

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

April 5, 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 Dr. V. Benford Friar, II, Faith Cathedral Church.
- 3) Pledge of Allegiance.
- 4) Approval of the Minutes of the March 15, 2005, regular meeting and the March 29, 2005, special meeting.
- 5) **PRESENTATIONS:** Employee-of-the-Quarter award to Barbara Prosch.
- 6) **AUDIENCE REMARKS:**
- 7) **INTERGOVERNMENTAL BOARD REPORTS:**
 - A) Metropolitan Planning Organization
 - B) Volusia Council of Governments
 - C) Smart Growth Implementation Committee
 - D) Water Authority of Volusia
- 8) **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. 2005-69 authorizing the execution of Change Order Number Four (4), Final, to that contract awarded to Masci Corporation regarding the Standish Drive, Triton Road and Royal Palm Avenue Drainage Improvements Project, by increasing the contract price by \$34,324.14.
 - B) Resolution No. 2005-70 ratifying the execution of two JPA Acknowledgments regarding completion of the Nova Road Utilities Relocation project. (\$427,035.10 refund to City)

- C) Resolution No. 2005-71 authorizing the execution of an interlocal agreement between the cities of Daytona Beach, Port Orange and Ormond Beach, providing for the reciprocal use of certain recreational facilities of the respective cities, including a jointly-sponsored summer therapeutic recreation program for special needs children with disabilities; authorizing the expenditure of funds for the City of Ormond Beach's share of program costs; providing for a payment schedule; establishing administration and personnel staffing arrangements; adopting a resident fee schedule.
- D) Resolution No. 2005-72 authorizing the submittal of a grant application to the State of Florida under the Joint Hazard Mitigation Grant Program for funding assistance relative to the Hand Avenue/Laurel Creek Drainage Improvements Project; authorizing the execution of all documents incidental thereto. (\$1,200,000 total project; \$900,000 grant funds; \$300,000 local funds)
- E) Resolution No. 2005-73 accepting funding assistance from the U.S. Department of Homeland Security for the purchase of personal safety and firefighting equipment; providing for a matching contribution by the City. (\$327,994 total project; \$295,195 grant funds; \$32,799 local funds)
- F) Resolution No. 2005-74 ratifying and amending the submittal of a grant application authorized under Resolution No. 2004-203 to the United States Department of Justice, Bureau of Justice Assistance; accepting the award of a Local Law Enforcement Block Grant in the amount of \$10,000; authorizing the expenditure of \$1,800 from the Federal Law Enforcement Trust Fund (112) as the City's local match; authorizing the execution of a certificate of acceptance; authorizing the purchase of certain police equipment. (\$10,110 total project; \$9,090 grant funds; \$1,020 local funds)
- G) Resolution No. 2005-75 in support of Volusia County's application for renewal of an Incidental Take Permit to continue to allow beach driving and parking in Volusia County.
- H) Resolution No. 2005-76 appointing John Adams as a member to serve on the Historic Landmark Preservation Board; setting forth term and conditions of service.
- I) Resolution No. 2005-77 authorizing the initiation of legal proceedings to seek the recovery of attorney's fees and court costs against The News-Journal Corporation in that lawsuit styled News-Journal Corporation vs. Jim Privett, Joyce High and Jeff Boyle, Case Number 2002-30268, in the Circuit Court of Volusia County, Florida.
- J) Submittal of a U.S. Department of Homeland Security Assistance to Firefighters Grant for the purchase of equipment. (\$342,200 total project; \$307,980 grant funds; \$34,200 local match)

DISPOSITION: Approve as recommended in City Manager memorandum dated March 31, 2005.

- K) Letter of support for funding of the Land and Water Conservation Fund State Assistance Program.

DISPOSITION: Approve as recommended in City Manager memorandum dated March 31, 2005.

9) **FIRST READING OF ORDINANCES:**

- A) Ordinance No. 2005-04 approving the preliminary and final plat for "Tymber Creek Plaza," Planned Business Development; establishing conditions and expiration dates of approval.
- B) Ordinance No. 2005-05 amending the annual budget for the 2004-2005 fiscal year relative to the General Fund; Downtown Redevelopment Trust Fund; Capital Improvements Fund; Tax Increment Financing Construction Fund; Local Roads Impact Fee Fund; Water and Wastewater Fund; Water and Wastewater Equipment Replacement Fund; Water and Wastewater Renewal and Replacement Fund; and Solid Waste Fund.

10) **RESOLUTIONS:**

- A) Resolution No. 2005-78 appointing an alternate representative as a member of the Volusia County Metropolitan Planning Organization; establishing term and conditions of service.
- B) Resolution No. 2005-79 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 MDSS, Inc. (Building “A” of the former Scotty’s site located at 333 West Granada Boulevard - \$50,000)
- C) Resolution No. 2005-80 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 MDSS, Inc. (Building “B” of the former Scotty’s site located at 333 West Granada Boulevard - \$50,000)

11) **DISCUSSION ITEMS:**

- A) Appeal of the Planning Director’s interpretation of the Land Development Code relative to the Granada Plaza signs.
- B) South Atlantic Avenue redevelopment.
- C) Letter of support for photo traffic enforcement legislation.
- D) Request by Commissioner Kelley to discuss the schedule of summer City Commission meetings.

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

13) Close the meeting.

Item #1 - Call to Order

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

Item #2 - Invocation

Dr. V. Benford Friar, II, Faith Cathedral Church, gave the innovation.

Item #3 - Pledge of Allegiance

Mayor Costello led the Pledge of Allegiance.

Item #4 – Approval of Minutes

Mayor Costello advised the minutes of the March 15, 2005, regular meeting and the March 29, 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 #5(A) – Employee-of-the-Quarter

Mr. Isaac Turner, City Manager, announced Ms. Barbara Prosch had been selected as the Employee-of-the-Quarter. He noted Ms. Prosch had been with the City for approximately one year as an Accounting Technician in the Finance Department. Mr. Turner advised Ms. Prosch was on the front line of customer service as she had a position of first contact with citizens, and she consistently goes above and beyond to make sure citizens are assisted. He stated that Ms. Prosch along with other staff members volunteered to man the Emergency Operations Center during the hurricanes.

Mayor Costello honored Ms. Prosch as Employee-of-the Quarter and presented her with two (2) plaques that would be displayed in City Hall, as well as a watch featuring the City seal. He thanked Ms. Prosch for all she had done for Ormond Beach.

Item #6 – Audience Remarks

Pulling Items from the Consent Agenda

Mayor Costello stated that in the workshop prior to their meeting, the Commission decided that in the future if a citizen would like an item pulled from the Consent Agenda for discussion, they must ask a Commissioner before hand to pull the item; therefore, this was the last meeting when a citizen would have the opportunity to come to the podium and request an item be pulled for discussion.

Budget Issues

Mr. Rick Lovell, 354 Applegate Landing, reported Ormond Beach had always been proud of its low tax level and high quality of life. He pointed out that while he was a member of the Budget Advisory Board, his comments were not necessarily representative of the board's opinion. Mr. Lovell noted the Commission's decision to raise salaries 6% rather than the 3¼% recommended by the staff and the Budget Advisory Board and the failure to address a \$700,000 shortfall in the Water Utility budget were two key factors that influenced the \$982,000 projected shortfall in the 2005-2006 budget. He stated that considering the 25% increase in fuel costs over the last year and revenues from property taxes not keeping pace with operating expenses, the citizens of Ormond Beach need to let their Commissioners know whether they want a low tax rate or a reduction of services or a tax rate comparable to other cities that would provide Ormond Beach the recreation and public service levels that the residents have come to expect. Mr. Lovell reported the current proposals from the Finance Department further decrease the fund balance below the 12% mark the Commission requested be kept in the 2004-2005 budget. He stated this solution would not correct the \$982,000 shortfall and the projected \$1.6 million and \$2.4 million shortfalls for the next two years, and it would effectively wipe out the General Fund reserve. Mr. Lovell noted that in 1997 Commissioner Boyle and Commissioner Kelley spoke in favor of a 15% General Fund reserve; however, the General Fund reserve with no increases in the millage rate would be 11.3% in this proposal. He reported the Commission would be considering this evening an Ordinance amending the budget whereby the shortfall would be eliminated by reducing the water utilities transfer to the General Fund by \$300,000 and reducing payment to the Wastewater Renewal and Replacement Fund by \$400,000, effectively reducing the General Fund in its reserve percentage and creating a need to address a shortfall in the Wastewater Renewal and Replacement Fund at a future date. Mr. Lovell stated that these actions do not fix the problem and actually make the problem worse. He reported that this Commission and past Commissions have demonstrated a lack of foresight by using reserves to make up for a lack of revenue. Mr. Lovell stated it was time to raise taxes to meet all known and projected needs or to cut services to meet current revenues.

Central Park

Ms. Joyce High, 38 Oak Brook Drive, stated there are moments to be celebrated such as the reception for the Plein Air Painters at The Casements who painted in Central Park for over a year. She noted there would be a month-long exhibition depicting various areas of the park. Ms. High reported this week children would be among the volunteers who have faithfully given their time to the park. She stated Ormond Beach staff would continue to educate the children as they work in the park.

ECHO Grants

Ms. Patricia C. Johnson, 4 Water Oak Circle, representing the Casements Guild, introduced members from the Guild who were in the audience, as well as members of the Ormond Beach Garden Club that helped to support The Casements Guild. She expressed appreciation for the Commission's assistance in keeping The Casements cellar dry. Ms. Johnson stated she was aware what the City pays to maintain The Casements annually; however, the restrooms can not accommodate the handicapped; The Casements does not have a sprinkler system; it has no automatic system of alerting the Fire Department in case of a fire; and storage was now having to be placed on the second and third floor since the storage shed was damaged. She reported this building did not meet City codes. Ms. Johnson noted she was pleased the City would receive an ECHO grant for \$200,000 for Central Park, and she urged the Commission to consider The Casements for a possible ECHO grant. She reported a study was conducted in 2002 outlining what needed to be accomplished at The Casements. Ms. Johnson noted The Casements Guild was prepared to offer the City a check for \$25,000 toward an ECHO grant, representing a great deal of donations and profits from the Christmas Walk. She asked this jewel of Ormond Beach be protected and pointed out that this was the only historic building owned by the City of Ormond Beach.

Mayor Costello asked Ms. Johnson to estimate approximately how much the Casements Guild had contributed over the past 25 years and assign a value of minimum wage to those working for the Guild to provide some concept of how much the Guild had contributed to the City of Ormond Beach.

Ms. Johnson stated two years ago the figure was approximately \$250,000 and last year the Guild gave \$7,000 for a single room.

Vicious Dog Ordinance

Ms. Janet Narushka, 357 Collins Street, referenced the recent revision of the vicious dog ordinance and dog limits. She reported that while a public notice was posted in the newspaper prior to the meeting, not all citizens get the local newspaper or have computer access. Ms. Narushka stated she found it unbelievable that laws were passed without setting up an advisory panel inviting those involved to participate in the planning of the laws. She reported she fully supported a fair vicious dog law; however, making this law retroactive would place a tremendous burden on the citizens affected prior to the new law. Ms. Narushka noted dog owners would not be able to afford these policies or find a company to insure them. She questioned who would determine if the dog was vicious and what credentials that person would have. Ms. Narushka urged the law address each incident separately, and she recommended an Animal Control Review Committee be established comprised of an animal control officer, veterinarian, member of each of the local dog clubs, hunter, and animal trainer behaviorist. She asked this law be amended so it would not be retroactive.

Ms. Narushka stated the City did not need a dog limit law in that it already had laws addressing the issues of nuisance, leash control, and cleanup. She noted limit laws were ineffective in that it failed to address the actual problem of irresponsible owners. Ms. Narushka reported to avoid the limit laws, pet owners may not register their pets or take them to the veterinarian to obtain needed vaccinations. She recommended enforcing the current laws on the books rather than enacting these new laws.

Mayor Costello asked the Assistant City Attorney and Chief of Police to contact Ms. Narushka. He suggested Ms. Narushka host a meeting of those people whom she mentioned, and the City would provide City representation. Mayor Costello explained this was a complaint driven ordinance, and the City was only targeting the dogs causing the problems.

Risk Management Program Committee

Mr. Charles Folcik, 402 Oceanshore Boulevard, stated he contacted the City Attorney relative to minutes of the Risk Management Program Committee and was informed the Risk Management Program Committee had not met in quite a long time, but the code indicated the committee was to meet quarterly.

Mr. Randall Hayes, City Attorney, stated he advised Mr. Folcik that the Program Committee or the Incident Committee had not met in the past three years. He pointed out the minutes of the Claims Committee were not a public record, and Mr. Folcik would need to identify what he wanted, and it would be determined if the case was closed or not. Mr. Hayes stated if the case was closed, it would be considered a public record; however, regarding Mr. Folcik's primary concern, he was still awaiting Mr. Folcik's response to his inquiry.

Mr. Folcik reiterated the Program and Incident Committees were to meet at specified times and by not meeting had violated the code. He stated the committee could have assigned a staff member to act as an insurance adjuster and ascertained the amount of damages for a claim against the City, but this never occurred because the committee did not meet. Mr. Folcik reported Ormond Beach had five to six similar sewage spillage incidents in the past two years. He pointed out a sewer lift station failed causing a sewage spillage, but other cities have had emergency generators in each lift station for years while Ormond Beach was only now placing emergency generators in all lift stations.

Mayor Costello requested Mr. Hayes report to the Commission within the next 30 days relative to the parameters of the Incident Committee and the Program Committee explaining what would cause the committees to meet. He noted the City had requested Mr. Folcik provide receipts to consider his claim, and those receipts had not been provided to date.

Mr. Hayes stated the Incident Committee and the Program Committee have not met because what they review was also considered by the Claims Committee, and this was the committee which would rightfully review this type of claim.

Item #7(A) – Metropolitan Planning Organization

Mayor Costello reported the Metropolitan Planning Organization (MPO) reversed its decision to support the renaming of the “Beeline” to the “Beach-Line.” He stated the MPO supported additional signage out of the Orlando Airport and along I-4 directing people to the Daytona Beach beaches. Mayor Costello noted the MPO received the 2003-2004 audit. He advised the main issue continued to be that the state, DOT, and federal government were converting 75% of the funds for the Strategic Intermodal System (SYS), which included only I-95, I-4 and SR40, making it difficult to fund local roads.

Item #7(B) – Volusia Council of Governments

Mayor Costello reported the 2003-2004 audit was presented at the Volusia Council of Governments (VCOG) meeting. He stated Ms. Mary Swiderski was hired as executive director. Mayor Costello advised that VCOG passed a resolution in support of the NASCAR Hall of Fame, the FEMA model letter for reimbursement of hurricane expenses was discussed, and the lawsuit allowing people who are part-time residents of Ponce Inlet to vote in local elections was also discussed.

Item #7(C) – Smart Growth Implementation Committee

Mayor Costello reported the four work groups of the Smart Growth Implementation Committee were continuing to meet with a goal to have a report by June to present to the County Council regarding implementing smart growth initiatives in Volusia County.

Item #7(D) – Water Authority of Volusia

Commissioner Boyle stated the Water Authority of Volusia (WAV) met on March 16 where a power point presentation was made on the Master Facilities Plan followed by a protracted discussion on what the reserve water supply should be. He advised that the Board settled on a 10% reserve water supply. Commissioner Boyle reported WAV questioned what, if any, water rate hike would be generated due to the recent water plant expansion.

Mayor Costello reported staff would provide information on this issue at a later date.

Item #8 - 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 Boyle requested Item Nos. 8(F) and 8(K) be pulled for discussion.

Commissioner Partington requested Item No. 8(I) be pulled for discussion.

Commissioner Kelley requested Item No. 8(G) be pulled for discussion.

Commissioner Kent moved, seconded by Commissioner Partington, for approval of the Consent Agenda, minus Item Nos. 8(F), 8(G), 8(I), and 8(K).

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

Item #8(F) – Purchase of Certain Police Equipment

RESOLUTION NO. 2005-74
A RESOLUTION RATIFYING AND AMENDING THE SUBMITTAL OF A GRANT APPLICATION AUTHORIZED UNDER RESOLUTION NO. 2004-203 TO THE UNITED STATES DEPARTMENT OF JUSTICE, BUREAU OF JUSTICE ASSISTANCE; ACCEPTING THE AWARD OF A LOCAL LAW ENFORCEMENT BLOCK GRANT IN THE AMOUNT OF \$10,000; AUTHORIZING THE EXPENDITURE OF \$1,800 FROM THE FEDERAL LAW ENFORCEMENT TRUST FUND (112) AS THE CITY’S LOCAL MATCH; AUTHORIZING THE EXECUTION OF A

CERTIFICATE OF ACCEPTANCE; AUTHORIZING THE PURCHASE OF CERTAIN POLICE EQUIPMENT; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Kent moved, seconded by Commissioner Partington, to approve Resolution No. 2005-74, as read by title only.

Commissioner Boyle reported he had serious problems with the entire taser concept, and no rationale was provided why Ormond Beach needed the tasers in this grant.

Police Chief Larry Mathieson stated 18 months ago the Commission approved a program to purchase tasers for all law enforcement officers. He reported there were occasions when police officers needed to apply force, and because the officer had the taser available, they were used in lieu of applying deadly force to effectively subdue individuals. Chief Mathieson noted the taser was a very effective weapon, and officers were authorized to use the taser only after extensive training in situations where they are confronting an actively resisting suspect. He noted the use of force reports were analyzed on a quarterly basis by the Citizens Law Enforcement Advisory Board, and the board had unanimously endorsed the use of the taser. Chief Mathieson reported the taser had been applied in approximately 18 circumstances without a filed complaint or significant injury.

Commissioner Kent stated there was a dangerous individual in Ormond Beach near the Daytona Beach border where Ormond Beach needed to call Daytona Beach because Ormond Beach did not have tasers at that time.

Chief Mathieson reported Commissioner Kent was referring to a burglary in progress where Ormond Beach officers pursued an individual to a roof of a business in Daytona Beach. He stated Ormond Beach officers were unable to physically contact the individual, but a Daytona Beach officer was able to deploy a taser and take him into custody without further resistance. Chief Mathieson reported another incident involved a violent individual who threatened suicide and the life of his spouse and was waving a firearm. He stated a sniper was set up, but officers were able to deploy the taser and take the individual into custody without further violence.

Commissioner Kent reported not every officer had the training to use a taser. He asked for clarification that extensive training was required, and the officer himself must experience being hit with the taser.

Chief Mathieson concurred that for an officer to be issued a taser, they must go through extensive training program and be hit with the taser.

Commissioner Kent reported he had heard that a dangerous individual who had consistently been giving officers problems was hit by a taser and was in much better control after the incident.

Chief Mathieson noted that there have been a number of similar incidences occurring, and the statistics around the country have been convincing as to the taser's effectiveness. He stated most agencies have experienced a 40% to 60% reduction in officer and suspect injuries as a result of the deployment of these weapons. Chief Mathieson reported a number of national organizations such as the Department of Defense and the International Association of Chiefs of Police have commissioned independent studies that have concluded that tasers were a very effective alternative to avoid physical contact and injuries.

Commissioner Kent asked that the statistics Chief Mathieson mentioned be sent to the Commission.

Commissioner Boyle requested that, in order to provide a balanced view, the report include information relative to incidences where there had been loss of life from a taser's use. He noted he could have used the information Chief Mathieson provided tonight in the staff report.

Mayor Costello stated this discussion should have occurred when the Commission approved the use of tasers 18 months ago.

Commissioner Boyle stated the controversy regarding tasers had occurred in the interim of those 18 months.

Chief Mathieson stated the independent studies have established that there had been no direct connection between the use of the taser and deaths. He explained most incidents actually related to drugs, alcohol, and positional asphyxia.

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

Item #8(G) – Incidental Take Permit to Continue to Allow Beach Driving and Parking

RESOLUTION NO. 2005-75

A RESOLUTION IN SUPPORT OF VOLUSIA COUNTY'S APPLICATION FOR RENEWAL OF AN INCIDENTAL TAKE PERMIT TO CONTINUE TO ALLOW BEACH DRIVING AND PARKING IN VOLUSIA COUNTY; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Kelley moved, seconded by Commissioner Boyle, to approve Resolution No. 2005-75, as read by title only.

Commissioner Kelley stated this issue had been actively pursued by previous Commissions for years, particularly by Commissioner Boyle. He noted comments to the US Fish and Wildlife Service were required by April 26. Commissioner Kelley asked for support from the citizens so the poles could be moved.

Mayor Costello noted that although Congressman Mica could obtain \$1 million for the City for an interchange study, he was not able to get the poles moved 200 feet.

Commissioner Boyle reported he received a letter from Mr. Romano regarding lifeguards training at the City's approach where there was not a great deal of parking. He noted that as a result of Commissioner Kelley's remarks, he did not need to discuss Item #8(K).

Mayor Costello noted the Item #8(K) would, however, need a separate vote.

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

Item #8(I) – Recovery of Attorney's Fees

RESOLUTION NO. 2005-77

A RESOLUTION AUTHORIZING THE INITIATION OF LEGAL PROCEEDINGS TO SEEK THE RECOVERY OF ATTORNEY'S FEES AND COURT COSTS AGAINST THE NEWS-JOURNAL CORPORATION IN THAT LAWSUIT STYLED NEWS-JOURNAL CORPORATION VS. JIM PRIVETT, JOYCE HIGH AND JEFF BOYLE, CASE NUMBER 2002-30268, IN THE CIRCUIT COURT OF VOLUSIA COUNTY, FLORIDA; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Kelley moved, seconded by Commissioner Kent, to approve Resolution No. 2005-77, as read by title only.

Commissioner Partington stated no criteria was noted in the report for the awarding of attorneys' fees based on an analysis of the opinion that the judge rendered. He asked the City Attorney the likelihood of success in obtaining attorneys' fees. Commissioner Partington stated the City had already been required to pay \$150,453.59, and he would hesitate paying another \$6,000 if it were not necessary. He pointed out another consideration was that it was not known at this time if the opposing council planned to appeal the judge's ruling, and he questioned if this action would trigger any consideration on their part as to whether they would file an appeal. Commissioner Partington noted that after speaking to people in the community, some would rather let this issue remain without further action.

Mr. Hayes stated the final judgment provided a reasonable basis on which to seek attorneys' fees; however, he could not state with any degree of certainty the fees could be obtained. He noted, however, that it was certain that if the City did not request them, they would not be obtained. Mr. Hayes pointed out that typically attorneys' fees could not be recovered, but he

could not predict the outcome. He explained that the standard under the statute was that the court may award fees if the court determined the suit was filed frivolously or in bad faith. Mr. Hayes reported Commissioner Boyle’s attorney estimated he would invest ten hours at \$200 per hour equaling \$2,000, and the other two lawyers’ fees would probably not exceed that fee.

Commissioner Boyle reported that when the suit was filed, the lawsuit specifically asked that the newspaper, at the conclusion of the legal proceeding, be reimbursed for their fees. He noted while potential for appeal clearly existed, the deadline for filing for recovery of fees was 30 days from the date of the court ruling on March 11, and the deadline for filing an appeal had the same deadline. Commissioner Boyle stated the decision on whether or not to try to recover these fees was separate from whether or not the newspaper would appeal the ruling. He noted the allegations went from Sunshine Law violations to circumstantial evidence of Sunshine Law violation, to the trail where it was reduced to circumstantial inference. Commissioner Boyle reported he was inclined to spend the \$3,000 to \$6,000 to try to recover the \$150,000.

Commissioner Kelley stated no one could possibly determine what the judge would rule. He noted the City spent \$150,000, and it would be a gamble to spend \$6,000 to recover some of that money; but it would probably be a good bet. Commissioner Kelley noted, however, if the \$6,000 was not invested, the City could not possibly win. He noted the City had a 50/50 chance of success.

Commissioner Partington reported the standard was whether the lawsuit was frivolously filed or in bad faith, and had this been a single page dismissal, he would have more comfort; however, the opinion was a 57 page reasoned decision, which was a concern. He explained that as an attorney, he understood how counsel thinks on the appellate issue where they may not appeal until the opposition would come after them for attorneys’ fees. Commissioner Partington stated he would vote “no” on this issue, not because he did not wish to support Commissioner Boyle, but because it was time for some healing in the community and to end this situation.

Mayor Costello noted it would give him pause that the newspaper would file because of this, but he would support it. He stated that when asked what had occurred, he had indicated that a Commissioner not present here tonight took some actions as a part of a power play; people did things that were ill advised; and people were mean spirited, political, and acted as a part of a pay back; but there was no Sunshine Law violation. Mayor Costello reported he would support this to let the three Commission members involved know that even though he disagreed with them then and now, he supported them by indicating there was no Sunshine Law violation. He stated he would also support his fellow Commission members in other municipalities that when they come together in a public meeting with no Sunshine Law violation and people may not agree with a decision, that this would not automatically mean that a Sunshine Law violation had occurred. Mayor Costello reported he heard some radio stations had accused some of his current fellow Commissioners of violating the Sunshine Law relative to airport issues; but he did not believe this to be true, and he would defend the Commission on any unfounded accusations and would ask for compensation.

Commissioner Boyle stated Mayor Costello had been consistent in his views. He noted the motives for this lawsuit were other than evidence, and he concurred that the City had a 50/50 chance for success.

Commissioner Kent reported it was a shame that this had to happen, especially when funds were needed for many projects in the City. He agreed this would be a gamble.

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

Item #8(K) – Land and Water Conservation Fund State Assistance Program

Commissioner Kelley moved, seconded by Commissioner Kent, to approve the recommendation on Item #8(K).

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

Item #9(A) – “TyMBER Creek Plaza,” Planned Business Development

ORDINANCE NO. 2005-04
AN ORDINANCE APPROVING THE PRELIMINARY AND FINAL PLAT FOR “TYMBER CREEK PLAZA,” PLANNED BUSINESS DEVELOPMENT; ESTABLISHING CONDITIONS AND EXPIRATION DATES OF APPROVAL.; REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Kelley moved, seconded by Commissioner Kent, to approve Ordinance No. 2005-04, on first reading, as read by title only.

Commissioner Kelley reported that this was unanimously recommended by the Planning Department staff and the Development Review Board.

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

Item #9(B) – Amending The Annual Budget

ORDINANCE NO. 2005-05
AN ORDINANCE AMENDING THE ANNUAL BUDGET FOR THE 2004-2005 FISCAL YEAR RELATIVE TO THE GENERAL FUND; DOWNTOWN REDEVELOPMENT TRUST FUND; CAPITAL IMPROVEMENTS FUND; TAX INCREMENT FINANCING CONSTRUCTION FUND; LOCAL ROADS IMPACT FEE FUND; WATER AND WASTEWATER FUND; WATER AND WASTEWATER EQUIPMENT REPLACEMENT FUND; WATER AND WASTEWATER RENEWAL AND REPLACEMENT FUND; SOLID WASTE FUND; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Kelley moved, seconded by Commissioner Kent, to approve Ordinance No. 2005-05, on first reading, as read by title only.

Commissioner Boyle asked what the bottom line cash amount was in the Solid Waste Reserve with all commitments subtracted at this time.

Mr. Paul Lane, Finance Director, stated considering the FEMA debris removal costs and the transfer to the 301 fund, the figure would be approximately \$2 million.

Commissioner Boyle asked if any money would be reimbursed back into this fund.

Mr. Lane stated the issue was the private subdivision debris removal. He noted if FEMA would not reimburse the City, the City would be obligated to pay for this debris removal. Mr. Lane reported the money was in cash investments. He stated the purpose of the fund was to cover the possibility of the City going back in the business of providing solid waste services and having to purchase equipment, to use as an advance to the Stormwater Fund to advance projects to construction, and to serve as a safety net against hurricane damage in picking up debris. Mr. Lane noted money had been transferred out that would be repaid.

Commissioner Boyle noted the City would probably not go back into the solid waste business after ten years. He reported Holly Hill privatized more recently than Ormond Beach, and they built a gym and swimming pool with their savings. Commissioner Boyle questioned if a \$1 million solid waste reserve would be adequate. He pointed out that 11% now was more money than 15% eight years ago.

Mayor Costello stated another reason to keep the reserve was as a competitive advantage to keep the private contractors honest, knowing the City was prepared to take over and discouraging them from jacking the rate up higher.

Commissioner Kelley asked if a ten-year contract was recently approved.

Mr. Lane stated a five-year contract with a five-year renewal was negotiated.

Commissioner Kelley stated the original contract indicated that if the company failed to complete its obligation, all the equipment purchased from the City would be returned.

Mr. Lane noted the original equipment had probably been replaced by now.

Commissioner Kelley stated there were additional penalties in the contract to prevent the contractor from breaching the contract; therefore, he did not believe the City needed the competitive edge for a contractor to breach the contract and place the City back in business to obtain another price since any price would have to be competitive with other cities and Volusia County. He reported it made no sense to keep a great deal of money in the fund and not be able to use it.

Mr. Lane stated that basically all of the available cash in the Solid Waste Fund was encumbered for the Stormwater Fund and would not be repaid for approximately ten years. He clarified that none of the funds could be used at this time.

Mr. Turner reiterated that unless priorities were altered eliminating some stormwater projects, the money could not be used at this time.

Commissioner Boyle recommended a future workshop to discuss this issue.

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

Item #10(A) – Appointing an Alternate Representative as a Member of the MPO

RESOLUTION NO. 2005-78
 A RESOLUTION APPOINTING AN ALTERNATE REPRESENTATIVE AS A MEMBER OF THE VOLUSIA COUNTY METROPOLITAN PLANNING ORGANIZATION; ESTABLISHING TERM AND CONDITIONS OF SERVICE; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Boyle nominated Commissioner Kelley as an alternate representative to the Volusia County Metropolitan Planning Organization (MPO).

Mayor Costello asked the vote be called with Commissioner Kelley as an alternate representative to the Volusia County MPO.

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

Item #10(B) – Property Improvement Grant Agreement for the Former Scotty’s Site Building “A”

RESOLUTION NO. 2005-79
 A RESOLUTION 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 MDSS, INC.; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Kent moved, seconded by Commissioner Boyle, to approve Resolution No. 2005-79, as read by title only.

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

Item #10(C) – Property Improvement Grant Agreement for the Former Scotty’s Site Building “B”

RESOLUTION NO. 2005-80

A RESOLUTION 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 MDSS, INC.; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Partington moved, seconded by Commissioner Boyle, to approve Resolution No. 2005-80, as read by title only.

Mayor Costello stated he would support this because of the amount of redevelopment involved. He recommended reconsidering a \$25,000 maximum for the matching grant for the program and increasing the amount the City would be willing to invest on a percentage basis. Mayor Costello noted the City needed to set aside money for parking, but this was a key parcel to be redeveloped.

Mr. Turner stated he would bring this program back to the Commission in the future when they were not considering a particular project. He noted this had been a good program with successful participation.

Commissioner Kent thanked Ormond Main Street and staff for their leadership to educate what this program was about and what it could do.

Commissioner Boyle noted he appreciated receiving the new information on this project. He stated this applicant was meeting the City’s investment with 85% when the City only required a 50/50 match. Commissioner Boyle stated this was the kind of project that this program was intended for, and he was pleased to see it moving forward.

Mayor Costello read amendments to be incorporated into this resolution to clarify it without changing the intent as follows: “Section One. The City Commission hereby approves the attached agreement regarding the grant request of Dwight C. Selby, President of MDSS, Inc., subject to the appropriation of funds in the City’s 2005-2006 fiscal year budget by the City Commission, and the decision to appropriate said funds shall be the sole and exclusive discretion of the City Commission. The Mayor and City Manager are hereby authorized and directed to execute the agreement upon the appropriation of said funds and the adoption of the City’s 2005-2006 fiscal year budget, and to pay said grant from the appropriated funds in accordance with the terms and conditions set forth in the agreement.” He stated additionally Section Two should be amended on the third line as follows: “~~of approval hereof~~ the agreement is executed.”

Mayor Costello noted he appreciated staff pursuing this even though some Commission members were concerned staff may have been “belaboring” the issue. He reported this should be used as an example that there were times when staff may believe they have information they neglected to translate properly to the Commission; therefore, they pursue the issue.

Commissioner Boyle moved, seconded by Commissioner Kent, to amend the motion as articulated by Mayor Costello.

Call Vote on the Amendment:	Commissioner Kent	yes
	Commissioner Kelley	yes
	Commissioner Partington	yes
	Commissioner Boyle	yes
Carried.	Mayor Costello	yes
Call Vote on the Underlying Motion:	Commissioner Kelley	yes
	Commissioner Partington	yes
	Commissioner Boyle	yes
	Commissioner Kent	yes
Carried.	Mayor Costello	yes

Item #11(A) – Granada Plaza Signs Appeal

Mr. Clay Ervin, Planning Director, reported staff received notice from Mr. Rob Merrell of Cobb and Cole that the applicant requested this be continued to the May 17 meeting to allow time to work with staff on an alternative available through an amendment to the Planned Business Development (PBD) for this particular project.

Mayor Costello noted that unless an objection was noted, this would be placed on the May 17 meeting agenda. No objection was voiced.

Item #11(B) – South Atlantic Avenue Redevelopment

Mayor Costello stated this was a continuation of the discussion held in a workshop where public input was heard.

Mr. Ervin stated staff took all of the comments and questions brought forward at the March 15 meeting, grouping them together with decision points to consider so staff could start working on any changes or advise people developing along the corridor on how to proceed.

Commissioner Kelley asked the definition of a “condotel.”

Mr. Ervin stated a hotel was one entity being the owner of a unit open for daily/weekly occupancy; a timeshare was where each unit was owned for 52 weeks; and a condotel was where a unit was owned the full year, but it was not a timeshare and could be operated as a hotel. He noted the condotel was required to be licensed through the State as a hotel, paying all bed taxes and other situations as a hotel.

Commissioner Kent stated this issue was discussed at his “Coffee with the Commissioner” meeting this week. He reported he favored maintaining the current height limitation and having a referendum on height limits allowing the residents to have the final opinion as to what Ormond Beach should have on the beachside. Commissioner Kent noted he supported good progress, but he had concerns. He stated the condominiums would cost \$1 million to \$1.5 million, and when a resident pays those figures they believe that the beach no longer belongs to the citizens but becomes their private beach. Commissioner Kent reported he would favor Ormond Beach taking the beach back from Volusia County or lobbying the County Council to provide every Ormond Beach resident a yearly pass for their vehicle so citizens could access beach. He pointed out that Ormond Beach had no public parking. Commissioner Kent stated those who own \$1 million and greater homes north of the poles believed the beach became their beach because of the money invested in their homes, but the beach belongs to everyone.

Commissioner Boyle commended Commissioner Kent for his leadership on this issue. He stated before changing height limitations, especially on the beach, the Commission needed to think very carefully and hear from a large portion of the public. Commissioner Boyle stated beach access was an important issue. He expressed concern for those living west of the Halifax River when there were no legal parking places and the approaches were closed. Commissioner Boyle stated all ideas must be considered to try to reinvigorate South Atlantic, but he was not convinced another 10 to 50 feet of height would accomplish that. He reported the Royal Floridian purchased a lot next to the hotel with the intent of expanding their building while their current parking was deficient. Commissioner Boyle noted that under current code, without a variance, that land could not be used for anything other than parking. He stated parking on this lot could help relieve some of the parking problem if the City could work out a partnership with the hotel.

Commissioner Kelley stated that the owner of the most expensive house north of the poles would prefer to have the driving on the beach. He clarified that the County put the poles where they were, and the decision had no bearing on residents indicating they did not want beach driving. Commissioner Kelley stated he was not indicating he would support anything, but he would be open to listening to options. He noted many changes had been made over the past 30 years; some were improvements and some were not improvements. Commissioner Kelley reported he would prefer more residences and less transient lodging, which would generate revenue, reduce the service level, reduce traffic, and reduce the constant turnover of people coming into the area. He pointed out that for most of the people purchasing condos, the condo would be their second or third home. Commissioner Kelley stated Daytona Beach Shores’ assessed property values were approaching \$2 billion, generating five times the ad valorem taxes per capita to the County of any other city in Volusia County. He clarified that he was not recommending Ormond Beach be like Daytona Beach Shores, but opportunities should be investigated thoroughly. Commissioner Kelley indicated that if a developer wished to take down two hotels, erect a nice condominium, reduce the traffic, and reduce the number of people, he

did not understand why this proposal should not be considered. He stated he would like to see a visual plan of what could be done to develop. Commissioner Kelley noted that if residences could be generated on the beach, some of the gift shops on the west side of A1A could be eliminated, and residences could be constructed. He pointed out that this could reduce the area's dependence on Spring Break, Bike Week, and Race Week. Commissioner Kelley encouraged creative ideas for the Commission to consider.

Commissioner Partington reported he favored all three vision recommendations, but the proposed City Commission tour should be primarily local and primarily in Volusia County; however, it should include sites that are tourist related and multi-family redevelopment. He noted he would support having further public workshops and meetings to clarify a vision for beachside redevelopment and have public input with mail outs requesting comments or receiving e-mails from constituents because the more people involved in the visioning process, the better. Commissioner Partington recommended Volusia County Association for Responsible Development (VCARD) and Ormond Main Street assisting the City to set some off site tours.

Commissioner Partington reported that he had no great concerns regarding height limits and was more interested in considering each project individually. He noted Mr. Marvin Miller sent an e-mail to the Commission, and the pictures he included depicted what could happen with a seven-story height limit. Commissioner Partington reported he would not favor specifying a height limit because in some areas one height may be appropriate and in another area another height may be appropriate. He stated he had faith in the creative ability of the development community to bring positive projects, satisfying their needs and community standards. Commissioner Partington reported an opportunity had arisen to greatly improve A1A through redevelopment, mostly due to the destruction of some of the buildings in the recent hurricanes. He stated public access was an important issue. Commissioner Partington reported that if the condotels were to be encouraged, he would want specific limitations on soliciting condo sales since the solicitations were a great nuisance.

Mayor Costello stated Marvin Miller provided the Commission with some information that has not been made available to the public. He questioned how to make such information available to the public as an addendum to this item. Mayor Costello reported that the point of the e-mail was that a 75-foot tall building created a wide building and a "canyon effect" providing several examples assessed at \$13 million, versus something narrower that would allow a vista of the beach and would be assessed at \$100 million. He noted Commissioners Kelley and Partington had indicated they would prefer to see specific projects, and he offered his support to that in that he would prefer to see particular projects, and the Commission may be flexible in considering what the project could offer the public such as providing public dedicated beach access or a smaller building footprint. Mayor Costello stated he opposed a referendum with permutations, as it would be difficult to write a referendum informing the public of possible considerations for an increase in the height limit. He stated it would not be fair to simply ask if the voter supported a 75-foot height limit because it would not explain what could be gained by allowing a greater height. Mayor Costello urged flexible height limits with criteria with a requirement that a shadow report must be submitted.

Mayor Costello reported he supported condotels being brought up to current code. He stated he was not concerned if this would slow down conversion and development since everything should be brought to code. Mayor Costello noted this would slow down the repairs of facilities where the owner would do minor repairs rather than a significant redevelopment; but in the long term, the owner would realize that they would make more profit by eliminating the hotel and replacing it with upscale condos if provided the opportunity to go up in height, with the flexibility of gaining public beach access. He stated the Commission must decide if they would be willing to challenge those who want to fix existing hotels in a minor way, insisting they come up to full current code or develop an entirely new project. Mayor Costello reported he would support the concept for all developers who want to increase the height limit that they would be required to have deed restrictions indicating that the beach was public and always would be, and no consideration would be given for a private beach. He stated he had been supporting a beach pass since 1984 while serving on the Blue Ribbon Beach Committee, and he was told it could not be done. Mayor Costello reported that he would support making a request to the County that until the County would provide Ormond Beach parking, Ormond Beach residents should have free beach access. He pointed out that the County invested in parking elsewhere without making any investment in Ormond Beach, and the County took the parking north of Granada Boulevard away from Ormond Beach.

Commissioner Kent stated he was pleased to have support for the beach pass concept. He clarified that he was for progress and profit, but he questioned "what you would sell yourself for." Commissioner Kent stated parks were needed on the beach, but questioned what would be fair to the developer and the citizens. He apologized for stating that everyone living north of

Granada Boulevard wanted the poles in place, although Commissioner Kelley's friend may be in the minority in that most people living on the beach north of Granada Boulevard would want to go to the beach without worrying about the cars. Commissioner Kent stated that he wanted to be appropriate and wise, but that he had noted what has happened to Ormond Beach's neighbors. He reported some great things have occurred with minimal investment on the Econolodge and Mainsail. Commissioner Kent agreed the height limit should be flexible enough to expand for certain projects such as the hospital, but he cautioned the Commission in making this decision.

Mayor Costello explained for the benefit of the audience that this was the continuation of a discussion where public input was permitted; however, at the 5:30 p.m. workshop, the Commission had directed him to not allow public input during discussion items.

Commissioner Boyle clarified that input would be permitted if the Commission would have a vote regarding the issue. He expressed concern where the vehicles would park if higher heights were permitted, and parking west of A1A would create new problems. Commissioner Boyle stated that in other communities where there were height restrictions, there was a higher quality of development in the heights allowed. He reported that even though the City had a strictly enforced height limit in the past, three Commissioners were now advocating applying subjective criteria where developers were willing to make trades to waive the height limit, but he was not hearing the community push for this or that it was necessary to obtain the quality redevelopment on A1A. Commissioner Boyle expressed concern that this Commission would turn from applying a rule made by wise people with a vision of the future, and he expressed a desire to read the minutes on the reasoning for implementing height limits on the beach. He noted concern for any Commission making subjective criteria on a case-by-case basis on how much value the project could bring to the City.

Commissioner Kelley noted he did not indicate he was willing to increase the height limit to 150 feet or 300 feet or even that he was willing to waive the 75-foot limit. He noted developers could now go to 90-feet with a planned development and exception. Commissioner Kelley reported he advocated considering specific plans without any promise of approval. He pointed out that the City did not want 75-foot buildings with a canyon on the entire beach. Commissioner Kelley reported that on Reed Canal Road in South Daytona condos costing \$250,000 to \$750,000 has already sold out 176 units.

Commissioner Partington objected to a Commissioner assigning motives to his comments when he was only advocating bringing projects through the normal processes so he could provide the project fair consideration. He reported he could not be bought, but if something is good for the people of Ormond Beach, he would accept it. Commissioner Partington noted he resented the implication that any Commission member could be "bought."

Mayor Costello urged the thought of "being bought" be taken as a rhetorical comment.

Commissioner Kent noted he was not inferring that any of the Commission members would be bought, but urged the Commission to stop and think if the Commission could allow big numbers to be brought in for taxes in order to allow the shade on the beach. He apologized if Commissioner Partington took his comment to believe Commission members could be bought because it was not his intent.

Commissioner Partington accepted Commissioner Kent's apology.

Item #11(C) – Letter of Support for Photo Traffic Enforcement Legislation

Commissioner Boyle reported he opposed the letter of support for the photo traffic enforcement legislation.

Mayor Costello stated in that only one Commission member expressed opposition and that this was informational rather than calling for a vote, he would urge staff to send the letter, and he would not ask it be brought back for a vote.

Item #11(D) – Schedule of Summer City Commission Meetings

Commissioner Kelley stated that in the past, the summer meeting schedule was adjusted to provide more flexibility.

Commissioner Boyle reported he was available any day, and he would take no vacation. He noted he had never scheduled a vacation opposite a meeting.

Commissioner Kelley recommended moving the June 7 meeting to June 14.

Commissioner Boyle noted the Commission had this discussion when former Mayor Carl Persis took office. He reported the City advertised meetings would be held the first and third Tuesday of each month, which he believed was in the City Charter. Commissioner Boyle noted meetings had been moved in the past where two meetings were held on consecutive Tuesdays, which caused problem with staff's preparation of the agenda. He pointed out the meetings were for the public, not the convenience of the Commission. Commissioner Boyle urged the Commission to schedule their vacations around the meetings that they were elected to attend.

Commissioner Partington reported he had no problem with Commissioner Boyle's comments. He noted while he had two meetings to attend on the first Monday of the month, neither took priority over City Commission business. Commissioner Partington reiterated that while he did have other commitments, they were subordinate to his Commission duties.

Commissioner Kent reported the first Monday of every month he hosts "Coffee with the Commissioner," but the term "not available" was not quite accurate as he, too, would be available if needed.

Commissioner Kelley reported a requirement that meetings be held on the first and third Tuesday was not in the Charter; the meetings were set by the Commission.

Mayor Costello stated he and Commissioner Kelley seemed to be the only Commission members interested in changing the dates. Mayor Costello reported Commissioner Boyle was blessed that he could make any meeting, but as a member of some professional organizations that meet annually, he was not always available. He pointed out that he would be traveling to Israel at the end of May and the beginning of June, and he did not select the date; therefore, he would have to miss the June 7 meeting. Mayor Costello assured the Commission that Deputy Mayor Boyle could chair the meeting in his absence.

Commissioner Partington stated that with enough notice, as a courtesy to fellow Commission members, he would be willing to change a meeting.

Mayor Costello noted he did not want this to be changed for him alone. He reported he had worked very hard to have a good attendance record, but there were times that were out of his control where he could not attend a meeting.

Commissioner Kent stated he had grown accustomed to the first and third Tuesday of each month for meetings, but he was sorry he did not make Commissioner Kelley's recommendation because he would be getting married in June and would have to miss a meeting.

Commissioner Kelley completed his proposal to change the June 7 meeting to June 14, the June 21 meeting to June 28, and the July 5 meeting to July 12. He noted he also could make any meeting, but would appreciate the recommended adjustments in the schedule.

Ms. Ronnie Patterson, City Clerk, clarified that the Charter required two meetings per month, but it did not specify the first and third Tuesday.

Commissioner Kelley recommended bringing this back at next meeting for a vote.

Mayor Costello requested Mr. Turner add an item to the next agenda to consider the recommended adjustments to the meeting schedule.

Commissioner Boyle reported the public had an expectation of meetings being held on the first and third Tuesday of each month, and changes would send the wrong message.

Item #12 - Reports, Suggestions, Requests

Building Height Limit

Commissioner Boyle apologized if anyone who may have thought he was "putting words in their mouth," but anytime the Commission says they wanted to do what was good or appropriate for the City, those words were a value judgment and therefore subjective, placing a tremendous burden on that judgment as opposed to his position of unequivocal support of the current height limits.

Workshop

Commissioner Boyle commended Mayor Costello and the Commission for the workshop earlier this evening, which would help the City have better meetings and be a better Commission.

Sewage Spill on South Atlantic Avenue

Commissioner Boyle requested an item in a future agenda to discuss reimbursing the homeowner with the sewage spill on South Atlantic Avenue caused by the lift station failure even though the Claims Committee had already ruled. He noted he would discuss placing this on the agenda with the City Attorney.

Code Enforcement

Commissioner Boyle reported six residents had lodged complaints on North Halifax regarding a trailer over a four to five year period with no change in status of the complaint for years.

Commissioner Boyle stated Code Enforcement was allowing Lowes, Office Depot, and others outside displays and harassing Ace Hardware for placing lawn supplies in front of their door. He stated the codes have not been consistently enforced.

Travel

Commissioner Boyle noted it was stated that the City Manager “got beaten up” for his travel. He reported the minutes use the word “chastised” or “criticized.” Commissioner Boyle pointed out he voted for the trip to Washington and appreciated the great job done by the Commissions and the City Manager and only voted against the National Conference for Black Public Administrators and stated his reasons for that vote on the record.

Intergovernmental Board Reports

Commissioner Kent commended Mayor Costello and Commissioner Boyle for the great job they do with their intergovernmental board reports.

Comments to Chair

Commissioner Kent reported all comments from the podium must be addressed to Mayor Costello as chair. He noted it was bothersome when Mr. Folcik attacked the City Attorney, and he requested Mayor Costello direct all comments to the chair in the future.

Beach Passes

Commissioner Kent requested Mr. Turner determine what the Commission could do to obtain beach passes for every Ormond Beach resident.

“Coffee with the Commissioner”

Commissioner Kent reported the next “Coffee with the Commissioner” was scheduled for Monday, May 2, at his home at 130 Magnolia Drive.

Welcome to the Commission

Commissioner Kelley stated he enjoyed the workshop, the Commission meetings, and felt welcomed to the Commission.

Emergency Dispatch Call

Commissioner Kelley commended the exemplary way the dispatcher for the Sheriff’s Department handled the call that came in at 2:30 a.m. from the five-year old girl. He noted this did not go unnoticed nationwide, and the City should be aware of the type of people who work at the Sheriff’s office. Commissioner Kelley stated this should alleviate any fears that the Sheriff’s Department was not adequately staffed with competent people. He recommended sending a complimentary letter to Sheriff Johnson.

Plein Air Painters

Commissioner Partington stated the Plein Air painters’ exhibit was ongoing at The Casements until the end of April, and the fantastic opening was held Thursday evening. He thanked Ambassador High for doing such a great job with this exhibit. Commissioner Partington reported approximately 150 people were in attendance. He noted Mayor Costello and Ambassador High spoke eloquently, expressing the beauty of Central Park and how important the park was to Ormond Beach and the surrounding area, drawing people from other areas into Central Park.

Lightning Strikes

Commissioner Partington noted lightning strikes occurred on Good Friday, and the Fire Department was dispatched next to his business to check out a fire alarm. He noted they took the time to check his building.

Focus Workshop

Mr. Turner commended the Commission on the workshop. He stated the comments and decisions made to improve decorum would serve the public and improve the atmosphere of the meetings.

Travel by Staff

Mr. Turner stated he and staff may need to make one or two trips to Tallahassee relative to the interchange modification project for US1 and I-95. He noted the House approved \$500,000 for the Interchange Justification Study, but work was needed with the Senate, DOT, and the Governor's office. Mr. Turner explained this would be handled separate from the Volusia Days component. He commended the City's lobbyist for working hard on this project, as well as Representative Pat Patterson and Senator Evelyn Lynn for their assistance.

Answering Citizen Questions

Mr. Turner stated Commissioner Partington sent an e-mail dealing with staff repeatedly answering citizen questions requiring a great deal of staff time. He noted staff clearly had a responsibility to provide answers to the public's questions, probably even the same questions twice, but when the same questions were asked four to seven times it unfairly utilized a significant amount of staff time. Mr. Turner reported that over the course of the next week he would be speaking to staff on this issue and would issue a directive that would be customer friendly to answer questions clearly and maybe more than once but without spending an excessive amount of time on repetitive questions. He asked the Commission to inform him if they had concerns with this decision. Mr. Turner clarified that this was not meant to limit information to the public, but to utilize staff time more appropriately.

Negotiating Versus Fact-Finding

Mayor Costello stated he had several items where he wanted to do fact-finding; however, he would not be negotiating anything. He reported he would specifically investigate some options for the YMCA.

Copying Information to the Commission

Mayor Costello noted he tried to copy the Commission with responses relative to recreation and other inquiries. He requested that the Commission inform him if they considered that to be inappropriate. Mayor Costello explained he was merely attempting to keep the Commission fully informed.

Transportation Issues

Mayor Costello requested the Commission consider approving a resolution stating that if there were a 50-foot setback and the City asked the landowner to provide 12 feet for a bike trail on SR40 that it would then be considered a 38-foot setback so the landowner would not lose any use of their land. He noted that after Ormond Beach passed such a resolution, he recommended encouraging Daytona Beach and Volusia County to pass a similar resolution. Mayor Costello stated that the City could then go to the landowners asking that the land be donated so bike trails could be constructed on SR40. He noted the DOT already had these trails designed, and he was hoping to accomplish this as soon as possible.

Mayor Costello reported additional transportation issues included the back up of traffic during special events where there is a concern with emergency vehicles traveling west. He suggested considering Hand Avenue over I-95, Tymber Creek Road south to LPGA Boulevard, the Nova Bridge, and four-lanes versus six-lanes on Granada Boulevard.

Beach Approaches

Mayor Costello recommended asking Volusia County if Ormond Beach could do something through the City's Public Works Department if the County would not improve the beach approaches because residents needed to have access to the beaches.

ECHO Grants

Mayor Costello recommended the Commission make decisions as to what ECHO grants to apply for next year. He noted possible projects would be The Casements, Central Park, Rockefeller Park drainage, Three Chimneys, and possibly others.

Osceola

Mayor Costello questioned why the City was replacing four racquetball courts with two at Osceola, and what could be done. He noted Osceola was one of the few places children could go to a park on the beachside.

Firefighter Overtime

Mayor Costello stated if \$786,000 was the firefighter overtime last year and \$164,032 was mandated, then discretionary overtime was \$621,968. He reported that if the City budgeted \$527,000 for this year, minus the same \$164,032 mandated and the \$32,000 from the approved raises, the balance would be \$330,968, which was compared to the \$621,968. Mayor Costello explained the Commission cut the budget from \$527,000 to \$450,000. He noted if staff achieved \$500,000, minus the mandated \$164,032 and the \$32,000 from raises, the total would be \$303,968 compared to \$621,968 the year before or less than 50% of last years discretionary overtime. Mayor Costello reported while he would like to see further reductions, he complimented staff for this achievement. He asked Mr. Lane to examine the numbers he articulated to be certain they were correct.

Item #14 – Close the Meeting

The meeting was adjourned at 9:28 p.m.

APPROVED: April 19, 2005

BY: Fred Costello, Mayor

ATTEST:

Veronica Patterson, City Clerk