthwhile. He noted the parents and volunteers and the spirit was overwhelming. Commissioner Kelley commended this Commission for doing something that was long overdue, and he appreciated their support for this worthwhile investment.

Commissioner Gillooly stated the event was amazing. She commended the parents, volunteers, and City staff. Commissioner Gillooly reported this was not merely about sports, but these athletes were proud of their socialistic component.

Flooding

Commissioner Gillooly stated Ms. Irene Todora represented a group of residents in the Ormond Terrace Annex area off Putnam Avenue and Cumberland Avenue. She reported she was invited to Ms. Todora's neighbor's home, Mr. and Mrs. Grassie, to discuss a flooding problem that began three and one-half to four years ago that they believe was created by the construction of three homes. Commissioner Gillooly advised staff was aware of the problem and was being responsive. She stated there were three additional properties on Putnam Avenue where a builder had applied for a permit, but staff arrived at certain criteria that must be met before the City would approve the permits. Commissioner Gillooly provided a petition to the

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City Clerk signed by 30 property owners asking the Commission and staff to be completely apprised of all of the impacts the development of this property would have on the neighborhood and the environment.

Pop Warner Opening Ceremony

Mr. Turner congratulated everyone responsible for the championship field.

Flooding

Mr. Turner stated staff was working on the issues at Putnam Avenue and would contact the residents in the next few days. He noted there were other factors that play a role in the problems the neighbors were encountering.

Budget

Mayor Costello commended staff regarding the budget. He noted the fact that the Commission did not have many comments tonight means that the issues they mentioned were incorporated in the budget, and the great majority of those who spoke were in favor of what the Commission was trying to accomplish with the budget, which he considered to be significant.

School Board Meeting

Mayor Costello stated the Commission would meet with the School Board on September 7. He reported the City was providing the facility for Seabreeze High School if they want to pay to play. Mayor Costello advised it could be figured out how much the school would have to invest in other areas with adequate room on the grounds; therefore, the school would not have to invest money in raw land, and they would also not have to invest in the infrastructure. He noted they would be charged considering these factors. Mayor Costello stated he would prefer to see the funds that are invested going toward the storage facility and press box that may be needed in the future. He clarified he was actively in support of Seabreeze High School having the opportunity to use the facility. Mayor Costello pointed out Seabreeze High School had 78% Ormond Beach residents.

Traffic at Ormond Beach Middle School

Mayor Costello stated he did not see the City's response to the Ormond Beach Middle School letter regarding traffic issues. He requested to be informed of the results.

Ormond Beach Historical Trust

Mayor Costello reported the Ormond Beach Historical Trust requested he attend the September 25 grant consideration in Tallahassee; however, he was unable to attend. He asked if any Commission member wished to go and speak on behalf of the City. Mayor Costello requested a letter be prepared in support.

Tymer Crossings Homeowners' Association

Mayor Costello reported there were issues regarding people getting building permits without obtaining the Tymer Crossing homeowners' association permits. He noted he was not pleased with the solution that the City cannot enforce homeowners' association covenants, since with computers, there should be a method to have every address who was a member of a homeowners' association flagged and not provide a building permit without homeowners' association approval.

Come Help Shape the Future

Mayor Costello reported he was not certain what the "Come Help Shape the Future" workshop on September 18 at 5:30 p.m. to 7:00 p.m. was about.

Mr. Goss explained staff was beginning the evaluation appraisal report for the Comprehensive Plan changes over the next year where the Planning Board, City Commission, and the public would be brought together rather than having three meetings.

Mayor Costello reported he liked the idea the flyer went out in the water bill where all of the citizens could see the notice.

Progress Report

Mayor Costello stated the progress report for the Ormond Beach utility customers was fantastic. He noted it included information regarding the fact there were issues regarding the inspection, but the issues were resolved.

Item #13 - Close the Meeting

The meeting was adjourned at 9:07 p.m.

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APPROVED: September 18, 2007

BY: Fred Costello, Mayor

ATTEST:

Veronica Patterson, City Clerk