

CITY COUNCIL OF EDGEWATER
REGULAR MEETING
MARCH 3, 2008
7:00 P.M.
COMMUNITY CENTER

MINUTES

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	Excused
Councilwoman Gigi Bennington	Present
Councilwoman Harriet Rhodes	Present
Councilman Ted Cooper	Present
Acting City Manager Tracey Barlow	Present
City Clerk Bonnie Wenzel	Present
City Attorney Carolyn Ansay	Present

INVOCATION, PLEDGE OF ALLEGIANCE

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

2. APPROVAL OF MINUTES

A. Special Meeting of December 3, 2007

Councilwoman Rhodes moved to approve the December 3, 2007 Special Meeting minutes, second by Councilwoman Bennington.

The MOTION CARRIED 4-0.

3. PRESENTATIONS/PROCLAMATIONS/PLAQUES/CERTIFICATES/DONATIONS

A. Presentation by Herman Mitchell of the YMCA to Edgewater Power Boats for their donation of \$50,000

Herman Mitchell, YMCA, presented Peter Truslow of Edgewater Power Boats with a plaque formally recognizing them for

their donation of \$50,000 to the YMCA and expressing their appreciation for their support of the YMCA. The donation will be used for capital improvements to improve the building.

Mr. Truslow acknowledged Scott Porta, who owned the buildings they bought in the fall and it was both of them together that believe in the YMCA and believe in giving back to the community. He has enabled them to stay in Edgewater and expand. They look forward to expanding in the town, employing more people and submitting their building proposals to the City very shortly.

Mayor Thomas thanked Mr. Truslow very much. He knows they can utilize that money. Edgewater Power Boats are a phenomenal addition to this community.

4. CITIZEN COMMENTS

The following citizens spoke:

Dot Carlson, 624 Art Center Avenue, representing ECARD, stated under the City Charter, once they have a sufficient number of petitions, 10% of the voting public, isn't there a requirement that the City Attorney review it and put it on for the next ballot or Special Election. Why has it been sent to a judge to decide? Are you letting yourselves off the hook? Are you really afraid of Mears? Are you afraid of Mears because they have made him promises and if you put this on a ballot he is liable to sue the City? You can't sue a town because they put something on the ballot. They were never given a certificate of sufficiency. Even though they had sufficient signatures. They were given by the County but not the City. Thirty days after you provide that, they are supposed to go forward with this and they haven't done it.

City Attorney Ansay explained at the last council meeting, they discussed the issue of whether or not the ballot measure should go on the ballot. There have been a number of legal issues raised in the proceeding we had previously been involved in with ECARD by the interested multiple interested land owners west of I-95 as to whether or not the measure is constitutional, is legal otherwise violates State Statutes. Quite frankly many of those arguments are legitimate. Her recommendation to Council was that because yes ECARD certainly has the required number of signatures,

nobody disputes that at this point in time, that because there are legal issues as to the measure itself, Florida law is replete with cases where that issue be presented to a court for determination on what are very complex constitutional law issues. She could make a recommendation to not place it on the ballot and she thinks ECARD and Ms. Carlson would have a very keen interest in seeing that overturned and would file suit. She thought she could make a recommendation to place it on the ballot and they will have interested landowners doing the same thing. Either way, there are going to be issues presented to a judge and she thinks it is fairest to do that now when the judge has enough time to potentially see it ECARD's way and get it on the ballot in November if the judge is convinced that is the most appropriate way to go. To wait and force another showdown come November, she didn't think would benefit ECARD. She didn't think it is staying true to the folks that signed petition. Ultimately whether it gets placed on the ballot will be determined on whether it is constitutional in accordance with Statute, etc. Based on that recommendation, Council made the decision to go to a judge upfront long before the election and let a judge decide.

Ms. Carlson stated basically they have bailed. They have actually told the citizens of Edgewater they don't have the constitutional right to petition their government for anything. They do but it doesn't mean they are going to listen to them. She would like ECARD to be notified when this goes to Judge Rouse. City Attorney Ansay informed her ECARD would be named so they will get service of it. She wanted Council to understand clearly the citizens have the ability and the right to sign petitions and get measures placed on the ballot. Throughout the course of history citizens have done so with measures that violate law. You can't just get a bunch of people to sign a petition and assume it is legal and when you have folks that have raised very significant legal issues as to this measure, whether it is constitutional and whether it is legal, she is not a judge and she didn't think it was in the City's best interest to be in drawn out litigation right before the election. She thinks it is in everyone's best interest to have the issue resolved up front. If that is considered bailing, that is exactly what the City has done.

Carol Ann Stoughton, 2740 Evergreen Drive, felt City Attorney Ansay has taken a lot of what she feels is law

into her own hands and they as the petitioners have their rights. They think it should have been put on the ballot. She didn't think she was representing the people in this community. She felt the builders were weighing in very heavily. She would like it to be placed on a ballot and let the people speak. She feels City Attorney Ansay has had too much input into her terminology of what has been going on.

Ms. Stoughton wanted to make Councilwoman Bennington and Councilman Cooper top recognize and realize who paid grossly and heavily into their campaigns. She thinks when it comes time to vote on certain communities that shouldn't be going on they should realize they have accepted moneys. She will go to Tallahassee and turn everyone in because they have a special interest. If Council wants to do a good job for the existing people here, they should check on the water. She has spoken to many people who work in this town. Our wells are moving further and further west. The only water sufficient we have is on Miami Corporation's land. We are going to have to be begging maybe the Mayor to speak to the Miami Corporation to give us water down the road. Flagler County will be out of water in three years and this County will be out of water in seven. When they want to keep shoving more developments in here, she feels they owe it to the people here to see that they have water because they are here already. She feels they should see to it that our water for the people here and the children to come continues. She thinks it is a sin that they keep on trying to appease the builders. The people elected them into office for the people in the community. She feels they have a right to speak up whether they like it or not and whether they threaten them with sicking the police on them or signing erroneous complaints.

Elizabeth Donahue, 3326 Umbrella Tree Drive, stated she took a ride down SR 442 a couple of weeks ago and the swamp was quite full. She didn't think people realized that if this development goes in, they are going to be filling in all those swamps. Where is the water going to go? Are they going to end up like Deltona? With the developer being long gone, that is going to leave it up to the town to take care of. Where are the firemen and policemen going to come from? They are having all these cut backs and they are fighting over water. She thinks that should be their number one priority at this point. She also commented on having to have recycled water for these people and they are

running out of recycled water now. She thinks New Smyrna was supposed to put homes on the other side. They were going to let development go on the other side of SR 442. She thought they had pulled out. They are smart. She wished someone could answer her a question. She hoped Councilwoman Rogers would have been there because she brought this up to her once and she said the engineer said there would be plenty of water. Those studies were done before all these buildings went in. The engineers went on past record. They weren't going that far into the future. Now we will be stuck with all the expenses and anything else that goes with it. She feels the Council should really think about that.

Dominic Capria, 606 Topside Circle, asked where they stand with the negotiations with the Police and Fire Department? Are they completed? He asked for an update if they were. If not, he wanted to know why not?

Acting City Manager Barlow stated the Fire Department is still currently going through their petition phase. They haven't even started to submit a contract. He didn't expect to see a Fire Department contract before next budget year.

Acting City Manager Barlow stated the Police, since he has been in this position they have had two meetings, the most recent being last Friday. They have another one scheduled for this Thursday. They are moving forward with some of those discussions. They are getting closer but nothing settled on the Police side. He has had one meeting with the Public Employees Association and he is attempting to schedule a second meeting with them.

Mr. Capria asked what the petition problem was. Acting City Manager Barlow stated it is where they petition PERC because they have never had a union prior to that. It is just the semantics of going through and being recognized as a bargaining unit. Mr. Capria thought they were recognized. Acting City Manager Barlow stated they have one portion that is recognized, the Firefighters and Drivers but not the Lieutenants.

Mr. Capria didn't understand why they had to wait for them to be recognized. That is their problem, not the City's. Acting City Manager Barlow stated that is why they don't actually do a contract, a labor agreement until they are

recognized as a labor unit. Mr. Capria stated he has negotiated contracts and didn't see why there should be a hold up at all. It is way beyond time. Because there is a lot of money involved and he would speak on that money later on.

Bob Peterson, Pine Bluff Street, stated he and his family have been coming here for sixty years as snowbirds and the street is deplorable. He mentioned building inspectors coming out when people make improvements to buildings. He spoke of the drug deals going on up on U.S. #1 and the deterioration of properties. He passed around two photos of locations where drugs are currently going on. The officers have told him and his neighbors there is nothing they can do because legally they can't go in and arrest anybody. They were there yesterday again. The places are deplorable. His grandparents would turn over in their graves if they saw what Pine Bluff Street looks like now. It is terrible. He asked for some help. They have a seventy-year-old woman who is living next door where they are in and out all night selling drugs who doesn't sleep at night. He doesn't sleep at night because he hears it and sees it.

Acting City Manager Barlow informed Council they are familiar with both of the locations from a Code Enforcement perspective. They have had numerous different citations and have come into compliance on numerous different times on the two story so they continue to address that. He believed Acting Police Chief Bennett had some stats on some arrests or stops so they have provided focus patrol in that area.

Acting Police Chief Bennett presented a history of what has been done down in that area. He felt it has gotten worse over a period of time but they are working that area.

A few residents in the audience from this area spoke from the audience. Acting Police Chief Bennett commented the individuals that keep causing the problems getting out of jail and they go back there and they go through this cycle.

There was a brief discussion regarding who owns the property.

Acting Police Chief Bennett pointed out having a similar problem at Magnolia and Riverside.

Councilwoman Rhodes confirmed the mother did not live in the house and that the son does. She also mentioned the City Council not having the authority to condemn that property.

Councilman Cooper asked if they had any delinquent tax issues or outstanding Code Enforcement fines that are lingering. Acting Police Chief Bennett stated not that he knows of. Councilwoman Bennington commented on the house not having water or electricity. She asked how someone could live in the house with no utilities.

City Attorney Ansay explained in order to have a structure habitable it has to be furnished with facilities. Usually that is handled through Code Enforcement. If they are living in the structure they can be forced out. The process is difficult and time consuming. She feels what is probably happening is every time they are cited they come back into compliance and they find a way to get through the next step and they keep going around.

Councilman Cooper asked City Attorney Ansay if she felt Code Enforcement should get in touch with her and look at the next steps to pursue this procedure. City Attorney Ansay stated obviously the Police have to handle the criminal aspect of it but looking at the photos there certainly are code issues they could target.

Councilman Cooper commented on Mr. Peterson witnessing drug deals. He asked if he could give him some insight on that. He was sure the Acting Police Chief would like to know how he determined this. Mr. Peterson informed him all you have to do is walk up and see how flaky these people are coming out of that building. They are spinning. There are cars coming day and night. Acting Police Chief Bennett asked Mr. Peterson if he calls when he sees a narcotic deal going down. Mr. Peterson informed him he had called. Acting Police Chief Bennett told him to call and they will come and investigate it. Mr. Peterson stated they are so fast you can't catch them.

Acting Police Chief Bennett stated if they don't call they are more than likely not going to get caught. They need to call when they see it. Every time they see activity that is not suitable to them they need to call the Police Department.

Councilman Cooper asked if there was anything they could set up in the way of video surveillance. Acting Police Chief Bennett stated part of the problem right now is we don't have anybody in the east side Narcotics Task Force. They had to make adjustments because of low staffing. They are quite a few officers down and their primary responsibility is to respond to the calls on the street. They could potentially do surveillance. The east side Narcotics Task Force did investigate it for a period of time.

Councilman Cooper asked if they could solicit some County or Sheriff help. Acting Police Chief Bennett informed him that is the east side narcotics Task Force.

Acting City Manager Barlow informed Council they would continue pretty heavy focus patrol on the law enforcement as well as Code Enforcement there. Every time they cite them they come into compliance. The last time they were there they did confirm they did have running water. He just came back from paying a late water bill and his mother was with him.

Councilman Cooper asked if license plate numbers would help Acting Police Chief Bennett. Acting Police Chief Bennett informed him absolutely.

Robert Novak, 113 E. Pine Bluff Street, stated he lives across the street from this drug den. The Edgewater Police are good when they are there but they can't get in the house because there are no warrants. They called Ms. Alty up and she told them they couldn't go in the house. There were drugs in the house. He watched a delivery being made. He sits on his porch every day. He can't see a judge slapping them on the wrist and letting them go. He is eighty-two years old or he would knock the hell out of them. They wouldn't need a cop. They would need an ambulance.

Councilwoman Rhodes asked if anyone had a video camera. A judge won't give a warrant without probable cause. Mayor Thomas has seen the drug deals go down. They pull up to the front yard and they don't even cut their engine off. They are there thirty seconds and they are gone.

Bob Richards, 204 S. Riverside Drive, mentioned having his home for sale and when somebody comes to look at his home,

he doesn't tell them to turn right on East Pine Bluff because he tells them to come down Park Avenue to Riverside. He doesn't want them thinking they have to live that close to those kind of places. If you are going towards U.S. #1 it is the two story on the left but it is also the one across the street too, next to the garage. This doesn't look like a real nice neighborhood that somebody wants to buy a \$700,000 home in.

Councilwoman Rhodes felt if Code Enforcement can work it that way and lien the house, she thought the mother might come around if it hits her in the pocketbook. A lady in the audience said it has hit her several times in the pocketbook.

Mayor Thomas stated law enforcement is very special and secretive and if they do all this in a public meeting and they know they are coming, they shouldn't do that. It is under investigation. It is noticed and action will be taken.

Mike Visconti, 316 Pine Breeze Drive, stated they have a problem on Pine Breeze Drive. Who is responsible for the sidewalks around Meadow Lake? Councilwoman Rhodes thought the Homeowners Association was. Mr. Visconti stated the sidewalk has lifted three and a half inches and for the past four months they put barricades on it. The owner of the house where it is lifted up in front volunteered to repair it. She was told she could not repair it because if something happened she could be sued. In the meantime the sidewalk is not being repaired. Somebody from the City put a barricade up and knows how long it has been there. He spoke of having to walk in the street around the barricades.

Acting City Manager Barlow agreed to have an answer at the next meeting.

Councilwoman Rhodes stated what they do now is when developments are built the sidewalks are built by the developer and the homeowners association is responsible for the sidewalks. She wasn't sure if this applied to Meadow Lake or not but they would research it.

Mr. Visconti stated they volunteered to fix them but they were told no. Councilwoman Rhodes asked who said no. Mr. Visconti informed her somebody in the City. The Board of

Directors have come to the City to ask for this. Naomi Calabrese is the one that owns the house in front of where it is bad. There are other spots too that are bad.

Mr. Visconti stated if the homeowners association is responsible for repairing it why are they liable in case somebody falls. Councilwoman Rhodes informed him they are not. Mr. Visconti stated that is what they told them.

Acting City Manager Barlow agreed to research that issue on both sides to find out who is responsible to repair. Even if there is an opportunity that a homeowner is willing to repair it and liability is a concern, he could maybe work with City Attorney Ansay and get a liability release to satisfy her needs. Councilwoman Rhodes stated she wouldn't have gone through all of this. She would have just done it.

5. CITY COUNCIL REPORTS

Councilwoman Rhodes stated they had a General Employees Pension Board meeting this week and they got their financial report from Mr. Ascherl. Mike Walker from Bogdahn who is the consulting firm that gives advice about the Pension, was there as well. They gave their report. They are having another meeting next week. The upshot of that meeting is nobody seems to have a copy of the by-laws. Originally when she came on to the Pension Board, she was told, but never saw anything, that it was an advisory board. If it is an advisory board that means they can make recommendations and then it comes to Council to implement those and Council and the Board have to agree. At their next meeting they are going to get a copy of the by laws and they are going to investigate if they are an advisory board or not. If they aren't and can actually do something they are going to discuss changing financial managers and redistributing some asset allocation, some small things that may help us get a better return on the money. If you sit on the Board you have a fiduciary liability, which means if those funds are not administered correctly then every member of the Board can be sued and every member of the Council can be sued. They tend to be very conservative as they should be.

Councilwoman Bennington pointed out she had the latest update on the list of advisory boards and the General

Employees Pension Board is not listed as an advisory board but the Police Pension Board is.

Councilwoman Rhodes stated the Police Pension Board is not an advisory board as far as she understands it. They are going to get that straightened out so they know whether they are or they are not.

Councilwoman Rhodes also reported they have another meeting at the end March, she thought it was March 21st with the lawyer present as well as Bogdahn and they have some questions to ask him. When she first was on the Pension Board, they only met twice a year. She thinks that is why everybody thinks it is an advisory board. It has only been in the last couple of years that they have been meeting more often than that to try and resolve some issues they are having. In the year 2000 or 2001 the employees in that pension plan wanted to retire she believed at the age of 55 or twenty years of service. Mr. Bosse' pointed out they could go early at twenty years or age 50 with retirement at age 55 or 25 years of service. Councilwoman Rhodes stated now the IRS has come out with some new rules, where you can't retire after twenty years if you aren't 55 or 60. In order to institute that change those years ago the employees paid 2 ½ percent so they were able to have that in their pension plan. Now they aren't able to have it in their pension plan because of the IRS. They paid 2 ½ percent for many years now and they aren't getting it. They are going to have to talk to the lawyer and work something out where they are reimbursed that money depending upon this IRS ruling and whether it is going to affect them or not. There are many irons in the fire. She will be reporting back and letting them know what happens with it.

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

Councilwoman Bennington congratulated the new City Clerk, Bonnie Wenzel for her first meeting and she hopes she is happy with this job after a couple more meetings. Councilwoman Rhodes jokingly informed her it was down hill from here.

Councilwoman Bennington stated they have had several meetings with the Pet Society and they have a conceptual drawing on how they want the Fire Department converted.

Right now they have some professionals looking at it to see if it is feasible for them to do it that way. They are also going out for bid for the new Wastewater Maintenance Building to replace the Animal Shelter. That is going out this week. Staff is working on drawing up policies and procedures to go with the new Animal Shelter so when they move in everything will be ready and working as it should be. Their target date is October. She has given them until December to have it done. Everything is looking really good. Everybody is working together very well with that.

Councilman Cooper asked Councilwoman Bennington if that meant opening in October or December. Councilwoman Bennington informed him that is what they are planning on.

Councilwoman Bennington reported on a call she received from someone that lived on Willow Oak Drive and he was very adamant about these throw away newspapers that are being thrown in the City rights-of-way, not in people's yards. He was saying that it's a way for the unsavory element to know when somebody isn't home. With the high number of empty homes we have they are accumulating. She asked if there was something the City could do to alleviate this. She suggested he call the newspapers and say don't throw them in his yard. He said they aren't throwing them in his yard. They are throwing them in the City rights-of-way and he is just letting them pile up at this point because he is really upset about it.

Acting City Manager Barlow stated they have had numerous concerns. They have called the individuals that circulate those free circulations. Those carriers get paid on how many they distribute. Even though the house may be on a do not throw list, they don't care. That is a continuous problem from a Code Enforcement standpoint.

Councilwoman Rhodes asked if they could do something if they are thrown in the public right-of-way. Acting City Manager Barlow informed her the public right-of-way they are referencing is the section in front of their house, which technically the only thing Code Enforcement can do is cite the property owner themselves and then lien that property owner for those papers they refuse to pick up out of their right-of-way. They are still responsible to maintain the right-of-way.

Councilwoman Rhodes asked if they could work out something with the recycling company that when they are picking up the recycling buckets if they see those papers on the right-of-way that they would pick them up. Acting City Manager Barlow stated he could ask them. That is essentially asking them to pick up litter and time is money on their part. Councilwoman Bennington suggested working out a program with juvenile defenders and have them pick them up. It is an unsightly mess and is creating a problem with all of the empty houses.

Councilwoman Bennington stated when she started questioning how they do board appointments she got one list and then when she questioned it it was the wrong way to do it and they checked it again and she has a memo from Susan from 1998 that she and Ken Hooper came up with rotating. She thought they rotated all of the boards. Each board is rotated individually. That is causing a whole lot of confusion. She would like the Council to have a workshop and decide how they want to do this. The Board appointments are too important to be left up in the air for someone to tell them it is their turn. She asked the City Clerk to go through and clean up all of the old applicants that have been piling up and keep them current within six months. She suggested they advertise but was told it doesn't do any good. This is an issue she feels the Council needs to sit down and decide how they are going to handle the board appointments. They are a reflection of the Council and they are very important to them.

Councilman Cooper noticed while reviewing the by-laws that nothing has been updated for twenty years on how they appoint. He feels they need to look at the by-laws for every one of the boards and committees and write in the amendments they need. The boards and committees should be reviewing the applications and bringing them the best candidate forward for Council to make appointments so mistakes aren't made.

Councilwoman Bennington stated when she was on the Council before when she got applicants she called every one of them. When you get an applicant that has been there since 2003 and their number is disconnected it makes you wonder. She asked to schedule a workshop to address this issue on how they would like it handled as a Council.

Mayor Thomas felt she had some good points.

Councilman Cooper stated the boards work at the grace of the Council. He asked if they could make a motion to send back to all committees and boards that they look at their by-laws and come up with a workable program for board appointments. Councilwoman Bennington stated that would be fine if that is what they want to do. The way she is seeing it is the Council has to address their section because even if the board sends them people and maybe one of them wants somebody else, they need to address how they are going to handle this before they ask the boards to do anything.

Councilman Cooper felt it was a good qualifier to have the best applicants brought forward. Councilwoman Bennington felt before they send it to the boards and ask them she thinks they need to decide how they are going to handle the appointments that come to them. Councilman Cooper confirmed she wanted to set the criteria, send it to them and tell them to change their by-laws accordingly.

Acting City Manager Barlow commented on them talking about two different problems, inconsistencies among numerous different by-laws over numerous different boards. There is an opportunity to have them uniform if they want them consistent and that could be put in a workshop and at the same time they could talk about what type of rotation they want to do for the board appointments. When it is said and done they would have consistent by-laws for all the boards and the consistency in the rotation as well.

Councilwoman Bennington didn't care how they did it. She just thinks they really need to look at it.

Councilwoman Rhodes had no problem with having a workshop on it.

City Clerk Wenzel asked when they wanted to have the workshop. Councilwoman Rhodes thought they had this discussion a few years ago and nothing has ever been right or worked better than this so far.

Councilwoman Bennington feels it needs to be discussed because now it is getting confusing.

City Clerk Wenzel asked if they wanted to do it at the next Council meeting or if they wanted it separate. Councilwoman Bennington wanted to have a separate workshop.

Councilwoman Rhodes questioned if they could have it before the next Council meeting. Councilwoman Bennington doesn't like time restraints like that but she was okay with whatever the Council wanted to do.

Councilman Cooper mentioned there being a lot of issues due to the by-laws not being addressed for so long.

There was some discussion about when to hold the workshop.

Acting City Manager Barlow stated prior to that they may be able to get a similar draft out. One of City Attorney Ansay's colleagues that works in her office may have some previous work. Councilman Cooper mentioned Finance Director McKinney having some input on some of these things as well.

It was the consensus of Council to hold the workshop before the next Council meeting at 5:00 p.m.

Mayor Thomas reported on attending the WAV meeting, the VCOG meeting and the VCOG Smart Growth Committee meeting since the last Council meeting.

Mayor Thomas responded to comments made by Ms. Donahue during Citizen Comments regarding Restorations and the water. One of the reasons he ran for Mayor was a project of Restorations. It concerned him because for thirty years he patrolled that property and used it as his back yard. They let him hunt out there. He is very familiar with which way the water runs. At this time he isn't sure they do. The Smart Growth Committee two meetings ago, Dr. Philip Laurien of the East Central Regional Planning Council attended their meeting and he was going through slides showing less than desirable and not poster child communities. It so happened that he showed the Restoration project on there. He gave a lot of concerns about what they were doing and how they were doing it. He asked him if he would come to the Council meetings and give them the orientation he just gave him. He said he would be happy to. Since then he has asked Acting City Manager Barlow to schedule him in or around the same time they get the next presentation from Mr. Mears. Since that time it just so happened that the word was received and Mr. Mears has met with the East Central Regional Planning Council on several occasions and they have changed their design again. This is going to be their third design. They have changed their

name twice. In this last design, he spoke with Mr. Mears on the phone and they were supposed to meet but they haven't yet. They are reducing the number of houses. They are not going to build any houses in the New Smyrna city limits. He asked if Mr. Laurien was still going to come and give a presentation.

Acting City Manager Barlow stated there was a meeting scheduled for next Tuesday with RPC and after that Mr. Mears has requested, probably in the middle of April, an opportunity to come before Council to make a presentation. He can see if he is interested as well. Mayor Thomas wasn't sure that that would be beneficial at this time. He thought Mr. Mears has actually gone along with all the recommendations that the East Central Regional Planning Council has put on there. They might want to talk to him first before they invite him.

Mayor Thomas then addressed the water. He was put on the Water Authority of Volusia to represent Edgewater. They are trying to make everybody go by requirements. A lot of these cities that aren't in WAV are using that and then Edgewater residents are preaching reclaimed water, xeriscaping and they are preaching water conservation and the other cities are utilizing the water like there is no end. They are in the Floridian aquifer. The other two wells aren't going to be put to the west. They are going to be put north of the Water Treatment Plant. He then pointed out where the other two wells are going to be drilled in the future. The WAV people don't know how to take him yet because he is a conservationist. He spoke of water being pumped to Key West. They need to plan for the future. He thinks they need to get a desalination plant, one on the east side and one on the west side for watering lawns and stuff, not for household use. He has only been to two or three meetings and he is easing into it. He is very concerned on the conservation of water and very concerned on the Restoration project. They will make sure it is done correctly.

Councilwoman Rhodes felt half the problem with that is that the largest consumers of the water are not in the program.

Mayor Thomas called a ten-minute recess at this time. The meeting recessed at 8:05 p.m. and reconvened at 8:19 p.m.

6. CONSENT AGENDA

A. Authorization for the City to enter into an Affiliation Agreement with Daytona Beach Community College which allows the EMT and Paramedic students to ride along with Fire Rescue

Acting City Manager Barlow made a staff presentation. Since they had completed the agenda, City Attorney Ansay has also sent some concerns regarding the liability insurance and making sure we have binders covering such. If Council approves this request, he asked that they consider contingent on satisfying comments that he is working with City Attorney Ansay on as it relates to the insurance.

Mayor Thomas asked who would be paying for the insurance. Acting City Manager Barlow informed him DBCC maintains the insurance.

Mayor Thomas asked if they would be going out and getting an insurance carrier or if they were self-insured. City Attorney Ansay explained the agreement provides that they are in what is known as the Florida Community College Risk Consortium. It is basically a self-insurance pool amongst community colleges but it is very sound and stable. The agreement mentions they are a member of this but it doesn't require them to stay a member. The traditional language they would have to protect the City in an event something were to happen to one of the kids in the program. There also needs to be language about sovereign immunity and things like that. Beyond that she felt the agreement was fine.

Councilwoman Rhodes stated she has no problem with education and feels this is a great program but asked if they thought of charging them a fee. Those kids pay tuition to be educated. The City is helping in their education and should get a fee for that. They are paying the college and the college is keeping the money. Acting City Manager Barlow explained that would just be another lab fee. This semester alone they have two or three students that are participating in the program which would be increased costs to us as well as other residents in the community that participate in the program. He was concerned if they required a fee and other cities didn't, then we would not have the opportunity to participate in the precept program whereas we also utilize that to screen

these paramedics and EMT's going through school and also recruit them to become volunteers or future career employees. It's a two-fold.

Councilman Cooper commented on having this in the past and he asked if they have had liability problems in the past. Acting City Manager Barlow stated it has been reviewed in the past from previous Attorney's as well. Councilman Cooper asked if they have ever had anyone get hurt. Acting City Manager Barlow informed him they had not.

Mayor Thomas asked if they have to sign a hold harmless. Acting City Manager Barlow stated no because they are covered under the college insurance. Mayor Thomas asked City Attorney Ansay if that would be another cog in the wheel for us. City Attorney Ansay explained it would certainly help the City but she has already bogged Tracey down with several things she thought had to be changed. Clearly the City would be much better protected if there was such a clause that would hold the City harmless in the event anything happened to them. She didn't know whether the college would go along with that or not. The way the agreement is drafted now, if someone were to get hurt, the insurance carrier, if it is the responsibility of the college, they will kick in and cover. She would say that is always an extra added protection.

Councilwoman Rhodes stated if someone gets hurt and gets sued they are going to come after the city. City Attorney Ansay stated the City is going to be named no matter what. Mayor Thomas stated he is looking out for the City. That is a high-risk profession.

City Attorney Ansay stated one of the things she recommended in her e-mail to Tracey was a provision as well for indemnification that in the event somebody is harmed and they sue the college and the City that at that point if it was not the City's negligence that we would be indemnified completely by the college. She felt that was something else that needed to be in there.

Councilman Cooper questioned City Attorney Ansay trying to put us into a shared responsibility position. City Attorney Ansay stated she is trying to shift the responsibility. Her firm does all of the liability defense for the school system. It's amazing what the tax dollars go to to spend in defending and ultimately paying on claims

that are really pretty frivolous. The system is such that you have to expect that. They have been lucky in the past but it is her job to sometimes predict the worst.

Mayor Thomas feels the more protection for the taxpayers of Edgewater they can put in there would be good. He is trying to build a case for the City, which is the taxpayers of Edgewater.

City Attorney Ansay recommended they approve it tonight with the conditions that she get with the City Manager and they come up with the best liability protections they can for the City of Edgewater to be placed in the contract and absence, if they refuse or there is a failure they will come back to Council. If they acknowledge them they would have authorization to proceed with the contract.

Councilwoman Bennington so moved.

Mayor Thomas stated he is not against on the job training. This is probably the best education they can get. He is not against that. He is trying to prevent something for the spending of money from the taxpayers or the citizens of Edgewater.

Councilwoman Bennington stated she made a motion for approval based on what City Attorney Ansay suggested, second by Councilwoman Rhodes.

The MOTION CARRIED 4-0.

7. PUBLIC HEARINGS, ORDINANCES AND RESOLUTIONS

There were no Public Hearings, Ordinances or Resolutions to be discussed at this time.

8. BOARD APPOINTMENTS

There were no Board Appointments at this time.

9. OTHER BUSINESS

- A. Appeal of Vested Rights Determination - Edgewater Preserve (VR-0702). SeaEdge Partners, LLC filed an appeal of the City Manager's Vested Rights Determination on January 3, 2008 for property (292.5+ acres) located adjacent to and north and

south of Volco Road, west of Edgewater Lakes,
west of the railroad tracks and south of Florida
Shores

City Attorney Ansay commented on recently conducting a vested rights determination hearing. It was the first one under the relatively new Land Development Code provision. Tonight they have two appeals of vested rights determinations also made by the previous City Manager Jon Williams. There were actually originally three applications filed by the applicant, SeaEdge Partners. One of those applications was deemed to be vested for the Edgewater Preserve property because there is an existing PUD agreement in place. Under the Code and under general law in order to be determined to be vested there is certain criteria that has to be met. The one that was granted by the City Manager was done so on that basis. There were two others that were denied. The first one has to do with the 292-acre parcel. Just as they have done before, this is an appeal based on a determination made by the City Manager. The application was filed and it comes to Council for determination. They originally had this scheduled for the February 4th meeting but were asked to continue it by the applicant. They scheduled it for today. The Land Development Code provides they shall make a determination within a certain time period and tonight is the last day under that time period. She thinks the way in which it would make most sense to proceed since this is an appeal by the applicant and by the landowner to allow them to present their appeal since they are the ones seeking relief and after they have been given an opportunity to discuss their basis for the appeal, they have Mr. Lear present who can respond to the land use issues. She felt they had to remember and it is sometimes difficult to do so that they are here solely to discuss whether or not this project is vested. Issues like whether or not they like the project, whether or not they like the folks at the podium, all of those things are completely irrelevant and really not what they are legally here to do. They are here merely to determine whether or not that vested rights denial made by Mr. Williams was appropriate or not. If they find it to be appropriate, they basically affirm or say they agree with that decision. If they find that vested rights do exist, that means as they discussed before they fall within those certain narrow categories then they can reverse that determination. That is really the only decision they are here for. She suggested they start with the one project.

Take them in turn so they don't have confusion. They do have two separate applications. They will start with one and hear it to conclusion and then hear the next one.

Jim Scott, Sea Edge Partners, announced Jason Gambone was also present, applicant appellant, wanted to correct one thing the City Attorney mentioned. This involves Edgewater Lakes, the large residential community that SeaEdge Partners is developing and there were three applications. The one that got approved was for parts of Phase I of Edgewater Lakes. The one they are talking about right now is the Edgewater Preserve. Edgewater Preserve is really just the name of the second phase of Edgewater Lakes. Back in March of 2005 the Council approved the plat for the first phase 1A of Edgewater Lakes. Upon the approval of that by Council back in March of 2005, they then wanted to present to the City at that time the application in connection with Phase 2, which again had been renamed Edgewater Preserve. The City staff said no, they wouldn't consider the application if they put it in at that point in time. They wanted them to get the final plat for Phase 1A that Council had approved in March of 2005 recorded, which is a ministerial act. Unfortunately an odyssey occurred at that point of a number of hoops they had to comply with in connection with the City. They had some well-known litigation and disputes and problems with the commercial property owner, Mr. Howard, that still kind of fester out there a bit. During this entire period of time, the City said they weren't going to consider the second phase until they got the plat recorded. They thought they had reached a point in April of 2006 when the plat was going to be actually recorded. All the ministerial stuff had been taken care of and they thought they had gotten Mr. Howard's cooperation. In May 2006 they filed the application with the proposed plans in connection with Phase 2, which was Edgewater Preserve and paid their \$5,000 fee. Again the City staff would not proceed with it. They kind of tabled it and put it on the back shelf and sat on it until the final plat for 1A got recorded. Again the ministerial act of recording which happened finally in January 2007 and what was holding it up at that time again was the dispute with Mr. Howard and he was actually in court and a judge was telling him to sign the plat or he would be going to jail today. He finally signed it. By then the City said they wouldn't take any action on the application that had been put in in May of 2006 and that SeaEdge wanted to proceed with back as early as March 2005 because now the

Land Development Code had been revised and it no longer complied with the code. Their application still languishes somewhere on a back shelf at the City. The difference in the Code between the old and the new and this project is that this project contains some 50 front foot and 60 front foot as well as 70 front foot, 75 front foot and 80 front foot lots. They wanted to proceed with this as early as March of 2005 and had their application in finally in May of 2006 they just want to proceed with the application and project and they feel because these various things had occurred that they are vested.

Development Services Director Darren Lear pointed out the location on a map. Phase 1A of Edgewater Lakes has been platted. Phase 1B and 1C, which they had applied for vested rights determination was determined to be vested. They are talking about the second phase of Edgewater Lakes, which they are calling Edgewater Preserve. The original PUD agreement did encompass all of that property. The applicants then wanted to amend the PUD agreement. They amended that on February 19, 2004 and removed Phase 2 from the PUD agreement. The PUD agreement says it is to be considered at a later date and that no development approvals or entitlements are authorized by City Council. What they have is that the application does not meet any of the criteria as defined in Section 21.07 of the Land Development Code.

Councilwoman Rhodes asked why they removed Phase 2 from the original PUD agreement. She asked if the City asked them to do that or if they did it on their own. Mr. Lear believed it was the applicant's proposal.

Councilwoman Bennington stated when she went through his affidavit and was writing down the dates, she hears from Mr. Scott, he mentioned 2005. She didn't have 2005 on any of the dates from Mr. Lear's affidavit. She asked where May 2005 came in. Mr. Lear stated he was going by application dates and dates things were approved. Councilwoman Bennington stated the project came into them originally in 2001 and then it was amended in 2004. Then they applied for a rezoning in May 2006 and that is when they agreed to split it. Mr. Lear stated they were split off in the 2004 amendment. Councilwoman Bennington stated but the rezoning was in 2006. Mr. Lear stated the application would be the rezoning from formally Phase 2 to Edgewater Preserve. Councilwoman Bennington stated then

they jumped to 9/06 is when the amendments for the 75-foot lots were put in. Then they have approval of Phase 1 in January 2007. Mr. Scott kept saying the plat approval for the first phase she was assuming was in 4/06 it was presented and it was accepted in 2005. Where does this fit into this? How did this get separated?

Councilwoman Rhodes stated she wasn't confused until Councilwoman Bennington started talking.

Mr. Lear stated basically the separation comes with the amendment to the PUD agreement in February 2004. Councilwoman Bennington stated but Phase 1 final plat was approved in 2005 or it wasn't approved until 2007. Mr. Lear stated Phase 1A was not recorded until January 2007. Councilwoman Bennington asked when it was approved. Mr. Lear stated he would have to check the records. It probably went to council several months before that. Councilwoman Bennington asked if that was what was Mr. Scott was saying that it was approved by the Council in May of 2005. Mr. Scott informed her yes.

Councilwoman Bennington stated when the whole project was brought in to begin with did they have 50 foot lots in the PUD? Mr. Lear stated they had a mixture of 50, 60, 70 and 80 in the 2001 PUD agreement.

Councilman Cooper asked Mr. Lear if he ever got an explanation to Councilwoman Rhodes question about why the second phase was dropped off. Mr. Lear wasn't sure and suggested they ask the applicant.

Councilwoman Rhodes stated the point is they had a development agreement. The development agreement was amended. All the rest of it was lived up to by the development agreement. This was dropped out at their request in 2004. At this point in time there is no development agreement that applies to that piece of property. Mr. Lear stated they have no development approvals for that piece of property.

Mr. Scott wanted to talk about Mr. Lear's affidavit in a moment. The reason that there is no development agreement is that the City would not accept their application. They wouldn't take it. That is a big piece of why they felt they were vested. In March of 2005 the first phase that had been separated off a year before in 2004 had been approved

by the Council. The recording of the plat at that point should have been a simple ministerial act because Council had approved it but it wasn't. The City had a lot of things for them to do before they would agree to record it. They also had this litigation going on with Mr. Howard who was trying to throw obstacles in the way. They came to the City after the Council approved their March 2005 plat for the first part and wanted to apply and get moving on the second part that had been separated away in 2004. The City said no, they had to have the plat recorded first. They didn't agree with that but they tried to work with the City on that. They thought it was going to get recorded by the City in April 2006. The new Land Development Code still was not in effect at that point. They make application the following month. They actually got to the point where they thought they were going to let them proceed so they make application and they still won't proceed. They pay their application fee and it gets put on the back shelf by the City, not them. That is why they feel they should be considered vested. It's not their fault. They attempted. If the City had acted on the application in a timely fashion as contemplated by their ordinances then they would have been approved long before they reached the point in September 2006 when they changed the Land Development Code.

Councilwoman Rhodes stated they don't know that they would have been approved.

Councilwoman Bennington stated Mr. Scott said the City did not act in a timely fashion. He was talking about going back to 2001 and those people had problems amongst themselves that created part of this problem. Don't just say the City didn't act timely.

Mr. Scott said in 2001 there were different people who owned this land and this project. They came in after the initial PUD had been signed and they purchased the property based on what they understood was going to occur. The deed was included with the application. They purchased in 2003. There was a different owner dealing with this during a couple years of that.

Councilwoman Rhodes wanted to know why they asked for that phase to be taken out of the development. Do you understand that we have criteria for vesting? One of those is that you have to have a development agreement. They have no development agreement for this piece of property

and Mr. Scott is saying the reason they don't have a development agreement is because the City didn't act in a timely fashion, which is why they think they are vested. But he doesn't know that the development agreement for that piece of property had the City acted in a timely fashion, that the development agreement would have been approved. Mr. Scott stated it changed very little from what had been approved before. That is why he is making that statement.

Councilwoman Rhodes stated he didn't know that he would have gotten 50 and 60-foot lots in that development agreement. In her recollection of that time period they very well probably would not have.

Mr. Scott stated they did in March of 2005 when Council approved the first phase and they had attempted again to make application immediately after that for what essentially was a similar community. It was the second phase of it.

Councilwoman Rhodes stated Mr. Scott is saying the City held them up so what they are asking them to do is say it was partly the City's fault so they should vest them. Councilwoman Bennington informed Councilwoman Rhodes he didn't answer her question. Councilwoman Rhodes felt they probably wouldn't get that answer. She asked why they took it out to begin with. Why didn't they just leave it alone?

Mr. Scott stated he would love to answer that but he wasn't sure himself. It was before his time with the company.

Councilwoman Rhodes informed Mr. Scott he bought that property with no development agreement to go with that piece of land. When they bought that property they knew there was no development agreement. There was no PUD on that.

Mr. Scott stated there was when they bought the land but it was amended and divided. Councilwoman Rhodes stated they amended it and question why he didn't know why they took it out. Mr. Scott stated he knew there was some issue about a golf course. It was before his time with the company. Councilwoman Rhodes stated for some reason it was advantageous to them to take that piece of property out of the amended agreement. Mr. Scott stated let's say he agrees with that. They then thought in a timely fashion and attempted to present an application and the City said

no. The City still has not acted on the application. He didn't disagree with her that there may have been a series of occurrences of which they participated in at some point. Councilwoman Rhodes stated they didn't only participate, they instigated it. They asked for it. Mr. Scott didn't disagree but at some point when they made application again, he thinks the City had an obligation to proceed with what they were attempting to do and that was before the Land Development Code changed. Councilwoman Rhodes agreed. She felt unfortunately at that point in time they should have come to Council and said they had turned their stuff in and nothing was being done. Mr. Scott stated and they were trying to work with staff as best they could. They learned that is the best way to approach trying to develop and build. Hindsight perhaps they should have come before Council much sooner but they were trying to work with staff.

Councilwoman Rhodes stated now they are at a point where it is his word against Mr. Lear's word. Mr. Scott wasn't sure they were disagreeing very much as to what happened.

Councilwoman Rhodes asked Mr. Lear if he agreed that the City held up his application. Mr. Lear stated the application was in May 2006. The Land Development Code change was in September 2006.

Mr. Lear commented on having negotiations with PUD agreements that can take six to nine months with developers. There is a process there.

Councilwoman Rhodes asked if during that time they were negotiating a PUD agreement. Mr. Lear stated basically they were in the land development revision stage and they were told that most likely they weren't going to get staff recommendation for 50 and 60-foot lots because they knew what was down the road with the 75 foot wide lots.

Councilwoman Rhodes stated her point is Mr. Lear was involved with the Land Development Code. Why was no one negotiating a PUD? If in fact he turned his stuff in, why was that not occurring? Was it because he had other work to do and he wasn't able to do it? Mr. Lear stated there is that and for what they were requesting they were basically told by staff for what they were requesting staff wouldn't recommend. That is what they were sticking with. That is what they wanted was the mixture of the 50's and

60's. There wasn't a whole lot of negotiating to go along with that.

Councilwoman Rhodes stated it isn't Mr. Lear's decision to make whether they should have 50 or 60-foot lots. That is Council's decision and it should have come to Council. Mr. Lear stated that wasn't their decision. It was staff's recommendation to not allow it. It wasn't their decision. They were telling them what the climate was at the time and what their recommendation would be. Councilwoman Rhodes stated that was the reason they did not process their application. Mr. Lear stated they were being processed. There is a whole other process of going through it where they make comments back to them. The TRC gets the document to write their comments. Councilwoman Rhodes asked if that was occurring. Mr. Lear stated he had in his files the written comments in the PUD agreement about what was wrong.

Councilwoman Rhodes asked if they had given them comments as to what was wrong. Mr. Lear stated they hadn't given them comments at that time. Councilwoman Rhodes stated so in six months they didn't give them any comments. Mr. Lear stated four to five months. Councilwoman Rhodes asked if that is normal. Mr. Lear informed her there were a lot of things that weren't normal at that time. Councilwoman Rhodes stated she was saying under normal application process is it normal that it takes. Mr. Lear stated it takes several months to work through things.

Mayor Thomas stated they were going through the legal process, which takes time. He tried to explain this in an analogy. He built his house before Andrew. Fortunately he was able to purchase the lot next to him. At that time the building Code had changed. He had to leave four trees on his lot and he had to get a permit to clear it. A lot of changes occurred that he had to put in his garage what he didn't have to put in his house. They got a permit to build a house. Then they wanted to build another house and in the meantime the changes of the code had evolved and the reason they made those decisions to put hurricane anchors was so their houses would be safer. Council voted to make these changes so the City of Edgewater would be better without the 50 and 60-foot lots.

Councilman Cooper guessed he was under the consensus that they are here to vote on a vested rights issue and whether it is valid or not. It sounds like prior to the Code

changes, which really isn't relevant, that there might have been some stalling why this man's plot hadn't been pushed through and approved considering there was an original back in 2001 that had them all on there anyway. They broke it apart for whatever reasons. He assumed it was for financial reasons. If that is the real issue, when under the Statute an application is filed or a process is being negotiated and they have documentation supporting the negotiations does it become the issue of vested rights? What date makes it a vested rights issue?

City Attorney Ansay explained under the Code they have three criteria that can be met. The one they are talking about describes an agreement in place meaning the agreement is executed.

Councilman Cooper asked if the agreement in place represents what Mr. Lear told them was in place as of 2001 for the entire project. City Attorney Ansay stated the agreement was superceded by the agreement in 2004 that specifically says as it relates to Phase 2 no entitlements exist. They are dealing with a property that is zoned for a PUD as opposed to dealing with a property where they are talking about changing the raw zoning. The PUD designation merely gives them the right to put together a deal with the government which is why she always advises her developer clients that before they do anything they have the PUD agreement in place and ready to go because there is peril there. There aren't any guarantees. It is an agreement. It is two parties trying to come to a mutual agreement. There is no entitlement until that document is signed. Her view of it she thinks as it relates to the question is there certainly are the allegations that there was discussion or this application that was being put in place but again it was apparently dependent on this plat approval and also they have the fact that the property at one point did have entitlement. For whatever reason that entitlement was given up and specifically disclaimed to have no entitlement and then they find themselves in the position they are in now.

Councilwoman Bennington stated at first she was looking at the date they were given the letter saying they didn't have the right, December 5, 2007. That could be a little iffy in her mind because of everything going on in the City then. They have this amended PUD agreement dated February 19, 2004 that referred to the proposed area as Edgewater

Preserve as Phase II of Edgewater Lakes and exclude permitted development from uses from said Phase 2. They signed this agreement saying they agreed to this. To her that would alleviate their vested rights.

Mr. Scott stated they were going under number 5 on the application. They weren't saying they had a development agreement. Number 5 says they relied in good faith and reasonable reliance in connection with something the City had done and it made a substantial change in their position. They were not changing the essential of the development when they split it into two. It is essentially the same thing and the City had just approved in March 2005 what they were trying to do in Edgewater Preserve in connection with Phase 1. There would have been no reason for them to suspect it would not get approved again separately. He didn't disagree that they started the ball rolling.

Councilwoman Bennington stated he keeps saying 2005 and this is 2004 where they signed this. Mr. Scott agreed and stated it was split off in 2004. They got Council approval for the first half in March 2005. They were ready to submit the application for the second phase, the other part, right after that and the City said no they would not take the application and process it until the ministerial act of the recording of the plat for the first part gets recorded. It is their position that the City staff should have taken the application at that time because Council had not one month before said they approve this type of development and these various types of lots and they were trying to proceed with the second part.

Councilwoman Bennington stated they shouldn't have signed away their agreement on Phase 2 before that.

Councilman Cooper stated as they read into the February 19, 2004 document, the very follow up question Phase I and Phase II known as Edgewater Preserve would continue to have a similar mixture of single family lots with front widths of 50 to 80 feet. It goes on to talk about both projects even though it says in the front it is a revised amendment. It kind of contradicts itself. He is getting testimony he has revised it but then in the same paragraph it talks about that it isn't thrown away, it's still lingering. Mr. Scott stated they were quite reasonable to rely on that in going ahead and once they got approval for the first one in

March 2005 getting their application ready to submit it for the second phase doing essentially the same type of building and the City said no, we aren't going to process this application and to this date they haven't processed the application. They weren't going to process the application until they got the recording of the phase, that ministerial act and the City Council had already acted and said they accept that type of development, the 50, 60, 70 and 80. They feel like they are vested because of that.

Mayor Thomas took offense that they were accusing Mr. Lear of stalling. His point was they have to go through legal processes and permits and applications. He doesn't think they stalled at all.

Councilwoman Bennington didn't want to say Mr. Lear did this. She doesn't blame Mr. Lear at all for this. She feels Mr. Lear was the subject of bad management.

Acting City Manager Barlow stated Mr. Lear doesn't have the unilateral authority as he has been accused this evening of possibly stalling on this. He acts and his work is prioritized by the current sitting Manager, which is then prioritized by the current sitting Council.

Councilman Cooper stated at the time the pulse was follow the new Code that was about to be changed. He was sure that was the motivation coming out of that department.

City Attorney Ansay stated based on the representations of the applicant, they are solely relying on the provision in the Code that states if you take a substantial change in position or incur some obligations on the project that are based on some clear and unequivocal act or promise that you can be deemed to be vested. Essentially the position they are taking is that because the City Council entered into an agreement and approved Phase 1 on certain terms and conditions that they believe it meets that criteria. Mr. Williams did not. Council has to determine whether they think that was reasonable or right. Whether approving Phase 1 is a clear and unequivocal act or promise that they are going to get approval on Phase 2. That is the real legal issue they need to focus on.

Councilwoman Rhodes stated she has a hard time with this because both hold equal weight. It is very difficult. She was on Council at that time when this was done. It is her

opinion that at that time when Council approved these, that they approved it all. The intent was to have multi-sized lots. They have gone through this many times before. That was the whole temperature at that point in time. Council's intent at the time this was done was that Phase II would be the same as Phase I. Her vote, since she finds both sides are compelling, was going to have to go with the intent at that time. They had a reasonable expectation of that at that time. She felt they made a huge mistake taking Phase 2 out of the PUD and legally they probably have every right to not vest them.

Councilwoman Bennington agreed with Councilwoman Rhodes. She felt both sides were very compelling. Because she wasn't on Council or the Planning & Zoning Board at the time, she would have to agree with Councilwoman Rhodes and go with what she said.

Mayor Thomas entertained a motion.

Councilwoman Rhodes made a motion that they not affirm the previous findings of vested rights. She wanted to reverse.

City Attorney Ansay thought the motion was to reverse the previous vested rights determination made by the previous City Manager. She felt because this item is technically an appeal of something they are taking action and on the last one public comment was allowed on the item, so she encouraged them to do it again.

Mayor Thomas opened the public hearing.

The following citizen spoke:

Carol Ann Stoughton, 2740 Evergreen Drive, stated from her understanding she didn't know but asked if the people owned the second thing at the time or was it through the courts and a judge made the man sign off. If they didn't own that land at that time, does anybody recall that statement?

Councilman Cooper stated on the title work Mr. Scott her answer is correct. They did have title on the property. Mr. Scott confirmed they owned the property.

Ms. Stoughton stated if she remembered back when we had a City Manager who headed an engineering firm, didn't this

company owe our town over \$2 million for work we performed. She asked if that had been paid?

Acting City Manager Barlow wasn't aware of any outstanding debt or any work that has been performed by the City on that.

Ms. Stoughton didn't think it was ever paid but thought they were out a lot of money on this. Councilwoman Bennington informed her that shouldn't have anything to do with what they have to address. Ms. Stoughton thought this was revenue the town could get and thought it should be looked into before they make a decision. She is totally against 50-foot lots.

Mayor Thomas closed the public hearing.

Councilwoman Bennington seconded Councilwoman Rhodes' motion.

Councilman Cooper asked City Attorney Ansay what the proper wording was. City Attorney Ansay thought the motion was to reverse and find that the applicant is vested on this particular application.

The MOTION CARRIED 3-1. Mayor Thomas voted NO.

B. Appeal of Vested Rights Determination - River Club (VR-0703). SeaEdge Partners, LLC filed an appeal of the City Manager's Vested Rights Determination on January 3, 2008 for property (36+ acres) located south of Oak Street between U.S. #1 and the Indian River

City Attorney Ansay again stated they should allow the applicant to stand up and present their position and give Mr. Lear an opportunity to respond.

Jim Scott, SeaEdge Partners, announced Jason Gambone was also present and stated the River Club property is 36+ acres that is south of Oak Street between U.S. #1 and the Indian River. Before they purchased this property, they had several meetings with then City Manager Ken Hooper and discussed with him at that time the City wanted higher densities along it's riverfront and wanted buildings of greater height on the west side of the river to expand the City's tax base and diversifields, housing stock and

increase job opportunities. They suggested to Mr. Hooper would a smaller condominium, which at that time they were talking several buildings that would be divided by a lot of green and were of six and seven story height would that be what he had in mind. He said yes. Based on those discussions, they purchased this property and contrary to the City Attorney's advice they annexed the property into the City and submitted their application. This one was submitted in March of 2006 and their conceptual plan and the proposed planned unit development agreement based on what they understood the City was willing to do. Nothing occurred on it because it was in the same period of time when the staff's focus was in other directions. On October 11th that is when it got put in front of the Planning & Zoning Board. The Planning & Zoning Board recommended against it because at that time it wouldn't have been consistent with the new Land Development Code. Then it came before council in April 2007 and Council turned it down for the same reason. This vested rights application was based entirely on and this appeal is based entirely on their reliance on the representations made to them by then City Manager Ken Hooper. That is why they bought the property in this instance.

Councilwoman Rhodes confirmed they talked to Mr. Hooper about this and that was their basis. Mr. Scott stated that is what they put in their application and sworn statement that they had several conversations with Mr. Hooper and actually suggested the very project and he said that is what the City would be happy to have so they bought the property and annexed in.

Development Services Director Darren Lear pointed out the property on a map and made a staff presentation by commenting on the history of the property. In September 2006 the Land Development Code was changed to require 35-foot maximum building heights and required net density calculations in lieu of the gross density calculations. It was brought to Council and denied at their April 16, 2007 meeting based on the request being incompatible with surrounding land uses and was not consistent with Section 21-50.02 and Section 21-58.02 of the Land Development Code. He was present at those meetings and there were never any promises ever given by staff that anything anybody proposes will happen.

Councilwoman Rhodes stated she doesn't feel any compunction about vesting them with this one because Mr. Hooper didn't have the authority to make that determination. It's just the luck of the draw.

Mr. Scott asked if what Mr. Lear said was on record before tonight. City Attorney Ansay informed him it was in the agenda packet in the form of an affidavit. Mr. Scott stated he was not there. That was long before his time. He was going entirely on what the President said occurred and didn't have anything else to add.

Councilman Cooper asked Mr. Lear if Mr. Hooper had those conversations in his presence and lead them to believe that a multi story building would be something he was looking forward to as far as density. Mr. Lear stated they were more along the lines of higher density, not necessarily higher building heights.

Councilwoman Rhodes stated for the record she was never in favor of high density along the river.

Councilwoman Rhodes made a motion that they affirm.

Councilman Cooper asked if they were going to have public comment.

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

Councilwoman Rhodes made a motion that they affirm the ex-City Manager's finding of the fact that they are not vested in regard to this property, second by Councilwoman Bennington.

The MOTION CARRIED 4-0.

C. Emergency Vehicle Transportation Agreement with the Emergency Medical Foundation, Inc. ("EVAC")

Acting City Manager Barlow made a staff presentation.

Councilwoman Rhodes asked if it was cost effective for them to them to not contract with EVAC and to provide that service. Acting City Manager Barlow explained State law dictates the counties have the right to issue those licensed to do the transport. Volusia County will not

issue those licensed to anyone outside of EVAC ambulance. It balances the service throughout the County. Insurance will dictate how much they pay on a transport. He feels it is a cost effective way where we get reimbursed, no additional money out of our pocket and they enhance their level of services for the critical patients that really need the immediate transport.

Councilwoman Bennington asked if they don't collect if they withhold that from us. Acting City Manager Barlow stated we only get reimbursed 90% of what they collect. It enhances our ability to enhance the services with the current staff and resources we have.

Councilwoman Rhodes felt it should have been in place all this time. Acting City Manager Barlow commented on what has been involved with this process and having worked on this for eight years. We have completed the pilot program and it is more effective and now they are expanding on this.

Councilwoman Bennington moved to accept this, second by Councilwoman Rhodes.

The MOTION CARRIED 4-0.

Councilman Cooper asked Acting City Manager Barlow if he ever had a situation where EVAC in other cities have actually taken advantage of the City providing any additional services where they aren't as diligent as they need to be. He realized what they are trying to do is a good thing for our community. Have they ever relied on the City to do twice as many transfers because they know the City will take care of it? Acting City Manager Barlow informed him he had not. With Amendment 1 and then relying on subsidy from the County there is a good chance that they will be removing units from the street and putting more reliance on some of them with those capabilities. His concern is that even without that agreement that scenario very well could take place and they would be at the mercy of waiting for an ambulance to respond from somewhere. It will help bridge that gap and take care of our citizens.

- D. Approve purchase of property located at 112 Rhode Island Street in the amount of \$180,000.00 with Fire Impact Fees and authorize Mayor to execute contract and closing documents

Acting City Manager Barlow made a staff presentation.

Councilwoman Bennington asked if they had the money in the Fire Impact fees. Acting City Manager Barlow believed there was over \$340,000 in there.

Councilwoman Bennington questioned the rental money going back into the Fire Impact fees. Acting City Manager Barlow informed her he would like for that money to go back in and he agreed to work with the Finance Director and make sure that is possible. This is just planning ahead.

Councilwoman Bennington moved for approval, second by Councilwoman Rhodes.

Mayor Thomas asked for public comment.

The following citizen spoke:

John Weiss, 1532 S Riverside Drive, stated he supports the purchase of this property if it can be purchased at the right price. He commented on properties that have sold around him and how much they sold for. He feels it is a good thing to purchase but thought the price was way too much money.

Councilwoman Rhodes asked about having an appraisal done. Acting City Manager Barlow informed her it came in at \$188,000. He has been negotiating with the property owner for some time and he has agreed to sell it below the appraisal and he split the cost of the appraisal also.

Councilman Cooper asked if he was doing anything on the closing fees. Acting City Manager Barlow stated we have agreed to pick up the closing fees and close in house if he would go below appraisal. That was part of the discussion, which started back in November or December.

Councilman Cooper asked how old the appraisal was. Acting City Manager Barlow informed him they got the appraisal in January. City Attorney Ansay informed him it was December 18th.

Mr. Weiss again stated he felt it was too much money based on properties that have sold in the area. To save the City

some money he would try to renegotiate in a hard way to try to get this property for less money.

Acting City Manager Barlow commented on the individual selling the property knowing the property is more valuable to the City than anybody else.

Councilman Cooper asked if they are getting a decent revenue on the rental. Acting City Manager Barlow stated they haven't established a rental rate. He is going to go in after they get direction that it is okay before he signs the contract and renegotiate an agreement with the rental but it will be market value of the rental. Provided this renter is willing to continue and they will do a month by month and Robin is in the process of working with the insurance company to get appropriate insurance and then they will end up with a renter's agreement. He would like to have a property management company so it is outside the City of Edgewater to manage it. He doesn't want the City getting into the rental business of residential properties. This is a unique circumstance where the opportunity was there.

Mayor Thomas asked Councilwoman Bennington if her motion still stood. Councilwoman Bennington informed him yes.

The MOTION CARRIED 4-0.

- E. Government Consulting Services Company - Cost Allocation Study and Model to determine the cost of all City services and fees that will maximize financial return on programs in an attempt to recover departmental and citywide overhead costs

Acting City Manager Barlow introduced Finance Director John McKinney.

Finance Director McKinney made a staff presentation regarding what this study will do.

Councilman Cooper stated this would support and pigeonhole every department and their costs and monies charged back to them for our own services. It makes it much more logical to follow the budgeting and how it is established.

Finance Director McKinney explained from year to year they will be able to level out what they are budgeting from every department.

Councilwoman Bennington stated they used to do it that way back when she used to serve on Council. Councilwoman Rhodes stated it got to the point where whatever the General Fund needed to balance the budget was moved over. Acting City Manager Barlow stated this would satisfy comments made by the auditors every year.

Councilwoman Rhodes thanked Finance Director McKinney for making his presentation very clear.

Councilman Cooper asked Finance Director McKinney if he had used this company before. Finance Director McKinney informed him he had not. They piggy backed with Ponce Inlet. He further commented on knowing Rob Garner.

Councilman Cooper asked about the time frame. Finance Director McKinney informed him if Council authorized this tonight he promises to have it to them by June 3rd, right in line with the due dates for budget, which he would be bringing to Council next.

Mayor Thomas opened the public hearing.

The following citizens spoke:

NoraJane Gillespie, League of Women Voters, stated she just served on the High Stakes Committee for the impact fee for new housing for the School Board and this same service was rendered by a different person to the High Stakes Committee to the tune of \$50,000.

Dominic Capria, 606 Topside Circle, stated he was very interested in this discussion. He was a little disappointed that they were going to spend \$12,500 to have this reviewed to see where they can save money. To him that is a slap in the face to the Department Heads. The Department Heads come every year and present their needs. This they are going to use user fees. The City Council has had the authority and always did transfer money from these users fee into the General Fund more than once. It's that simple. They can do it without this study. To him what is happening is once they get involved with that, there we go. Now the fees will start to go up. The paper said this was

not the purpose but in his belief that is the purpose. What he is actually saying is we have so much money in these users fees, they should be dropping the rates on that if they have that kind of money to keep transferring into the General Fund. When they do the budget and come up with the General Fund, if they have to raise taxes, raise them if that is what they have to do or start cutting. He further commented on how much the City pays in overtime a year, approximately \$360,000. Those are the things they need to look at. Not keep getting more money out of the public because he guaranteed that was what was going to happen.

Pat Card, 3019 Willow Oak Drive, stated this gets them one step closer to zero balance budgeting. What they really need to do is look at and see what it is actually costing in every area and get back to one of those fancy term, zero base budgeting and actually find out what it is rather than taking a look at what it was last year and adding 3 ½\$ back to it. It doesn't say anything bad about the Department Heads. It says they need to take a different approach. If it is done right and done effectively, what they should come out of this knowing is whether or not the user fees are actually valid. They may have too much money. If they do then they ought to reduce them for a while. If they don't they ought to get them where they are paying for themselves.

Councilwoman Rhodes wanted to go on the record and say that Dominic Capria said to raise taxes.

Mayor Thomas entertained a motion.

Councilwoman Bennington moved to accept the study and go on with it, second by Councilwoman Rhodes.

The MOTION CARRIED 4-0.

Mayor Thomas welcomed Finance Director McKinney onboard.

10. OFFICER REPORTS

A. City Clerk

City Clerk Wenzel reported that she didn't have a whole lot to report just yet. She is working on learning everything she needs to do and learning the ropes in her new office.

Everybody has been pretty nice to her so far and hasn't bombarded her with too much stuff. It is starting to trickle in now so she thinks it is going to get much busier as the weeks go on.

Mayor Thomas wasn't sure who was in charge of the clock but informed City Clerk Wenzel they needed to get it fixed. City Clerk Wenzel agreed to work on that.

Mr. Visconti congratulated City Clerk Wenzel.

B. City Attorney

City Attorney Ansay had nothing at this time.

C. City Manager

Acting City Manager Barlow presented an update on the Mission Oaks Subdivision regarding the temporary easement and his meeting with Councilman Cooper and City staff and the residents of Mission Oaks that was held on February 25th. He commented on their strongest issues being their concern for lack of communication and how this went down and the inability to receive their deposits back from the Utilities Commission as the City is charging them deposits as well. He received an e-mail from Robert Roddy, Utilities Commission, confirming they will be returning their wastewater and water deposits.

Councilman Cooper assumed the deposit was \$100. Acting City Manager Barlow informed him it was \$93 and change. Councilman Cooper commented on the deposits that will be returned to them being around \$50. Acting City Manager Barlow informed him that was for water and wastewater. They have broken the deposits down and are letting them make installments over a twelve-month period. After that, if they go 13 consecutive months without a late bill they return their deposits.

Acting City Manager Barlow informed Council the newsletter had been reassigned to Christi Moeller in Leisure Services. Councilman Cooper is working with her on some formatting changes he wanted. They are hoping to have the newsletter in the next water bill.

Acting City Manager Barlow reported that the General Employee Pension personnel have currently been meeting with

City employees this week and starting some of that transition and assisting them with some of the direction they needed to make a decision on which way they are going with the current pension changes and the options Council provided. They are hoping to have that resolved by April 1st.

Acting City Manager Barlow presented an update on Union negotiations. He is working hard to motivate PEA and the Teamsters to continue working toward this. He hopes to be possibly scheduling an Executive Session before their first meeting in April so they can talk about where they are with the negotiations and get some final direction.

Councilman Cooper asked about the General Employees contract they had a special meeting on and had made proposals when Mr. Williams was still here and if it had ever been presented to the General Employees. Acting City Manager Barlow informed him it had. Councilman Cooper clarified he was talking about the amended document. Acting City Manager Barlow informed him his first meeting with the General Employees was February 10th or 11th. The representative showed up and confessed he hadn't read any of the contract and that he would read it and get something in writing to them by the 15th and he hasn't seen anything. The local representative has been off on personal leave so he is trying to get with her to get that ball moving again.

Councilwoman Rhodes stated so they haven't gotten any raises so far. Acting City Manager Barlow stated no and he was trying hard. He felt bad about that. Councilwoman Rhodes felt they needed to get after their Union. Acting City Manager Barlow stated he knew how important it was to the Council to ratify those contracts. He has met with the Police Department twice and also had a meeting scheduled for Thursday with them. He commented on what he was requesting and what he was trying to do to expedite the process.

Acting City Manager Barlow commented on the school closings. He received a letter today from South Daytona and it appears they are trying to coordinate a meeting between the School Board and all of the cities. He wasn't sure if it was for just the City Managers or the elected officials as well. He asked the Council if they would be interested in him coordinating a representative with the School Board coming before City Council and discussing the

effects Edgewater would experience on some of these school closings.

It was the consensus of Council for Acting City Manager Barlow to do this.

Acting City Manager Barlow reported on Volusia Days. There is a bus that will be transporting elected officials from Volusia County. He told them to get with City Clerk Wenzel if they are interested. The bus will leave that morning and come back that night. He thought it was on April 3rd.

Councilwoman Rhodes couldn't believe they were doing it in one day. It is five hours there and five hours back.

Councilman Cooper asked if it could be amended to an overnight stay to get in the two-day session. Acting City Manager Barlow stated if someone was interested in going over night they could work with the Finance Director and the City Clerk to try to facilitate that.

Councilwoman Rhodes mentioned they used to attend every year but then they took it out of the budget because they were trying to cut costs wherever they could.

Councilman Cooper asked the cost on an individual basis for an overnight stay. Acting City Manager Barlow estimated it at \$120 a night for the hotel and then meal per diem. They could use a City vehicle. He didn't feel it was a bad for what you get out of it.

Acting City Manager Barlow stated Port Orange is trying to put together a special workshop with all the Southeast cities and also include Jack Hayman to discuss the Southeast Transportation Study. They are looking at March 12th or March 13th at 4:00 p.m. in Port Orange.

March 13th was better for the Council.

1) Tentative Agenda Items

There were no Tentative Agenda Items to be discussed at this time.

11. CITIZEN COMMENTS

The following citizens spoke:

Mike Visconti, 316 Pine Breeze Drive, stated the last time he was here he talked about the first impression about the grass growing in the gutters. He made a special trip to see if it was gone and it was. Somebody cleaned it up. Congratulations whoever did it. They also scraped the windows so he guessed they were getting ready to paint. He guessed it paid to talk sometimes.

Acting City Manager Barlow reported that the Electrical Inspector has been doing some building maintenance in the Building Department.

Councilman Cooper commented on the group effort by Tracey and Brenda to clean up the Park Avenue dirt and the entranceway to North Flagler. It has been improved immensely. He also commented on a problem on Pine Tree Drive that had been taken care of as far as he knew.

Eric Bosse', Vista Palm Drive, City employee, stated earlier Councilman Cooper mentioned about the little celebration that was put on for Mr. and Mrs. Wadsworth. He asked whether there is a policy in effect within the City as to who is recognized when they retire.

Councilwoman Rhodes stated he said the City and she didn't correct him. The City did not pay for that because she donated to it. Councilman Cooper stated they all donated to it but didn't they sell scrap metal to cover costs. Acting City Manager Barlow stated the City Council gave him direction to make a City donation, they didn't fund it they made a donation to it.

Mr. Bosse' stated he was just asking if there was some type of policy in effect as to who is actually recognized. Councilwoman Rhodes informed him no. Acting City Manager Barlow stated it is one of the things they have talked about but it is not priority right now, to put together a policy as they wrestled with this issue with Susan and Terry going into it. Can they unilaterally across the City? The Police Department was experiencing the same thing and presented a draft to him of a policy that would only affect the Police Department. He would like to see one citywide so it would recognize years of service and what is offered.

Mr. Bosse' stated so would he because there were two other thirty plus year employees that retired recently that really weren't acknowledged like that. He would like to see something uniform. It was Debby Sigler and Rob DeLoach.

Councilwoman Rhodes said was acknowledged. She went to Debby's party. Mr. Bosse' stated by Susan and Terry at their house. Mayor Thomas stated he spoke to Ms. Sigler and she didn't want a big party. Mr. Bosse' stated he wasn't criticizing. If they are going to do that type of thing there should be a standard policy on who is recognized and who isn't.

Councilwoman Rhodes stated you can't limit people if they want to give you a party.

Mr. Bosse' stated his concern was if City funds were being used.

Councilman Cooper thought Mr. Bosse' was bringing up that recognition is warranted and he reported that they are also working on a personnel policy and procedure to have a recognized program for plaques, awards, and notice in the newsletter to start to recognize our employees.

Mr. Bosse' asked that in the future if City funds are allocated for this that all employees be invited to it, which in this particular one they weren't and that it be held in this community and that the money be put back into the businesses that employ our citizens here instead of it being taken to Daytona somewhere.

Councilman Cooper stated Susan & Terry's son worked there so they wanted to go there.

Mayor Thomas mentioned the Police Officers and the issue with the City purchasing their guns or the employees purchasing their own guns. They are trying to make a uniform policy.

12. ADJOURNMENT

There being no further business to discuss, Councilman Cooper moved to adjourn. The meeting adjourned at 10:02 p.m.

Minutes submitted by:

Lisa Bloomer