

CITY COUNCIL OF EDGEWATER
REGULAR MEETING
JUNE 16, 2008
7:00 P.M.
COMMUNITY CENTER

MINUTES

MINUTES FOR ITEMS 1 - 7B WERE DONE BASED ON NOTES TAKEN DURING THE MEETING DUE TO THE FIRST HOUR OF THE MEETING NOT RECORDING.

1. CALL TO ORDER

Mayor Thomas called the Regular Meeting to order at 7:00 p.m. in the Community Center.

ROLL CALL

Mayor Michael Thomas	Present
Councilwoman Debra Rogers	Present
Councilwoman Gigi Bennington	Present
Councilwoman Harriet Rhodes	Present
Councilman Ted Cooper	Present
Acting City Manager Tracey Barlow	Present
Assistant City Attorney Michael Ciocchetti	Present
City Clerk Bonnie Wenzel	Present

INVOCATION, PLEDGE OF ALLEGIANCE

There was a silent invocation and pledge of allegiance to the Flag.

2. APPROVAL OF MINUTES

A. Regular Meeting of February 4, 2008

Councilman Cooper moved to approve the February 4, 2008 minutes, second by Councilwoman Rhodes.

The MOTION CARRIED 5-0.

B. Regular Meeting of March 3, 2008

Councilman Cooper moved to approve the March 3,-2008 minutes, second by Councilwoman Rhodes.

The MOTION CARRIED 5-0.

C. Regular Meeting of March 17, 2008

Councilman Cooper moved to approve the March 17, 2008 minutes, second by Councilwoman Rhodes.

The MOTION CARRIED 5-0.

D. Regular Meeting of May 5, 2008

Councilman Cooper moved to approve the May 5, 2008 minutes, second by Councilwoman Rhodes.

The MOTION CARRIED 5-0.

3. PRESENTATIONS/PROCLAMATIONS/PLAQUES/CERTIFICATES/DONATIONS

There were no Presentations at this time.

4. CITIZEN COMMENTS

The following citizens spoke:

Dominic Capria, 606 Topside Circle, stated two meetings ago he asked about sick/vacation savings. He asked what the savings was. Does it involve Police, Fire & General? Acting City Manager Barlow informed him \$4,023.42 was saved this year. He added that 100% of the employees had a reduction.

Dot Carlson, 624 Art Center, asked if the Charter Review Committee had any plans to bring up the height amendment in the next 20 years. Councilwoman Rhodes stated that would be discussed tonight.

Carol Stoughton, 2740 Evergreen Drive, asked Council if they read the papers about the water shortage. Volusia County will be out of water in 7 years. The City wants to bring in 9,800 homes. Two people on City Council were financed by developers and she hopes they don't vote on development we don't need. She stated people come to her disgusted. The Mayor ran on "keep green". Volusia County is in debt \$20 million. The City Council should move and advertise for energy companies to come in and establish water safe efficiencies. Who are the wells for, existing

residents or developers? She wanted to know what was spent this year on the attorney compared to the old one. She wants a call with that answer.

Bob Lester, 2230 Needle Palm Drive, stated he has an article that says the Charter Review Committee says to revote on the height limit. He wanted to know why they should revote. He stated that someone has something to gain. He stated and elections another 13 months, why 13 months. Why should we have to put up with you? Councilwoman Rhodes stated to save the City money. Mr. Lester stated they should not take the pay. Councilwoman Rhodes stated she was not doing it for free. Councilman Cooper stated these were two agenda items to discuss tonight. Mr. Lester stated they would pass them.

5. CITY COUNCIL REPOPRTS

Councilwoman Rhodes responded to Mr. Lester by stating the fact is she goes to these meetings and does her job. She stated it costs gas money. If any one else wants to do this go ahead. Mr. Lester stated he would do it. Councilwoman Rhodes stated then get elected. She added that she does worry about money. Who doesn't? If she could she would be happy to let people call her names for free.

Councilman Cooper read his report into the record.
(Attached)

Mayor Thomas stated based on performance level Acting City Manager Barlow has done great. He commended Steve Cousins on the 4th of July event. He stated the event was still on mostly because of three boat manufacturers. He further explained the day's events and organization of the event.

Councilwoman Bennington stated she was glad the Association took the initiative to ask for donations. She was glad to see this get back to what it was and that it would not cost the taxpayers a dime.

Councilwoman Rogers stated she has received numerous phone calls from Cherrywood. She stated most of the issues have been addressed, but 211 Cherrywood is consistently a problem. She gets calls for non-maintenance and would like to see this looked at. She also stated the yard waste trucks are not picking up debris. She asked who cleans up

when an owner does his own roof. Acting City Manager Barlow stated that the owner/contractor is responsible. He further stated that Code would give about 10 days to resolve the issue.

Councilwoman Rogers stated she has received e-mails on the height amendment. She stated that 35 feet is not going to make or break the City right now. Some projects already exceed the 35-foot height limit. Economics have nothing to do with 35 feet. She stated the City should look at what will attract business. She asked that Restoration bring businesses first then homes. She stated that the people to the south would come to shop.

Councilwoman Bennington stated the shelter is on schedule and the building should be up during the second week of July. She stated the renovation plans are almost complete.

Councilwoman Bennington stated the employee lunch was great, but wondered what is Chinese Grouper? She stated it was really good.

Councilwoman Bennington said included in the last budget the City was able to participate in the League of Cities conference. This is a very good conference to go to. She stated she has talked to Acting City Manager Barlow & Finance Director McKinney and money is available if anyone wants to go. It is \$871 per person total. She stated they set Legislature there. Councilwoman Rhodes stated she was interested and that the conference is very beneficial.

Councilwoman Bennington stated Acting City Manager Barlow has been in that position since December. He declined a raise at that point. Every position has gotten a raise. Councilwoman Rhodes asked if he asked for out of class pay. Councilwoman Bennington stated she would like to ask City Council to give him a 10% raise. They are now paid up with Jon Williams. She does not want to lose him. Acting City Manager Barlow asked them to consider amending it to 2-5%, although he appreciated the gesture. Councilwoman Bennington stated the prior City Manager received travel expenses. Acting City Manager Barlow pays his own. He is one of the best City Managers we have had. Mayor Thomas asked if this would affect his pension. Acting City Manager Barlow stated no. Councilwoman Rhodes asked if he received a clothing allowance. Councilwoman Bennington stated he gets nothing.

Councilwoman Bennington moved to give Acting City Manager Barlow a 5% raise with allowance, expenses up to \$500 a month retroactive.

Motion DIED due to the lack of a second.

Councilman Cooper asked Acting City Manager Barlow to give them an idea as to what would be compatible.

Councilwoman Bennington moved to give Acting City Manager Barlow a 7 ½% raise with no allowance and not retroactive, second by Councilman Cooper.

The MOTION CARRIED 5-0.

6. CONSENT AGENDA

There were no items on the Consent Agenda to be discussed at this time.

7. PUBLIC HEARINGS, ORDINANCES AND RESOLUTIONS

- A. Resolution No. 2008-R-07, supporting the FDOT in the development and implementation of the Central Florida Commuter Rail Project

Assistant City Attorney Ciocchetti read Res. 2008-R-07 into the record.

Acting City Manager Barlow made a staff presentation.

Councilwoman Bennington asked how this would benefit us directly. Acting City Manager Barlow stated this is a request of the MPO. The intent is to help alleviate traffic in Central Florida on I-4. It could benefit our residents if they go that way. Councilwoman Bennington stated the MPO asked them to support this. Councilman Cooper stated there was one more year to get approval by the State. This was a consolidated effort by the County. At some point we will be asked for money. This is a plan for the future. Councilwoman Bennington stated in the long run it will cost us.

Mayor Thomas opened the public hearing.

Dave Ross, 2803 Needle Palm Drive, stated he was not educated in the pros and cons they see on this. He is concerned the MPO put this out for political reasons. The City could become a political pawn. Do you know DOT is right and the opposition is wrong? This will cost us. The State will pay millions.

Councilwoman Rhodes stated there are valid questions that need to be answered. Councilman Cooper stated they argued this at each MPO meeting. Million of dollars will benefit Port Orange, Daytona Beach, and Ormond Beach. This is political football. Councilwoman Rhodes suggested holding this for more information. Councilwoman Bennington asked from whom the MPO? Councilman Cooper stated they are only asking for support. Councilwoman Rhodes stated she wanted to know about the money. Councilwoman Rogers stated they are not being asked to commit money. Acting City Manager Barlow stated he and Councilman Cooper would get more information and bring this back later.

Mayor Thomas closed the public hearing.

Councilwoman Rogers move to approve Res. 2008-R-07.

DIED due to lack of a second.

Councilwoman Rhodes moved to table Res. 2008-R-07 until they could get more information, second by Councilwoman Bennington.

The MOTION CARRIED 4-1. Councilwoman Rogers voted NO.

Dave Ross was in agreement as to who this is most beneficial to. Acting City Manager Barlow asked who assumes the liability. Councilman Cooper stated it would be subsidized by all of us. Councilwoman Rogers stated the City would not benefit directly. It would be a long time before money was needed. They are only asking the cities to say they are for it, not promising money.

B. Ordinance No. 2008-O-06, amending the Firemen's Pension Fund to include the share plan to the existing plan

Assistant City Attorney Ciocchetti read Ord. 2008-O-06 into the record.

Acting City Manager Barlow made a staff presentation.

Jim Jollie stated they received State money from Community Development and it is divvied out by the State. There are very specific ways to use the money. They held off making any changes to find a plan that costs the City no money. Councilman Cooper stated so there is no impact. You can't buy a fire truck with this money? Mr. Jollie stated it is very specific on what it can be spent on. If you don't use it you can't hold it for the future. There is at least a 5-year vesting period. Acting City Manager Barlow stated it is intended to help offset healthcare. Mr. Jollie stated the State says they need to use it. Acting City Manager Barlow stated it could only be used for pension enhancements. The City does not contribute to enhancements.

Councilman Cooper moved to approve Ord. 2008-0-06, amending the Firemen's Pension Fund to include the share plan to the existing plan, second by Councilwoman Rhodes.

The MOTION CARRIED 5-0.

Mayor Thomas called for a ten-minute recess at this time. The meeting recessed at 8:02 p.m. and reconvened at 8:15 p.m.

C. Ordinance No. 2008-0-07, providing for an amendment of the City Charter, Section 3.04 "Election and Terms"

Assistant City Attorney Ciocchetti read Ord. 2008-0-07 into the record.

Acting City Manager Barlow made a staff presentation.

Ferd Heeb, 115 N. Riverside Drive, asked how he could help the Council.

Mayor Thomas asked him to tell them why the Charter Review committee came up with this suggestion.

Mr. Heeb stated they have to understand that State law changed. They made some amendments to the State election law requiring audits, a percentage of the precincts and elections. The largest part of it started with the Supervisor of Elections. She said we have 17 cities and

most of these cities are on odd numbered years. They have to run these 17 elections on the odd numbered years and each of them is a separate election so now they have to audit one precinct in each of the 17 cities. This is expensive. Somebody has to pay for this. Presently while we are on an odd numbered years we have to pay for the elections costs, \$16,000, which is projected to grow as our population grows. This cost will expand every year from here on out. They studied it and studied the State law. They had Ann McFall come in and address them. They talked to attorneys and went through the issues. They decided as a Committee that the solution to this was to adopt the State law as it is applicable to Volusia County which would put this City and all of the cities on even numbered years. The problem. If they are going to change from odd years to even years how do they go about it? They kicked this around and came up with the only solution is that they are going to have to extend the Council's term for twelve months. Under our present Charter the Council takes office the first Tuesday in November after the election. They talked to Susan Wadsworth and she has had to deal with these elections for thirty years and they found this is a problem because if there is ever a situation where they have to do a recount they could possibly have three vacant spots when they reconvene the Council. They discussed it and decided they should extend that one-month so that now the elected officials will take office on the first Tuesday in December after the election. From there by unanimous vote the committee recommended this ordinance to the City Council to go on the ballot.

Mr. Heeb then addressed a couple of arguments. The first argument that comes out constantly is we elected you for four years, why are you still there. The answer is if you are really that dead set against these people continuing for thirteen months then vote against the amendment, we'll stay at odd numbered years, we'll continue to pay the cost of elections until such time as we get a group of people that understand why they were trying to go to even numbered years.

Mayor Thomas stated from what he understood they had another option. Some of the cities have adopted resolutions where the City Council said that they were going to adopt this. They didn't take that option. They said no that they wanted to go to the voters and let the voters decide.

Mr. Heeb stated this Council could adopt this ordinance and change the election from even to odd numbered years. They felt under the circumstances it would be better for this City to put it on the ballot and let the citizens address the issue.

Mr. Ross asked if it was a Charter issue. Mr. Heeb informed him it was a valid Charter issue. Mr. Ross asked how the Council could change the Charter.

Assistant City Attorney Ciocchetti stated if they review Florida Statute 166.031.1 there is a limited exception in there where Council may extend their terms to transition in election years. It is a right within a Council.

Mr. Ross asked if they could move it from odd to even numbered years. Assistant City Attorney Ciocchetti stated that is the purpose attending to that would be extending their terms.

Councilman Cooper commented on the three seats coming up for election. There is no way to correct this problem unless they blanketly do it. Their hands were tied when they went into this. The State and Supervisor of Elections is mandating it to you and are saying to the citizens they can vote it in or vote it out. If they vote it out understand it could cost anywhere from \$16,000 to \$22,000 for every election.

Mr. Heeb stated one of the issues they discussed was what about the people who were elected for four year terms and are on their second term. He used Councilwoman Rhodes as an example. Does she really want to serve another year? They address this and made a provision in this Charter amendment that would allow her to resign and the Charter will provide that in this one instance the Council can appoint her successor for that thirteen-month period. They covered that point to because that is always an issue.

Councilwoman Bennington asked if the Committee considered the voter turnout as an issue in the decision when they were doing the recommendation to go from even numbered years? Our voter turnout in the odd numbered years is atrocious for this City. Mr. Heeb informed her they did. He mentioned there being a number of articles in the newspaper and there was one of the people that had a column

that discussed that issue and he was upset because he felt that in an odd numbered year that the "super voters" had more of a voice in what happened in the municipalities than they did in even numbered years because of the turnout. Normally you have a light turnout in odd numbered years and a heavy turnout in any of the State or National elections. From his position, he thinks that is advantageous to have a better turnout and to have more of the people voices heard on issues than a low turnout. In a local election a lot of times people don't pay attention to the issues and don't research the issues before they vote or consider the implications or problems that may be created by what they are voting on. A lot of time they don't understand what it says so they don't vote.

Councilwoman Bennington stated if they are going to waste their vote, the local vote is the worst place not to vote. That is where they have the biggest vote. Your vote makes a difference there more than any other place. It is a privilege to vote. We have men dying for this privilege. The voter turn out they have had in the last two elections is horrendous. She is ashamed of Edgewater, the electors for the low turnout.

Mr. Heeb felt if she looked at the vote and turnout at the elections on the odd numbered years, that 85% of the people that voted in the last municipal election voted in the one before that and the one before that. Sometimes they can get an emotional reaction to an issue and that 85% of the people can become emotional about that issue and vote something that they never would have voted if they really thought about it. He feels if they can get a better turnout, get more citizens involved they will have a better City and less suspicion and worry about how things are being operated in the City.

Councilwoman Rhodes stated she appreciated the clause that she can resign if she wants to. Her intention is not to do that. She takes this job seriously and she gives it everything she has 95% of the time. With health issues that are going on with her with dad and stuff like that it might be necessary. She appreciated all of the work the Charter Review Committee did. They did it quickly and they did a great job.

Mayor Thomas opened the public hearing.

The following citizens spoke:

Mike Visconti, 316 Pine Breeze Drive, stated the Charter Review Committee deserved a round of applause for the job they have done. This is only going to happen for the first time. Once it is done it will go smoothly. He thinks that everybody who votes for the council, they voted because they trusted them, put them in office and he praised the City Council and the Mayor and the City Manager for the job they have been doing for the City of Edgewater. We have people that come and complain and it is always a negative part they complain about, never the positive part. This is one of the positive times they should say yes. He felt council should do this because it will help Edgewater financially and more voters will turn out on the even numbered years because everybody votes at the same time for different issues.

Councilwoman Rhodes stated they would never have that whole General Election/Municipal Election debate ever again.

Dominic Capria, 606 Topside Circle, stated he is for even years. He feels there is a better way to do it. He knows they worked hard and he knows they have a clause in there if you resign but he thinks he has an answer for that. He believes that he has been told that it is unconstitutional to change the term of the four years. He asked the Attorney if that was true. He then asked if it is unconstitutional why would it not be unconstitutional to lower the term. He suggested for the even years even though there is a clause in there if you resign that the Council appoints. He is not for that at all. He knows all of the Council are working for the City and they believe in the City. Now is the time to prove it. What they can do to help the situation is submit a letter of resignation at the end of the third year. Therefore they will have no election in 2008 when there is a Presidential Election where a lot of votes will be coming out and if you are liked you will be elected again.

Mr. Capria still wanted the answer on the constitutionality of raising it or lowering it and is it legal to do what he just asked.

Mayor Thomas asked Assistant City Attorney Ciocchetti if he wanted to answer that.

Assistant City Attorney Ciocchetti stated he answers questions if he is directed by Council to answer questions. He would not submit an ordinance to Council that was unconstitutional. He has already stated their position and the position of many other municipal attorneys in the State. Pursuant to Florida Statute 166.031.1 this Council has the authority to adopt an ordinance changing their terms and extending them for a period of one year without a referendum. It is constitutional via referendum or ordinance. If they have a basis please provide that other than just a generalization that it is unconstitutional. Mr. Capria stated that they have the right to change to the lesser year.

Assistant City Attorney Ciocchetti stated he wasn't trying to engage them in every type of factual scenario. Question #1 yes it is constitutional. If you have a basis please provide it. Question #2. They did examine shortening limits. The Attorney General has spoken to extending limits and they are basing this on precedent not only within Florida Statutes but interpretation by the Attorney General, which is not binding precedent but their advisory opinion. We are basing this on the Attorney General and what other municipalities have done.

Mr. Capria stated he hoped they would give his recommendation some consideration. It will be faster. They will get more votes out because of the Presidential Election and nobody will be hurt.

Councilwoman Rhodes disagreed. If three of them resign, the three that are up for re-election in 2009, to eliminate that 2009 election before the 2008 election and ran again, if they resigned, then they would have three vacant seats on the Council. They would have to resign before because you can't sit on the Council if you resign. You have three vacant seats. Assistant City Attorney Ciocchetti stated these are the type of questions he doesn't like analyzing in a public meeting. Councilwoman Rhodes stated three of them resign and they have three vacant seats. As soon as they resign they didn't complete their term so then she could run for two more terms. Councilwoman Bennington stated they wouldn't have a majority and couldn't conduct any City business.

Mr. Moriarty stated there is a point to that. If all three resign the Legislature has designated the Governor as the

appointee of the selection so they would have a majority. The Governor would appoint one so they would have a majority.

Assistant City Attorney Ciocchetti stated there are emergency procedures. Councilwoman Rhodes feels that is a logistical nightmare there.

Carol Stoughton, 2740 Evergreen Drive, stated she voted for certain candidates for four years. She feels her constitutional rights have been met when they got elected. She only wanted them in office for four years. She doesn't see any constitutional basis that allows the Council to take a stand whether it is their position. This is a position. This is not law. Neither is the Attorney General law. She feels they are treading on waters here just because Ann McFall feels it saves them \$16,000. She feels she has that right every four years to vote whether it is an odd year or an even year. She hopes the ones that are up for office, a certain two, don't have another year. That would be like putting Bush back in for another year. Forget it. Perhaps there is a reason for this because certain people that are up there are all for the developers and she thinks that is why they would like them to stay.

Councilman Cooper thought what was being missed from Council is the fact that Mr. Heeb has brought up. They are bringing it back to the voters to vote. They could make the resolution and go along with Ann McFall's recommendation. They don't want to usurp their vote. They are putting it back to the voters and they have the right to say no, keep it the way it is or they vote it in and they go along with the even numbered years. Nobody was trying to usurp a vote. He is against taking that vote away. They are getting the opportunity to vote again on it. They are basically voting the five of them in for one more year should they vote for this change. Should you not, it stays right where it is and the City will be expensed what it costs to run those elections.

Bob Lester, Needle Palm Drive, stated that wasn't the deal when they voted. The deal was for four years. Councilwoman Bennington stated things change. Mr. Lester stated so do wars. Councilwoman Bennington stated circumstances change. Mr. Lester stated you get an extra year. He didn't vote for Councilwoman Bennington anyway. Councilwoman Bennington stated she didn't ask for it. Like

Mr. Cooper said if you don't want it you vote no. Mr. Lester stated why should they have to go vote on an issue that has been settled for years. Councilwoman Bennington informed him he doesn't have to. Mr. Lester asked why should they give them an extra year and tell them they have to go vote to make sure they don't get an extra year. Councilwoman Bennington informed him he didn't have to vote if he didn't want to. Mr. Lester feels there should be no discussion and that this is asinine. Councilwoman Bennington informed him this whole thing started at the State level and filtered down to them. Mr. Lester guaranteed the Council was going to vote for this. Councilwoman Bennington was sure they would vote to put it on the ballot. Councilwoman Rhodes stated the voters will decide if they get an extra year. Mr. Lester stated the voters decided years ago. Why revote something? Keep revoting to get it their way? Councilwoman Rhodes stated now the voters get to decide if they want to save \$16,000 or they don't and if that is the way they want their tax money spent. Mr. Lester stated they could have saved \$114,000 by not buying new police cruisers but they went ahead and voted that in.

Councilwoman Rhodes stated let's let them die. When they are coming to his house. Mr. Lester stated he can't get them to come to his house. He has people coming up and down Needle Palm Drive doing 60 mph and they don't do anything about it. One police officer told him until somebody gets killed there will be nothing done about this.

Mayor Thomas closed the public hearing and entertained a motion.

Councilwoman Bennington moved to approve Ord. 2008-0-07, providing for an amendment of the City Charter, Section 3.04 "Election and Terms" and to authorize the city Clerk to transmit to the Supervisor of Elections for inclusion on the ballot, second by Councilwoman Rhodes.

The MOTION CARRIED 5-0.

D. Ordinance No. 2008-0-08, providing for an amendment of the City Charter by deleting Section 1.01(a)(1)

Assistant City Attorney Ciocchetti read Ord. 2008-0-08 into the record.

Acting City Manager Barlow made a staff presentation.

Mr. Heeb stated the discussion centered around the fact that a consensus of the Committee members believed that this is not an appropriate item to be in the City Charter. They have studied a number of Charters and the uniform Charter as recommended by the LOC and nowhere are there height limitations in Charters. This is an emotional response that was dictated by a well-orchestrated campaign in this City to limit the height of condominiums on the riverfront. There are not that many condominiums built on the riverfront and the area that they could build condos on the riverfront is limited and is addressed in the LDC which is where height limitations belong, which he understands are covered in the LDC at this point. They felt that they would give the voters a second chance to take a look at what has happened and take this out of the Charter. When you put something in the Charter, especially a development issue like height limitations, they have created in this City a Planning & Zoning Board of approximately 11,000 people. What they are saying is if there is a variance necessary, somebody has to go to the citizens and say they would like them to amend the Charter to allow this person or entity to develop a building that would be a little bit higher. He commented on the inconsistencies that are created by the issue that is in the Charter. If they read the height limitations in the Charter it creates problems in a number of communities where the street might be below the required height of the property, where they will have to add fill or put the house on pilings. They are basically saying those people have to build a house that is going to be less in stature than their next door neighbor. The point of the matter is once you put it in the Charter it is etched in stone and there is no way to have a variance or change or mitigation of a problem. It doesn't belong in the Charter and they are going to ask the citizens to take another look and hopefully the citizens will agree it doesn't belong in the Charter.

Mayor Thomas asked Mr. Heeb if a hospital or school wanted to come into Edgewater right now and they were going to build above 35 foot. He was informed that is permitted under the Charter. Councilwoman Bennington stated at the last election they deleted it from that. This is just affecting residential.

Mr. Heeb stated all they are saying is height limitations belong in the Land Development Code and they are in the Land Development Code. As he understands the Land Development Code provides now a height limitation of 35 feet on residential in this City. Why is it necessary to have this in the Charter? They are etching it in stone and haven't given anybody the ability to say they have a unique situation. The only way they can change it is to go to the electorate.

Councilwoman Bennington stated she understands that this whole height thing, part of it was to keep condos from going up on the river. Riverside Drive has a height restriction in the Land Development Code. The last election they took out all commercial development. This is just deleting the left over residential houses that would be affected all over the City.

Acting City Manager Barlow stated it is taking it out of the Charter but it is still regulated in the Land Development Code.

Councilwoman Bennington asked what the height limit was on Riverside Drive. Development Services Director Darren Lear informed her it was 26 feet. Councilwoman Bennington stated so this is just eliminating something that shouldn't have been there to begin with. She believed it was an emotional issue that brought this about.

Councilman Cooper stated he thought the protection thing is the scare of the public. It sounds like the 35-foot height thing is another issue again by removing this. If he had to go over 35 feet he would have to petition the Planning & Zoning Board anyway for a variance. Mr. Lear informed him if it is a residential building he couldn't do it. Councilman Cooper asked about a commercial building. Mr. Lear stated commercial only but they could not have mixed use. Councilman Cooper stated what the Committee is bringing back to the citizens is they already have a double guard on this right now with the planning & zoning codes and there is no sense discouraging a business or homeowner or project when you have the protections in place in the planning & zoning code. If you have it in the charter you flatly refuse them from ever coming in and you can't do anything.

Councilwoman Rogers stated business is not part of this. This is residential. If it is in the Land Development Code yes somebody could petition to get a variance but what if they petition to get a variance and the Council says no, then they are open to potential lawsuit which is what they went through before with Mr. Hood. That is why it was put into the Charter. We aren't the only city that has this in our Charter. Other cities took it and it is in the Land Development Code. They went the extra step and went through the same process the citizens did in this area. They had the petitions, the signatures, they put it out there to the voters, the voters voted it in and then they turned around and changed things around and then the businesses and mixed use is allowed to exceed 35 feet and here we are again chopping it again. Councilwoman Rhodes stated they aren't chopping it. The voters are. Councilwoman Rogers stated if they put this back out there it doesn't make them look very good on Council to keep putting things out to the voters. They already made a decision before they amended and changed things. She didn't vote for it and she didn't think it would pass the way it was and it didn't. Now they are looking at doing it again to put it back out to the voters regarding residential when the voters already voted for it. It doesn't make sense. They are letting the voters do things they have the right to do. When they don't like it or somebody comes to them and argue the point and they may not be citizens of Edgewater so they are going to put it back out there on a ballot and let it be voted on again. This is just redundant. Every time somebody goes to do something they are going to be back in a circle.

Mr. Heeb stated putting it in the Charter doesn't preclude somebody from suing. The difference is that having it in the Charter means they are going to take a lawsuit if there is a lawsuit brought they are going to fruition. They can't modify anything because it is in the Charter. If somebody questions the fairness or legality of this height limitation that is in the Charter, they have to fight it all the way. That is going to be expensive. The other issue that keeps being brought up is that this was put in the Charter by the voters. It was put in the Charter by the voters voting in that particular election in which we had a turnout of less than 20%. He spoke of 10% of the people dictating how the City will operate and the kind of information that is in the Charter. In his personal opinion, it doesn't belong in the Charter. If they have to

put it on the ballot for the next twenty years it should be on the ballot because it does not belong in the Charter.

Mr. Heeb stated the Constitution of the State of Florida had an extremely emotional issue that never should have been on the ballot. The joke of the nation. You can't put a pig in a box and grow it in the State of Florida. It is in our constitution. Why was that on the ballot and how did it get passed. The answer is that things happen. People get emotional and they vote with their emotions instead of their heads. He feels the 35-foot height limitation in the Charter is an emotional issue and doesn't belong in the Charter. Let's put it before the electorate when we are hopefully going to have a higher turnout. If it passes at that time they will know the majority of the citizens wants the 35-foot height limitation. Councilwoman Rogers stated for residential.

Councilwoman Bennington stated first this was brought up by petition and put on. Then the Council decided. Now what we have here is a Charter Review Committee per our own Charter that they have to convene periodically who looked at this and thought this was an important enough issue to suggest to them to put it on the ballot. They aren't arbitrarily putting it out there again. They had a Committee that was appointed to study this and look at this and in her personal opinion, if they are going to have height limits in the Charter they might as well put the Land Development Code in the Charter.

Mr. Moriarty stated the height limit does apply to mixed use and that is one of the problems. If they have mixed use they can't go above 35 foot.

Councilwoman Rhodes stated it doesn't matter if she is in favor of 35-foot height limitation or not. She is in favor of the voters deciding. The Charter Review Committee thought this was important enough to put back before the voters. She isn't going to put things before the voters just because she thinks they are going to vote her way. It's got to work both ways. It's not about what she wants or doesn't want. It's about what the voters want and let them decide.

Councilman Cooper asked for clarification from Mr. Lear. He asked him if he felt soundly in his mind that we have enough protection there and enough control there that they

could keep unwanted building projects out of our City whenever warranted if they exceed the limitations that are already spelled out in the planning & zoning code. Mr. Lear stated if someone was to ask for a variance they would have to come before the Planning & Zoning Board. He then spoke about appealing it to the City Council if they are not happy with the decision made by the Planning & Zoning Board. Councilwoman Bennington stated if they don't like the Council's decision they can go to court.

Councilman Cooper asked Mr. Lear if he felt confident that he had the checks and balances in place should this be removed from the Charter. Mr. Lear informed him he did.

Mayor Thomas stated he was on the City Council when they voted on this issue to put it in the Land Development code along with a 75-foot lot width and net density verses gross density. The citizens did not think that was enough and it was a well-orchestrated campaign. They went out with petitions and they got it. Even though it was only 10% of 20% they voted for it then. He tries to go along with all staff recommendations and he appreciates the work they did but he cannot support going back to the polls because this went to the polls one time. The people voted it in. He cannot support that.

Mayor Thomas opened the public hearing.

The following citizens spoke:

David Ross, 2803 Needle Palm Drive, stated Mr. Heeb said consensus of the Committee. He felt it would be most appropriate to have a dissenter up there making the same presentation for the dissenting side for the same allocated twenty minutes that he took to promote it.

Mr. Ross stated the pig in the box is in the Constitution because the Legislature wouldn't do what is right by the pig.

Mr. Ross wanted to talk about protection. Do we have enough protection in the LDC? If you believe that five years from now that any three of them can tell any developer they so choose to bring any height he so well pleases, that is the only protection. Three people can tell a developer to build a 100-foot condo on the river five years from now, that is the protection they have got. He believed Ormond

Beach had it in their Charter. There are cities in Florida that have it.

Mr. Ross wanted to address Councilwoman Rhodes but informed her it wasn't intended to be personal. There are only two reasons to put this back on the ballot. One is a philosophical reason that Mr. Heeb has explained. It doesn't belong in the Charter. There is only one other reason and that is because three people will then be able if it is voted in to go as high as they so choose with residential buildings. He feels the City is unlocking it for the developers if they put this on the ballot. He sees no other logical reason to do it. He knows some of our citizens truly believe it is a purely philosophical thing. The problem with that on its own is the residential height issue in this City is at the very core of our City's character and beauty. Three people on the Council can destroy that. We don't need that door opened.

Marcia Barnett, 124 Flamingo Road, stated Mr. Heeb explained it better than anyone could have. She thanked him for that.

Ms. Barnett stated we do need business. We have plenty of houses that are ready to go but we don't have people that want to live here because they can't live here and work here. The Economic Development Board is trying very hard to get business here. She has joined the business development partnership in Halifax to try to influence business. They have gone everywhere they can to try to encourage business here. The same thing happens every time they talk to people that want to build a business. They are scared because they put things in the charter that really should be in the LDC. If they bring businesses there for people to work, they also have to consider their families. They have children, parents and grandparents. They need some mixed use. When they first put this in the Charter, she thought it was emotional and people voted for it, a very small amount. They were able to get out and get some voter education and they had 73% of the people said they were right and they needed to get rid of this. She asked that they give them another chance to educate the people that we do need this for our City. We need it for the growth. We need Smart Growth for the businesses to come in and help our people. She has a business in Edgewater. They love it here and aren't going anywhere. They want to help people prosper. She spoke of employing a

student from the high school and it is hard for the high school students to know where they are going to go after they graduate. There is nowhere around here for them to work. Let the people make another decision. Give them that opportunity.

Carol Ann Stoughton, 2740 Evergreen Drive, stated she hoped the Mayor stayed on another year. He made a big turn around. He knows what the people stood for. This is not an emotional issue. This is a developer's issue. Marcia Barnett has property she can't even build houses on. She was Mr. Cooper's campaign secretary to the tune of \$7,650 that developers all kicked in. She hopes Mr. Cooper and Ms. Bennington do not vote because she will turn it in to the State Attorney's office because they are both in conflict if they vote on this. They went out and carefully discussed with individuals. People don't want it. Don't you get it? They don't want to vote again. They don't want cities like Orlando and high rises. They would have to pay for snorkel trucks, more firemen, more fire houses and yet they want to clutter up the river, clutter up the town because these two guys are so biased for the developers sent here they planted different people just like they paid originally for the Fire Departments fireworks. That was Restorations. She asked if they are involved in the fireworks this year or were they prevalent to the Council in some other way. They voted not to have high rises once and she feels that is enough. The people have spoken in the majority. The same amount of people that put the Council in office, they voted no.

Mike Visconti, 316 Pine Breeze Drive, stated if he recalled the vote at that time was 49 $\frac{1}{4}$ to 49 $\frac{3}{4}$. The night of the election he got a phone call stating that it was turned down and they had lost. The next morning with the absentee ballots came in and they had lost. As far as he was concerned at the time was the City was divided 50/50. It wasn't an overwhelming mandate that this has got to be done. It was a very close call.

Dot Carlson, 1714 Edgewater Drive/624 Art Center Avenue, New Smyrna Beach, representing ECARD, stated they are going to keep putting this on the ballot until they have hair lipped granny to the chin bone. What is it going to take? The Mayor was right. This will be the third time. Is the third time the charm? Who are they working for? She knows who she is working for. She doesn't work at all. She has

worked to get the citizens in this town aware of what is going on. Get them involved, get them to Council. The last time this went on the ballot before it went there they had to have Beth Rawlins Inc do a survey. She has Jon Williams telling people they have to get out and vote. The Fire Department slammed every meeting she was in. They asked ridiculous questions. It wasn't emotional until they made it emotional. They can make it emotional again. Jacksonville Beach has a 35-foot height limit on everything and they aren't dying. She doesn't think this town is going to die because we don't get 35 foot height on houses. The motel from hell, the destroyer and killer of animals, is 32 feet. They can live with that. We have the businesses and have the height on them. She didn't think people wanted to vote for this thing again. She thinks they are getting tired of them throwing it at them. Are they going to put signs on the fire trucks and garbage trucks again? What is that going to cost the citizens? They are getting tired of having to pay for this thing. Does she regret bringing this up? Never. Would she do it again? Absolutely. If this height on residential isn't working for a big developer she really doesn't care.

Mayor Thomas closed the public hearing.

Councilwoman Rogers stated what it said on the TV the night before and the results Mr. Visconti found out the next day she doesn't pay attention to what is on the TV. They need to go online directly to Ann McFall's website. That is going to be your most accurate. She knew what the results were the night before.

Councilwoman Rogers stated if it does end up going on the ballot, she would tell people not to vote one way or the other and then they are just moot. We are at the same point we were. If it comes back as a close percentage and it probably will then everybody is going to argue that there weren't enough voters. They are going to be spinning their wheels. They are spinning their wheels now talking about this.

Councilwoman Rhodes also doesn't care how the developers feel about it. She cares how the voters feel about it and she has a philosophical issue with it. She thought last time and she thinks this time it does not belong in the Charter. It belongs in the Land Development Code and it is in the Land Development Code. If the voters want to change

their mind, let them change their mind. What are you afraid of? If you really think the voters of this City want a 35-foot height limit then they are going to vote this down and they don't have to be afraid of anything.

Councilwoman Bennington agreed with Councilwoman Rhodes 100%. By putting this on the ballot they are letting the citizens tell them what they want again. They aren't making that decision. It is up to the voters to decide. She doesn't believe it should be in the Charter. She has been on several Charter Review Committees and has never seen anything like this in the Charter. She is taking it as the committee makes this recommendation. She doesn't care what the developers want. Nobody put any money in her personal pocket for anything. Let the voters vote. They are letting the voters have their say. If they don't like it vote no. If they like it vote yes. They are letting the voters speak and giving them that right. There is no conspiracy here. If there was a conspiracy they wouldn't let them vote on certain things.

Ms. Stoughton stated the developers paid for your campaign. Mayor Thomas informed Ms. Stoughton she was out of order.

Councilman Cooper stated they have a proposition brought forward from the committee. They put the committee in the position. They brought these issues forward. They felt they should judge on them. Take the vote and see what you do here and let the voters decide or they can finish it here tonight.

Mayor Thomas entertained a motion.

Councilwoman Rhodes moved to approve Ord. 2008-0-08, providing for an amendment of the City Charter by deleting Section 1.01(a)(1), second by Councilwoman Bennington.

The MOTION CARRIED 3-2. Mayor Thomas and Councilwoman Rogers voted NO.

8. BOARD APPOINTMENTS

A. Volusia Growth Management Commission - Mayor to fill the expired term of Karen Hall

Mayor Thomas nominated Sandy Jones. Mayor Thomas announced Ms. Jones was present and asked her to stand.

Councilwoman Rhodes moved to approve the Mayor's recommendation to appoint Sandy Jones to the Volusia Growth Management Commission, second by Councilwoman Bennington.

The MOTION CARRIED 5-0.

9. OTHER BUSINESS

A. Authorization for the Mayor to execute the Central Florida Sustainable Communities Initiative Agreement

Acting City Manager Barlow made a staff presentation.

Councilwoman Rhodes asked if this was who Daytona used. Acting City Manager Barlow wasn't sure. These are architectural planners. He commented on one of their most recent projects they have done.

Councilwoman Rhodes asked who pays them. Acting City Manager Barlow thought they used it as a tax write off. This is part of what they do to give back to the central Florida area. They try to give vision and see communities grow. He commented on City Attorney Ansary reviewing this before it was brought to Council. When they start this process they will supply them with some back up information so they understand our EAR and Land Development Code so they can get somewhat of a flavor of our community before they come over. He is looking at late summer that they can start to have those community meetings here so they can get to meet the community as well.

Councilman Cooper stated they are going to take this to the next step. It doesn't cost us anything. We have a large corporation that is going to show us a planning book but we are going to develop a community committee, not just staff. He doesn't want staff telling him what his visions are. He would like a cross section of everybody telling them what the vision could be and see what they come up with. Acting City Manager Barlow wants to touch every facet of this community. Councilman Cooper asked if they could solicit outside where they can sign up where they would request to serve on this committee. Acting City Manager Barlow informed him there will be no sign up. It will be open town hall meetings on Saturday mornings and Wednesday

evenings. The Council will see all this and hear all this and essentially will be in charge at the end of the day.

Councilman Cooper stated they are going to bring them back a book. Acting City Manager Barlow stated at the conclusion they will do a presentation when they present the Vision Book.

Councilman Cooper stated the overall intent is to be able to present something back to our citizens. Councilwoman Bennington stated it is going to be a combination of everybody.

There was a brief discussion regarding this being free and it seeming too good to be true.

Due to there being no comments, Mayor Thomas opened and closed the public hearing.

Councilwoman Bennington moved to approve the Central Florida Sustainable Communities Initiative Agreement and authorize the Mayor to execute, second by Councilman Cooper.

The MOTION CARRIED 5-0.

10. OFFICER REPORTS

A. City Clerk

City Clerk Wenzel commented on receiving a letter from the Florida League of Cities. Every year they request a voting delegate from each municipality. It's a consensus of the Council to pick someone. She has to let them know by July 27th. She informed Council they could discuss this further at the July 21st meeting.

Councilwoman Bennington informed her it was okay to give them her name.

City Clerk Wenzel mentioned this past Saturday Inlet Charlie Skate Shop sponsored a skateboarding contest at Whistle Stop Park and Jill Danigel was very instrumental in help coordinating it. The City was a co-sponsor of this event. There were about 30 kids that participated from age 6 to 45. Jill participated as did Shelly from our Finance Department. They placed second and third place

respectively in their category. It was a very hot day but it was great. It was something they would like to see more of doing every year.

Councilwoman Bennington asked City Clerk Wenzel to tell Deputy City Clerk Bloomer she really appreciated the effort she has made on the minutes.

B. City Attorney

Assistant City Attorney Ciocchetti stated City Attorney Ansay asked him to update them on the status of the Deck action and they are currently trying to schedule a hearing time with Judge Rouse. They will let them know when they have that hearing date.

C. City Manager

Acting City Manager Barlow reminded Council of some upcoming dates. July 7th the Council meeting is cancelled. That pushes them to July 21st with a cost allocation workshop at 6 p.m. and a Council meeting at 7 p.m. He reminded them August 4th had been cancelled. The three proceeding Mondays they have budget hearings and workshops. The Council meeting will be held on August 18th.

Councilwoman Rhodes stated on July 21st she would not be there. On the Charter Amendment for the 35-foot height amendment it looks like it would be a two to two vote. They might want to provide for that contingency. She wasn't sure what they do in that respect.

Councilwoman Bennington suggested they have a special meeting when Councilwoman Rhodes can be there.

Acting City Manager Barlow asked if they have done it in the past with it being telephoned in. Assistant City Attorney Ciocchetti stated he has had meetings where Councilmembers have called in. Councilwoman Rhodes stated she was going to be on an airplane that evening. She could give them a written vote. She told them to tell her what to do. Assistant City Attorney Ciocchetti stated she couldn't do that but they could have a special meeting. Acting City Manager Barlow stated they would have to make a decision pretty quick because it will have to be advertised. Councilwoman Rhodes apologized and said she wouldn't be on the plane and could call it in. She is

coming home the next day. Acting City Manager Barlow asked if that was permissible. Assistant City Attorney Ciocchetti stated he believed so. He agreed to confirm that. He was of the understanding that she would have to attend the whole meeting.

Acting City Manager Barlow stated another option if that is a concern, they could consider rescheduling the meeting to July 28th. Mayor Thomas told him to do it. That is the VCOG meeting but he could leave early. He would reschedule the cost allocation as well that evening.

It was the consensus of Council to move the meeting to July 28th.

Mayor Thomas thanked the Charter Review Committee for all their hard work.

1) Tentative Agenda Items

Acting City Manager Barlow asked City Clerk Wenzel to update the list of Tentative Agenda Items and put it in Council's box tomorrow.

11. CITIZEN COMMENTS

The following citizen spoke:

Mike Visconti, 316 Pine Breeze Drive, stated at the last meeting Mrs. Carlson brought in a picture of a rain barrel. Today they had one of the best rains we have had in three months. Just think if they had a rain barrel how much water they could conserve today. Councilwoman Rhodes stated they are looking into that.

Mr. Visconti asked if there was a way a developer or builder could take the reclaimed water and pipe it right to the toilet to flush the toilet. They talk about conserving water but nobody does anything about it.

Councilwoman Bennington stated that was when they originally did the sewer system in Florida Shores and the reclaimed. That was a consideration but there was something about the bacterial content and they didn't want to take a chance because dogs and kids can get into toilets. She didn't know if the technology had improved or not. Mr. Visconti stated in a new development that comes

in there should be a law on the books saying that they have to put reclaimed water into the flushing. They want to conserve water. That is the way to conserve water. Councilwoman Rhodes agreed with that. She didn't have a problem putting that in the Land Development Code for all new development

Acting City Manager Barlow commented on there being very strict restrictions with the reclaimed water. There is movement out there to try and address some of that to try to address some of that. He didn't believe it was acceptable yet.

12. ADJOURNMENT

There being no further business to discuss, the meeting adjourned at 9:40 p.m.

Minutes submitted by:

Lisa Bloomer