

March 10, 2005

**AGENDA ITEM**

Item 03

Ordinance

Resolution

Budget Resolution

Other

**Department:** Leadership

**File Number:** VC-1109165985077-A

**Division:** Leadership

**Subject:** County Council Minutes - November 11, 2004

**Account Number(s):** N/A

**Total Item Budget:** N/A

**Staff Contact(s):** Marcy Zimmerman-Rigsby Phone: 736-5920 ext. 2398

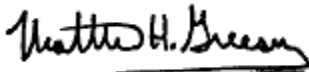
**Summary/Highlights:**

Attached are minutes of the County Council - Regular Session, held November 11, 2004.

**Recommended Motion:**

Request for approval of November 11, 2004 County Council minutes, as presented.

Matt Greeson  
Director  
Leadership



OMB

Approved as to  
Budget Requirements

Legal



Approved as to  
Form and Legality

Betty Holness  
County Manager's Office



Approved Agenda Item  
For:  
**March 10, 2005**

**Council Action:**

- Approved as Recommended
- Approved With Modifications
- Disapproved
- Continued Date:

**Modification:**

**MINUTES OF THE MEETING OF THE COUNTY COUNCIL OF  
VOLUSIA COUNTY, FLORIDA, IN REGULAR SESSION, AT  
THE THOMAS C. KELLEY ADMINISTRATION CENTER, DELAND, FLORIDA  
NOVEMBER 11, 2004**

**COUNCIL MEMBERS:**

Dwight D. Lewis, Chair  
Bill Long, Vice Chair  
Frank T. Bruno, Jr.  
Jack Hayman  
Joseph C. Jaynes  
Patricia Northey  
Joie Alexander

District 1  
District 5  
District 2  
District 3  
District 4  
At-Large  
At-Large

**STAFF:**

Cynthia A. Coto, County Manager  
Daniel D. Eckert, County Attorney  
Ray W. Pennebaker, Deputy County Manager  
Matt Greeson, Assistant County Manager  
Betty J. Holness, Assistant to the County Manager  
Sue Whittaker, Deputy Clerk to the County Council  
Marcy A. Zimmerman-Rigsby, Administrative Aide

**PUBLIC PARTICIPATION – 8:30 a.m.**

None

**CALL TO ORDER – 9:00 a.m.**

The County Chair called the November 11, 2004-, Regular Session of the Volusia County Council to order at 9:00 a.m. in the County Council Chambers, Thomas C. Kelly Administration Center, 123 West Indiana Avenue, DeLand, Volusia County, Florida

**ROLL CALL**

Chairman Lewis and Council Members Alexander, Bruno, Jaynes, Hayman, Northey and Long, were present.

**INVOCATION AND PLEDGE OF ALLEGIANCE**

Provided by Reverend Ivan Corbin, Trinity United Methodist Church, DeLand.

**RETIREMENTS**

**Item 1**

**David M. Nowinski, a Telecommunicator with the Sheriff's Office, retired October 7, 2004, after ten years of service to Volusia County Government.**

Staff Contact: Michael D. Lary, 736-5951, ext. 2605

VC-1095684445423

Dave Byron, Sheriff Ben Johnson, David M. Nowinski and his wife, were present.

## COUNTY COUNCIL AGENDA – NOVEMBER 11, 2004

### PUBLIC HEARINGS AND TIME CERTAIN MATTERS

#### Item 2

Request to authorize the Volusia County Sheriff's Office to accept an American Heart Association grant, to purchase forty-four (44) Automated External Defibrillators(AED) from Zoll Medical Corporation (County Price Agreement 7254); and request to adopt Budget Resolution 2004-\_\_\_\_\_ appropriating the funds into account 001-400-2000. [+\$46,000.00]

Staff Contact: Laura Bounds, 736-5961, ext. 2108

VC-1095943881421

Sheriff Johnson and Matt Zavadsky provided the staff report and the following PowerPoint presentation:

#### Public Access Defibrillation...

##### Perspective...

- 250,000 people die from sudden cardiac death each year
- 700 per day (like 3, 747 crashes every day)
- 90% of sudden cardiac arrests occur out of the hospital
  - Workplace
  - Public places
  - Home
- Nationwide - only 5% will survive
- Volusia County Survival Rates:
  - May '97 - Feb '04
    - 45 survivors of 3,631 cardiac arrests (1.2%)
  - Jan 2002 - March 2004
    - 23 survivors of 479 cardiac arrests (4.8%)
    - 5 of the 23 were revived with AEDs (22.7%)

## COUNTY COUNCIL AGENDA – NOVEMBER 11, 2004

### Placements

- 143 AEDs placed in "High Risk" locations since 2002
- County & City Buildings
- Library's
- YMCA's
- Top of the Ponce Inlet Lighthouse
- Hurricane Shelters
- Now moving into Law Enforcement Vehicles

Dr. Luther St. James, American Heart Association representative, also provided a presentation.

Matt Zavadsky then displayed the defibrillator process to Council. It has audio instructions to assist the person using it.

Elizabeth Layton asked if there was any danger to an untrained person using the defibrillator. The only danger is not using it on somebody who needs it.

Council Member Jaynes moved for **APPROVAL** as recommended, with the correction of the date, and after Council Member Long seconded the motion it **CARRIED** 7 to 0. **Resolution No. 2004-212**, entitled as follows and on file in its entirety with the records of the County Council, was duly **ADOPTED**.

### RESOLUTION NO. 2004-212

RESOLUTION OF THE COUNTY COUNCIL OF VOLUSIA COUNTY, FLORIDA,  
AMENDING THE FISCAL YEAR 2004-05 BUDGET, CHANGING THE ESTIMATED TOTAL  
REVENUES, SURPLUS AND EXPENDITURES AND PROVIDING AN EFFECTIVE DATE

## Item 3

### Appeal of Subdivision Approval Requirement - 04-S-ODP-0333

Request for consideration of Mr. Robert J. Riggio's **APPEAL**, as attorney representing Ms. Lynette Walters, to **OVERTURN** the denial of the Volusia County Development Review Committee's (DRC) action that John Anderson Highway is designated as a Collector Thoroughfare, which requires a minimum right-of-way width of 80 feet, as noted in Table III of the Land Development Code (Ord. 88-3, as amended). The property is located on the northeast corner of John Anderson Highway and Barrier Isle Drive, north of Ormond Beach.

**STAFF RECOMMENDATION: DENY THE APPEAL AND UPHOLD THE DETERMINATION OF THE VOLUSIA COUNTY DEVELOPMENT REVIEW COMMITTEE.**

Staff Contact: Palmer M. Pantan, 736-5942, ext. 2736

VC-1098987910717

Palmer Pantan provided the staff report.

## COUNTY COUNCIL AGENDA – NOVEMBER 11, 2004

Council discussion ensued.

Council Member Bruno had a problem with approving 15 feet and now saying 30 feet. Mr. Panton advised that it was determined 30 feet would be more appropriate, and the property owners would still have two buildable lots.

Council Member Jaynes stated the whole idea of taking 30 feet of the property for some future right of way is in addition to what was looked at. There is no way the County will do 80 feet of right of way on John Anderson Drive.

### **Public Participation**

- Robert Riggio, Attorney for Lynette Walters: Ms. Walters owns a 180-foot wide lot. She had hoped to split it, putting a house on one lot and selling the other. The only problem is the 30-foot issue. Everything north of Ms. Walter's property will stay the way it is. Thirty feet is excessive.

Council Member Bruno moved to **UPHOLD** the appeal, limiting the right of way to 15 feet, to **OVERTURN** the denial of the Volusia County Development Review Committee's (DRC) action and after said motion was seconded by Council Member Jaynes, it **CARRIED** 7 to 0.

## **Item 4**

***Order of Business:***

***Open Public Hearing***

***Staff Report***

***Public Participation***

***Close Public Hearing***

***Council Discussion/Action***

~~Public hearing and request to adopt Resolution No. 2004— abandoning/vacating a portion of an un-named, un-opened 50-foot wide right of way, lying within the subdivision of Caleb McKeel's Subdivision (DeLand area), in Map Book 1, Page 158; and request to accept the utility easement covering the abandonment area. [F.A. (Alex) Ford, Jr., attorney for Donaldson's Ornamentals, Inc., Petitioner]~~

Staff Contact: Joette Enfinger, 736-5967, ext. 2455

*No Agenda Item*

WITHDRAWN BY PETITIONER

## COUNTY COUNCIL AGENDA – NOVEMBER 11, 2004

### ZONING

#### Item 5

*Order of Business:*

*Open Public Hearing*

*Staff Report*

*Public Participation*

*Close Public Hearing*

*Council Discussion/Action*

PUD-04-113 – First public hearing and request to set the second public hearing regarding consideration of an application from Rick Michael, Agent for County of Volusia, Owner, requesting a rezoning from the I-1 (Light Industrial) zoning classification and I-1/C (Light Industrial/Thoroughfare Overlay Zone) zoning classification to the IPUD (Industrial Planned Unit Development) zoning classification and IPUD/C(Industrial Planned Unit Development/Thoroughfare Overlay Zone) zoning classification. The property is located on the north side of State Road 44 at its intersection with Interstate 4, near the West Volusia Transfer Station, east of the City of DeLand; ± 43 acres.

*The County Council is required to conduct two (2) public hearings. The second public hearing should be scheduled for December 16, 2004 at 10:00 a.m. if approved by a majority plus one vote. Otherwise, the second hearing must be held after 5:00 p.m. as required by Chapter 125.66, Florida Statutes.*

Staff Contact: Scott Ashley, 943-7059, ext. 2014

VC-1097521279437

County Council Member Jaynes moved for **APPROVAL** and set the second public hearing for December 16, 2004 at 10:00 a.m. for PUD-04-113, and after Council Member Bruno seconded the motion, it **CARRIED** 7-0.

## COUNTY COUNCIL AGENDA – NOVEMBER 11, 2004

### Item 6

#### Order of Business:

*Open Public Hearing*

*Staff Report*

*Public Participation*

*Close Public Hearing*

*Council Discussion/Action*

**Z-04-106 – Application of E. Channing Coolidge, Jr., Attorney for Gas Properties, Inc., Owner, requesting a rezoning from the R-1C (Urban Single-Family Residential/Thoroughfare Overlay Zone) to the B-2C (Neighborhood Commercial/Thoroughfare Overlay Zone) zoning classification. The property is located on the west side of State Road 15A (North Spring Garden Avenue) at its intersection with Glenwood Road, near the community of Glenwood and north of the City of DeLand; ± 2.5 acres; and request to adopt Resolution No. 2004-\_\_.**

***PLDRC Recommendation: APPROVAL***

***Opposition at PLDRC***

***Staff Recommendation: APPROVAL***

Staff Contact: Scott Ashley, 943-7059, ext. 2014

VC-1097514651921

Scott Ashley provided the staff report.

#### Public Participation

- Karen Clark, Glenwood Civil Association, wanted to know if this makes more regulations for gas stations than what it is currently zoned at. If yes, the GCA supports it. State Road 15A is projected to be widened in the future and there is a setback.
- Channing Coolidge, Attorney for Gas Properties, said his client will follow through with the development process. He is unable to say at this time if there is a plan to build a gas station right now, but there will be a convenience market.

There was Council discussion regarding whether alcohol could be sold, as the property is owned by a church. Mr. Ashley advised that the County ordinance does not have a restriction about distance requirements for sale of alcohol located near a church. The church will come back next month for a special exception.

After further discussion, Mr. Ashley advised there is significant frontage on Glenwood Road. The distance along State Road 15A might have a driveway on the southern end. It may have to be a joint driveway. It's a state road, so the state will dictate the type of driveway before issuing a permit.

Council Member Bruno moved for **APPROVAL** as recommended and after Council Member Hayman seconded the motion it **CARRIED** 7 to 0. **Resolution No. 2004-13**, entitled as follows and on file in its entirety with the records of the County Council, was duly **ADOPTED**.

## COUNTY COUNCIL AGENDA – NOVEMBER 11, 2004

### RESOLUTION NO. 2004-213

A RESOLUTION OF THE COUNTY COUNCIL OF VOLUSIA COUNTY, FLORIDA, AMENDING THE OFFICIAL ZONING MAP OF VOLUSIA COUNTY, FLORIDA, BY CHANGING THE ZONING CLASSIFICATION OF CERTAIN HEREIN DESCRIBED PROPERTY FROM R-1C TO B-2C; PROVIDING AN EFFECTIVE DATE.

## Item 7

### Order of Business:

### *Open Public Hearing*

### *Staff Report*

### *Public Participation*

### *Close Public Hearing*

### *Council Discussion/Action*

**PUD-04-102 – Application of Sam Merrill, Jr., Contract Purchaser, Shirley Barnes, Owner, requesting a rezoning from A-2 (Rural Agriculture) zoning classification to Rodeo Road RPUD (Residential Planned Unit Development) zoning classification. The property is located on the east side of Rodeo Road, approximately ± 0.10 miles from its intersection with State Road 40, south of the Volusia-Flagler County Line; ± 89.33 acres; and request to adopt Resolution No. 2004-\_\_.**

**PLDRC Recommendation: APPROVAL**

**Opposition at PLDRC**

**Staff Recommendation: APPROVAL**

Staff Contact: Scott Ashley, 943-7059, ext. 2014

VC-1097696897441

Scott Ashley provided the staff report. This is a residential PUD. It is restricting density on the southern 40 acres of the property. The applicant is proposing to create a development pattern that squeezes between the borrow pit site and a wetland area, creating 2-½ acre size lots. Access from the site comes from Rodeo Road with the existing driveway. There will be no development in the flood plain. Outside the flood plain, 20,000 square feet is restricted. The eastern leg of the road was ending at the south property line. Staff said it can't be done unless a cul-d-sac was used and there was access onto SR 40.

### Public Participation

- James White of Ormond Beach lives on three acres on the northern part of the property. He is concerned about flooding. The top portion of the property is wetlands, but after heavy rains, the water runs off onto other property. Once the property is developed, fill will be brought in and that will affect flooding.
- Leon Parrott of Ormond Beach lives on a street that backs up to this area. If this is approved, he suggests making it three to five acre tracts, not two-acre tracts. That area is contiguous to two places. There is a homeowner's association. Under SJRWMD, EPA residents have to pay for the maintenance of drains, easements and retention ponds. Some of the proposed property will back up to that. When development is started, the developer and owner should be held responsible for anything that affects the drainage,



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etc. of the surrounding properties That area is subject to flooding. There is a pond on the property, which floods with a minimum amount of rain. Mr. Parrott suggests a six to 12 month moratorium to get engineers together to figure out a drainage pattern for the area.

- Faith Collins said her neighbors on Rodeo Road couldn't get off from work, and live on the west side of Rodeo, across from the proposed area. At least 50 neighbors are very concerned and don't want this, but due to work, could not be here, such as the McCabes who live at 200 Rodeo Road. Ms. Collins provided a picture of flooding at the back of the McCabes' property. If the back 40 acres is not going to be developed, why rezone it? She is also concerned with filling in the front area. It's completely flooded. The urban boundaries issue is also of concern. Why can't the 15 houses be put there under the agricultural zoning that already exists?
- Mary Taylor Mardis "Besau," from Ormond, lives on a 10-acre lot. The biggest issue is the flooding. She is not opposed to what Shirley wants to do. We have drainage ditches, which just stop. She has called the County for years to come out and clean out the ditches, which need fixing. Seven of our 10 acres are under water. She was told the ditches run into Flagler County.
- Marie Williams of Ormond Beach lives directly across from the property. She owns 7.5 acres. As more and more homes were developed out there and the land filled out, flooding became more of a problem. There is a drainage ditch south of her property. She has contacted Volusia County about dredging the ditch. When all the wetlands and land are filled in, there will be more flooding, more mosquitoes, etc., if proper drainage is not put in. She is concerned about the septic system and water.
- Joe Cartwright of Daytona Beach stated the proposed development indicates one-acre sites, yet other paperwork indicates 2.5 acres. Why the discrepancy? How will he mitigate the wetlands?

Mr. Ashley advised that in the plan and development agreement, there is no development in the wetlands. That requires a 50-foot wetland buffer. The area is restricted. Only 2.5 acres were lost on the south side of proposed roads. The lots on north side are approximately six acres or larger.

Mr. Cartwright also stated that adding 15 houses will impact traffic patterns. He asked if there will there be a turning lane added off SR 40 for safe access?

- Jason Clark of Ormond Beach lives directly adjacent to property and is concerned with the water, because the land is now under water. He will not be able to maintain his horse farm if there's anymore flooding.
- Christine Greenaway of Ormond Beach lives on three acres and there is a flooding problem. Additional homes being built will cause more flooding.

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- Burdette (Ed) Townsend of Ormond Beach said traffic is a big concern. SR 40 is going to be a four-lane road all the way to Rodeo. It's already tough to pull off SR 40 at the high speeds traveled. The additional traffic will be a problem. It's a no-passing zone, and there's no safe land to pull off. He also understand the property did not pass the soil test. If soil is not perked to take it now, and dirt is added, it will create a runoff.
- Diane Morgan of Ormond Beach is mainly concerned with flooding and additional traffic on the roads.
- Allen Espy, Ormond Beach, is concerned about the water. The diagram shows where the road is going in and another road is coming out onto SR 40. The road going into the property has gone under water. The road coming onto SR 40 was to be a dirt road, used only for emergency purposes. Now there's different information regarding that.
- Connie Marquette of Ormond Beach said her parents live across from property and she lives in a house on Little Bit Lane. Flooding is a problem. She can't ride her horses down Rodeo Road anymore, because of traffic. There is flooding as a result of the storms, and she couldn't get to her trailer to get her horses out. Alligators and moccasins were out there because of the flooding.

Sam Merrill, Agent, said the area is definitely wet and Rodeo Road does flood. The developer believes, as a result of improvements that will be required, the drainage situation will improve. The developer is required to convey water, control the water, contain the water and discharge the water, more than likely into the SR 40 system, working with DOT. The engineers have been instructed to address any discharge coming from the borrow pit, so that is controlled and any discharge will also go to SR 40. State and County requirements dictate controlling a certain amount of water as a result of impervious areas they are creating. They will have pods for the water.

As far as the impact on traffic, this is just 15 lots being developed. The connection on SR 40 will be an improved connection, a paved road. Perhaps, if they have latitude in working with the staff, they could put a cul-d-sac at the end going to Rodeo, so they don't have access on Rodeo, as long as they can have emergency ingress and egress extending from the cul-d-sac onto Rodeo.

Twenty percent of the property is set aside for conservation. The balance of the north 40 acres is private ownership. There will be a conservation easement over the common area.

Council Member Long wanted to make certain that while the developer has control of the two parcels adjoining SR 40, the developer will attempt to move the water from the borrow pit to SR 40. It's not part of the plan, but Council would have to get that on the record and make it part of the motion. Mr. Merrill said they can't control the west side, but they can try to find a way to control the water on east side.

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Council Member Hayman was concerned about the cul-d-sac because of the length of the road and how it impacts existing codes and ordinances. Mr. Ashley indicated staff can look at it. If the distance is not an issue, staff might be able to support it.

Further Council discussion ensued regarding going through this process to request a RPUD because it gives Council the ability to set conditions and requires permitting compliance. State Road 40 is being widened. Maybe the developer could work with DOT for a turn lane cut. The soil analysis was also discussed. Septic will be bounded (a certain distance from water). The stormwater retention area has to be set a certain distance from the body of water. There is an easement along the east side for the length of the property in place now. If there's an easement in place, the developer is willing to work with it. The easements on the property now are intended for access and drainage.

Pursuant to discussion and there being no objection, Council Member Hayman moved for **APPROVAL with the following conditions:**

- 1 – Create a cul-d-sac with end at Rodeo Road.
- 2 - Provide emergency access point for ingress and egress from that point to Rodeo Road.
- 3 – The developer will be responsible for stormwater management control generated by the project by using other surrounding properties.

After Council Member Long seconded the motion, it was duly **ADOPTED** 7 to 0.

### **Item 8**

#### **Order of Business:**

***Open Public Hearing***

***Staff Report***

***Public Participation***

***Close Public Hearing***

***Council Discussion/Action***

**Z-04-097 – Application of Kirk Bauer, Attorney for Frank and Cynthia Fusco, Owners, requesting a rezoning from the A-1 (Prime Agriculture) zoning classification to A-4 (Transitional Agriculture) zoning classification. The property is located on the north side of Blackwelder Road approximately 2,000 feet west from its intersection with State Road 11, near Lake Caraway, northeast of the community of DeLeon Springs; ± 20.5 acres; and request to adopt Resolution No. 2004-\_\_.**

***PLDRC Recommendation: DENIAL***

***Opposition at PLDRC***

***Staff Recommendation: APPROVAL***

Staff Contact: Scott Ashley, 943-7059, ext. 2014

VC-1098712951968

Scott Ashley provided the staff report. A-4 is 2-½ acres. There is no problem with the north parcel. Staff is concerned with the south parcel. There is a wetland area that would make

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development and division of the land difficult. Staff felt A-2 would be more appropriate for that property.

### Public Participation

- Van Canada of DeLeon Springs lives on Blackwelder, directly across the street from the project. There is a slight southerly slope to the property, which can cause stormwater runoff onto his property. The road washes out after rains on El Dorado Road, east of the project. A dirt road cut into this project would create a similar situation.
- Kirk Bauer said there are three points. First, the property is located east of the future land use line. There is a rural designation, including this property to the east, and agricultural designation to the west. After the PLDRC, residents made comments that a line should be established so there aren't smaller lots near the current residents' properties. The County established that line when the future land use designation was made. The A-4 zoning designation, given where it lands on the future land use line, is appropriate. Second, there is a wet area in the southwest corner. Two and a half acre sites could be developed and the wet area can be maintained as a wet area. There's enough property to build on the east side of the lot. Third, to go to A-2, there are 10 acres, and if the applicant goes through development and dedicates a road to the County, the applicant loses property, and ends up with one lot on that southern portion of the property.

Mr. Ashley stated the proposed amendment to the Land Development Code will change the requirements. If this property is approved, a minimum right of way is needed, which takes away property from the southern 10 acres. Under the current standards, five-acre lots would provide an easement but they maintain ownership and could have two lots.

Mr. Bauer advised if the applicants dedicate a roadway, they have to give up lots on the north side as well. Staff's recommendation has them ending up with three lots to the north and one lot to the south. The reason Environmental didn't get into the property is because it was locked, not because of flooding. The south side is now a swampy piece of property. There is some low area in the southwest corner, maybe two of the ten acres. There is an easement on the east side, but only between the homeowners. If there was a right of way along the east line, they could protect the southerly lots and wetlands in the area, but lose lots.

Mr. Ashley advised that if the property has only 10 acres and A-2 zoning, and the applicants provide access to north, they have to provide right of way.

Council Member Alexander moved for **APPROVAL** the staff recommendation of A-2 on the front and A-4 on the back, which was seconded by Council Member Long. Thereupon, there was the following **roll call**:

Council Member Hayman - no  
Council Member Jaynes - no  
Council Member Long - yes

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Council Member Northey - no  
Council Member Alexander - yes  
Council Member Bruno - no  
Council Member Lewis – no

### **The motion failed 5-2**

Council Member Jaynes moved to **APPROVE** rezoning the A-1 zoned classification to A-4, **UPHOLDING** the recommendation of the Zoning staff to **APPROVE Zoning Case Z-04-097**, said motion seconded by Council Member Long, there was the following **roll call**:

### **Roll Call**

Council Member Bruno - yes  
Council Member Hayman - yes  
Council Member Jaynes - yes  
Council Member Long - yes  
Council Member Northey - no  
Council Member Alexander - no  
Council Member Lewis - no  
The Motion **passes** 4 to 3

*The Council later voted to rehear this case on December 16, 2004 at 10:00 a.m.*

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**PULLED CONSENT ITEMS**

County Chair Bruno – none  
Council Member Long - Items 14, 15, 27  
Council Member Jaynes - none  
Council Member Northey - none  
Council Member Alexander - none – correct spelling in #19 as well as #15  
Council Member Hayman none  
Council Member Lewis – Item 19  
Public – Items 19, 20, 32

Council Member Bruno moved to **APPROVE** the **CONSENT AGENDA** and all actions recommended therein, as amended to **remove Items 14, 15, 19, 20, 27 and 32**, for discussion, said motion seconded by Council Member Jaynes and duly **ADOPTED** 7-0.

## COUNTY COUNCIL AGENDA – NOVEMBER 11, 2004

### SPECIAL EXCEPTIONS

#### Item 9

**Order of Business:**

**Open Public Hearing**

**Staff Report**

**Public Participation**

**Close Public Hearing**

**Council Discussion/Action**

S-04-105 - Application of Bechtel Telecommunications, Agent for Cingular Wireless, Applicant, Helen Alderman, Owner, requesting a special exception for a Communications Tower exceeding 70 feet in height (190 feet monopole tower including antennae), with supporting equipment, and a waiver of Section 817.00(w)(5)e, Setbacks and Separation, (for a 500 foot separation from a single-family dwelling in lieu of the required 1,000 foot) on RC (Resource Corridor) zoned property. The property is located on the west side of Morgan Alderman Road approximately 1/4 mile north from its intersection with State Road 46, east of the St. Johns River and the Volusia/Seminole County line. ± 3.5 acres.

**PLDRC Recommendation:** **APPROVAL (with 5 conditions) No Opposition at PLDRC**

**Staff Recommendation:** **APPROVAL (with 5 conditions)**

Staff Contact: Mary Robinson, 943-7059, ext. 2013

VC-1098640098546

Mary Robinson provided the staff report.

Council Member Alexander asked for confirmation that the distance between the tower and the house is 500 feet, less than what normally is allowed and the occupant had no objection.

Ms. Robinson said that was correct.

Council Member Bruno moved for **APPROVAL** as recommended and after Council Member Long seconded the motion it **CARRIED** 7 to 0.

#### Item 10

**Order of Business:**

**Open Public Hearing**

**Staff Report**

**Public Participation**

**Close Public Hearing**

**Council Discussion/Action**

S-04-069- Application of Bob Chopra, WFI, Agent for Cingular Wireless, agent for Owner, Broadway Investments, Inc. c/o Jimmie Townsend, requesting a special exception for a communication tower exceeding 70 feet in height above ground level (220 feet) on FR (Forestry Resource) and RC (Resource Corridor) zoned

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property. The property is located on the south side of State Road (SR) 44, approximately one mile west from its intersection with Pioneer Trail, west of the community of Samsula; ± 11 acres (parent tract).

**PLDRC Recommendation: APPROVAL (with conditions)      No Opposition at PLDRC**

**Staff Recommendation: APPROVAL (with 7 conditions)**

Staff Contact: Mary Robinson, 943-7059, ext. 2013

VC-1098642996858

Mary Robinson provided the staff report.

Council Member Jaynes asked the applicant if this will make service better along S.R. 44 and also asked when there will be a tower on 17-92.

The applicant advised there's a big hole and that there are actually a number of areas in Volusia County that have holes that Cingular is working on.

Council Member Lewis inquired if Cingular has generators. Mr. Chopra, from Cingular, advised that most sites have battery packs.

There was further Council discussion as to why, in #6 of the conditions, a tower not be used. There have been a couple of instances where a tower has been abandoned due to a newer and larger tower and they go to that tower. So the old tower becomes abandoned. The tower is structured for three carriers. Ten feet below is another carrier and then another 10 feet below, there will be a third carrier. It is up to the carrier as to whether it wants to cost-share generators for towers.

Council Member Northey stated she hoped Cingular takes seriously that the County expects it to look at how it will handle emergency power in the future. Council Member Lewis asked Mr. Chopra to take that issue back to Cingular and to provide the County with a letter as to how it will provide emergency power.

Upon Council Member Long suggesting the County enacting an ordinance that will require all future towers to have a generator, Ms. Robinson indicated that language could be added as a condition.

Council Member Long wanted staff to look at this and bring a plan back to Council. He wants to see an emergency management plan devised with the implementation of generators for cell phone usage.

Council Member Hayman agrees the County has to work with the companies. This is definitely a needed tower.

Council Member Jaynes suggested Cingular work with FP&L, because FP&L has priority power.

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County Attorney Daniel Eckert indicated the County has limited jurisdiction under the Telecommunications Act. He would appreciate it if Cingular could report back about Council's concerns.

Council Member Jaynes moved for **APPROVAL** as recommended and after Council Member Long seconded the motion it **CARRIED** 7 to 0.

### Item 11

**Order of Business:**

***Open Public Hearing***

***Staff Report***

***Public Participation***

***Close Public Hearing***

***Council Discussion/Action***

**S-04-109 - Application of A. and Sharon D. Yelle, Jr., Owners, requesting a Special Exception for a Garage apartment on R-1 (Urban Single-Family Residential) zoned property. The property is located on the south side of Glenwood Road, approximately 600 feet west of its intersection with State Road 15A (North Spring Garden Avenue), north of the City of DeLand; ± 1.07 acres.**

***PLDRC Recommendation: APPROVAL***

***No Opposition at PLDRC***

***Staff Recommendation: APPROVAL (with conditions)***

Staff Contact: Scott Ashley, 943-7059, ext. 2014

VC-1098723388374

Scott Ashley provided the staff report. The garage apartment is for the applicant's mother and is consistent with zoning and land use. If it is not used for the mother, then it becomes rental property. There will be a shared driveway with an extension to the rear. Water is provided by the City of DeLand, but not sewer.

Council Member Long moved for **APPROVAL** as recommended with conditions and after Council Member Hayman seconded the motion it **CARRIED** 7 to 0.

### Item 11A

**Order of Business:**

***Open Public Hearing***

***Staff Report***

***Public Participation***

***Close Public Hearing***

***Council Discussion/Action***

**S-04-110 - Application of Dennis K. Bayer, Attorney for Robert and Theresa Hernandez, Owners, requesting a special exception for a single-family residence on**



## COUNTY COUNCIL AGENDA – NOVEMBER 11, 2004

**B-8 (Tourist Commercial) zoned property. The property is located on the east side of State Road A-1-A approximately 350 feet south from its intersection with Breezewood Drive, in the community of Ormond by the Sea; 15,000 sq. ft.**

**PLDRC Recommendation: APPROVAL (with condition) No Opposition at PLDRC**

**Staff Recommendation: DENIAL**

**Staff Contact: Mary Robinson, 943-7059, ext. 2013 VC-1098642372327**

Mary Robinson provided the staff report. There is a five-unit apartment building. The special exception is to convert the building to single-family dwelling. Minimum density would be 2.78 units to meet the urban high-use land use classification. Staff recommended denial because it is not consistent with the urban high-use land use designation. In the interim, the comp plan amendment on the 03-01 cycle addresses the density question. Should that pass, then this should be allowed as it would be consistent. Part of the comp plan cycle was challenged. The DCA just received a settlement agreement back from the County Attorney's office. There would have to be another hearing on it. PLDRC heard this and tied it to the passing of that amendment. Staff has now said this can be passed and supports that today.

County Attorney Daniel Eckert advised that the comp plan is complicated. Council approved a settlement agreement by DCA and a comp plan change. Subsequently, the DCA didn't execute the stipulation because it was concerned it inadvertently affected another part of comp plan challenge that was not resolved. Drafts of the settlement agreement have been exchanged and the parties have to agree on language. We have not determined if we need to bring back the comp plan change to a hearing. The stipulation will have to be brought back due to wording changes. What the applicant is requesting today is the action be approved contingent upon that settlement agreement being executed by all parties and the comp plan being approved at any public hearing.

Council Member Lewis asked why this item could not be continued. County Attorney Eckert advised that the applicant is involved in issues that are not of his making and it's an expense to have his attorney come back to a subsequent hearing, and to maintain the loan commitment.

- Atty. Dennis Bayer stated the property is not dense enough. His clients didn't know they needed a special exception. If this is not approved, the loan commitment will elapse. His clients are asking for approval, subject to the final resolution of DCA of the agreement.

Council Member Bruno moved for **APPROVAL** as recommended, subject to DCA approval, and after Council Member Northey seconded the motion it **CARRIED** 7 to 0.

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### BEGIN CONSENT AGENDA

## COUNTY COUNCIL AGENDA – NOVEMBER 11, 2004

### AIRPORT SERVICES

- Airport Services

#### Item 12

Request to approve the Second Amendment to the Food and Beverage Concession Agreement with MSE International of Florida, LLC, to purchase all required equipment for the Volusia Room Expansion at the Airport; and request to authorize the Chair and County Manager to execute the Second Amendment. [not to exceed \$42,000.00]

Staff Contact: Stephen Cooke, 248-8030, ext. 8309

VC-1096910769624

This item was approved at the time the CONSENT AGENDA was approved.

### FINANCIAL AND ADMINISTRATIVE SERVICES

- Office of the CFO

#### Item 13

Request to adopt Resolution No.2004-\_\_ authorizing the borrowing of \$2,080,000.00 for the refinancing of a Solid Waste loan; request to adopt Budget Resolution No. 2004-\_\_\_\_; request to adopt IRS Resolution No. 2004-\_\_\_\_; and request to authorize the Council Chair and County Manager to sign all related financing documents. [\$2,080,000.00]

Staff Contact: Rhonda Orr, 943-7054, 2961

VC-1098990828217

Josef Grusauskas, 943-7889, ext. 6021

This item was approved at the time the CONSENT AGENDA was approved. **Resolution Nos. 2004-216, 2004-217, 2004-218**, entitled as follows and on file in its entirety with the records of the County Council, was duly **ADOPTED**.

#### RESOLUTION NO. 2004-216

A RESOLUTION OF THE COUNTY COUNCIL OF THE COUNTY OF VOLUSIA, FLORIDA, AUTHORIZING THE BORROWING OF NOT EXCEEDING \$2,080,000 PURSUANT TO THE TERMS OF THE LOAN AGREEMENT BETWEEN THE COMMISSION AND THE COUNTY IN ORDER TO REFINANCE A LOAN PREVIOUSLY MADE TO THE COUNTY IN ORDER TO FINANCE CERTAIN CAPITAL IMPROVEMENTS TO THE COUNTY'S SOLID WASTE DISPOSAL SYSTEM; AUTHORIZING THE EXECUTION OF A LOAN NOTE OR NOTES TO EVIDENCE SUCH BORROWING AND AGREEING TO SECURE SUCH BORROWING WITH A PLEDGE OF DESIGNATED REVENUES AS PROVIDED IN THE LOAN AGREEMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF SUCH OTHER DOCUMENTS AS MAY BE NECESSARY TO EFFECT SUCH BORROWING; AND PROVIDING AN EFFECTIVE DATE.

## COUNTY COUNCIL AGENDA – NOVEMBER 11, 2004

### BUDGET RESOLUTION NO. 2004-217

RESOLUTION OF THE COUNTY COUNCIL OF VOLUSIA COUNTY, FLORIDA, AMENDING THE FISCAL YEAR 2004-05 BUDGET, CHANGING THE ESTIMATED TOTAL REVENUES, SURPLUS AND EXPENDITURES AND PROVIDING AN EFFECTIVE DATE.

### IRS RESOLUTION NO. 2004-218

A RESOLUTION OF THE COUNTY COUNCIL OF THE COUNTY OF VOLUSIA, FLORIDA DECLARING OFFICIAL INTENT OF REIMBURSEMENT OF CAPITAL EXPENDITURES AND PROVIDING FOR AN EFFECTIVE DATE.

## Item 13A

### RFP No. 04-P-244 BB / Banking Services

Request to approve an award of the contract for banking services to the top ranked firm, Bank of America, Tampa, Florida, for an initial three year term, with two one-year renewals, permissible upon mutual written agreement and Council approval; and request to authorize the Council Chair and the County Manager to sign the contract. [\$105,838.48]

Staff Contact: Charlene Weaver, 943-7054, ext. 2725

VC-1096660428655

This item was approved at the time the CONSENT AGENDA was approved.

- Purchasing

## Item 14

Request approval to award Bid No. 04-B-246LB, Contract No. 1114, for the Resurfacing of Various Roads Countywide 2004, to the lowest responsive, responsible bidder, P & S Paving, Inc. of Daytona Beach, Florida. [\$1,620,954.28]

Staff Contact: Gerald Brinton, 736-5967, ext. 2294

VC-1097699958121

Upon Council Member Long getting an answer from Mr. Brinton to his questions, Council Member Long moved for **APPROVAL** as recommended and after Council Member Alexander seconded the motion it **CARRIED** 7 to 0.

## Item 15

Request approval to award Bid No. 04-B-273LB to the lowest responsive, responsible bidder, McMahan Construction, Inc., of DeLand, Florida, for the construction of approximately 4,500 lineal feet of water main and approximately 4,300 lineal feet of force main from 17/92 to the DeBary Hall Visitor's Center and

## COUNTY COUNCIL AGENDA – NOVEMBER 11, 2004

### **Trailhead, located adjacent to the historic DeBary Hall, and authorize the Council Chair to sign all required documentation. [\$219,387.00]**

Staff Contact: Nancy Maddox, 736-5953, ext. 5953

VC-1086700005805

Council Member Long was concerned about whether the line can handle the additional tying into it. Bill Apgar advised it could. Notice has not been given to surrounding neighbors as the County is not ready. Staff can advise them of the construction and utilities, and of tying into the system. Staff will work with utilities to provide a common memo to the residents.

County Manager Cynthia Coto provided some clarification. Water would be available since this is a force main and not a gravity system.

Council Member Long moved for **APPROVAL** as recommended and after Council Member Alexander seconded the motion it **CARRIED** 7 to 0.

### **Item 16**

**Request approval to award Bid No. 04-B-128PW to Sita Construction of Daytona Beach, and to Acoustical Contractors, a Division of Steve Carr Construction of Fruitland Park, Florida, each for three (3) years, with options for two (2) one-year renewals, with Council approval, for carpentry, drywall, plastering, masonry and ceiling installation for small projects for Facilities Services. [\$145,000.00]**

Staff Contact: Fred Schwenck, 248-1760, ext. 1264

VC-1097844197699

This item was approved at the time the CONSENT AGENDA was approved.

### **Item 17**

**Request approval to award Bid No. 04-B-252JJ to Hirt Construction of Osteen, Florida for a period of three (3) years, renewable for two (2) additional one (1)-year periods, contingent upon Council approval, to excavate borrow from stormwater ponds to build solid waste facilities and cover the landfill, pursuant to permits. [\$325,000.00]**

Staff Contact: Josef Grusauskas, 943-7889, ext. 7889

VC-1098709859077

This item was approved at the time the CONSENT AGENDA was approved.

### **Item 18**

**Request authorization to utilize the Shared Interest Cooperative Purchasing (SICOP) Bid 03-001E (Volusia Co. Bid No. 05-B-16JJ), for the purchase of chemicals, for a period of two (2) years, with the option to renew for two (2) additional one-year periods, contingent upon Council approval. [\$120,000.00]**

Staff Contact: Jonas Stewart, 239-6516, ext. 6516

VC- 1098881321202

This item was approved at the time the CONSENT AGENDA was approved.

## COUNTY COUNCIL AGENDA – NOVEMBER 11, 2004

### Item 19

**Request approval to award Bid No. 04-B-263LB, Contract No. 1121, Southwest Activity Center Lift Station and Force Main in Orange City, to the lowest responsive, responsible bidder, McMahan Construction, Inc., DeLand, Florida; and request to authorize the Council Chair to sign all corresponding documentation. [\$1,268,936.00]**

Staff Contact: Gloria Marwick, 943-7027, ext. 2724

VC-1097676162062

County Manager Cynthia Coto received information from FDOT regarding the need to move forward. This is the activity center that the County has worked on for several years for West Volusia. Provision of water and wastewater services is essential to starting that development. Staff looked at work the DOT will be doing in that area. If the County does not complete its project by the end of this year, it will be in a hold status for two and a half years. The County must have its line in that area complete.

Gloria Marwick advised that DOT was constructing an on-ramp off I-4 to the project. This is based on the survey for the DRI. These lines would be installed even for the northwest area. This has been considered for quite awhile. Council will hear the interconnection phase (Phase 1) at the first meeting in December.

Ms. Coto stated there is a 1990 grant stating the County would be the service provider to this area. The City of DeLand expressed an interest in serving this area at a workshop. These utility lines do not violate the verbal discussion that staff had with the City of DeLand. The City of Orange City expressed a desire to service the area south of S.R. 472. At one time, this area was designated as "to be determined" in the future as to a provider. There was a discussion with the City of DeLand as to where the County has drawn the service line at Cassadega Road. Anything north of the line will be serviced by the City of DeLand and south of the line will be serviced by Volusia County. Since the County had capital expenditures on infrastructure, there have been discussions of value of the infrastructure and how the County would be compensated. There is a verbal agreement, so Ms. Coto does not feel it will impact the Cassadega agreement with DeLand. They've encouraged all utility providers in the area to interconnect.

Council Member Hayman indicated if the County moves forward with this, any subsequent discussions with the agreement regarding the DeLand service area could still be addressed and worked out amicably. Ms. Coto concurred and stated the County thought it had reached an agreement. The City of DeLand should voice its opinion. Staff felt the County agreed to a service area amendment that has not been brought forward for action.

Council Member Lewis inquired when construction would begin. Ms. Marwick advised within the next couple of weeks. If the construction is postponed, the timeframe on this will be jeopardized.

## COUNTY COUNCIL AGENDA – NOVEMBER 11, 2004

### Public Participation

- **Mayor Ted Erwin and City Manager** John McCue were present on behalf of the City of Orange City. They said the City has been involved in negotiations over the past five years. Every time there's a meeting, the City of Orange City feels it has an agreement. The City agreed that it would forego any claims to the service area north of S.R. 472 and the County would forego claims to the area south of S.R. 472 and west of I-4. Every time the agreement comes back, it's different. Another thing involved is putting in two wells within the City's acknowledged service area in Orange City. The County said the City could put it in if it gave the County one-half of its production of those two wells. The interlocal agreement the City has with the County would waive all the interlocal agreements that were in force for water. Any new agreements have to come from WAV for wholesale water. The City will consider giving wholesale water to the County, but will not be confined to a certain number of gallons. The City's customers come first. Orange City is looking for an easement on the wells' formal agreement of the service area, and is asking that the County get together with the other cities involved, which are DeLand, Orange City and Deltona. The cities have considered buying out the County and servicing the area themselves. It has a six-inch line going up S.R. 472, which was installed in 1995. The County says a six-inch line cannot serve the potential in that area. It is servicing anyone requesting that water. The City also had an agreement to extend the 16-inch line up to S.R. 472 when the Beltline was opened. Why would the County agree for Orange City to put in a pipeline if that wasn't the case? When asked about the 16-inch line and whether the County would service customers on south side of S.R. 472, County staff said yes. Orange City feels there's no settlement in that area and notified the County two weeks ago that it no longer cares to negotiate and is going back to its original position, which is that the area north of S.R. 472, north of Cassadega, belongs to the City and the City will proceed in that manner. Orange City can solve the conflict with DeLand on this. The cities can work this out. Monday morning, the City was made aware that the County was going ahead with this line and will service customers south of S.R. 472. Orange City has authorized its legal department to get a temporary injunction and proceed with any further legal procedures to assert its position on this issue.

Council Member Lewis said the County has agreed that from S.R. 472 south, is Orange City's area.

Mayor Erwin stated that the Public Works Director said she will sell water.

Ms. Coto indicated that this statement was made six to nine months ago, prior to a subsequent meeting. After that, the County made public statements giving the area south of 17-92 for water. The County has nothing from a staff prospective that violates that verbal agreement.

Mayor Erwin stated the County is laying a pipeline in Orange City's service area and Council Member Lewis said that has been discussed in our meetings.

- John McCue provided some Orange City history. In 1994, the City filed for the service area and followed the intent of the interlocal agreement. The intent of that northeast

## COUNTY COUNCIL AGENDA – NOVEMBER 11, 2004

optional area was first come first served. Orange City then took the next step for water in the area just north of Cassadega Road in 1994. The County could not negotiate with DeLand if it was not a 180 service area. Orange City isn't looking at the financial production-side. Passing a line through the service area is not a concern unless service is being provided. During discussions, Orange City believed that is its service area. When going down the path, the City of DeLand called and asked why was Orange City giving up the service area to the County, and the County was negotiating to sell that service area to DeLand. That doesn't show good faith negotiations. The Orange City Council approved a conflict resolution process Tuesday night and also authorized the city attorney to seek injunctive relief and a declaratory judgment. Orange City followed the letter, terms and conditions of the interlocal agreement. The County did not give Orange City anything. The City has a six-inch line and a 16-inch line underneath S.R. 472 in preparation of its system above and beyond. It also has a new water line coming down S.R. 472 from Minnesota, and has spent \$55,000 for a force main, in joint participation with the County. The City understands the County's investment out there. Things have changed since those investments. Three utilities in the area are not good. The capacity of excess water availability is not there. Orange City is being told that it does not have the capacity to serve that area. It's the County that doesn't have the capacity. Orange City says if the County proceeds with this, the City will do whatever it believes is necessary to prevent that from happening. The waterline is already there, so the time constraints should be for under I-4 for the wastewater.

Council Member Long asked if there was anything heard on public record today to lead the City of Orange City to believe this can't be worked out? Mr. McCue said he hasn't heard the County say it is the owner of that service area. That puts the City of Orange City at odds with the County because the City believes the service area belongs to Orange City.

Council Member Long questioned whether the installation of the lines serve a public purpose if contested. Public Works Director Mary Connors advised that the County is the service provider for the area on the north side of S.R. 472. The intent to connect lines in that area, anticipates that these lines are in place. If the County puts the service provision aside, these lines should be there. The County's commitment in terms of bringing water and wastewater to the activity center was to deliver the infrastructure and allow a DRI to handle it. The County proceeded on that basis ten years ago, when it put those plants in that area. Each city's lines should be coming in there to make it a multi-agency use of those lines. The County could be handling regional services.

Council Member Jaynes said there are systems on the eastside that lie close together and coexist. Orange City indicated it is not interested in future revenues. Why is the County in a big hurry to spend \$1.2 million to make it okay for people, or is it the money?

Mr. McCue advised that the City of Orange City is not looking at it as a lucrative growth area, otherwise it would have come to the County.

Council Member Jaynes felt these issues belong in a workshop forum.

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Mayor Erwin said that two and a half weeks ago, the City sent an email to Council and didn't get a response until yesterday. Council Member Lewis stated the County talked about getting wells in before WAV came in.

Mayor Erwin indicated all parties do need to talk about this globally, not just the County, Orange City, or DeLand. Deltona plays a role in the picture too. He'll bring it back to his Council at its next meeting.

- Mike Abels, DeLand City Manager, said DeLand is also in a position, and is pleased with the progress made on the activity center. The primary areas of difficulty are the utility system and who is to provide the utility service delivery. There have been negotiations at staff level as to who has service delivery responsibility since 2002. DeLand worked on several compromised areas, such as coming down to Cassadega Road. Mr. Abels thinks joint participation in the planning of that whole area needs to be discussed. That hasn't been done with the utility system. The City is concerned about the lift station being proposed. Water and sewer are the two parts of the project. Is it not best for the County, DeLand, Orange City and Deltona to jointly decide how to provide service? Would it not be better for DeLand to extend the sewer down to MLK and down to S.R. 472 since it has systems in that area? If DOT and the time constraints are a primary problem, is it not possible to still do the four-way participation and joint planning by protecting the County's vested interest by bringing sewer across I-4 toward the contract in phases, and then hold in abeyance the rest of the contract until all four parties can meet and discuss? The City of DeLand does have a vested interest and feel a staged-construction is best so issues can be discussed.

Ms. Connors was hesitant to discuss if the contract could be broken up into stages. She doesn't think that's the right approach. The County should proceed with making service available.

Council Member Hayman asked what was the problem with going ahead with the project and then sorting things out, including if it's decided this is not the County's lift station?

Mr. Abels said part of the problem is the magic of value. Everything put in the ground will have a value put on it. What the County has proposed to the City regarding moving down S.R. 472, with respect to value, is \$8 million. There is no way to provide utilities in that area and ever pay that back, at what the County says its worth. If it is moved down to Cassadega Road, the City is being asked to buy out the County's impact fees and a plant. The more infrastructure put in the ground, the more to argue over as to value. The City can provide the service within S.R. 472 at no cost. There's already water coming across. Everything put in the ground may be a redundant expenditure that may have not been required if there was a joint approach. The City of DeLand has asked for mediation on the value difference, which has not been accepted.

Council Member Long is looking at the regional view and wants to keep it in Volusia County. If the County has to get policy setters together, let's do it. The activity center and getting it up and out of the ground is more important than who's providing service.



## COUNTY COUNCIL AGENDA – NOVEMBER 11, 2004

Mr. Abel said the County already has the water. It's the sewer that's the problem. It can be broken out separately.

Council Member Jaynes thought everything was defined in the DRI.

Ms. Coto advised that the 1994 agreement stipulates the entire DRI area north of S.R. 472 belongs to the County. That's what the County used as its guiding principle. The City of DeLand signed off on that.

Council Member Jaynes suggested that each municipality put up a \$2 million bond on the \$8 million infrastructure.

Council Member Lewis directed Ms. Coto to set up a meeting.

Council Member Alexander moved for **APPROVAL** as recommended and after Council Member Bruno seconded the motion it **CARRIED** 7 to 0.

### **GROWTH AND RESOURCE MANAGEMENT**

- **Land Acquisition**

#### **Item 20**

**Request approval of the Volusia Forever Group A and B List (Exhibit A), as submitted, with direction to staff to begin the acquisition process on the Group A properties.**

Staff Contact: Doug Weaver, 740-5261, ext. 2953  
Rob Walsh, 740-5261, ext. 2297

VC-1098382955718

#### **Public Participation**

- Sam Roth of DeLand represents RBD Ltd. and is asking for RBD Ltd. land to be put on the "A" List. Carrie Stewart suggested he come before the County. The property is on the St. Johns River and is now flooded. If it is not bought to absorb the floods, developers, who have a big interest in the property, will get it. The County needs to keep the property the way it is. It's the last piece of property on St. Johns River, south of Woodruff Wildlife, that is available. He doesn't know what is happening with flooding, but it could flood all the way up to S.R. 44. It won't affect the St. Johns Water District, or the federal government, only Volusia County.

Doug Weaver indicated that Volusia Forever thinks this property should remain on the "B" list. It has looked for a partner. It could move to the "A" list at some point, if a partner emerges. It's mostly a hardwood swamp, and access is limited. When this property was evaluated against other properties, it was put on the "B" list.

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Council Member Jaynes asked if a conservation easement could be put on the property to protect it from offers? Mr. Weaver advised RBD Ltd. wants a fee simple acquisition and are asking for \$5,000 per acre.

Rob Walsh advised the property has an assessed value of \$300/acre and is in the 100-year flood plane.

Mr. Roth advised there are 13 people looking at buying the property so they can bring in their boats. If these people come in, a road will be built, and houses and docks will be put up there. They can put a well and septic tank on each one. He's trying to get the County to buy it because it's for the people of the County, not for anybody else. It will flood because it absorbs flood areas now. Even without access from the road, these 13 people want to buy it. If the County doesn't buy it, the 13 people will have a contract by the end of the year.

Council Member Jaynes moved for **APPROVAL** of the lists and to begin the acquisition process, as recommended and after Council Member Alexander seconded the motion it **CARRIED** 7 to 0.

### Item 21

**Request to approve the Florida Communities Trust Grant Contract for the Doris Leeper Spruce Creek Preserve, Phase II, and Paul and Bayou Bay Properties, and authorize staff to proceed with the Project Plan and Management Plan; and adopt Budget Resolution 2004-\_\_\_ for appropriating \$1,384,900.00 in grant funding.**

Staff Contact: Doug Weaver, 740-5261, ext. 2953  
Bill Gardner, 740-5261, ext. 2082

VC-1098887257109

This item was approved at the time the CONSENT AGENDA was approved. **Resolution No. 2004-219**, entitled as follows and on file in its entirety with the records of the County Council, was duly **ADOPTED**.

#### RESOLUTION NO. 2004-219

RESOLUTION OF THE COUNTY COUNCIL OF VOLUSIA COUNTY, FLORIDA, AMENDING THE FISCAL YEAR 2004-05 BUDGET, CHANGING THE ESTIMATED TOTAL REVENUES, SURPLUS AND EXPENDITURES AND PROVIDING AN EFFECTIVE DATE.

- **Leisure Services**

### Item 22

**Request to approve Task Assignment No. 5 to the contract with Environmental Consulting & Technology, Inc., of New Smyrna Beach, for coastal engineering services, to evaluate, design and to provide specifications, permitting, bidding assistance and construction phase services for the seawall and park facility repair**

## COUNTY COUNCIL AGENDA – NOVEMBER 11, 2004

**and/or improvements for the 27th Avenue Park located in the City of New Smyrna Beach, Project No. 5300. [\$66,000.00]**

Staff Contact: John Harper, 736-5953, ext. 2663

VC-1098816841417

This item was approved at the time the CONSENT AGENDA was approved.

- **Planning and Development**

### **Item 23**

#### **Final Plat Application - 04-S-FPL-0555**

**Request for approval to grant a Development Order approving the application for a Final Plat and approval of the required Maintenance Agreement and any necessary Performance Agreement for the Lakewood Terrace subdivision, subject to resolution of conditions 1 through 4 contained therein.**

Staff Contact: Palmer M. Panton, 736-5942, ext. 2736

VC-1098819717855

This item was approved at the time the CONSENT AGENDA was approved.

#### **LEADERSHIP**

- **Community Information**

### **Item 24**

**Request for approval of fiscal year 2004-05 website provider expenditure to Far Reach Technologies Inc., for www.volusia.org, its subwebs, live streaming County Council meeting audio and beachcam, and other web-related services. [\$30,000.00]**

Staff Contact: Dave Byron, 822-5062, ext. 2616

VC-1098998416358

This item was approved at the time the CONSENT AGENDA was approved.

- **Economic Development**

### **Item 25**

**Request to adopt Resolution No. 2004-\_\_\_\_\_, authorizing the submission of an application to the State's Qualified Target Industrial Tax Refund Program (QTI), on behalf of BBK PERFORMANCE, INC., a California-based manufacturer and distributor of auto parts and accessories, creating up to 30 new manufacturing and distribution jobs, averaging in excess of \$32,000.00 annually, within thirty-six months of occupancy. [20% local cash match or a total of \$18,000.00]**

Staff Contact: Richard Michael, 248-8048, ext. 8377

VC-1098994501217

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This item was approved at the time the CONSENT AGENDA was approved. **Resolution No. 2004-220**, entitled as follows and on file in its entirety with the records of the County Council, was duly **ADOPTED**.

### RESOLUTION NO. 2004-220

A RESOLUTION BY THE COUNTY COUNCIL OF VOLUSIA COUNTY, FLORIDA FINDING THAT SAID COMPANY REFERRED TO AS BBK PERFORMANCE, INC. BE APPROVED AS A QUALIFIED APPLICANT PURSUANT TO S.288.106, FLORIDA STATUTES; AND PROVIDING AN APPROPRIATION OF UP TO \$18,000 AS LOCAL PARTICIPATION IN FLORIDA'S QUALIFIED TARGET INDUSTRY TAX REFUND PROGRAM; AND PROVIDING FOR AN EFFECTIVE DATE

### Item 25A

**Request to adopt Resolution No. 2004-\_\_\_, authorizing the submission of an application to the State's Qualified Target Industrial Tax Refund Program (QTI) on behalf of PROJECT HOMELAND, an information technology company specializing in government related services, creating up to 300 new to Florida full-time jobs, averaging in excess of \$50,000.00 annually within thirty-six months of occupancy. [20% local financial match or a total of \$300,000.00]**

Staff Contact: Richard Michael, 248-8048, ext. 8377

VC-1099686390843

This item was approved at the time the CONSENT AGENDA was approved.

- **Leadership**

### Item 26

**Request for approval of Public Official Bonds for County Council Chair Frank T. Bruno, and County Council Members Dwight Lewis, Art Giles, Jack Hayman, Carl Persis, and Bill Long; and request to approve Public Official Bonds for Sheriff Ben F. Johnson, Property Appraiser Morgan Gilreath, Elections Supervisor Ann McFall, and Clerk of the Court Diane Matousek.**

Staff Contact: Sue Whittaker, 736-5920, ext. 2188

VC-1097689558640

This item was approved at the time the CONSENT AGENDA was approved.

### Item 27

**Request to authorize the County Manager to execute the Letter of Agreement with Daytona Beach Community College (DBCC) and authorizing the transfer of property to DBCC for the development of a corporate and cultural training center/multi-use meeting facility along the eastside of Veterans Memorial Parkway, across from the County's PFC Bennett Park in Orange City, and approve the transfer of 37.52 +/- acres to DBCC.**

Staff Contact: Matt Greeson, 736-5920, ext. 5549

VC-1099334950429

## COUNTY COUNCIL AGENDA – NOVEMBER 11, 2004

Council Member Long requested an update on the status of the project for the benefit of the Council.

Matt Greeson advised that Council has a letter of agreement with DBCC, and if it is approved, it will transfer 37.52 acres to DBCC to make way for development of the cultural training facility. The Letter Agreement assures cooperation between the County, the City and DBCC as we move forward. The County will retain the property adjacent to this for further recreation development and will have right of way for future extension of Rhode Island. This ensures the property the County is giving away and what is retained, is developed in a coordinated manner.

David Darsey, Vice President of Real Estate Research Consultants, said there are planned stages. Right now, they are working on budget issues. The things put into this agreement protect the County. This is the premier project in Southwest Volusia. It's a unique partnership.

Council Member Long moved for **APPROVAL**.

Council Member Northey said the Letter Agreement calls for a five-year window. In the past, the County has had a seven-year window. Mr. Darsey said a seven-year window is not out of line, but if they need an extension of a five-year window, they will come back to Council.

Council Member Northey further indicated that there's no dollar amount assigned to this. She would expect a dollar amount be included in a recommended motion, to be paid back to enhancing the additional grounds, such as with trails.

Ms. Coto said Council acknowledges that. Money will be taken out of the general fund and put into Volusia Forever. The amenities would be associated with the development of the site.

Council Member Bruno asked if they go for the super grant under ECHO, is there a time frame? Margaret Hodge stated if the land is to be used as a match, there's not a length of time; it has a value. Time is not an issue.

Council Member Long moved for **APPROVAL** as recommended and Council Member Northey seconded the motion.

Council Member Hayman supports the motions, but it was mentioned they would be coming back for additional funds in the approximate amount of \$1.6 million. Is that one lump sum, over an extended period of time, a letter of credit, or what? Larry Atkinson said they don't need it all at one time. The construction period will be at least three years. The design phase will take 18 months. Then, all the money is needed to sign a contract with the contractor. The urgency right now is catching the Legislature. We need to come back before the end of the year at the Dec. 2<sup>nd</sup> meeting to make a presentation and a formal request, in order to get a State match. They could spread it over at least two years.

## COUNTY COUNCIL AGENDA – NOVEMBER 11, 2004

Council Member Lewis instructed Ms. Coto to look at the budget and the Dec. 2<sup>nd</sup> meeting as a possibility.

Council Member Alexander was not prepared to vote on money today.

Ms. Coto advised they will come back to Council on December 16<sup>th</sup> to give staff time to prepare.

The motion **CARRIED** 7 to 0.

### **PUBLIC PROTECTION**

- **Animal Services**

#### **Item 28**

**Request to approve the service contract with Halifax Humane Society to impound animals, from the unincorporated areas and included municipalities, for fiscal year 2005. [\$160,000.00]**

Staff Contact: Becky Wilson, 248-1790, ext. 3522

VC-1098802820327

This item was approved at the time the CONSENT AGENDA was approved.

- **Emergency Management**

#### **Item 29**

**Request to approve the Emergency Management Preparedness and Assistance Trust Fund Grant Agreement, and adopt Budget Resolution 2004-\_\_\_. [+\$102,959.00]**

Staff Contact: Jim Ryan, 254-1500, ext. 1505

VC-1098989949436

This item was approved at the time the CONSENT AGENDA was approved. **Resolution No. 2004-222**, entitled as follows and on file in its entirety with the records of the County Council, was duly **ADOPTED**.

#### **RESOLUTION NO. 2004-222**

RESOLUTION OF THE COUNTY COUNCIL OF VOLUSIA COUNTY, FLORIDA,  
AMENDING THE FISCAL YEAR 2004-05 BUDGET, CHANGING THE ESTIMATED  
TOTAL REVENUES, SURPLUS AND EXPENDITURES AND PROVIDING AN  
EFFECTIVE

## COUNTY COUNCIL AGENDA – NOVEMBER 11, 2004

### PUBLIC WORKS

- Engineering

### Item 30

Request to approve the Local Agency Program (LAP) Agreement between the Florida Department of Transportation and the County of Volusia, for the design and construction of Bellevue Avenue Extension Paved Shoulders from Williamson Boulevard to Clyde Morris Boulevard in the City of Daytona Beach; and request to adopt Resolution No. 2004- \_\_\_\_, authorizing the Council Chair to sign the LAP agreement; and request to adopt Budget Resolution No. 2004 - \_\_\_\_, approving the expenditure of grant funds for the Bellevue Avenue Paved Shoulders project. [\$472,879.00]

Staff Contact: Gerald N. Brinton, 736-5967, ext. 2294

VC-1098198797078

This item was approved at the time the CONSENT AGENDA was approved. **Resolution Nos. 2004-223 and 2004-224**, entitled as follows and on file in its entirety with the records of the County Council, was duly **ADOPTED**.

#### RESOLUTION NO. 2004-223

RESOLUTION OF THE COUNTY COUNCIL OF VOLUSIA COUNTY, FLORIDA, AMENDING THE FISCAL YEAR 2004-05 BUDGET, CHANGING THE ESTIMATED TOTAL REVENUES, SURPLUS AND EXPENDITURES AND PROVIDING AN EFFECTIVE DATE.

#### BUDGET RESOLUTION 2004-224

A RESOLUTION OF THE COUNTY OF VOLUSIA, FLORIDA, AUTHORIZING THE COUNCIL CHAIR TO SIGN A LOCAL AGENCY PROGRAM AGREEMENT WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION FOR THE BELLEVUE AVENUE EXTENSION PAVED SHOULDER PROJECT IN DAYTONA BEACH, FLORIDA.

### Item 31

Request to approve the Local Agency Program (LAP) Agreement between the Florida Department of Transportation and the County of Volusia, for the design and construction of the Kepler Road Paved Shoulders project, from SR 44 to Talmadge Drive (north intersection) in Volusia County; request to adopt Resolution No. 2004- \_\_\_\_, authorizing the Council Chair to sign the LAP agreement; and request to adopt Budget Resolution No. 2004 - \_\_\_\_, approving the expenditure of grant funds. [\$244,392.00]

Staff Contact: Gerald N. Brinton, 736-5967, ext. 2294

VC-1098209089218

## COUNTY COUNCIL AGENDA – NOVEMBER 11, 2004

This item was approved at the time the CONSENT AGENDA was approved. **Resolution Nos. 2004-225 and 2004-226**, entitled as follows and on file in its entirety with the records of the County Council, was duly **ADOPTED**.

### RESOLUTION 2004-225

A RESOLUTION OF THE COUNTY OF VOLUSIA, FLORIDA, AUTHORIZING THE COUNCIL CHAIR TO SIGN A LOCAL AGENCY PROGRAM AGREEMENT WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION FOR THE KEPLER ROAD PAVED SHOULDER PROJECT IN VOLUSIA COUNTY, Florida.

### BUDGET RESOLUTION NO. 2004-226

RESOLUTION OF THE COUNTY COUNCIL OF VOLUSIA COUNTY, FLORIDA, AMENDING THE FISCAL YEAR 2004-05 BUDGET, CHANGING THE ESTIMATED TOTAL REVENUES, SURPLUS AND EXPENDITURES AND PROVIDING AN EFFECTIVE DATE.

## Item 32

**Request to adopt Resolution No. 2004-\_\_\_\_ approving the acquisition by eminent domain of Pond "A" for the intersection improvement at Tymber Creek and Airport Road in Ormond Beach, Florida; and, approval of the Intersection Improvement Evaluation Report establishing the necessity for the acquisition.**

Staff Contact: Gerald Brinton, 736-5967, ext. 2294

VC- 1092678906296

Matthew Guy Minter, 736-5950, ext. 2947

### Public Participation

- John Upchurch, an attorney in Daytona Beach, said the property owners think the pond can be located somewhere else. They want to either sell the property or develop it themselves.

Deputy County Attorney Matthew Guy Minter advised if voluntary acquisition negotiations are not successful, and the County has to file a eminent domain action, the courts say a landowner cannot object to the acquisition by saying "don't take my property." There are five criteria to be considered:

- Long range area of planning
- Costs
- Environmental factors
- Availability of alternate sites
- Safety

Mr. Brinton provided the staff report and explained the need for the project. Staff looked at each of the four quadrants and this is the best location. Staff has tried negotiating with the property owners.



## COUNTY COUNCIL AGENDA – NOVEMBER 11, 2004

Council Member Jaynes stated this is a critical intersection for Ormond Beach.

Mr. Upchurch said the owner owns both lots, on the north side and south side. There are mobile homes. They have owned the property for a long time with the intent to develop it down the road. A pond doesn't make sense to be placed at the corner of a major intersection. Other commercial activity makes more sense, not only for the property owner, but also for County taxes.

Council Member Lewis said anytime the County can move a stormwater pond off a major intersection, he thinks that would be more appropriate.

Mr. Brinton advise just to the east of this parcel and parcels on the northeast, is the resource corridor. This is a buffer. The other quadrants are not developed.

Pursuant to discussion, Council Member Jaynes moved to **ADOPT Resolution No. 2004-227**, entitled as follows and on file in its entirety with the records of the County Council. After Council Member Long seconded the motion, it was duly **ADOPTED** 7 to 0.

### RESOLUTION NO. 2004-227

A RESOLUTION OF THE COUNTY COUNCIL OF VOLUSIA COUNTY, FLORIDA, RELATING TO THE ACQUISITION OF A PARCEL OF REAL PROPERTY CURRENTLY IMPROVED WITH TWO MOBILE OR MANUFACTURED HOMES, SWIMMING POOL, WOOD RAIL FENCING AND SHED, WELLS AND SEPTIC SYSTEMS, LANDSCAPING AND DRIVEWAY, IN ORMOND BEACH, VOLUSIA COUNTY, FLORIDA FOR THE PURPOSE OF IMPROVING THE INTERSECTION OF TYMBER CREEK ROAD AND AIRPORT ROAD; APPROVING ACQUISITION OF PARCEL A BY GIFT, PURCHASE OR CONDEMNATION, FOR THE PURPOSE OF NECESSARY IMPROVEMENTS INCIDENT TO THE TYMBER CREEK AND AIRPORT ROAD INTERSECTION IMPORVEMENT PROJECT; PROVIDING AN EFFECTIVE DATE.

- **Water and Utilities**

### **Item 33**

**Request to approve the EPA Section 319(h) grant contract No. WM792 time frame extension, to November 18, 2005, for the "Riverbreeze Park Wetland Stormwater Treatment Facility".**

Staff Contact: Gary Cook, 943-7027, ext. 2309

VC-1098364337624

This item was approved at the time the CONSENT AGENDA was approved.

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**END CONSENT AGENDA**

## COUNTY COUNCIL AGENDA – NOVEMBER 11, 2004

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### LUNCH RECESS – Lunch at the Fairgrounds

#### Item 34

*Order of Business:*

*Open Public Hearing*

*Staff Report*

*Public Participation*

*Close Public Hearing*

*Council Discussion/Action*

Public hearing and request to adopt Resolution No. 2004-\_\_\_ abandoning/vacating a portion of 40-foot wide Vermont Avenue lying within the J.A. Lizzie Davis Subdivision and 30-foot wide Goodall Avenue lying within the Map of W.W. Marshall Subdivision (the Vermont Avenue and Goodall Avenue beach approaches in the Daytona Beach area), for the purpose of development of the property. [Daytona Oceanfront LLC, Petitioner]

Staff Contact: Matt Greeson, 736-5920, ext. 5549

VC-1095689025343

Matt Greeson provided the staff report. Because of significant interest on this item, and it being a beach approach, staff had a PowerPoint presentation explaining everything.

**Proposed Abandonment  
Vermont & Goodall Avenue Beach Approaches  
Staff Report  
November 11, 2004**

**Abandonment/Vacation Process**

- Property owner makes application (Daytona Oceanfront LLC).
- Application is distributed to internal departments and sometimes FDOT or City staff to review.
- Applicant obtains consent letters from utility providers.
- Right of Way Activity coordinates and compiles responses.
- County staff negotiates with applicant to address identified concerns.
- Staff advertises public hearing and sends complimentary notifications to nearby residents (in this case across A-1-A and one block west of A-1-A on both Vermont and Goodall Avenues).
- Public hearing held by the County Council

## COUNTY COUNCIL AGENDA – NOVEMBER 11, 2004

### Beach Access abandonment/vacation staff considerations

- Volusia County Beach Code, Section 20-83, Preservation of access through existing approaches
- F.S., Chapter 161.55 (5), PUBLIC ACCESS
- F.S., Chapter 336.09 Closing and abandonment of roads; authority
- Comments received during review process
- Other guidance:
  - Beach Management Plan

### Beach Code Section 20-83

- “Neither the county nor any municipality shall vacate any approach to the beach or allow the same to be used for private purposes not otherwise preserved to a property owner as a matter of law; provided that, the county may vacate an approach if it determines that equal or superior access is created within 1,000 feet of the vacated approach. No approach may be vacated until the new access is constructed and accepted for maintenance by the county or the affected municipality.”

### What was not considered.

- Staff did not require a site plan of the applicant as the City has comprehensive planning, zoning, and site planning jurisdiction.
- As a result, staff did not examine setback, building height, landscaping, or other site development issues.
- Additionally, there is no 51% requirement for consent of nearby or neighborhood property owners. In this case, applicant owns on both sides of the right of way.

### Overview of Proposed Abandonment/Vacation

- Applicant proposes to vacate:
  - Vermont Avenue beach approach
    - » 40 ft. wide
    - » Closed beach ramp, except during non-toll season (2 months of each year)
    - » Provides little off-beach parking
  - Goodall Avenue approach/walkover
    - » 30 ft. wide
    - » Pedestrian access via dune walkover
    - » Provides little off-beach parking

Photos displayed.

## COUNTY COUNCIL AGENDA – NOVEMBER 11, 2004

### Applicant Proposal

- Fee simple title to 70 ft. width of land adjacent to north property line of SunSplash Park.
- 6 ft. public easement from A-1-A to beach at north end of applicant's property.
- Construction and maintenance of public pedestrian way for public use in easement.
- Permitting and construction of parking and pedestrian facilities and related improvements in 70 ft. being deeded.

### Applicant Proposal, continued

- Dune creation and plantings
- Seawall extension necessary for expansion of park in 70 ft.
- Vehicular beach approach
- Walkover near north end of SunSplash Park expansion.

### Applicant Proposal, continued

- New access would be approximately the following distances from the current accesses and in compliance with the Beach Code:
  - Approx. 364 ft. from current Vermont Avenue access.
  - Approx. 83 ft. from current Goodall Avenue access.

Council Member Bruno said that when the budget was submitted, he didn't think it included a replacement tower on Main Street in this area, or moving the whole Beach Department to this location. He asked how many parking spaces there were right now?

Mr. Greeson said in the budget submitted, it encompassed more than the Main Street headquarters and moving the other headquarters. The application for the vacation came in before approval of the budget. The opportunity for additional parking space for the beach patrol headquarters was known to staff at budget approval time. There is a small staff of 440. Most of the staff comes to the station in the morning and then goes to their assigned locations. West of the facility are parking spaces that are on existing County-owned land that the County plans to develop. The spaces will be used to help accommodate the beach patrol facility and any excess parking.

Ms. Coto advised this concept was identified at the budget workshop. The proposed budget adopted by Council was \$1.8 million and includes this construction and the consolidation of the two lifeguard towers. There was no additional land that needed to be acquired.

Mr. Greeson added that this helps facilitate the development and improves the location of the beach patrol facility.

## COUNTY COUNCIL AGENDA – NOVEMBER 11, 2004

Council Member Alexander said the Code states the County has to provide the public with equal or superior access if anything is done with beach ramps. Is there any difference between these two access points?

Deputy County Attorney Frank Gummey advised that from a user standpoint, there's not a significant difference. The County has no ownership interest in the two rights of way. It just has a dedication for use by the public and the County controls it. Fee simple title of the 70 feet of the park gives control. The resolution says the County cannot have any interference of the public's use of the easement.

### **Public Participation**

- Aidan Magee of the Volusia/Flagler Environmental Action Committee, said Sun Splash Park is a great asset that is wonderfully utilized. Why build a beach patrol facility on the most expensive property on the beach? Why not build across the street? The County is giving away a valuable asset.
- Neil Harrington of the South Atlantic Redevelopment Board finds it interesting for staff to make a presentation for the petitioner, instead of the petitioner making a presentation. The original vote of the board was 5-2 in favor of this. The Board felt redevelopment in Daytona Beach is not needed. The entire process has been of limited information. When it came before Board, there was no site plan and there were no answers because nobody knew anything. The Board made the wrong vote. There are a lot of things going on that were not done in front of the public. The Board revisited the issue and voted 5-0 against recommending this project. This is not an even exchange. It is not of matter of law, rather a matter of quality of life for the citizens. Access is very important. There are people who built homes expecting to see the beach. A compromise is needed between the developer and the residents. Please do not take a vote today or vote against it.

Ms. Coto said, for clarification for Council, the Beach headquarters is on existing property that the County owns. The conveyance or vacation and the new beach access may make it more attractive, but as for parking spaces and building the facility, it's on existing County property.

- Terrie Campbell of Son's of the Beaches said she was here to represent handicapped people and many other organizations, which represents thousands and thousands of citizens. This has not been brought before the Beach Advisory Board, which should have been the first step of the process. Vote no and stop it now.
- Art Giles of South Daytona said the residents are truly concerned about the beach and their neighborhood access to that beach. This is their home. They have pleaded with him to stand beside them. There's no way he would abandon their trust in him to help fight this Council to listen to them. The County is gaining some parking places on the 70 feet to be deeded to the County. The public will have to compete at certain times for parking spaces. On the north side of the parking lot, on Sun Splash Park, there are 14 parking spaces that have been eliminated.

## COUNTY COUNCIL AGENDA – NOVEMBER 11, 2004

- Stephen W. Ricks of Daytona Beach said this deal does not have to be accepted. If Council says no today, it invites another offer by the applicant.
- Karen Ricks with the Ocean Dunes Neighborhood Association said she is limited in what she can say, yet staff can add what they want to. A deeded land is something we own. An easement is something the builder owns and let's us walk on. Fee simple title is new, but allows the builder to own our property. Section 20-83 says equal and superior access. Are we getting that when they own it and we don't? Also, the code says "may", which is not "must" or "shall" vacate. It's not mandated. The approach currently allows breezes to go through a corridor into the neighborhoods. If you move the approach, it will no longer do that. Four approaches have been taken from Ocean Walk and this is two more.
- Dianne Johnson of Daytona Beach asked if this property is deeded property, who actually owns it and who has the right to give it away, or trade it?

Mr. Gummey said Vermont and Goodall are owned by the property owners, Oceanfront LLC. A dedication of a public right of way is imposed on that property by the original owners of the property, and thus the County is responsible for the public right of way and controls its purpose. It also has other purposes for access and egress for adjoining property. What is proposed is for the public to abandon its right to utilize the two properties for public purpose in exchange to providing public access. The applicant will deed 70 feet of the north side of Sun Splash Park. The County would not only control, but would have full ownership of that property. Also proposed on the north end of the applicant's property, is a six-foot public pedestrian easement.

- Peter Cort, Broadway to Beach Neighborhood Association, Inc., displayed a board showing the area to be affected by the decision. A total of 154 homes use the access, at \$180,000 each. That's \$27 million worth of property. The Association is not in a CRA. Any devaluation of their property comes out of the pockets of the city and the County. The development is in the CRA. Not a dime of that additional value will be in the County's pocket. From a financial standpoint, this could be a disaster for the neighborhood, and at the same time do nothing for the County.

Council Member Lewis said the heights of buildings and setbacks are controlled by the City of Daytona Beach. Mr. Cort said the minute the beach approaches are used, the width of the property is affected, which is how the city controls it.

- Janet Hamer with the Ocean Dunes Neighborhood Association suggested the request be rejected.
- Harry R. Henderson with the Ocean Dunes Neighborhood Association is opposed to the abandonment of closing beach access.

## COUNTY COUNCIL AGENDA – NOVEMBER 11, 2004

- Mark Reed of Holly Hill said the heights of buildings are important. Width determines how high the buildings are, which in turn, determines how much shade there will be. So the heights of buildings do need to be considered.
- Thomas R. Thibeault of Daytona Beach said the key here is neighborhoods and how this affects the neighborhoods. The older neighborhoods were set up with breezeways and a view of the ocean. Take that away and the value goes down. He hopes Council votes in opposition of this.
- Dereck Thornton of Daytona Beach bought his house because of the access in front of it. He is opposed.
- Barbara Welsh of Ormond Beach believes, after looking at the slides, the County will get better than what it has. She supports this.
- John J. Nicholson of Daytona Beach (Seebreeze) stated all approaches are at an angle because of the sea breeze. Residents had a reasonable expectation the County would not destroy their quality of life. If Council grants this, it will destroy their quality of life. You can't close one section of Goodall without affecting the rest of it. What you do today will affect what the City of Daytona Beach decides. The City does not want the Adams Mark and Ocean Walk development up and down the beach. The County did not go before boards, or even the City of Daytona Beach.
- Tracey Remark of Daytona Beach, quoted from an email from John Harper to Bill Apgar regarding parking spaces. Across the street counts regarding "nearby property owners." All environmental concerns staff looked at had to do with turtles, birds, etc. Humans are also part of the ecology. The breezeway is needed for the quality of life for the access and citizens. Depending on heights of breezes, breezes are slowed down from 10 MPH to 0-2 MPH. Daytona Beach has codes that allows this to be developed right now, as it is, and has been looking at, for the last year, the environmental impact of breezes.
- John Wagner with the Ocean Dunes Neighborhood Association says everything has been said tonight. A weatherman on the weather channel was broadcasting from Daytona Beach during storms. One location was the Ocean Walk breezeway and he was unable to stand up. In Daytona Beach Shores, the winds were measured. The buildings behind were affected.
- Joey Deen of Port Orange requests Council reject this item.
- John Schobert of Daytona Beach asks Council to vote against this.
- Beverly R. Thibeault of Daytona Beach wrote a letter of protest. She is opposed to giving away both accesses to the beach. Their present view is a valuable asset to their property.

## COUNTY COUNCIL AGENDA – NOVEMBER 11, 2004

She is opposed to new construction that does not take into consideration the ecological affects.

- Walter F. Hayes of Edgewater and with Sons of the Beach, used Miami Beach as an example, remembering it back in 1954 and how it is today. Don't give away any existing access.
- William Kretlow of Daytona Beach said if more buildings re constructed, where will you put everybody? Taking beach access away will do more damage to his property than the hurricanes did.
- Richard Kane of Daytona Beach urged Council to continue the matter. He examined the backup materials and they are misleading. Council should have all information and implications of Council's action. If Council approves the vacating, it approves the project. If Council denies it, the project is dead. The letter from the Daytona Beach Development Board dated April 12<sup>th</sup>, was not the last action. That letter should not have been in backup materials. Staff reported that you need letters from public utilities and your backup says you don't have those letters. Council has no information from the most critical utility, that being the City of Daytona Beach. The City Manager's letter from Daytona Beach says he and the city don't have enough information to make a recommendation. The city's letter also said an 18-foot pedestrian easement is needed on the north side of the property. The County's resolution says six feet instead.
- Bob Davis of Port Orange and with the Hotel/Motel Association of Volusia County, said the Association feels it's a win-win situation for the County (FOR). This is a chance to make the beach approaches into what they should be. The buildings there today are a disgrace for our community.
- Marti A. Smolinski of Daytona Beach is representing the entire block of Davis Street. The entire block of Davis was not provided notified regarding this. She has lived here and used that approach since 1977 and feels giving the developer anything is not fair.
- Commissioner Shiela K. McKay of Daytona Beach is not representing the City Commission. She lives in this neighborhood and this affects her. Timing is everything. This affects the whole City as well as the neighborhood. There are 435 historically registered houses between International Speedway Boulevard and Silver Beach. She requested this item be postponed.
- Jeff Brock, represents the Petitioner: There is some confusion as to what is before Council tonight. The Petitioner has offered to deed fee simple interest of contiguous land to Splash Park, and, at its expense, construct a beach parking to increase the number of off beach parking space, vehicular beach ramps and pedestrian walkway. On the north end, the Petitioner is offering six-feet for an easement. Although the Petitioner will have fee simple title, it will have use to the public. Petitioner has planned for 10 parking spaces on the public right of way on the Vermont and Goodall beach approaches. The proposed



## COUNTY COUNCIL AGENDA – NOVEMBER 11, 2004

design on the donated parcel on the 70 feet is 40-50 spaces, depending on landscaping and the ultimate layout. Since it is contiguous to Sun Splash Park, it increases use of the amenities there. As far of value on the trade is concerned, a 70-foot parcel has a much larger value, if you look at this as an asset owned by the public, than a 400-foot and 30-foot area. Beachfront land is selling for \$30,000 per linear foot. The dedication of the 70 feet gives the County the opportunity to relocate its lifeguard station, with vehicular design for access to the beach. The vacation of Vermont and Goodall does not become effective until the Petitioner builds the improvements and dedicates these lands to the County. Access will increase if this application is approved. Seventy feet will be deed to the County. We don't count that. The standard for review is the vacation process and whether it is equal or better. In this case, it's not equal, it's better. Petitioner offered to meet with the public to discuss what will be built there. There will be two or three public hearings, and there will be staff input from City of Daytona Beach.

Council Member Lewis said he has never supported vacating public beach access and will not do that today.

Council Member Bruno said years ago, he indicated he would never give up beach access. He did not support the vacation of Seebreeze Boulevard. This issue should have been heard by the Beach Advisory Board and other boards, as well as the city. He is opposed to this.

Council Member Hayman is disappointed that the Beach Advisory Board and the city had not been consulted. He will support this request because he thinks there are checks and balances in the system to work this out and it gives the County us a net increase.

Council Member Long said everybody wants the County to purchase property and establish off beach parking. In this instance, the County is gaining parking spaces. The employees will not impact these parking spaces. Seventy-six feet versus seventy feet, public ownerships versus cross-access easements, means a gain to Volusia County. The process may have been flawed, but he will support the resolution of abandonment for the purpose of gaining more access.

Council Member Alexander had spoken with Glenn Storch, Chairman of the Beach Advisory Committee. In 1988, voters said the County will manage the beach. She does see that the County will be owning the 70 feet and then will have public access by law of the other six feet. There is a gain.

Council Member Northey said after looking at letters, the city would have had 90 days to prepare its position, and it has not done that. This is a vacation and an exchange. She has consistently supported the redevelopment efforts of Daytona Beach. Ocean Walk has cleaned up the community, provided income and a job base. It looks attractive and there is a rebirth in Daytona Beach. She will support this because it's better than an even exchange, doesn't give up beach access and supports redevelopment.

Council Member Jaynes said his sentiments do lie with property owners and homeowners, but he has to make a decision based strictly on this issue.

## COUNTY COUNCIL AGENDA – NOVEMBER 11, 2004

Council Member Bruno said the County is setting a precedent here. If this is approved, how will the County deny anything down the road? This is going against a public right, which the public has right now. This was done behind the scenes and not done in a public process.

Council Member Bruno moved to **DENY** the request. The motion dies for lack of a second.

Council Member Hayman moved to ADOPT the resolution for abandonment and accept the 70 foot and six- foot wide properties and Council Member Long seconded the motion.

Council Member Lewis was concerned whether the six feet would be adequate for disabled access. Council Member Hayman said his motion could include six feet or more in the motion. Council Member Lewis thought it should be at least 10 feet.

The attorney for the developer would like to defer the width of the easement to the site plan process, but he can commit to working with the City of Daytona Beach, since it's a usable access.

Council Member Lewis said it is important to know that there should be enough access for two wheelchairs to pass there. Attorney Brock said the developer will make it functional.

Deputy County Attorney Frank Gummey suggests adding language stating the requirement be that it is ADA compliant.

Council Member Hayman, amending his motion, moved for **APPROVAL** of abandoning/vacating a portion of 40-foot wide Vermont Avenue lying within the J.A. Lizzie Davis Subdivision and 30-foot wide Goodall Avenue lying within the Map of W.W. Marshall Subdivision (the Vermont Avenue and Goodall Avenue beach approaches in the Daytona Beach area), for the purpose of development of the property, with the revisions that a pedestrian walkway be provided that is at least six feet wide and ADA (American Disabilities Act) compliant, and after Council Member Long the motion, there was the following roll call:

### **Roll Call**

Council Member Bruno - no  
Council Member Hayman - yes  
Council Member Jaynes - yes  
Council Member Long - yes  
Council Member Northey - yes  
Council Member Alexander - yes  
Council Member Lewis - no

The motion **passed** 5-2, with Council Members Bruno and Lewis opposed.

**Resolution No. 2004-228**, entitled as follows and on file in its entirety with the records of the County Council, was duly **ADOPTED**.

## COUNTY COUNCIL AGENDA – NOVEMBER 11, 2004

RESOLUTION NO. 2004 -228

RESOLUTION VACATING AND ABANDONING CERTAIN RIGHT OF WAY, EASEMENT OR LAND IN VOLUSIA COUNTY, FLORIDA AND PROVIDING AN EFFECTIVE DATE

### Item 35

**Order of Business:**

**Open Public Hearing**

**Staff Report**

**Public Participation**

**Close Public Hearing**

**Council Discussion/Action**

**Request for consideration of a Notice of Proposed Change for the National Gardens Development of Regional Impact (DRI) and adoption of Resolution No. 2004-\_\_.**

**Staff Recommendation: *The NOPC does not represent a substantial deviation. However, staff recommends that the Council adopt the NOPC with the condition included in the staff report.***

Staff Contact: Montye Beamer, 736-5959, ext. 2000

VC-1097522939717

Montye Beamer provided the staff report. The areas left for DRI are those areas in Ormond, and those areas south of Small Pines. The large portion remaining is Plantation Oaks. There's a bit of land left to the north of that which has no planned development. This development impact has lessened the number of units. With 762 units, staff has lessened the impact again of the development regional impact. There is now the ability to adopt this resolution showing it does not represent a substantial deviation.

Council Member Jaynes moved for **APPROVAL** as recommended and after Council Member Northey seconded the motion it **CARRIED** 7 to 0. **Resolution No. 2004-229**, entitled as follows and on file in its entirety with the records of the County Council, was duly **ADOPTED**.

#### **RESOLUTION NO. 2004-229**

A RESOLUTION OF THE COUNTY COUNCIL OF VOLUSIA COUNTY, FLORIDA, AMENDING RESOLUTION NO. 86-192, APPROVING AN AMENDMENT TO THE TRUSTEES OF THE NATIONAL GARDENS DEVELOPMENT OF REGIONAL IMPACT (DRI), BY REMOVING 406.70 ACRES OF LAND FROM THE NATIONAL GARDENS DRI KNOWN AS MISSION PINES (226.40 ACRES) AND TALL PINES (180.30 ACRES); BY AMENDING THE LEGAL DESCRIPTION IN EXHIBIT A OF RESOLUTION NO. 86-192 TO DELETE THE 406.70 ACRES; BY APPROVING AN AMENDMENT TO MAP "H" TO REMOVE MISSION PINES AND TALL PINES FROM THE MASTER DEVELOPMENT PLAN; BY APPROVING AN AMENDMENT TO MAP "P" TO ADJUST THE PHASING PLAN TO REFLECT THE REMOVAL OF THE 406.70 ACRES; BY APPROVING AN AMENDMENT TO MAP "Z" TO REMOVE MISSION PINES AND TALL PINES AND THE

## COUNTY COUNCIL AGENDA – NOVEMBER 11, 2004

RESIDENTIAL UNITS CONTAINED WITHIN THOSE AREAS FROM MAP “Z”;  
PROVIDING AN EFFECTIVE DATE.

### **Item 36**

**Order of Business:**

***Open Public Hearing***

***Staff Report***

***Public Participation***

***Close Public Hearing***

***Council Discussion/Action***

**Request of Scott Culp, Executive Vice President, Sandspur Housing Partners, LTD (Enterprise Cove Apartments), to assess road and school impact fee rates regarding a proposed 216 unit affordable housing apartment complex, at the rates in effect on February 19, 2004. The proposed project is located on the east side of Enterprise Road near Diplomat Drive, within the municipality of Orange City.**

Staff Contact: Mary Robinson 943-7059, ext. 2013

VC-1098469644999

Mary Robinson provided the staff report. She provided what the fees were as of 2/19/2004 and what the current rates for roads, schools and project costs and also discussed rates as of February, 2005. Mr. Culp also asked that the effective date for school impact fee be extended, just for his project, should this request be denied. The developer had a pre-application meeting. There's no development order or project permits. Staff recommends the request be denied.

Ron Yates advised there are probably more than seven apartment complexes in the pipeline right now.

#### **Public Participation**

Scott Culp of Maitland, and Executive Vice-President of Sandspur Housing, said Council did approve this project earlier this year and has a housing finance authority. There's a very lengthy process for affordable housing. When this was approved by Council in February, the applicant applied to the State in March, and was aware of the necessary subsidy. This is the same zoning, and everything as developed last year in Orange City. The difference is this is the first time that there's been a substantial increase in impact fees during the lengthy process it has gone through. Mr. Culp addressed a few items in the staff report. The building permit applications will be submitted by the end of this year or by January. The developer is only requesting the February 19<sup>th</sup> date be moved, but recognized that Council has not adopted an impact fee ordinance regarding the schools. When that ordinance is adopted, Council sets a date for projects. This community will not be viable for affordable housing if the fee is increased and Council has the authority to implement affordable housing developments. Council has the authority, as it triples the school impact fees, to consider the impacts on the affordable housing process and the resources that can't be used again. The allocation of this year's taxes allocation will be used. That's why the developer is requesting that Council make the effective date for communities that received bond allocations at least 90 days beyond February 1<sup>st</sup>. All permits should be in hand by the end of the first quarter.

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After questions from Council, Mr. Culp further advised that sometimes the permitting time takes longer, so maybe by the end of second quarter, at the latest. There's a hardship placed on the affordable housing, not just with Volusia County, but proceeding through the housing finance authority process approved by the State. We didn't anticipate the increase in the impact fee would be triple what it used to be and thought we would have our permits prior to that. The bond allocation for this year will be lost because of this short timing gap, because of the implementation of the new fee. There will be 216 apartments, with one child for every apartment home. The interest rate is a weekly low floater rate based upon the market for tax-exempt bond rates. It is tax exempt. It will be a fully amortized rate for 30 years.

County Attorney Daniel Eckert advised this is a subject for Council to take up as a matter of legislative policy when it addresses school impact fee on January 20<sup>th</sup> and asked Mr. Culp if he had addressed the school district staff. Mr. Culp said he has not heard back from them. The request has been routed, but he has not addressed them himself. He can address the school board prior to January 20<sup>th</sup>. That impact would be important to the developer.

Council Member Jaynes asked what triggers the point where they must pay their impact fees? Ms. Robinson said they have to pay by the Certificate of Occupancy. The ordinance sets the amount. Mr. Yates further advised that the ordinance states when you can get your impact fee study done and pay the fee is set upon application for a building permit, and the fee must be paid by the time the certificate of occupancy is issued.

Mr. Culp said if they can get the building permit, this is not applicable. The developer is only asking for the review of the effective date. It does not object to paying it now.

Mr. Eckert advised that no action is required at this point.

- **Port Authority**

### **Item 37**

**Request to consider the Federal Feasibility Cost Share Agreement for the Volusia County hurricane and storm damage reduction study, and request approval for the Chair and County Attorney to execute the attached agreement between the Department of the Army and Volusia County, Florida. [The non-Federal share of the total study cost is \$1,500,000.00. The State of Florida, Long-range Beach Erosion Control Program anticipates providing 50% of the non-Federal share. If the State participates in this program the local share for the County will be reduced from \$1,500,000.00 to \$750,000.00]**

Staff Contact: Joe Nolin, 248-8072, ext. 8335

VC-1097853013015

Joe Nolin provided the staff report. In 1999, the County requested the Federal government conduct a storm damage reduction reconnaissance study. It was completed

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earlier this year and there is federal interest in the protection of the County's beaches. Now an analysis is needed. The Board will only be bound by what is provided annually by the Federal government in support of this project. The County has a great deal of input and influence, on the local level, as to the outcome of this analysis. Only beach-compatible sand will be used for shore protection.

Council Member Jaynes was concerned because the County recently approved money for erosion on the beach.

Council Member Northey would rather spend the money on buying up beachfront property than on a study. She does not support this item.

Council Member Hayman said after the hurricanes, everybody heard the congressional special appropriations for communities that were hard hit. Volusia County was not a recipient because it is not a participant in the Federal Shoreline Preservation Program. Had the County been a recipient of that, it would have had a lot of Federal money to restore our beaches. The County works through the U.S. Army Corps of Engineers and the State level. The two are not combined.

Council Member Alexander asked what happens at the end of the second year when the Federal government says there is no money for the third and fourth years? What happens to the money?

Mr. Nolin advised it stays in place until the Federal government gives more money. The benefits realized are worth the wait.

Mr. Nolin also explained that beach compatibility is often a challenge. The permitting demand on the material meets native beach characteristics and specifications as far as grown size and coloration. This doesn't halt all other efforts.

Upon recommendation by the County Manager, Council Member Long moved to **CONTINUE** this item and after Council Member Alexander seconded the motion it **CARRIED** 5 to 2, with Council Members Northey and Jaynes opposed.

### Item 38

~~Council direction regarding the Florida Inland Navigation District (FIND) and the U.S. Army Corps of Engineers, modifying current plans for Intra-coastal Waterway (IWW) dredge spoil disposal in the Central Volusia reach, to include placement on the South Beaches in Segments B and C, and include a maintenance dredging event at Ponce de Leon Inlet. [The current cost share with the State for beach erosion control on the south beaches is approximately 65% County and 35% State. Given this, the following estimated project cost share values are derived: County of Volusia \$4,810,000.00, State of Florida \$2,590,000.00 for a total of \$7,400,000.00]~~

Staff Contact: Joe Nolin, 248-8072, ext. 8335

VC-1097872051546

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WITHDRAWN BY STAFF

### REPORTS

May be heard anytime throughout County Council meeting as time permits

NONE

### OTHER BUSINESS - NOMINATIONS/APPOINTMENTS

NONE

### PUBLIC PARTICIPATION

- Barbara Herrin, of the Volusia Citizens Alliance for Responsible Growth, read a letter dated Nov. 11, 2004 to Council from Leslie Blackner, Attorney for the Volusia Citizen's Alliance for Responsible Growth, Inc.

County Attorney Daniel Eckert stated among the issues that Tom Cloud suggested, there is an emergency order that extends the 60-day window. Tom Cloud believes the VGMC staff has an adoption hearing in December 16, 2004. Mr. Eckert and Mr. Cloud talked about the scope of the VGMC and Mr. Eckert think Mr. Cloud feels like it requires certification.

Ms. Herrin indicated the Volusia Citizens Alliance for Responsible Growth does not speak to the VGMC process. It appears there is to be a concurrent review with its process. There are other arguments along that line.

Mr. Eckert did not agree with the word "prompt". The charter doesn't say "prompt." He is working towards a "soon as possible" adoption hearing. Staff is reviewing the VGMC staff's timeline.

Ms. Herrin requested a synopsis for the Alliance's attorney.

Mr. Eckert said he is unable to state when Council is having an adoption hearing on December 16<sup>th</sup>. If something changes, he will advise Ms. Blackner.

### DISCUSSION BY COUNCIL OF MATTERS NOT ON AGENDA AND COMMITTEE REPORTS

#### Council Member Frank Bruno

- Council Member Bruno asked if the County could petition the DCA to make a decision quickly on the UGB issue before it.

Mr. Eckert advised the court granted an expedited review. The briefs have been filed. There's no more to be done until the court makes a decision.

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Council Member Bruno said If VGMC is asking for more time, that puts the County in a situation that it cannot put it up for adoption in December. Mr. Eckert advised staff is reviewing that. The charter says the VGMC rules of procedures are for enforcement. It is the Council's ordinance that creates the timeline. However the UGB confers upon Council's separate grant of authority and staff is reviewing the positions.

- Council Member Bruno received calls regarding dredging of the Inlet. We've been working with the Federal government on that. In light of the destruction of the dunes in New Smyrna Beach, can staff contact Congressman Mica or Feeney to expedite the dredging so material can be moved down to New Smyrna Beach?

Ms. Coto advised that item will be back to Council on December 2<sup>nd</sup>, due to a change in the conditions south of the Inlet as a result of storm activity.

- Council Member Bruno asked that Item 8, which Kirk Bauer brought before Council earlier in the day, be reconsidered and brought back to Council. He was on the prevailing side and can bring it back up. He felt he made the wrong decision regarding that matter.

Ms. Coto advised that due to advertising requirement, it could not be heard until December 16<sup>th</sup>.

Council Member Bruno **MOVED** to reconsider Item 8, which motion was seconded by Council Member Long. Thereupon, there was the following **roll call**.

### **Roll call**

Council Member Alexander - yes  
Council Member Alexander Bruno - yes  
Council Member Alexander Hayman - no  
Council Member Alexander Jaynes - no  
Council Member Alexander Long - yes  
Council Member Alexander Northey - no  
Council Member Alexander Lewis - yes  
4-3

The motion **CARRIED** 4-3, with Council Members Hayman, Jaynes and Northey opposed.

### **Council Member Bill Long**

- Council will only have two options regarding the 04-02 cycle amending the comp plan: Withdraw the submittal of the entire comp plan, or take the portion pertaining to the UGBs out.

County Attorney, Daniel Eckert indicated he has difficulty with the staff's interpretation of the VGMC's rules of procedure. When they say they cannot enact before January, the County shows it transmitted the plan to the VGMC on Aug. 27<sup>th</sup> and receipt was acknowledged on Sept. 8<sup>th</sup>. Those rules apply to the normal comp plan transmittal by the County. The constitution provides a



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charter can set the priorities between municipal and county ordinances. Chapter 163 states the charter can provide for comp planning authority. If a charter says a county has comp planning authority, it's not inconsistent with Chapter 163. The VGMC, as result of 1986 charter amendment, which is implemented through County ordinances, established limited priority and that authority was delegated to the VGMC to determine consistency of comp plans.

- Council Member Long said that Council members having conversations with senior staff members is a contentious matter. He doesn't want to be left out of discussions and will continue to have conversations with senior management. He felt if there were conversations occurring outside of the legal department, he should be included in them.

Mr. Eckert advised he didn't have conversations.

### Council Member Joe Jaynes

- There is not a clear understanding as to what authority the VGMC has and there are UGBs sitting out there in the wings. He implores Council, at the next goal setting session, to do away with the VGMC.

County Attorney Eckert advised it is the Council's job to implement UGBs. It's not self executing. Council will have a large say in determining how Council sees its role with respect to the amendment, in the adoption of the ordinance.

### Council Member Pat Northey

- Council Member Northey also said she has a lot of conversations with senior staff, and those are her conversations. Any of the other Council members are free to have conversations as well.
- Council Member Northey indicated the cost of the Goodall project is \$30,000 per linear foot. She suggested using Volusia Forever money to pick up some beach property.

### Council Member Dwight Lewis

- Council Member Lewis **MOVED** to give a \$25.00 gift certificate to those employees who worked hard during the elections and hurricanes, and after Council Member Long seconded the motion, it **CARRIED** 7 to 0.
- Council Member Lewis distributed a form to the other Council members pertaining to the upcoming reviews of the County Manager and County Attorney.

## DISCUSSION BY STAFF OF MATTERS NOT ON AGENDA

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### County Manager Cynthia Coto

- Staff has looked at the Happy Whale property. Based upon the preliminary estimates, the County could get 100 off-beach parking spaces. This property is approximately 1,000 feet north of Tom Renick Park.

Council Member Alexander **MOVED** for staff to proceed with acquiring the Happy Whale property, and after Council Member Northey seconded the motion, it **CARRIED** 7 to 0.

- Ms. Coto advised that two meetings ago, Council authorized staff to provide the County's position and letter of opposition regarding the annexations into the City of Deltona. The City is proceeding with its annexations. One parcel is on east side of S.R. 415 and the other parcel is south of Doyle Road. There is a 30-day time constraint, if Council wants to challenge Deltona's decision. That means actions must be taken by December 1<sup>st</sup>. She asked for guidance from Council if it wants to proceed with the challenge.

Council Member Alexander **MOVED** to move forward with challenging the City of Deltona's decision on annexation of the two parcels, and after Council Member Northey seconded the motion, there was further discussion.

Council Member Lewis expressed his concern about the property being contiguous and meeting the criteria. The landowner wants to annex and he doesn't think the County can prevail on that issue.

Council Member Long agrees with Council Member Lewis.

Council Member Hayman thought that Deltona's policy was not to go east of S.R. 415 and one of the properties is in that vicinity.

Council Member Long said his recollection was the City of Deltona made an offer on public record not to annex on SR 415 unless the County moved the lines on UGBs.

Council Member Lewis said the east side of S.R. 415 doesn't meet the criteria, but Doyle Road does.

Thereupon, the following roll call was held:

### **Roll call**

Council Member Long – no  
Council Member Northey – yes  
Council Member Alexander – yes  
Council Member Bruno – yes  
Council Member Hayman – yes  
Council Member Jaynes – yes  
Council Member Lewis – no

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The motion **CARRIED** 5 to 2.

Ms. Coto clarified that there is a resolution drafted by the County Attorney's Office regarding the conflict resolution process.

Pursuant to discussion, Council Member Jaynes moved to **ADOPT Resolution No. 2004-230**, entitled as follows and on file in its entirety with the records of the County Council. After Council Member Alexander seconded the motion, it was duly **ADOPTED** 7 to 0.

### RESOLUTION NO. 2004-230

A RESOLUTION OF INTENT OF THE COUNTY COUNCIL OF THE COUNTY OF VOLUSIA TO INITIATE CONFLICT RESOLUTION PROCEDURES UNDER THE FLORIDA GOVERNMENTAL CONFLICT RESOLUTION ACT PRIOR TO PROSECUTING THE COUNTY OF VOLUSIA'S ACTION TO BE FILED IN THE CIRCUIT COURT AGAINST THE CITY OF DELTONA CHALLENGING THE CITY'S RECENT ANNEXATION OF CERTAIN PARCELS OF LAND IN THE UNINCORPORATED AREA OF THE COUNTY; AND PROVIDING WHEN THIS RESOLUTION SHALL TAKE EFFECT.

- Ms. Coto advised there was a summary judgment hearing with Second Judicial Circuit Court regarding the DID issue. The County of Volusia has joined with other counties in opposing what it feels is an unfunded mandate. The County of Volusia is one of 31 counties withholding payment, and expects a threatening letter from the state about withholding monies.

### Deputy County Attorney Frank Gummey

- Mr. Gummey said good-bye and thanked Council.

## ADJOURNMENT

There being no further business before the Volusia County Council, the meeting was adjourned at 8:30 p.m.

APPROVED  
COUNTY COUNCIL  
VOLUSIA COUNTY, FLORIDA

BY \_\_\_\_\_  
Dwight D. Lewis Chair

ATTEST \_\_\_\_\_  
Cynthia A. Coto  
County Manager