

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

**March 1, 2005      7:00 p.m.**

Present were: Mayor Fred Costello, Commissioners Jeff Boyle, Troy Kent, Ed Kelley, and Bill Partington, City Manager Isaac Turner, Assistant City Manager Theodore MacLeod, City Attorney Randy Hayes, and City Clerk Veronica Patterson.

**A G E N D A**

- 1) Meeting call to order by Mayor Costello.
- 2) Invocation by Gray King, First United Methodist Church of Ormond Beach.
- 3) Pledge of Allegiance.
- 4) Approval of the Minutes of the February 15, 2005, regular meeting and the February 23, 2005, special meeting.
- 5) Oath of Office to Ed Kelley, City Commissioner, Zone 3.
- 6) **PRESENTATION:** Nancy Christman, Intergovernmental Coordinator, St. Johns River Water Management District.
- 7) **AUDIENCE REMARKS:**
- 8) **INTERGOVERNMENTAL BOARD REPORTS:**
  - A) Metropolitan Planning Organization
  - B) Volusia Council of Governments
  - C) Smart Growth Implementation Committee
  - D) Water Authority of Volusia
- 9) **CONSENT AGENDA:** The action proposed is stated for each item on the Consent Agenda. Unless a City Commissioner removes an item from the Consent Agenda, no discussion on individual items will occur and a single motion will approve all items.
  - A) Resolution No. 2005-42 authorizing the purchase of chlorine from Jones Chemical, Inc., for the City's water and wastewater treatment plants at a higher cost than that obtained under a cooperative bid solicited by several local cities and authorized by the City Commission in September 2004; authorizing payment therefor. (\$439 per ton)

- B) Resolution No. 2005-43 authorizing the execution of a Joint Participation Agreement between the City and the Florida Department of Transportation regarding the installation of a security fence at the Ormond Beach Municipal Airport. (\$139,000 in FDOT funds; \$0 in City funds)
- C) Resolution No. 2005-44 authorizing the sole source procurement of aerial contour photography mapping from Jones Edmunds & Associates, Inc.; authorizing the approval of a requisition and payment therefor. (Not-to-exceed \$62,000)
- D) Resolution No. 2005-45 of the City Commission, also acting as the Community Redevelopment Agency of the City, authorizing the execution of a Property Improvement Grant Agreement between the City of Ormond Beach Community Redevelopment Agency and Edwin M. Byrd and Edith K. Byrd d/b/a Byrd's Nest Quilting. (\$50,000)
- E) Resolution No. 2005-46 authorizing the execution of a Wildfire Hazard Mitigation agreement between the City and Volusia County Fire Services.
- F) Resolution No. 2005-47 authorizing the execution of a Memorandum of Understanding between the City of Ormond Beach and the St. Johns River Water Management District regarding an aquifer storage and recovery project.
- G) Resolution No. 2005-48 accepting a bid from RW Contractors, Inc., for construction of the Nova Gym Roof Replacement Project, under Bid No. 2005-19; authorizing the execution of a contract and payment therefor; rejecting all other bids. (\$73,764)
- H) Resolution No. 2005-49 re-appointing Darrell L. Brock to serve as a trustee of the City of Ormond Beach Municipal Police Officers' Pension Trust Fund; establishing term and conditions of service.
- I) Request to continue allowing the East Volusia Mosquito Control District to perform low-level flights over the City of Ormond Beach to apply insecticides for the control of mosquitoes.

DISPOSITION: Approve as recommended in City Manager memorandum dated February 24, 2005.

- J) Purchase of e-mail archiving system.

DISPOSITION: Approve as recommended in City Manager memorandum dated February 24, 2005.

10) **PUBLIC HEARINGS:**

- A) Resolution No. 2005-50 approving and authorizing the removal of an historic tree located at 602 Tomoka Avenue.
- B) Resolution No. 2005-51 authorizing the execution and issuance of a Development Order for "Walgreen's Pharmacy" Special Exception on a site located on the northwest corner of Tymber Creek Road and Granada Boulevard within the B-8 (Commercial) zoning district; allowing the construction of a commercial development consisting of one principal building for retail sales totaling 14,820 square feet; granting priority status for development purposes in accordance with Section 1-34, Article V, Chapter 1, *Land Development Code*; establishing conditions and expirations of approval.
- C) Ordinance No. 2005-02 amending Article III, Dogs and Cats, of Chapter 5, Animals and Fowl, of the *Code of Ordinances*, by amending Section 5-78, Dangerous Dogs, to provide for a new definition of "Dangerous"; by amending Section 5-81, Action to be Taken by Owners/Keepers of Dangerous Dogs. (Second Reading)
- D) Ordinance No. 2005-03 amending Article I, In General, of Chapter, 5, Animals and Fowl, of the *Code of Ordinances* by revising Section 5-11, Limitations on Domesticated Animals, to remove dogs from its application; adding Section 5-14, Limitations on Dogs. (Second Reading)

- 11) **RESOLUTION** No. 2005-52 appointing a member of the Budget Advisory Board; setting forth term and conditions of service.

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12) **DISCUSSION ITEMS:**

- A) Reconsideration/clarification of the vote regarding the extension of Runway 17-35 at the Ormond Beach airport.
- B) Request by Mayor Costello to discuss Florida Hospital Memorial Division relocation plans.
- C) Relocation of the Birthplace of Speed replica cars.

13) **REPORTS, SUGGESTIONS, REQUESTS:** Mayor, City Commission, City Manager, City Attorney.

14) Close the meeting.

Item #1 - Call to Order

Mayor Costello called the meeting to order at 7:00 p.m.

Item #2 - Invocation

Gray King, First United Methodist Church of Ormond Beach, gave the invocation.

Item #3 - Pledge of Allegiance

Mayor Costello led the Pledge of Allegiance.

Item #5 – Oath of Office to Ed Kelley, City Commissioner, Zone 3

Veronica Patterson, City Clerk, administered the oath of office to Ed Kelley, City Commissioner, Zone 3.

Mayor Costello presented Mrs. Kelley with a dozen red roses. He stated that being on the Commission was a partnership effort in that Mrs. Kelley would be giving up a great deal to allow her husband to do a good job for the citizens of Ormond Beach.

Former Commissioner Joe Thompson, 356 Chardon Road, stated Commissioner Kelley was a man of principle, and he enjoyed serving with Commissioner Kelley in the past. He reported Commissioner Kelley would be good for Ormond Beach.

Item #4 – Approval of Minutes

Mayor Costello advised the minutes of the February 15, 2005, regular meeting and the February 23, 2005, special meeting had been sent to the Commissioners for review and asked if there were any corrections, additions, or omissions.

**Mayor Costello asked if there was any objection to approving the minutes as submitted. Hearing none, he declared the minutes approved as submitted.**

Item #6 – St. Johns River Water Management District

Ms. Nancy Christman, Intergovernmental Coordinator, St. Johns River Water Management District (District), congratulated Ormond Beach for working with the District and for obtaining three cost share projects. She noted two projects related to alternative water supply cost share projects and the third was a stormwater improvement cost share program. Ms. Christman provided a packet of information on the Northern Coastal Basin Initiative and a guide explaining the water management programs where cities could partner with the District.

Mr. Paul Haydt, Northern Coastal Basin Program Manager, reported he enjoyed working with City staff on projects to improve water quality and flooding situations. He stated the project being awarded was a continuation of a successful project to extend sewer lines and remove septic tanks and package plants in the North Peninsula.

Mayor Costello noted he hoped to continue working with the District to continue to remove septic tanks from the barrier island.

Ms. Ann Moore, a District governing board member, presented Mayor Costello with three ceremonial checks for two alternative water supply projects and the Hand Avenue baffle boxes. She stated all three projects help the Halifax River.

Mayor Costello reported the checks were for \$75,000, \$50,000, and \$140,000.

#### Item #7 - Audience Remarks

##### Grants

Ms. Joyce High, 38 Oak Brook Drive, stated receiving these grant awards were a reason for celebration. She noted "TLC" was needed for Central Park: "T" representing total commitment from the Commission, staff and community; "L" representing leveraging with designating funds; and "C" representing communications and networking. Ms. High reported keeping the public informed on successful efforts and inviting public participation would establish credibility. She explained that this would be the first project to receive ECHO grant funds in this portion of Volusia County. Ms. High reported that with County approval of the ranking of this project at its March 10 meeting, Ormond Beach would receive \$205,000. She noted these funds, plus the LWCF funding achieved last fall for \$100,000, and other funds would equal \$450,000 or one-third of the estimated total required for this multi-faceted park. Ms. High reported Central Park would not only benefit the physical well being of the residents, but would attract visitors and new businesses to Ormond Beach. She noted the next attempt for seeking grants would be for the Volusia Forever funds in April.

Ms. High commended the efforts of Public Works Director/City Engineer Judy Sloane, Assistant City Manager Ted MacLeod, Leisure Services Director Alan Burton, Recreation Director Dave Abee, volunteer groups, and Commissioner Partington. She thanked Grants Coordinator Loretta Moasio for her hard work on this grant.

Mayor Costello thanked Ms. High for her efforts. He also commended staff for their efforts in obtaining the water grants, this Central Park grant, and other grants.

Mr. Joe Bourassa, 801 Lewis Drive, Daytona Beach, stated programs must have merit before they would be accepted for grant funding, and he pointed out grants were merely the return of the City residents' tax dollars.

##### Water Issues

Mr. Bourassa stated Commissioner Kent has an open house planned for next Monday at 4:00 p.m., and he was asked to make a presentation around 5:00 p.m. He invited anyone interested in the water issues to attend this meeting.

##### Billboards

Ms. Pat Behnke, 15 Malayan Sun Bear Path, stated she addressed the Commission over a month ago relative to the billboards on the southbound side of US1 between Airport Road and Wilmette Avenue, and they are still unsightly. She urged the new Zone 3 Commissioner to correct this situation.

Mayor Costello asked the City Attorney if it would be months or years before the lawsuits would be finalized.

Mr. Randall Hayes, City Attorney, advised that the City was currently in litigation regarding this matter, and until litigation was concluded, there was little the City could do.

Mayor Costello explained this was in litigation and was a State issue. He noted no one wanted the billboards gone more than some on this Commission.

##### Commissioner Kelley

Mr. Adrian Thompson, 6 Dorado Beach Court, extended a warm welcome to the Zone 3 Commissioner and noted that he trusted the confidence the electorate had shown would be demonstrated by Commissioner Kelley's support of sound policies that would be fairly and not arbitrarily considered and that he would be fiscally responsible.

##### Fuel Farm

Mr. Rich Lemke, 2 Springwood Trail, reported he perused information relative to the fuel farms located at the Ormond Beach Airport at City Hall earlier today. He stated he found a great deal of information regarding Ormond Beach Aviation's fuel farm, but nothing about Sunrise Aviation's fuel farm. Mr. Lemke noted Mr. Tom Lipps, Support Services Director/Airport Manager, informed him that all of the documentation was lost in a flood. He stated the City

should have a way of replacing this paperwork, possibly by asking Sunrise Aviation to provide copies.

#### Bid for Lease of Sunrise Aviation Property

Mr. Lemke provided copies of a proposal relative to Sunrise Aviation property FBO (1) whose lease would expire December 2013 with no current option for renewal. He reported he would like to place a bid for that property.

Mayor Costello asked Mr. Lipps to include this information at the March 15 meeting.

#### Runway Extension

Mr. Glenn Jaspers, 160 Ocean Terrace, stated that in a radio talk show a caller asked if the new Commissioner would speak on the runway extension, and Mayor Costello informed her it was not on the agenda. Mr. Jaspers noted he followed up that question by asking why the environmental assessment would continue if the runway extension would not be constructed. He reported Mayor Costello answered that it was his desire to gather all of the facts, and the study would continue.

#### Florida Hospital Memorial Division Relocation Plans

Mr. Jaspers stated that in a recent News-Journal article, a staff member was quoted referring to the Florida Hospital Memorial Division relocation plans as “putting the project on the fast track.” He questioned how a project would qualify for the “fast track.” Mr. Jaspers pointed out that Mayor Costello was quoted as saying that he had never stopped working behind the scenes on this project. He stated the City Charter did not extend the mayor the unilateral right to act as he has when the Commission was not being apprised of his activities until the February 16 and 17 e-mails.

#### Access to Parks, Rivers, and the Beach

Mr. Gregory Avakian, 161 Heritage Circle, stated a Commissioner described Ormond Beach parks as the best in the area; however, he questioned what this would benefit Ormond Beach when access to the parks, rivers, and beach was so limited. He noted Ormond Beach has the worst boat ramps south of St. Augustine and north of Canaveral. Mr. Avakian stated there was little parking for trailers at the boat ramp, and it was a poor staging area for loading and off-loading of boats. He noted beach access and building heights are connected. Mr. Avakian stated with the City’s current code, a seven-story building could block the view and access to the beach for those who do not live on the beach. He noted the City had an opportunity to have builders provide all citizens access to the beach if done correctly; but time was an issue, and the subject needed to be discussed immediately with a great deal of citizen participation. Mr. Avakian reported this could not be accomplished in a one and one-half hour discussion in a special meeting, and he recommended a day-long session be scheduled for discussion of this issue.

Mayor Costello stated Mr. Avakian mentioned a number of issues, and if any Commission member would like to discuss any of these issues, they could bring them up in the Commission comments section of the meeting.

#### Item #8(A) – Metropolitan Planning Organization

Mayor Costello reported the Metropolitan Planning Organization (MPO) discussed the Strategic Intermodal System (SIS) indicating it would take 75% of the funds and would include I-4, I-95, and SR40; however, there would not be as many funds available for local roads as there was in the past. He stated the MPO was working with legislators and FDOT to resolve this situation.

#### Item #8(B) – Volusia Council of Governments

Mayor Costello reported Chairman Frank Bruno presented a challenge to Volusia Council of Governments (VCOG) to work on some items that would bring the community together for their benefit. He stated the pros and cons of Universal Tag were discussed. Mayor Costello noted veterinarians pointed out flaws they perceived in the system.

#### Item #8(C) – Smart Growth Implementation Committee

Mayor Costello reported the Smart Growth Implementation Committee continued to work toward achieving a mechanism by which growth could be directed to areas that could sustain that growth, where the impacts would be by design rather than by accident. He noted the transfer of revenues from the County to the cities to take care of specific growth was discussed. Mayor Costello reported it would probably be several months before a final recommendation

could be made. He pointed out that the Ormond Crossings project was mentioned several times by different people.

Item #8(D) – Water Authority of Volusia

Commissioner Boyle stated the Water Authority of Volusia (WAV) held its regular board meeting on February 16 where three presentations were given on the WAV Master Facilities Plan and water conservation. He noted Ormond Beach was “ahead of the curve” on water conservation issues thanks to staff and previous Commissions.

Item #9 - Consent Agenda

Mayor Costello advised that the action proposed for each item on the Consent Agenda was so stated on the agenda. He asked if any member of the Commission had questions or wished to discuss any one or more of the items separately.

Commissioner Kelley requested Item No. 9(B) be pulled for discussion.

Commissioner Partington asked that Item No. 9(G) be pulled for discussion.

Commissioner Kent asked that Item No. 9(A) be discussed separately.

**Commissioner Boyle moved, seconded by Commissioner Partington, for approval of the Consent Agenda, minus Item Nos. 9(A), 9(B), and 9(G).**

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

Item #9(A) – Purchase of Chlorine

RESOLUTION NO. 2005-42

A RESOLUTION AUTHORIZING THE PURCHASE OF CHLORINE FROM JONES CHEMICAL, INC., FOR THE CITY’S WATER AND WASTEWATER TREATMENT PLANTS AT A HIGHER COST THAN THAT OBTAINED UNDER A COOPERATIVE BID SOLICITED BY SEVERAL LOCAL CITIES AND AUTHORIZED BY THE CITY COMMISSION IN SEPTEMBER 2004; AUTHORIZING PAYMENT THEREFOR; AND SETTING FORTH AN EFFECTIVE DATE.

**Commissioner Partington moved, seconded by Commissioner Kelley, to approve Resolution No. 2005-42, as read by title only.**

Commissioner Kent asked what could be done in the future to prevent a \$100 per ton increase.

Ms. Judy Sloane, Public Works Director/City Engineer, noted this was the first time this had ever occurred. She explained the City went out for a competitive bid with a number of cities to obtain the best price, and those other cities were also faced with having to accept the higher price. Ms. Sloane reported this bidder gave the lowest price, even with the increase, and chlorine was a necessity.

Commissioner Boyle understood there was no option in this bid, but explained that 47 days after the Commission approval and the agreement on a price of \$339 per ton, the price was increased \$100 per ton or a 30% increase. He stated this was a very unusual occurrence.

Ms. Sloane concurred that this was an unusual situation.

Mayor Costello thanked Ms. Sloane for the explanation so the Commission could better understand the situation.

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

Item #9(B) – Security Fence at the Ormond Beach Municipal Airport

RESOLUTION NO. 2005-43

A RESOLUTION AUTHORIZING THE EXECUTION OF A JOINT PARTICIPATION AGREEMENT BETWEEN THE CITY AND THE FLORIDA DEPARTMENT OF TRANSPORTATION REGARDING THE INSTALLATION OF A SECURITY FENCE AT THE ORMOND BEACH MUNICIPAL AIRPORT; AND SETTING FORTH AN EFFECTIVE DATE.

**Commissioner Partington moved, seconded by Commissioner Kent, to approve Resolution No. 2005-43, as read by title only.**

Commissioner Kelley clarified that this was not in any way related to the extension of the runway.

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

Item #9(G) – Nova Gym Roof Replacement Project

RESOLUTION NO. 2005-48

A RESOLUTION ACCEPTING A BID FROM RW CONTRACTORS, INC., FOR CONSTRUCTION SERVICES FOR THE NOVA GYM ROOF REPLACEMENT PROJECT, UNDER BID NO. 2005-19; AUTHORIZING THE EXECUTION OF A CONTRACT AND PAYMENT THEREFOR; REJECTING ALL OTHER BIDS; AND SETTING FORTH AN EFFECTIVE DATE.

**Commissioner Partington moved, seconded by Commissioner Boyle, to approve Resolution No. 2005-48, as read by title only.**

Commissioner Partington stated the Commission toured Nova recreation facility last year, and everyone agreed this facility did not meet Ormond Beach standards and needed to be replaced, probably with a community center. He questioned why staff was recommending spending \$74,000 to replace the entire roof. Commissioner Partington recommended the roof be patched since the building would be replaced soon.

Ms. Sloane advised the roof could no longer be patched, and if the building were to be replaced, it could not be accomplished before two to three years.

Commissioner Boyle stated that these repairs should be considered an emergency. He noted the City had received a great deal of valid public criticism for the duration of time it took to address the situation. Commissioner Boyle reported that for future similar emergency situations, the Commission should address the problem in a more expedited timetable. He stated he read documentation that a staff member brought the need to replace this roof to the attention of the Commission a number of years ago, but he could not find any reference to this other than a plan to remodel the interior to construct an office. Commissioner Boyle noted it was management’s responsibility to bring such deficiencies to the Commission’s attention and to see that they are corrected in an expedited fashion.

Commissioner Kent stated most of the Commission was shocked at what they saw on the tour of the Nova recreation facility last year. He concurred with Commissioner Boyle that when such problems are noted, the Commission needed to move much more quickly.

Commissioner Kelley stated he received numerous e-mails on this issue in the past month.

Mr. Isaac Turner, City Manager, reported recreational concerns have been at issue for a number of years. He noted that the Commission had a comprehensive discussion scheduled for the March 15 meeting regarding the Nova Recreation Complex. Mr. Turner pointed out that the communities’ ability and willingness to fund recreation has been at issue the past few years. He noted maintenance of facilities have been neglected in an effort to reduce expenses; however, the Commission recently allowed certain funding to go toward this endeavor.

Mr. Turner stated staff would provide a report for the March 15 meeting indicating the current funds available, and the Commission could set policy considering these factors.

Mayor Costello stated that for several years he tried to obtain funding for maintenance and a roof at the Nova Gym; and funding was sought through a bond issue, but the bond issue was rejected because the community wanted the City to do maintenance without a bond issue. He noted the repairs were pushed back each year in the Capital Improvements Projects because the Commission did not provide the funding necessary for the project. Mayor Costello stated he was delighted this was finally being done. He noted he believed a two to three year estimate for a new building was actually optimistic. Mayor Costello stated he had no doubt a new roof was needed and would hold further comments to the March 15 meeting.

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

Item #10(A) – Removal of an Historic Tree Located at 602 Tomoka Avenue

RESOLUTION NO. 2005-50  
 A RESOLUTION APPROVING AND AUTHORIZING THE  
 REMOVAL OF AN HISTORIC TREE LOCATED AT 602 TOMOKA  
 AVENUE; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Kelley stated he supported the City’s tree ordinance, but he noted that this tree was dead. He requested an amendment to the Land Development Code be made to reflect that dead trees could be removed with the approval of the two staff members who approved the removal of this tree.

**Commissioner Boyle moved, seconded by Commissioner Partington, to approve Resolution No. 2005-50, as read by title only.**

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

**Hearing no objection, Mayor Costello closed the public hearing on Item #10(A).**

Item #10(B) – Development Order for “Walgreen’s Pharmacy” Special Exception

RESOLUTION NO. 2005-51  
 A RESOLUTION AUTHORIZING THE EXECUTION AND  
 ISSUANCE OF A DEVELOPMENT ORDER FOR “WALGREEN’S  
 PHARMACY” SPECIAL EXCEPTION ON A SITE LOCATED ON  
 THE NORTHWEST CORNER OF TYMBER CREEK ROAD AND  
 GRANADA BOULEVARD WITHIN THE B-8 (COMMERCIAL)  
 ZONING DISTRICT; ALLOWING THE CONSTRUCTION OF A  
 COMMERCIAL DEVELOPMENT CONSISTING OF ONE  
 PRINCIPAL BUILDING FOR RETAIL SALES TOTALING 14,820  
 SQUARE FEET; GRANTING PRIORITY STATUS FOR  
 DEVELOPMENT PURPOSES IN ACCORDANCE WITH  
 SECTION 1-34, ARTICLE V, CHAPTER 1, *LAND  
 DEVELOPMENT CODE*; ESTABLISHING CONDITIONS AND  
 EXPIRATIONS OF APPROVAL; AND SETTING FORTH AN  
 EFFECTIVE DATE.

**Commissioner Kent moved, seconded by Commissioner Partington, to approve Resolution No. 2005-51, as read by title only.**

Mr. Richard Jaffe, president Jaffe Corporation, 300 North Nova Road, stated that generally speaking, it had been a pleasure dealing with the planning staff for the past years. He reported the Planning staff treated him with respect and had been prompt in response to any inquiries. Mr. Jaffe noted he and staff have agreed on most issues, but there was a discrepancy on this project.



Mr. Jaffe stated the proposed Walgreen's was a permitted use in the zoning district; he was not requesting any design variances; there were no wetland issues; there were no tree issues; and all agreed that the project was well designed and engineered. He reported the staff and City Manager's memos indicated the directive text of the Comprehensive Plan listed this site as an area for a major shopping center designed to meet the needs of the greater Ormond Beach area. Mr. Jaffe noted the memos also indicated this area was to be for a retail use, and along with other developments west of I-95, would reduce the total number of trips and bring retail goods and services closer to West Ormond residents. He pointed out it was also envisioned in the City's Comprehensive Plan.

Mr. Jaffe reported that the Planning staff stated there was a problem with traffic, but he had submitted three traffic studies, all of which indicated there was not a problem, and the State and County concurred. He explained the first study was conducted by the Lassiter Transportation Group in September 2003, and the results were summarized as follows: "All the signalized intersections currently operate within the allowable level of service and will continue to do so under Phase 1 build-out conditions." Mr. Jaffe stated Phase I was to include a pharmacy and a bank, but would now only include the pharmacy. He continued: "The four unsignalized site-drive intersections will operate within the allowable level of service under Phase 1 build-out conditions. All roadway segments are currently operating within the allowable level of service standard and will continue to do so under Phase 1 build-out conditions." Mr. Jaffe reported the City did not accept this report because it was technically beyond the submittal date, and staff asked that a new report be provided. He explained he waited nine months trying to convince the County to make a determination as to whether they would or would not take frontage from the property on Tymber Creek Road. Mr. Jaffe noted the most recent report was from Kimley Horn and Associates. He explained Kimley Horn provided a peak hour analysis as opposed to a daily count analysis as requested by the City. Mr. Jaffe pointed out the Land Development Code, Comprehensive Plan, and FDOT Quality Level of Service Handbook indicated the use of a peak hour analysis. He stated the handbook reported that a clear case of not representing capacity values was with the daily tables, and that roadway capacities for the day far exceeds the volume shown in the daily tables.

Mr. Jaffe stated a second approach, would be one of common sense in that since there were no retail services west of I-95 at this time, everyone would have to travel past this location and go to other stores east of I-95. He noted a community need would be met when the pharmacy was built. Mr. Jaffe related that staff believed this would be causing new trips from those east of I-95 heading west, which he agreed would occur; however, for every new trip being created, he questioned how many old trips would be eliminated. He reiterated that beside logical reasons, there were also statistical reasons this makes sense.

Mr. Jaffe reported that even the City's traffic consultant approved of this plan. He distributed an excerpt from the report from the City's traffic consultant which reads as follows: "based on the analysis conducted in our review, it seems reasonable that the new site could potentially reduce trips along SR40 between the site and I-95 by as many as 55 trips in the peak hour." Mr. Jaffe stated a Development Review Board member pointed out that this did not guarantee reduced trips, but he urged the Commission to use common sense.

Mr. Jaffe requested the City Commission amend the motion to delete the two conditions attached to the Development Review Board's recommendation. He stated he had been in the project for too long to be placed on a priority list, and he assured the Commission there was not a traffic problem. Mr. Jaffe noted the second Development Review Board recommendation was for the retention pond to be sculpted; however, the retention pond met every aspect of the building code, and it was only a temporary pond that would be relocated when the remainder of the property was developed.

Mr. Clay Ervin, Planning Director, stated the City coordinated with Volusia County and FDOT on a regular basis when the project would affect a Federal, State, or County road. He explained the Lassiter study was rejected because it was over a year old and it pertained to a development program which was not being fully implemented. Mr. Ervin reported there were several other projects identified, reviewed, approved, and incorporated into the Concurrency Management System; therefore, the study did not fully address all of the impacts, and it would have had to be updated. He noted staff accepted the p.m. peak analysis so that issue was moot. Mr. Ervin reported the traffic study was accepted, but it was accepted with conditions.

Mr. Ervin reported staff's main concern was not whether traffic would be drawn into Walgreen's. He pointed out staff has supported this project and was recommending approval. Mr. Ervin noted the concern was that it would generate new trips. He noted the City's consultant stated that segments of SR40 on either side of I-95 were already operating below capacity, and they recommended the study be revised to include mitigation measures for those two roadway

segments. Mr. Ervin stated 82% of the new trips generated by this would accumulate at that point, which was contradictory to the previous study. He clarified that staff did not want another study, merely to revise their assumptions so they could identify any improvements that needed to be made. Mr. Ervin pointed out that precedent had been established in similar projects, and staff must follow suit. He explained that in the Comprehensive Plan, the City was required to do concurrency management where any new project would not degrade the level of service adopted by that municipality. Mr. Ervin reported he must have a defensible point that the City had not violated its Comprehensive Plan and Land Development Code regulations. He reiterated that this was a good project, and staff supported it; but if the applicant would make the modifications to the report, it would identify specific improvement that could be made before a building permit would be issued. Mr. Ervin cautioned that there were other projects coming; therefore, he urged the Commission to realize this issue would be faced again and again, and everyone must be treated equally with the same level of review and the same standards applied.

Commissioner Kelley stated Mr. Jaffe indicated the State and County accepted the reports, but the City did not accept the report.

Mr. Ervin reported the City did not receive final comments from FDOT, and the County had no comments. He reiterated that the City consultant was requesting some of the numbers be changed, and where problems at intersections or lane segments were noted, specific improvements could be identified where the developer could either contribute to or correct the problems.

Commissioner Kelley asked if the specific improvements had been suggested.

Mr. Ervin explained the improvements had not yet been suggested since the City had not yet received the revised analysis. He stated the Highway Capacity Manual software would be used to identify where an intersection may be failing that may be changed by the timing of the light, increasing the lane width of a turn lane, changing the number of access points, or changing the number of driveway connections. Mr. Ervin explained that while Ormond Beach does not yet have the program, other cities are developing a "Fair Share Contributions" program where a proportionate fair share program could be established when it would not be financially feasible to solve an identified problem. He reported staff was researching the creation of such a program.

Commissioner Partington stated this developer had done a great deal of good work for Ormond Beach, but he was feeling he was being pressured into make certain improvements and to carry the burden on himself alone when his project would not be the problem, but those projects to follow would be the problem impacts.

Mr. Ervin reiterated that staff must make sure mitigation would correspond to the impact.

Mayor Costello pointed out that he lived west of I-95 and would attest that SR40 and Tymber Creek Road were extremely congested twice a day around the time school started and ended, but the remainder of the day the roads were not congested. He stated Mr. Jaffe has become a friend, and he has spoken to Mr. Jaffe about this issue. Mayor Costello pointed out he informed Mr. Jaffe he wanted to support staff, but he must concede that those living west of I-95 would stop at Walgreen's rather than proceeding on to Wal-Mart or Publix, thereby reducing the number of trips east of I-95. He stated approving this would reduce traffic on SR40 from I-95 to Tymber Creek Road. Mayor Costello urged staff to proceed with the creation of the Fair Share Contributions program so that the impacts that the additional shopping areas would create could be corrected by such as improvements as turn lanes or signalization as explained by Mr. Ervin. He noted while he did not wish to oppose staff or the Development Review Board, those living west of I-95 wanted smart growth, which was placing where people work and shop as close as possible to where they live.

Mayor Costello pointed out it took the County nine months to inform the developer if they would be taking 65-feet of their land, and the project could not be designed until they obtained this information. He stated because of this delay, the Lassiter study was too late. Mayor Costello noted he could understand the frustration of this and other developers who want to develop to the highest standards.

Mr. Ervin advised that driving in this area at this time did not reflect the 400 homes approved to be built in Hunter's Ridge, the 200 homes approved in the Pineland PRD, or the build-out of Saddler's Run. He pointed out that there have been approved projects that have been vested, making the current traffic different from what it would be at build-out. Mr. Ervin noted this

recommendation was not made in an attempt to delay this project, but because of the cumulative impacts of projects that were going to be built.

Mayor Costello stated if Mr. Ervin had mentioned projects were east of this project, he could understand staff's concern, but since they would be west of this project, those residents would be going past this location to go to the Wal-Mart or Publix or other pharmacies.

Mr. Turner stated there was a substantial upgrade in the analysis from the first to the second study. He pointed out that staff was charged with being the guardian of the standards that the Commission had chosen for the City's quality of life. Mr. Turner stated Kimley Horn was a well recognized firm; however, the standards and qualitative aspects of what a community wanted and set down in ordinances was staff's responsibility to uphold. He expressed concern that the analysis was not completed and urged a separate work session be set aside to complete this discussion because it was important for not only this project, but for how the City would treat other businesses to come into this location in the future. Mr. Turner urged careful consideration be given to anything that would impact Granada Boulevard, particularly anything west of Clyde Morris Boulevard. He stated he had a great deal of respect for Mr. Jaffe, and staff had supported him, but he disagreed with his assessment on this issue. Mr. Turner cautioned the Commission about approving this in that it would set a precedent, and it would have an impact on the intersection.

Commissioner Boyle noted he joined Mr. Turner in praise for Mr. Jaffe. He thanked Mr. Jaffe for what he had produced at the Trails, and he agreed this was needed west of I-95; however, a new methodology was being used. He pointed out sometimes people defy common sense since some will pass certain stores to drive to another store carrying the same goods. Commissioner Boyle pointed out that some health insurance companies require their insured to go to Walgreen's for prescriptions which would draw some customers east of I-95 to this Walgreen's. He stated this was an economic institution, and they knew exactly how many trips they would attract in total on east of I-95. Commissioner Boyle noted he was convinced this project would generate more trips, but the outstanding issues could be resolved in the near future, although it could probably not be resolved tonight. He urged the Commission to not go against the Planning Director's advice and the rules of concurrency. Commissioner Boyle stated he concurred with the recommendation of staff and the unanimous recommendation of the Development Review Board.

Commissioner Kelley stated he had merely been asking questions of the speakers. He reported the discussion should come after the public hearing was closed and a motion was on the floor to approve the item.

Mayor Costello asked that Commissioner Kelley discuss the item at this time.

Commissioner Kelley stated he believed the trips generated would be by those who live west of I-95. He reported the Commission did not have everything it needed to make a decision such as the final traffic report or what may be required by the City.

**Commissioner Kelley moved, seconded by Commissioner Boyle, to table this until all of the pertinent information could be provided.**

Commissioner Partington noted he supported Mr. Jaffe's position on this issue. He stated Mr. Jaffe had met the concurrency requirements; he had gone above and beyond in the design; the County had approved the traffic portion; the State had approved the traffic portion; and he would not punish Mr. Jaffe because the City did not have a Fair Share Contribution program or cause a delay, risking that this valuable Walgreen's would not be built. Commissioner Partington reported he would support deleting the two conditions.

Commissioner Kent stated that it had been said Clay Ervin was the best in the business, and he would agree with that statement. He reported looking at this in a common sense methodology, Mr. Jaffe made sense, but indicating that this would decrease trips east of I-95. Commissioner Kent concurred with Commissioner Partington.

**Commissioner Kelley withdrew his motion and Commissioner Boyle withdrew his second.**

Mr. Jaffe stated he understood the concern regarding setting precedent; however, he did not see a precedent being set since all of the projects were to add additional homes which would add more traffic. He reported his goal was to place an important community service in the heart of the community that they would be serving. Mr. Jaffe concurred that Walgreen's was an economic institution, and the traffic consultant placed a market share east of I-95 at zero.

Mayor Costello asked what information staff was recommending the Commission obtain before making a decision.

Mr. Turner expressed concern about a project being approved with a traffic analysis that needed more definitive data. He stated this was a very complicated process, and the Planning Director was asking for some assumptions to be changed in the analysis the City received. Mr. Turner noted traffic reports are not merely accepted, they have to be analyzed to assess what improvements need to be made in the area.

Commissioner Kelley asked if this could be completed before the next meeting and if a delay would be acceptable to the developer.

Mr. Jaffe stated one of the most outstanding firms in the country had provided a report with explanations, and they believe the study to be complete. He reported that by the City Manager's own memorandum, these roads are not currently in a failed state. Mr. Jaffe explained that of the two portions of the road that were at a level of service "D," one was Tymber Creek Road, and the widening was already approved for that section, and the other section was east of I-95. He stated the problem would only be exacerbated if nothing were built to keep the customers west of I-95.

Mayor Costello stated that should this be approved tonight, he wanted to hear from staff and the Development Review Board that all of the traffic issues had been resolved before he could approve any other project. He noted he believed this project would minimize traffic congestion east of I-95.

**Commissioner Kent moved to amend, seconded by Commissioner Partington, to delete the two conditions imposed by the Development Review Board regarding placing the project on a priority list and the retention pond design.**

Commissioner Boyle stated the Commission had methodology for traffic analysis that had never been challenged until tonight and he was troubled that because the road was over capacity, a new methodology was needed.

Commissioner Kelley stated he believed this would relieve the traffic, but he questioned how one study could show one thing and another study showed something else. He noted peak traffic was a different determining factor than total traffic count, and the City was using total traffic count.

Mr. Ervin stated the City was reviewing the peak hour analysis done by Kimley Horn utilizing a different methodology. He reported the proper procedures and inputs were used, but some of the assumptions were different.

Commissioner Kelley asked if it were possible that when all of those assumptions were examined that it could be acceptable to the City.

Mr. Ervin stated staff was recommending approval with the requirement that the developer make the amendments and come back with mitigative measures if needed.

Mr. Randall Hayes, City Attorney, noted there were concurrency standards the City must comply with, as a matter of law. He reported the critical question was what methodology should be used, and two methodologies were presented. Mr. Hayes stated if the Commission believed in the methodology the staff had historically used, that could be considered credible evidence; however, if the Commission believed the methodology Mr. Jaffe presented was sufficient and competent, the Commission could base its judgment on that evidence.

Commissioner Kelley asked if one methodology was correct and the other incorrect or merely a different interpretation of the facts presented.

Mr. Turner stated it would probably take a workshop to show the Commission how the assessments were done and examine the models.

Mr. Ervin explained Kimley Horn used a methodology that was acceptable by the Florida Department of Transportation, Volusia County, and could be accepted by the City of Ormond Beach; however, the assumptions their engineer made were questioned by the City's consulting engineer.

Mr. Turner reported the consultant was not questioning the entire methodology, merely the numbers of vehicle trips.

Mr. Ervin stated if the Commission approved the original staff recommendation, staff could get back with the applicant and his engineer to make certain the analysis was sufficient; and if there were any improvements needed, they could be required. He noted, however, if no improvements were needed, the applicant could obtain a building permit.

Mayor Costello noted this was merely two prominent engineers disagreeing with one another.

Call Vote on the Amendment:	Commissioner Kent	yes
	Commissioner Kelley	yes
	Commissioner Partington	yes
	Commissioner Boyle	no
Carried.	Mayor Costello	yes

Call Vote on the Motion as Amended:	Commissioner Kelley	yes
	Commissioner Partington	yes
	Commissioner Boyle	no
	Commissioner Kent	yes
Carried.	Mayor Costello	yes

**Hearing no objection, Mayor Costello closed the public hearing on Item #10(B).**

Mayor Costello called a break and 9:00 p.m. and reconvened the meeting at 9:08 p.m.

Item #10(C) – Dangerous Dogs

ORDINANCE NO. 2005-02  
AN ORDINANCE AMENDING ARTICLE III, DOGS AND CATS,  
OF CHAPTER 5, ANIMALS AND FOWL, OF THE *CODE OF  
ORDINANCES*, BY AMENDING SECTION 5-78, DANGEROUS  
DOGS, TO PROVIDE FOR A NEW DEFINITION OF  
“DANGEROUS”; BY AMENDING SECTION 5-81, ACTION TO BE  
TAKEN BY OWNERS/KEEPERS OF DANGEROUS DOGS;  
REPEALING ALL INCONSISTENT ORDINANCES OR PARTS  
THEREOF; PROVIDING FOR SEVERABILITY; AND SETTING  
FORTH AN EFFECTIVE DATE.

**Commissioner Kelley moved, seconded by Commissioner Boyle, to approve Ordinance No. 2005-02, on second reading.**

Commissioner Kelley stated the revised ordinance included the prohibition for the breeding of any animal deemed dangerous and required proof of spaying and neutering, and additionally, the owner must show proof of liability insurance or surety bond. He noted it also indicated that if the owner could not obtain that bond, they must place a \$1,000 cash non-refundable deposit. Commissioner Kelley questioned if \$1,000 was sufficient considering the \$100,000 bond.

Ms. Sandy Upchurch, Deputy City Attorney, stated this provision was consistent in what was being required in many municipalities in Florida. She noted it could be raised, but would need to be consistent with whatever the premium would be for a policy.

Commissioner Kelley stated if the owner could not obtain a policy, there would have to be a reason.

Ms. Upchurch noted many insurance companies would not write policies for dangerous dogs.

Commissioner Kelley stated those who could obtain policies would be singled out while those who could not obtain policies would put up \$1,000; and if that person’s dog should bite someone, there would be no liability to cover that person or property.

Ms. Upchurch explained there was certainly personal liability since civil lawsuits could be filed for damages. She stated this was the City’s way to regulate the keeping of the dog, but remedies could be sought in circuit court beyond what this ordinance would require. Ms. Upchurch reiterated that this was consistent with what was being done around the State of Florida.

Commissioner Kelley noted merely because Ormond Beach would be following other cities did not automatically make it the right thing to do.

Ms. Upchurch stated the \$1,000 fee could certainly be increased, although she was uncertain if that would be considered a substantive change requiring an additional reading.

Commissioner Kelley stated he was not necessarily indicating the \$1,000 should be increased, but something should be added to find a way to insist the dog owner obtain insurance to protect the public and their property.

Ms. Upchurch explained that in reality what would occur was that once a dog had been deemed dangerous and the owner understood how financially onerous the requirements were, the dogs would be removed or euthanized at the option of the owner. She noted that there were requirements as to where the dog could go once it had been deemed dangerous.

Mr. Hayes stated it would be difficult or impossible to obtain liability insurance on these types of dogs. He noted some companies may provide a policy prior to a dog being deemed dangerous, but it would be next to impossible after an incident had occurred. Mr. Hayes reported the pet owner normally would elect to euthanize the pet given the cost involved in the statutory requirements.

Ms. Laura Jones, 59 Amsden Road, requested a complete description of what this ordinance entailed.

Commissioner Partington stated he requested this ordinance on behalf of a number of his constituents. He explained it would bring Ormond Beach's dangerous dog ordinance more in line with the State statutes and a majority of other communities in Florida.

Ms. Jones asked who would determine if a dog was a dangerous dog.

Ms. Upchurch stated the initial determination would be made by the animal control staff. She explained the animal control staff would conduct an investigation based upon a reported incident. Ms. Upchurch reported the dog owners have the right to appeal a determination of a dangerous dog through the Special Master process, and they may then appeal to the circuit court.

Ms. Jones stated a complaint must be made before an investigation would begin; whereby, Ms. Upchurch agreed the City would have to be made aware that an incident had occurred. Ms. Jones expressed a concern with the discrimination of dog owners as opposed to other animals.

Mayor Costello reported the City could include other animals at a future time if it would determine that there was a need; however, the Commission did not determine a need for that at this time.

Ms. Upchurch stated the reality of the situation was that the majority of the harm done to individuals was done by dogs.

Ms. Jones reported that two years ago the Commission allowed a resident to have as many cats as they wanted. She commended the Commission for this ordinance; however, she objected that it was directed to only one species and ignored other species.

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

**Hearing no objection, Mayor Costello closed the public hearing on Item #10(C).**

Item #10(D) – Limitations on Domesticated Animals

ORDINANCE NO. 2005-03  
AN ORDINANCE AMENDING ARTICLE I, IN GENERAL, OF  
CHAPTER, 5, ANIMALS AND FOWL, OF THE *CODE OF  
ORDINANCES* BY REVISING SECTION 5-11, LIMITATIONS ON  
DOMESTICATED ANIMALS, TO REMOVE DOGS FROM ITS  
APPLICATION; ADDING SECTION 5-14, LIMITATIONS ON

DOGS; REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; AND SETTING FORTH AN EFFECTIVE DATE.

**Commissioner Kelley moved, seconded by Commissioner Kent, to approve Ordinance No. 2005-03, on second reading.**

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

**Hearing no objection, Mayor Costello closed the public hearing on Item #10(D).**

Item #11 – Budget Advisory Board Appointment

RESOLUTION NO. 2005-52  
A RESOLUTION APPOINTING A MEMBER OF THE BUDGET ADVISORY BOARD; SETTING FORTH TERM AND CONDITIONS OF SERVICE; SETTING FORTH AN EFFECTIVE DATE.

**Commissioner Kelley moved, seconded by Commissioner Kent, to approve Resolution No. 2005-52, as read by title only, appointing Mr. Todd Phillips.**

Commissioner Kelley stated he appointed Mr. Phillips because he was currently serving in this capacity. He explained the Budget Advisory Board was working on several issues, and it would be difficult to have a new member updated at this time, especially since a number of reports would be due in the next few weeks.

Call Vote:	Commissioner Kent	yes
	Commissioner Kelley	yes
	Commissioner Partington	yes
	Commissioner Boyle	no
Carried.	Mayor Costello	yes

Item #12(A) – Extension of Runway 17-35 at the Ormond Beach Airport

Mayor Costello stated his comment on the radio was that he did not believe Commissioner Kelley would be able to make a motion because there was already a discussion item on the agenda regarding the airport.

Commissioner Partington restated his motion that was delayed from the last meeting to this meeting due to the Thompson Rule issue.

**Commissioner Partington moved, seconded by Commissioner Kent, to clarify the January 4, 2005, City Commission action regarding the proposed extension for Runway 17-35 that indicated staff was not to pursue the runway extension or apply for grants until such time as the results from the environmental assessment could be obtained, a Finding of No Significant Impact (FONSI) could be obtained, and the Aviation Advisory Board would have the opportunity to review both.**

Commissioner Partington explained the purpose of the motion was to allow the City to obtain all relevant facts and allow public participation before the Commission would make any further determination.

Commissioner Boyle stated Commissioner Partington made the motion on January 4 to direct staff to implement the balance of the eight actions subject to the receipt of a FONSI and other issues relative to the Airport Sports Complex. He reported while Commissioner Partington seemed to be trying to slow down the process for a runway extension, if he would vote to slow down the process, he would be voting for the runway extension; and if he would not vote to slow down the process, he would still be voting for a runway extension.

Mayor Costello asked Commissioner Boyle to word the motion so the intent was intact and he would not experience a dilemma on how to vote. He stated the intent was that staff would do nothing to enhance, promote, or facilitate the runway extension. Mayor Costello reported after

receipt of the findings of the environmental assessment, it would then take another vote to proceed.

**Commissioner Kelley moved to amend the motion, seconded by Commissioner Boyle, to do nothing at all and totally reject the runway extension.**

Commissioner Kelley stated he believed there would be a Finding of Significant Impact because it would reduce the quality of life in the safety and noise, and the City would be adversely impacted by the money spent for something that the City did not need, want, or could afford.

Mayor Costello asked the City Attorney if he could accept the motion as stated under the Thompson Rule.

Mr. Hayes advised the motions were somewhat incompatible. He stated the environmental assessment report would include the FONSI and was awarded by contract to Hoyle Tanner. Mr. Hayes noted the other portion of the January motion was a policy directive to do what was necessary to submit grant applications independent of what the consultant was doing relative to the environmental assessment. He noted the intent of Commissioner Partington's motion today was not to submit grant applications and other policy directives, but the consultant would continue to do the environmental assessment; and when that was completed the Commission could revisit what the Commission wanted staff to do. Mr. Hayes stated Commissioner Kelley's motion was to stop the contract to Hoyle Tanner for the environmental assessment.

Commissioner Kelley clarified his goal was to stop the runway extension.

Mayor Costello noted he understood Commissioner Kelley's motion to only stop the runway extension, not to stop the contact that the Commission could not stop. He stated unless otherwise advised by the City Attorney, he would rule the amendment was germane, and the Commission would do nothing about the runway extension regardless of what the environmental assessment would report.

Mr. Hayes clarified the Commission was stating they would spend the money to allow the consultant to do the study, but not act on the results when it was completed.

Mayor Costello reported he favored the study because the Commission would learn from that study what could improve the airport without doing the runway extension. He stated since the last study there has been new construction, there was talk of an eagle's nest, and other new issues could be explained.

Mr. Hayes asked if there was a policy directive within the amendment to staff to not proceed with grant submittals; whereby, Mayor Costello concurred there was that directive.

Mr. Turner stated this motion would restrict the Commission from proceeding with the runway extension.

Mayor Costello stated it would take a request from anyone on the prevailing side to change that directive.

Mr. Turner asked Mr. Lipps if this would cause any difficulty with any of the granting agencies.

Mr. Tom Lipps, Support Services Director/Airport Manager, stated that typically the FAA requested designations for potential expenditures years in advance. He explained what could have been done was to take no action, but slide all of the expenditures from the 2006 to 2007 or 2008; however, they would be reflected in the submittal for the future. Mr. Lipps asked if the Commission was now asking this project be completely deleted from the multi-year capital improvement plan submittal.

Commissioner Kelley clarified that was part of his motion.

Mr. Lipps stated he understood the direction and did not believe there would be any financial implications, but he would need to discuss this with the FAA before he could provide a definitive answer.

Mr. Turner stated if staff would learn there would be financial implications, they would come back to the Commission to explain the situation.

Mr. Hayes advised that procedurally Commissioner Kelley's motion would substantively replace Commissioner Partington's motion.



**Commissioner Partington withdrew his motion.**

Mr. Gregory Avakian, 161 Heritage Circle, stated there was an additional cost added to the study for \$13,000 to be paid by the FAA for additional homeowners' association meetings. He asked if that portion was a binding contract.

Mayor Costello directed staff to come back at the next meeting to determine if that contract addition could be removed. He stated if it would help make the existing facilities better, he would still prefer that expenditure he made. Mayor Costello asked for this to be researched.

Mr. Lipps noted that it was a discretionary expenditure and it could be eliminated.

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

Item #12(B) – Florida Hospital Memorial Division Relocation Plans

Mayor Costello reported he would not ask for a formal or informal vote, request staff involvement, or request any board review until the City would hear from the Florida Hospital Memorial Division board of directors indicating they would give serious reconsideration to the existing/expanded site if the City would be willing to make some accommodations. He stated Mr. Mike Gentry indicated he would take the information to the board. Mayor Costello noted he did not believe enough reason could be provided to the Commission for them to make a commitment of any kind at this point. He stated should the hospital be willing to consider remaining at the site, he wanted to provide the community an opportunity, collectively and individually, to provide input on this issue. Mayor Costello noted that many of the aspects of the overall plan would probably be acceptable to most of the Commission, but a few may be a problem with a few aspects such as the eminent domain issue that many Commission members abhor, including himself. He explained that the e-mail delineated that a minimum of 75% of the necessary property would have to be acquired by the hospital before the Commission would consider eminent domain. Mayor Costello recommended a 200-foot path onto Granada Boulevard and a 200-foot path onto Nova Road, which could be achieved without the use of eminent domain, to form a gateway to the hospital. He noted creative ideas have been suggested such as an elevated bridge over the road enabling the road to remain open. Mayor Costello explained that Ormond Beach was about to lose its community hospital although he has tried for several years to keep them in the City. He noted the challenge from Halifax Hospital may possibly provide the necessary impetus that may convince Memorial Hospital to believe it would be in their best interest to stay in Ormond Beach.

Mr. Bob Burch, 106 North Old Kings Road, stated he applauded what Mayor Costello was trying to do but did not believe Memorial Hospital was the same as it was when it was a non-profit hospital. He noted considering the condition of the buildings and the money that would have to be spent to renovate the building, it would not be cost effective. Mr. Burch pointed out their new location would be only ten minutes away from their current location. He recommended the hospital donate the property to the Daytona Beach Community College in that this would be a great asset to the City of Ormond Beach.

Mayor Costello noted Memorial Hospital was still a non-profit hospital, but he understood Mr. Burch's point.

Mr. Gregory Avakian, 161 Heritage Circle, stated that not trying to keep Memorial Hospital at its current location would be a great disservice to Ormond Beach residents in that the difference in a minute or two to transport a patient to a hospital could be critical to that patient. He noted concessions may be necessary, but saving a life would be worth making some concessions.

Ms. Gail Burch, 106 North Old Kings Road, stated she was a nurse and worked at Memorial Hospital for 19 years. She applauded the community for wanting to retain the hospital, but considering the traffic in the City, it was more difficult to arrive at the hospital at the hospital's current location than it would be at its proposed location.

Mr. Emmett R. Crump, 1 Tomoka Oaks Boulevard, Unit 117, stated that while he was not speaking on behalf of the hospital, he indicated he believed that action should have been taken a year ago, and it was too late to do anything at this point in time. He noted he believed the emergency room would remain at the current location.

Ms. Lori Garafolo, president of the Ormond Beach Chamber of Commerce, 165 West Granada Boulevard, stated that this was a very complex issue, and she trusted the wisdom of the Commission. She reported a special board meeting of the Ormond Beach Chamber of Commerce was held, and after a thorough review of the issues, the board expressed a strong desire to see the hospital remain in Ormond Beach at its present site.

Commissioner Boyle stated that everyone in the community and on the Commission wanted a hospital in Ormond Beach, either at its current location or on Ormond Beach's border. He noted one-quarter to one-half of the citizens of Ormond Beach would probably be closer to the proposed location than the current location. Commissioner Boyle expressed concern that public assertions were made that the previous Commission did not "go the extra mile" to meet the needs of what the hospital asked of the City. He reported the Commission had a workshop on December 17, 2002, and he distributed a copy of the minutes of that meeting that would show that six of the seven requests made by the hospital were agreed upon by the Commission. Commissioner Boyle explained that eminent domain was not an issue; the Commission did not know there may be unwilling sellers; and there was no awareness of opposition to the closing of Old Kings Road. He stated the Commission learned ten months after the workshop that many property owners were strongly opposed to the closing of Old Kings Road. Commissioner Boyle questioned why Old Kings Road would have to be closed when the City did not receive a commitment from the hospital and he noted that the commitment has never been received. He reported that after hearing from the public and receiving a letter from VOTRAN indicating they would not stop at the hospital if the road was closed, the Commission elected not to close the road. Commissioner Boyle stated the City received a letter from Mr. Gentry who indicated the closing of the road was needed immediately for parking and a separate issue from the original request, but that decisions such as these would impact the hospital's final decision for future plans.

Commissioner Boyle noted he was shocked that a representative of the government was offering a written commitment to eminent domain, which was the taking of many small businesses for a large business. He stated eminent domain, for this purpose, was beyond the scope and power of this Commission. Commissioner Boyle commended Mayor Costello for what he was trying to do and for his motivation, but he had clearly been negotiating this issue, which violated the City Charter prohibition against administrative duties by the Mayor. He noted Mayor Costello could negotiate if the Commission would delegate him the authority to do so, which he would be willing to do; however, once this was done, all negotiations must be in publicly advertised meetings conducted in the Sunshine.

Mayor Costello clarified that there were absolutely no negotiations between him and the hospital.

Commissioner Kent stated he received a number of e-mails this week. He commended Mayor Costello for not fearing reprisals when he believed something was right for the community, which was something a strong leader would do. Commissioner Kent stated the hospital in its current location was far enough from some residents in Zone 1 and Zone 2, but the new location would be even farther. He thanked the Chamber of Commerce board for meeting and for Ms. Garafolo presenting their decision. Commissioner Kent stated the hospital needed a strong message from the Ormond Beach Commission that it wanted a hospital in Ormond Beach, that it deserved a hospital for its residents, and that the hospital should remain at its current location. He noted he was ready to relay that strong message to the hospital, although he was not fond of allowing eminent domain. Commissioner Kent reported he concurred with Mayor Costello in his request to allow the hospital board to discuss the issues. Commissioner Kent stated there may be variables this Commission was unaware of at this time.

Commissioner Kelley stated that what the Commission was being asked to do was too much, and it was much too late. He pointed out that Florida Hospital never indicated they wanted to stay in this location. Commissioner Kelley reported the hospital could build a new hospital for 20% less than they could enlarge the current facility. He stated while Mr. Gentry indicated he would present the information to the board, he never indicated he supported the idea; and without the CEO pushing for a concept, he had little faith it would go forward. Commissioner Kelley reported he would consider small concessions, but it was not fair to ask someone with a building to pay them 125% of the assessed value, ask them to purchase another business for more money and rebuild that business, and he questioned where that business could be rebuilt. He noted the hospital would not stay since it already has its Certificate of Need. Commissioner Kelley reported Halifax Hospital was challenging that Certificate of Need, but Halifax would lose that battle, and they would not be able to afford to build the hospital they expect to build, leaving Florida Hospital the only hospital at that location. He noted he did not want to pay any more property taxes to Halifax Hospital to build another

hospital, especially when residents pay almost as much hospital taxes as they do City taxes to Ormond Beach. Commissioner Kelley noted had Florida Hospital come to Ormond Beach and indicated they would stay if the City would accommodate them on certain items, they would probably have wanted to stay; but under the circumstances, they never really wanted to stay.

Commissioner Partington cautioned making any comment until and unless the City would hear from the hospital board.

Mayor Costello stated the hospital has heard what the Commission had to say. He reported there would be a new hospital soon, and many would like it to be located in Ormond Beach without having to use eminent domain. Mayor Costello noted the message has been sent that if the hospital could use a gateway corridor without the use of eminent domain, Ormond Beach would do what they could to accommodate them; but the decision was now up to them to act or not to act.

#### Item #11(C) – Relocation of the Birthplace of Speed Replica Cars

Mr. Alan Burton, Leisure Services Director, reported volunteers have offered their services to maintain the replica cars.

Mr. Dan Smith, 9 Sunset Boulevard, stated the Birthplace of Speed Park was created around the two replica cars, and they were to be the centerpiece of the park. He noted a round cement slab uniquely built to hold the cars along with a monument describing the cars is currently in the park, but the cars are not there. Mr. Smith reported he had volunteered to do weekly maintenance, and Mr. Randy Crabtree would repair any problem at his own expense as well as providing transportation to move the cars to repair them should that be necessary. He pointed out that the DuPont Corporation had donated the materials to maintain the cars. Mr. Smith noted it was a mistake to place the cars in the park originally with no protection, and he urged the Commission at the very least to be willing to provide lighting at night. He questioned the liability of children climbing on the cars and urged the City, at some point, to provide a means of protecting the cars from the public.

Commissioner Boyle commended Mr. Smith and Mr. Crabtree who have asserted there would not be a large environmental problem replacing the cars in the park, and he stated a pavilion to protect the cars would not make any difference. He stated the original scope of work provided to the manufacturer indicated that both replica cars would be fabricated from an aluminum substructure with an aluminum and fiberglass body work and children could play on and around the cars. Commissioner Boyle noted he had no objection to the cars being replaced on the slab, but totally objected to spending more money to build a roof over the cars or place a fence around them.

Commissioner Kent stated he did not believe the park was the best place for the cars. He noted both salt and vandalism have alternately been blamed for the problems with the cars. Commissioner Kent commended Mr. Crabtree who offered to paint and maintain the cars and Mr. Smith who would wash and inspect them weekly; therefore, his concerns of maintenance had been eliminated. He reported while he still had a concern regarding vandalism, the fence looked ridiculous; therefore, he would not oppose replacing the cars in the Birthplace of Speed Park, but not erecting a fence.

Commissioner Kelley stated \$51,493 has already been spent on the cars, and now \$21,800 was requested to be spent from Tax Increment Financing (TIF) funds. He questioned how much was spent on the park for these cars and if TIF money was used.

Ms. Sloane stated over \$200,000 was spent on the park, but the concept of rebuilding the park was not just to place the cars in the park in that it was actually a rehabbing of the park. She noted the slab was specially made with a sand finish to resemble the beach and was the only thing made specifically for the cars, costing maybe \$10,000.

Commissioner Boyle stated the pavilion was moved 10 to 15 feet to make the cars the centerpiece of the park.

Ms. Sloane reported making the cars the centerpiece was one of the purposes to move the pavilion, but the major reason was bringing the pavilion closer to the beach to make it more usable. She stated the park was funded through TIF funds.

Commissioner Kelley stated he objected to using TIF funds merely because money was available for purposes that do not serve the public well.

Mr. Burton stated a three to four-foot vertical fence could offer a view while helping to keep vandalism at a minimum. He reported a cantilever roof could keep the sun off the cars and lighting would help to reduce vandalism. Mr. Burton noted the TIF funds could be used to reduce vandalism and frame the cars to keep the hot sun off the cars on a daily basis.

Commissioner Kelley stated he opposed spending more money on something that should not have been done in the first place. He noted there was probably a better location to place the cars. Commissioner Kelley stated he appreciated the people willing to maintain the cars, and if they were to be replaced in the park, if another problem should arise, they should not be replaced but another location should be found. He reported the City spent a great deal of money to place two cars on the beach because Ormond Beach was the Birthplace of Speed, but no one cares, and he questioned if anyone would change their mind by seeing the cars. Commissioner Kelley noted the cars could be replaced, but he did not want to spend any more tax money on them.

Commissioner Partington noted he supported the staff recommendation.

Ms. Laura Jones, 59 Amsden Road, asked how she would access the park and where she could park. She stated the park was beautiful, but inaccessible. Ms. Jones noted she originally opposed spending money on the park, and she continued to oppose spending any money since people could not get to the park.

Mayor Costello stated the City was still trying to have the polls moved after many years. He concurred he did not want to spend any more City funds; but the last time this was discussed, he challenged the Ormond Beach Historical Trust to raise the needed funds. Mayor Costello noted agreement with Mr. Smith's recommendation for lighting, and he urged the Trust to fund the lighting. He stated the consensus of the Commission was to place the cars on the beach with no more City money being spent.

#### Item #13 - Reports, Suggestions, Requests

##### E-mail

Commissioner Kelley noted he received a great deal of e-mails, and he was grateful for the new e-mail sorter.

##### Aviation Advisory Board Agenda Item

Commissioner Kelley recommended the Aviation Advisory Board add a permanent agenda item relative to discussing possible safety improvements and noise reduction suggestions.

Mayor Costello recommended having Commission approval for this recommendation. He noted the Commission unanimously provided their approval for this recommendation.

##### Commissioner Kelley

Commissioner Kelley noted he was glad to be back working with the Commission.

Commissioner Partington welcomed Commissioner Kelley. He stated Ormond Beach could not lose no matter who won the election, and he congratulated Commissioner Kelley for his successful campaign.

##### Recent Activities – Zone 4

Commissioner Partington stated that on February 21, the ECHO board granted the City \$205,000 for Central Park. He noted Ambassador High and staff attended the meeting and sent a powerful message.

Commissioner Partington noted he met with Mr. Joe Bourassa the same day and viewed his power point presentation regarding the St. Johns River Water Management District. He urged everyone avail themselves of the opportunity to view this presentation at Commissioner Kent's "Coffee with the Commissioner" meeting.

Commissioner Partington stated that on the evening of February 22, the Commission members, Mr. Hayes and City Clerk Veronica Patterson, went to DeLand to canvass the election. He noted it was exciting to be a part of the democratic process.

Commissioner Partington reported on that February 23, he attended the Volusia County Association for Responsible Development (VCARD) Redevelopment Seminar. He noted redevelopment issues would be more prevalent in the future in Ormond Beach. Commissioner Partington thanked Mr. Ervin, Economic Development Director Joe Mannarino,

and Dorian Burt of Ormond Main Street who had a table where they provided information to those in attendance.

Commissioner Partington noted that on February 24, the Ormond Beach Historical Trust fundraiser/dinner was held celebrating the great history of Ormond Beach. He stated people from all over the country come to Ormond Beach to appreciate the history as the Birthplace of Speed.

Commissioner Partington stated he met with two groups of City staff yesterday working on stormwater problems. He pointed out the majority of his time as a Commissioner seemed to be spent on stormwater related problems. Commissioner Partington noted stormwater issues are important because they affect people's lives. He reported staff worked hard to try to solve these frustrating problems.

#### City Recreation

Commissioner Boyle pointed out the budget for City recreation was \$3.5 million annually, and \$800,000 of that money would go toward maintenance. He stated he hoped the Commission could find answers to the recreational needs of the City within the current budget as well as adding new dollars.

#### Audience Remarks

Commissioner Boyle commended Mayor Costello for the way he handled tonight's Audience Remarks section of the agenda, particularly taking the extra time to answer citizen questions. He reported the City once had the practice of answering questions at the podium, and if staff needed extra time for research, the answer was provided at a subsequent meeting on the public record. Commissioner Boyle requested the Commission discuss the possibility of going back to that practice.

#### Commissioner Kelley

Commissioner Boyle noted two great citizens ran for the Zone 3 seat, and the citizens struggled with these two great choices.

Commissioner Boyle noted all five Commission members bring different types of leadership. He stated Mayor Costello leads the entire Commission in a ceremonial manner and in many other ways, which he executes well. Commissioner Boyle stated Commissioner Kelley brings a unique and important type of leadership that was evident tonight. He reported this Commission was privileged to have the opportunity to work with Commissioner Kelley and learn from him again as he did when he previously served with Commissioner Kelley.

Commissioner Kent congratulated Commissioner Kelley, stating the residents of Zone 3 had a difficult decision. He stated he looked forward to working with Commissioner Kelley.

#### Coffee with Commissioner Kent

Commissioner Kent invited everyone to his home next Monday for "Coffee with Commissioner Kent" where Mr. Joe Bourassa would be the guest speaker who would provide a power point presentation after the regular meeting at approximately 5:00 p.m.

#### Bon Terre Group Litigation

Commissioner Kent expressed concern that the Bon Terre Group's attorney was considering a lawsuit because the Commission did not approve the fuel adjustment fee. He thanked Mr. Hayes for his leadership. Commissioner Kent stated Mr. Hayes replied to the letter with a letter that was very succinct, explaining how the contract was worded. He expressed concern that the Commission allowed the contract to continue, and it seemed everything was settled when this letter arrived from Bon Terre's attorney. Commissioner Kent noted he was eagerly awaiting the attorney's reply to the question if Bon Terre would continue the contract.

#### Frances Goddu

Commissioner Kent noted he had the opportunity to celebrate the life of Mrs. Frances Goddu, wife of long time City employee Jerry Goddu. He noted Mrs. Goddu was a longtime friend who lost her long, courageous battle to cancer. Commissioner Kent reported he was pleased to see staff members in attendance at the very moving service.

#### Beach Access and Overnight Parking

Commissioner Kent noted he had enjoyed a great rapport with Joie Alexander on the Volusia County Council. He expressed concern that during this time of year there would be a larger proliferation of overnight campers and trailers on the beach approaches. Commissioner Kent reported that it had been indicated by some that this was an Ormond Beach issue and by others

that it was a Volusia County issue. He noted Councilwoman Alexander indicated this was a County issue, but he asked that the City Police Department monitor the situation as well.

#### Central Park

Commissioner Kent commended Loretta Moio, Grants Coordinator, and Joyce High for helping the City obtain grants for Central Park.

#### Mayor Costello

Commissioner Kent commended Mayor Costello for doing such a great job. He stated when things go great, Mayor Costello passes on the compliments to the Commission; but when things go bad, he takes the criticism upon himself alone.

#### Commissioner Kelley

Mr. Turner welcomed Commissioner Kelley to the Commission.

#### Noise Management Task Force

Mr. Turner reported the first meeting of the Noise Management Task Force was held, and he thanked Mr. Lipps and his staff for staffing the meeting and preparing the agenda. He reported the task force would be going on a tour at the airport at the next meeting, which may include a helicopter ride over the area to view the proximity of the neighborhoods to the airport and the flight patterns of the aircraft.

#### Grants

Mr. Turner commended the staff members who worked on grants for bringing in grants successfully. He thanked Mr. Lipps and Ms. Moio for their work as well as the other departments who wrote grants. Mr. Turner noted Ms. High and Commissioner Partington have helped with Central Park grants. He concurred that the grant funds were actually tax money, but it was good to bring those funds into the community to help augment the City's budget.

#### Nova Recreation Complex

Mr. Turner urged citizens to attend the March 15 meeting relative to the Nova Recreation Complex. He stated there have been attempts to garner support for making improvements to the recreation complex. Mr. Turner noted staff would provide information relative to what improvements have been made, but the main focus would be on what could be done. He explained there were times in the past when finances were tight and cuts had to be made.

#### Ormond Beach Historical Trust Banquet

Mr. Turner noted he, Mayor Costello, Commissioner Partington, and staff members attended the Ormond Beach Historical Trust banquet. He stated he was hopeful that the facility could be utilized for some type of City function.

#### Commissioner Kelley

Mr. MacLeod and Mr. Hayes welcomed Commissioner Kelley back to the Commission.

#### Bike Week

Mayor Costello displayed a "No Wake Zone" sign noting the signs would be available at the Chamber of Commerce. He stated there was a campaign to remind the bikers that the City welcomes them back if they respected the community. Mayor Costello reported there would be "Ride Quietly" signs along A1A, and he also requested that some be posted along US1. He explained some Daytona Beach businesses have funded the "No Wake Zone" campaign.

#### Beach Access, Boat Access, and Height Limitations

Mayor Costello reported Mr. Avakian mentioned beach access, boat access, and height limitations. He stated he would be willing to discuss these issues with options provided by staff and input from Mr. Avakian; however, he was not prepared to commit to a full day discussion or a separate meeting to devote to these issues.

Mr. Turner reported the height limitation issue would be mentioned in conjunction with another item on the next agenda, and staff would investigate the other issues if the Commission directed staff to do so.

Commissioner Kelley noted he would be willing to discuss these issues as a discussion item.

Mayor Costello explained his policy was that more than one person would be needed to discuss an item.

Commissioner Boyle stated he believed only one Commissioner should be able to ask for an issue to be discussed.

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Commissioner Kelley reported any Commission member should have the right to bring an item up for Commission discussion unilaterally.

Commissioner Kent concurred with Commissioner Kelley.

Mayor Costello clarified that for this particular issue, he was not pushing these items be discussed if no other Commission member wished to discuss the issues; however, he concurred any Commission member may request that an item be discussed.

Zone 3 Election

Mayor Costello pointed out that there were four good candidates in Zone 3. He stated he greatly respected Commissioner Kelley, and he had a great deal of influence in his originally running for office. Mayor Costello reported he had supported Commissioner Kelley, but tried to do so in a way as to not diminish his respect for the other candidates.

Item #14 – Close the Meeting

The meeting was adjourned at 10:48 p.m.

APPROVED: \_\_\_\_\_ March 15, 2005

BY: \_\_\_\_\_  
Fred Costello, Mayor

ATTEST:

\_\_\_\_\_  
Veronica Patterson, City Clerk