

The City Council of the City of Titusville, Florida met in regular session in the Council Chamber of City Hall, 555 South Washington Avenue, on Tuesday, June 8, 2004.

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Mayor Ronald Swank called the meeting to order at 6:40 p.m. Present were Vice-Mayor Ken Ward and Members Chris Broome, Jeff Rainey and Conrad Eigenmann. Also in attendance were City Manager Tom Harmer and City Attorney Dwight Severs.

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Pastor Ray Southerland of God's Family Church gave the invocation.

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Mayor Swank asked for a moment of silence with special mention made of the passing of former President Ronald Reagan. He then led the entire assembly in the Pledge of Allegiance to the Flag.

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Special Recognitions – City Manager Harmer introduced Carol Iseman and John Peterson of the Water Resources Department as the newest Most Valuable Persons as selected by the City MVP Committee members. He read from their nominations and both he and Mayor Swank commended each for their service and value to the City.

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City Manager Harmer introduced Dock Master Mark Leslie of the Municipal Marina who gave a presentation that spotlighted his department. Mr. Leslie highlighted the City Manager's activities during his workday at the Marina and gave an overview of the Marina's organization, operations, and responsibilities.

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Presentations – Chairman Dean Pettit gave the semi-annual report of the Titusville Environmental Commission. Chairman Pettit's presentation highlighted Tree City initiative activities, site plan reviews, ordinance enforcement and proposed future ordinances, support of the city wide planning initiative, and the South Area Well Field Management Program. Chairman Pettit requested approval of a future presentation on the Greater Titusville Heritage Trail.

Member Rainey moved to allow Chairman Pettit to give a presentation on the Greater Titusville Heritage Trail at a future council meeting. Member Eigenmann seconded the motion and it carried unanimously. Member Rainey then moved to accept the Titusville Environmental Commission's Semi-annual Report as submitted. Member Eigenmann seconded the motion and it carried unanimously.

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Member Eigenmann moved to conduct the public hearing and address Ordinance No. 37-2004. Member Rainey seconded the motion and it carried unanimously.

Mayor Swank read quasi-judicial procedures.

Vice-Mayor Ward stated he could give a nonbiased vote on the item and would be voting on Ordinance No. 37-2004.

City Attorney Severs read, ORDINANCE 37-2004, AN ORDINANCE AMENDING ORDINANCE NO. 5-1993 OF THE CITY OF TITUSVILLE, FLORIDA, BY AMENDING THE ZONING MAP MADE A PART OF SAID ORDINANCE BY REFERENCE BY CHANGING PROPERTY LOCATED AT 1301 ARMSTRONG DRIVE FROM ITS PLANNED INDUSTRIAL DEVELOPMENT (PID) CLASSIFICATION TO PUBLIC USE (P) CLASSIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE the second time by title only.

City Attorney Severs then reviewed ethics opinions on voting conflicts based upon Florida Statutes. He reviewed criteria that required council members to disclose any contact from outside sources on quasi-judicial items and that written communications should be made part of the record as well. Vice-Mayor Ward, Member Broome, Mayor Swank, Member Rainey, and Member Eigenmann each revealed those whom they had spoken with concerning the item and each felt that they would give an unbiased vote.

City Manager Harmer reported that correspondence that concerned the matter was received and outlined said letters from Astrotech, Knight, LLC, Congressman Tom Feeney, and State Representative Bob Allen.

Planning Administrator Keith Cunningham gave a presentation that outlined the application to rezone submitted by Brevard Innovative Charter to rezone property at 1301 Armstrong Drive from Planned Industrial District (PID) to Public (P) zoning classification in order to allow a charter school of approximately 380 students. Mr. Cunningham's presentation addressed issues that included the Titusville-Cocoa Airport Authority's opposition to the request, the property location in relation to the Airport Noise Protection Zone, the Florida Department of Transportation's opposition to the request due to the site falling within the Airport Runway Protection Zone, and the request not being in compliance with the City's Comprehensive Plan Future Land Use Element Objection #18. Mr. Cunningham gave staff's recommendation to deny the request and the Planning and Zoning Commissions' recommendation that council assign staff with the responsibility of working out a creative way to allow the school to function at the site on a temporary basis until such time that the applicant could build a permanent facility.

Mayor Swank opened the public hearing.

Attorney John Evans represented the applicant and requested ten minutes to speak. Member Eigenmann moved to allow Mr. Evans ten minutes to speak. Member Rainey seconded the motion and it carried unanimously.

Mr. Evans spoke for the majority of parents, teachers, administrators, and students of Sculptor Charter School. His comments focused on how he felt the school's presence on the site was positive to the area and how he felt the zoning of the property was in line with the Comprehensive Plan.

The following parents, teachers, administrators, and students of Sculptor Charter School spoke in favor of the request and stated the school's value to the community and noted academic successes of the school and its students: Dara Yarosh, Barbara Carter, Shelly Price, Annie Widmeier, Tina Pobjecky, Jessie Jacobson, Bruce Penticoff, Kathleen Burkett, Kevin Brown, Mark Shimei, Patricia O'Sullivan, Ron Watford, and Jeff Gray, a local business owner, that favored the request and urged council to adopt Ordinance No. 37-2004.

The following citizens opposed adoption of Ordinance No. 37-2004 and urged council to deny the request. Reasons stated included safety, violations of airport noise and runway zone regulations, and incompatible land use within the area: Attorney Mike Arnold whom Mr. Evans cross-examined, Attorney Tim Pickles, Veronica Clifford, Wanda Barbash, Joan Wheeler, Patrick Corr, Gary Clifford, William Holm, and Gary Perry representing Knight Enterprises, LLC was neutral on the issue and wanted to ensure the applicant was aware his company whose property was near the applicant's property was a weapons manufacturer.

District 1 School Board Representative Robert Jordan was neutral on the issue and made himself available for questions. He conveyed the School Board's desire that Sculptor Charter School not fail and that the safety of the children of their school came first and foremost.

Member Broome asked Mr. Jordan whether any public schools in the county were located in any airport flight paths and whether the School Board faced any similar issues. Mr. Jordan felt only one school located in Port St. John was in a similar situation but clarified that charter schools were more flexible than public schools.

Attorney John Evans spoke in rebuttal and clarified that a school in Port St. John was in an airport's flight path and that a church with a large congregation was also in the flight path.

Mayor Swank closed the public hearing.

Vice-Mayor Ward reviewed deed restrictions within the area and felt that they compared with the *Land Development Regulation* permitted and conditional uses and that the applicant met the criteria in order to rezone the property. He then moved to approve Ordinance No. 37-2004 as submitted. Member Broome seconded the motion for discussion.

Member Broome expressed concern of the Comprehensive Plan as far as inconsistencies created by growth. He concurred with Vice-Mayor Ward and supported approval of the application. Member Rainey supported the school. Mayor Swank had safety concerns with the location, its proximity to Astrotech, and the potential for an accident involving hazardous chemicals. Member Eigenmann concurred with Vice-Mayor Ward and supported approval of the application.

Vice-Mayor Ward amended his motion to add that when applicant vacates property, it would automatically revert back to Planned Industrial Development (PID) zoning. The second held and the roll call was:

Vice-Mayor Ward	yes
Member Broome	yes
Mayor Swank	no
Member Rainey	yes
Member Eigenmann	yes

The motion carried by majority vote 4 to 1 and Ordinance No. 37-2004 was adopted.

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Mayor Swank called a recess at 9:10 p.m. and council reconvened at 9:25 p.m.

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Consent Agenda – Mayor Swank asked for clarification as to the reason for approving Boye Avenue as a public right-of-way. City Manager Harmer clarified the naming was made necessary due to a request from the Brevard County E911 that would allow the placement of address points on the new and enhanced 9-1-1 system maps.

Member Broome moved to approve the following items of consent as recommended. Vice-Mayor Ward seconded the motion.

- A. Authorize the Mayor to execute a contract with CPH Engineers, Inc. of Sanford, Florida for water distribution system analysis and design and permitting of water distribution system chlorination facilities in the amount of \$27,500 with funds from the Water Resources Water and Sewer Unscheduled Projects account. Recommendation: Approve with funds available from the Water Resources Water and Sewer Unscheduled Projects account.
- B. Approve the final plat and deed restrictions for Plantation Oaks of Brevard, Phase III Subdivision. Recommendation: Approve.
- C. Adopt Resolution No. 20-2004 to officially approve Boye Avenue as a public right-of-way. Recommendation: Approve.
- D. Approve advisability to proceed with an ordinance changing the current Noise Ordinance to include regulations that pertain specifically to the Downtown Community Redevelopment Agency to recognize the mix of uses and to allow for

- entertainment while protecting the rights of the residents. Recommendation: Approve.
- E. Adopt Resolution No. 21-2004 formally supporting continued operation of Patrick Air Force Base and Cape Canaveral Air Force Station and strongly urge that Patrick Air Force Base and Cape Canaveral Air Force Station be excluded from the Secretary of Defense list of bases for closure/realignment. Recommendation: Approve.
  - F. Approve advisability to proceed with an ordinance changing the Central Business District regulations to include a provision to require all development projects larger than two acres to be a mixed-use development, defined as a development that incorporates residential office, and/or commercial uses within the development, with commercial uses being accessible to the larger public population. Recommendation: Approve.
  - G. Adopt Resolution No. 22-2004 to amend Section 3 of Resolution 13-2004 to establish June 22, 2004 as the date to hear objections or 4 comments concerning the proposed improvements. Recommendation: Approve.

Member Eigenmann requested clarification of approving Boye Avenue as a public right-of-way. City Manager Harmer stated that Brevard County E911 addressing brought to staff's attention that the alley known as Boye Avenue had never been officially approved by the City of Titusville and that the Planning and Zoning Commission voted unanimously to recommend approval.

The roll call was:

Member Broome	yes
Mayor Swank	yes
Member Rainey	yes
Member Eigenmann	yes
Vice-Mayor Ward	yes

The motion carried unanimously.

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Petitions and Requests from the Public Present – Tiffany Johnson commented on citizens who spoke at past meetings for the Brevard County Commission. She then requested security cameras be installed in various locations throughout city hall that included both the north and south parking lots. She was also concerned for the impact on the City regarding the Brevard County Charter Review Commission's discussion on Home Rule.

Mayor Swank informed Ms. Johnson of council's authority to attend meetings of the Brevard County Charter Review Commission pertaining to "Home Rule."

Vice-Mayor Ward moved to authorize members of council, staff, City Attorney, and City Manager to attend meetings of the Brevard County Charter Review Commission to address issues that concern "Home Rule." Member Rainey seconded the motion.

Discussion ensued.

Member Broome felt he should be given the opportunity to review comments of other council members prior to their speaking at the Charter Review Commission meetings.

Member Eigenmann was concerned with the community's perception of council and was confident with how the Mayor and Vice-Mayor represented the City.

Member Rainey felt it was important to have representation at the Brevard County Charter Review Commission meetings for the city.

Mayor Swank clarified that council was authorized to attend meetings of the Charter Review Commission to discuss issues concerning "Home Rule."

The motion carried unanimously to authorize members of council, staff, City Attorney, and City Manager to attend meetings of the Brevard County Charter Review Commission to address issues that concern "Home Rule."

City Manager Harmer clarified that the next meeting of the Charter Review Commission was June 9, 2004 and that Charter Review Commission Amendment No. 40 would be discussed. He then requested authorization for staff to attend the meeting.

Vice-Mayor Ward moved to authorize staff to attend the Charter Review Commission meeting scheduled for June 9, 2004 to speak for the city in opposition to issues associated with Charter Review Commission Amendment No. 40. Member Broome seconded the motion.

Member Eigenmann felt the Joint Planning Agreement was an obstacle as it related to the annexation of roads concurrent with the annexation of property.

Mayor Swank was concerned for the city receiving tax revenues on roads when annexed into the city.

Vice-Mayor Ward stated the Joint Planning Agreement should be agreed to but felt it more important to protect the City "Home Rule" ability and that Charter Review Commission Amendment No. 40 would erode "Home Rule." He continued to state that all municipalities in the county shared the problem.

The motion carried unanimously to authorize staff to attend the Charter Review Commission meeting on June 9<sup>th</sup>.

Vice-Mayor Ward moved to have staff provide an update on the current status of the Joint Planning Agreement. Member Eigenmann seconded the motion and it carried unanimously. City Manager Harmer gave an updated status on the joint planning agreement as requested.

Charles Moehle expressed concern that the Charter Review Commission did not follow proper procedures and suggested council attend their meetings to state opposition to issues. He further stated certain members of the Charter Review Commission were against "Home Rule" for cities.

Member Broome clarified his previous remarks that concerned council members attending Charter Review Commission meetings.

Arlyn Baker thanked council for their support regarding Wal-mart on Garden Street. She invited citizens to attend the Wal-mart meeting at the Christ Community Church on Garden Street on June 21, 2004.

Joy Craft was concerned with the new Environmental Protection Agency law on spill prevention and how it affected proposed ordinances relative to pervious material.

Chamber of Commerce President Marcia Gaedcke thanked council on its support regarding Resolution No. 21-2004 which formally supported the continued operation of Patrick Air Force Base and Cape Canaveral Air Force Station.

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Ordinances – First Reading – City Attorney Severs read ORDINANCE NO. 38-2004, AN ORDINANCE OF THE CITY OF TITUSVILLE, FLORIDA, AMENDING SECTION 35-61(E) BY DELETING ANY CREDIT FOR THE USE OF PERVIOUS PAVEMENT WITHIN THE AREA OF CRITICAL CONCERN; AND PROVIDING FOR AN EFFECTIVE DATE, and

ORDINANCE NO. 39-2004, AN ORDINANCE AMENDING ORDINANCE NO. 5-1993 OF THE CITY OF TITUSVILLE, FLORIDA, BY AMENDING THE ZONING MAP MADE A PART OF SAID ORDINANCE BY REFERENCE BY CHANGING PROPERTY LOCATED AT 305 OLMSTEAD DRIVE FROM SINGLE FAMILY HIGH DENSITY (R-1c) CLASSIFICATION TO MULTI-FAMILY MEDIUM DENSITY (R2) CLASSIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE, and

ORDINANCE NO. 40-2004, AN ORDINANCE OF THE CITY OF TITUSVILLE, FLORIDA, AMENDING SECTION 7, OF CHAPTER 63-2001, LAWS OF FLORIDA, SPECIAL ACTS OF 1963, BY ANNEXING CERTAIN PROPERTY LOCATED SOUTH OF FOX LAKE ROAD AND WEST OF I-95 TO BE INCLUDED WITHIN THE CITY LIMITS; AND PROVIDING FOR AN EFFECTIVE DATE, and

ORDINANCE NO. 41-2004, AN ORDINANCE OF THE CITY OF TITUSVILLE, FLORIDA, AMENDING THE CODE OF ORDINANCES BY AMENDING ORDINANCE NO. 60-1988 WHICH ADOPTED THE COMPREHENSIVE PLAN OF THE CITY, BY AMENDING THE VARIOUS ELEMENTS OF SAID PLAN AND MAPS BY CHANGING THE FUTURE LAND USE MAP TO INCLUDE CERTAIN PROPERTY TO BE ANNEXED INTO THE CITY LIMITS OF THE CITY OF TITUSVILLE, FLORIDA AND DESIGNATING A LAND USE CLASSIFICATION; AMENDING THE FUTURE LAND USE MAP TO INCLUDE CERTAIN PROPERTY LOCATED SOUTH OF FOX LAKE ROAD AND WEST OF I-95 TO BE ANNEXED INTO THE CITY WITH LOW DENSITY RESIDENTIAL LAND USE; DESIGNATING RESIDENTIAL ESTATE (RE) ZONING CLASSIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE the first time by title only.

City Manager Harmer clarified that staff recommended tabling Ordinance No. 38-2004 until additional information was obtained.

Vice-Mayor Ward announced he would not vote on Ordinance No. 40-2004 and Ordinance No. 41-2004.

The second reading and public hearing for each item was scheduled for June 22, 2004.

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Ordinances-Second Reading, Public Hearings and Related Action – City Attorney Severs read, ORDINANCE NO. 36-2004, AN ORDINANCE OF THE CITY OF TITUSVILLE, FLORIDA, AMENDING SECTIONS 59-501 THROUGH 59-523 OF THE LAND DEVELOPMENT REGULATIONS BY ALLOWING OUTDOOR STORAGE AS A PERMITTED USE IN THE INDUSTRIAL (M-2) ZONING DISTRICT AND ALLOWING MINI WAREHOUSE AS A CONDITIONAL USE IN THE INDUSTRIAL (M-2) ZONING DISTRICT; AND PROVIDING FOR AN EFFECTIVE DATE, the second time by title only.

City Manager Harmer outlined the ordinance that resulted from a past meeting with Mr. Kelly Townsend that regarded storing trailers, boats, and RV's at 3535 South Street and his desire to store trailers, boats, and RV's in a fenced area located to the rear of the subject property. Mr. Harmer reported that the Planning and Zoning Commission unanimously recommended approval of the ordinance.

Mayor Swank opened the public hearing.

Kelly Townsend supported the adoption of the ordinance and offered to answer any questions.

Mayor Swank closed the public hearing.

Member Eigenmann requested and received staff clarification on permitted uses outlined in the ordinance.

Member Rainey moved to approve Ordinance No. 36-2004 as submitted. Member Broome seconded the motion and the roll call was:

Mayor Swank	yes
Member Rainey	yes
Member Eigenmann	yes
Vice-Mayor Ward	yes
Member Broome	yes

The motion carried unanimously and Ordinance No. 36-2004 was adopted.

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Member Broome moved to table consideration of Conditional Use Permit No. 6-2004 to the meeting of June 22, 2004. Vice-Mayor Ward seconded the motion and it carried unanimously.

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Petitions and Requests from the Public Present – Tiffany Johnson provided council excerpts from minutes of Brevard County Commission meetings of January 13, 2004 and January 27, 2004 and announced an upcoming workshop to discuss Brevard County Charter Review Commission proposed Amendments 8, 9, 10, 10A, and 40.

Mayor Swank requested clarification of procedural process used by the Charter Review Commission.

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Mayor and Council Reports – Council acknowledged receipt of the Mayor’s written report on his activities since the last meeting.

Mayor Swank reported his attendance at the Annual Wreath Laying Ceremony on May 31, 2004 at the Veterans’ Memorial Pier.

Member Rainey reported his attendance at the World War II Veterans Ceremony conducted by the American Legion on May 29, 2004. He also reported his attendance and acceptance of the City Participation Award from Keep Brevard Beautiful.

Mayor Swank reminded citizens of upcoming Flag Day Ceremonies on June 14, 2004.

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City Manager’s Report - Council acknowledged receipt of the City Managers written report. City Manager Harmer highlighted the following items from his report:

City Manager requested council authorization for a presentation from the National Oceanic and Atmospheric Administration to recognize the city’s Osprey Plant for its contribution as a weather observation station to be scheduled for the July 27, 2004 regular meeting. Member Eigenmann moved to authorize the National Oceanic and Atmospheric Administration to give a presentation to recognize the city’s Osprey Plant for its contribution as a weather observation station at the July 27, 2004 regular meeting. Member Rainey seconded the motion and it carried unanimously.

The time was 10:30 p.m. and Member Eigenmann moved to extend the meeting five minutes. Vice-Mayor Ward seconded the motion and it carried unanimously.

City Manager Harmer reported the receipt of Letters of Appreciation for the following employees: City Managers Office: Jim Thomas, Adrian Kilgore, and Robert Brown; Police Department Z. Rimoczi, Johnny Jordan, Greg Shaw, Leamon Jackson, Tom Fiorito, Jessica Sultan, Erline Lively, Robert Kelly, Dana Gondek, Dave Butler, Mike Allen, Dave McCourt,

Chris DeLoach, Lincoln Strom, Bill Amos, John Cruz, Gary Boyer, Bob Kelly, Wayne Wilson, Bob Kelly, Josh Little, and David Rodriguez.

City Manager Harmer advised that an appointment to the Titusville-Cocoa Airport Authority was scheduled for the June 22, 2004 regular meeting.

City Manager Harmer advised that an appointment to the Brevard County School Board Oversight Committee was scheduled for the July 8, 2004 regular meeting.

City Manager Harmer announced President Bush had issued an Executive Order that declared June 11, 2004 a National Day of Mourning in honor of the passing of former President Ronald Reagan and certain federal offices would be closed. He recommended for the City of Titusville offices to remain open. Council had no objections.

City Manager advised Florida Power and Light was aware that the white way lights north of Garden Street on U.S. Highway One were not working and repairs would be completed within the next five to ten days.

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City Attorney's Report – City Attorney Severs reported that litigation was filed by Brevard County that pertained to recent annexation of property located in the Carpenter Road and Fox Lake Road area. He reported that he had submitted a public records request to Brevard County to obtain documents that led to the action.

City Attorney Severs reviewed an opinion letter on counting of submerged lands for density purposes.

Vice-Mayor Ward requested clarification of the County's objection to the Carpenter/Fox Lake Road annexation. City Manager Harmer reported that the videotape of the County Commission meeting where the decision was made to pursue litigation had been obtained.

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The meeting adjourned at 10:40 p.m.

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Ronald G. Swank, Mayor

ATTEST:

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Wanda F. Wells, Interim City Clerk