

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

April 2, 2013

7:00 PM

Commission Chambers

Present were: Mayor Ed Kelley, Commissioners James Stowers, Troy Kent, Rick Boehm and Bill Partington, City Manager Joyce Shanahan, Assistant City Manager Ted MacLeod, City Attorney Randy Hayes, and City Clerk Scott McKee.

A G E N D A

- 1. CALL TO ORDER**
- 2. INVOCATION**
- 3. PLEDGE OF ALLEGIANCE**
- 4. PRESENTATIONS AND PROCLAMATIONS**
 - A. Proclamation for Lt. Godfrey
- 5. AUDIENCE REMARKS - REGARDING ITEMS NOT ON THE AGENDA**
- 6. APPROVAL OF MINUTES**
 - A. Minutes from City Commission meeting – March 19, 2013
- 7. 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. Laboratory Testing Services**

Staff Contact: Dave Ponitz, Utilities Manager (386-676-3305)
Disposition: Approve as recommended in the City Manager memorandum dated April 2, 2013.
- B. Bid Specifications for Wilmette Avenue Stormwater Pumping Bid Number 2013-23**

Staff Contact: John Noble, City Engineer (386-676-3269)
Disposition: Approve as recommended in the City Manager memorandum dated April 2, 2013.
- C. Dell PC Surplus Property for Civil Air Patrol Cadet Program**

Staff Contact: Ned Huhta, IT Manager (386-615-7031)
Disposition: Approve as recommended in the City Manager memorandum dated April 2, 2013.
- D. Auto Renew Contract - As Needed Information Technology**

Staff Contact: Kelly McGuire, Finance Director (386-676-3226)
Disposition: Approve as recommended in the City Manager memorandum dated April 2, 2013.

8. PUBLIC HEARINGS

- A. **ORDINANCE NO. 2013-21** : AN ORDINANCE ANNEXING CERTAIN REAL PROPERTY INTO THE CITY OF ORMOND BEACH, SAID PROPERTY BEING GENERALLY LOCATED ALONG THE WEST SIDE OF WILLIAMSON BOULEVARD APPROXIMATELY 1,800 LINEAR FEET SOUTH OF WEST GRANADA BOULEVARD AND BEING COMMONLY LOCATED AT 250 WILLIAMSON BOULEVARD, INCLUDING THAT PORTION OF WILLIAMSON BOULEVARD ABUTTING THE PROPERTY; REDEFINING THE TERRITORIAL BOUNDARIES OF THE CITY OF ORMOND BEACH TO INCLUDE THE PROPERTY; RE-DESIGNATING THE BOUNDARIES OF ZONE 3 OF THE CITY OF ORMOND BEACH TO INCLUDE THE PROPERTY; SETTING FORTH ZONING PRIVILEGES, AND OBLIGATIONS OF SAID PROPERTY; PROVIDING FOR TRANSMISSION; PROVIDING FOR SEVERABILITY; AND SETTING FORTH AN EFFECTIVE DATE. **(SECOND READING)**

Staff Contact: Ric Goss, Planning Director (386-676-3238)

- B. **ORDINANCE NO. 2013-22** : AN ORDINANCE AMENDING PARAGRAPH C, OFFICIAL ZONING MAP, OF SECTION 2-01, ESTABLISHMENT OF ZONING DISTRICTS AND OFFICIAL ZONING MAP, OF ARTICLE 1, ESTABLISHMENT OF ZONING DISTRICTS AND OFFICIAL ZONING MAP, OF CHAPTER 2, DISTRICT AND GENERAL REGULATIONS, OF THE CITY OF ORMOND BEACH LAND DEVELOPMENT CODE, BY AMENDING THE OFFICIAL ZONING MAP TO REZONE CERTAIN REAL PROPERTY TOTALING APPROXIMATELY 0.99-ACRES LOCATED AT 3 NORTH YONGE STREET AND 9 NORTH YONGE STREET, FROM B-4 (CENTRAL BUSINESS) TO PBD (PLANNED BUSINESS DEVELOPMENT), AUTHORIZING REVISION OF OFFICIAL ZONING MAP; REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; AND SETTING FORTH AN EFFECTIVE DATE. **(SECOND READING)**

Staff Contact: Ric Goss, Planning Director (386-676-3238)

- C. **ORDINANCE NO. 2013-23** : AN ORDINANCE AUTHORIZING THE EXECUTION AND ISSUANCE OF A DEVELOPMENT ORDER FOR A PLANNED BUSINESS DEVELOPMENT TO BE KNOWN AS "SUNOCO, STORE NO. 0405-2205", AUTHORIZING THE CONSTRUCTION OF A 3,159 SQUARE-FOOT BUILDING WITH SIX FUELING DISPENSERS OR TWELVE INDIVIDUAL GAS PUMPS TO BE LOCATED AT 3 NORTH YONGE STREET AND 9 NORTH YONGE STREET; ESTABLISHING CONDITIONS AND EXPIRATIONS OF APPROVAL; AND SETTING FORTH AN EFFECTIVE DATE. **(SECOND READING)**

Staff Contact: Ric Goss, Planning Director (386-676-3238)

- D. **ORDINANCE NO. 2013-24** : AN ORDINANCE AMENDING PARAGRAPH C, OFFICIAL ZONING MAP, OF SECTION 2-01, ESTABLISHMENT OF ZONING DISTRICTS AND OFFICIAL ZONING MAP, OF ARTICLE 1, ESTABLISHMENT OF ZONING DISTRICTS AND OFFICIAL ZONING MAP, OF CHAPTER 2, DISTRICT AND GENERAL REGULATIONS, OF THE CITY OF ORMOND BEACH LAND DEVELOPMENT CODE, BY AMENDING THE OFFICIAL ZONING MAP TO REZONE CERTAIN REAL PROPERTY TOTALING APPROXIMATELY 1.73-ACRES LOCATED AT 1546 WEST GRANADA BOULEVARD AND 1566 WEST GRANADA BOULEVARD, FROM B-7 (HIGHWAY TOURIST COMMERCIAL) TO PBD (PLANNED BUSINESS DEVELOPMENT), AUTHORIZING REVISION OF OFFICIAL ZONING MAP; REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; AND SETTING FORTH AN EFFECTIVE DATE. **(SECOND READING)**

Staff Contact: Ric Goss, Planning Director (386-676-3238)

- E. **ORDINANCE NO. 2013-25** : AN ORDINANCE AUTHORIZING THE EXECUTION AND ISSUANCE OF A DEVELOPMENT ORDER FOR A PLANNED BUSINESS DEVELOPMENT TO BE KNOWN AS "SUNOCO, STORE NO. 0041-8012", AUTHORIZING THE CONSTRUCTION OF A 3,159 SQUARE-FOOT BUILDING WITH EIGHT FUELING DISPENSERS OR SIXTEEN INDIVIDUAL GAS PUMPS TO BE LOCATED AT 1546 WEST GRANADA BOULEVARD AND 1566 WEST GRANADA BOULEVARD; ESTABLISHING CONDITIONS AND EXPIRATIONS OF APPROVAL; AND SETTING FORTH AN EFFECTIVE DATE. **(SECOND READING)**

Staff Contact: Ric Goss, Planning Director (386-676-3238)

9. FIRST READING OF ORDINANCES

- A. **ORDINANCE NO. 2013-27** : AN ORDINANCE AMENDING THE FUTURE LAND USE ELEMENT OF THE COMPREHENSIVE PLAN BY AMENDING THE FUTURE LAND USE MAP TO CHANGE THE DESIGNATION OF ONE (1) PARCEL OF REAL PROPERTY TOTALING +6.88-ACRES LOCATED AT 1608 NORTH US HIGHWAY 1 (PARCEL ID NO. 3136-01-64-0170), FROM VOLUSIA COUNTY "COMMERCIAL" TO ORMOND BEACH "TOURIST COMMERCIAL"; AUTHORIZING TRANSMITTAL; PROVIDING FOR CONFLICT; AND SETTING FORTH AN EFFECTIVE DATE.

Staff Contact: Ric Goss, Planning Director (386-676-3238)

- B. **ORDINANCE NO. 2013-28** : AN ORDINANCE AMENDING THE FUTURE LAND USE ELEMENT OF THE COMPREHENSIVE PLAN BY AMENDING THE FUTURE LAND USE MAP TO CHANGE THE DESIGNATION OF ONE (1) PARCEL OF REAL PROPERTY TOTALING +1.15-ACRES LOCATED AT 1622 NORTH US HIGHWAY 1 (PARCEL ID NO. 3136-01-64-0020), FROM VOLUSIA COUNTY "COMMERCIAL" TO ORMOND BEACH "TOURIST COMMERCIAL"; AUTHORIZING TRANSMITTAL; PROVIDING FOR CONFLICT; AND SETTING FORTH AN EFFECTIVE DATE.

Staff Contact: Ric Goss, Planning Director (386-676-3238)

- C. **ORDINANCE NO. 2013-29** : AN ORDINANCE AMENDING THE FUTURE LAND USE ELEMENT OF THE COMPREHENSIVE PLAN BY AMENDING THE FUTURE LAND USE MAP TO CHANGE THE DESIGNATION OF ONE (1) PARCEL OF REAL PROPERTY TOTALING +0.46-ACRES LOCATED AT 1626 NORTH US HIGHWAY 1 (PARCEL ID NO. 3136-01-64-0022), FROM VOLUSIA COUNTY "COMMERCIAL" TO ORMOND BEACH "TOURIST COMMERCIAL"; AUTHORIZING TRANSMITTAL; PROVIDING FOR CONFLICT; AND SETTING FORTH AN EFFECTIVE DATE.

Staff Contact: Ric Goss, Planning Director (386-676-3238)

10. SECOND READING OF ORDINANCES

- A. **ORDINANCE NO. 2013-26** : AN ORDINANCE AMENDING THE DEFINITION OF FIXED BASE OPERATOR IN SECTION 3.3-1, DEFINITIONS, OF ARTICLE 1, IN GENERAL, OF CHAPTER 3.3, AIRCRAFT AND AIRPORT; AND AMENDING DIVISION 2, FIXED BASE OPERATOR AND GENERAL AIRPORT TENANT CATEGORIES, OF ARTICLE IV, COMMERCIAL OPERATIONS, OF CHAPTER 3.3, AIRCRAFT AND AIRPORT, OF THE CODE OF ORDINANCES, BY ADDING A NEW SECTION 3.3-65.2, SPECIALIZED AVIATION SERVICE OPERATION; REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; AND SETTING FORTH AN EFFECTIVE DATE. **(SECOND READING)**

Staff Contact: Joe Mannarino, Economic Development Director (386-676-3266)

11. DISCUSSION ITEMS

A. Appeal of Planning Director's Use Determination

Staff Contact: Ric Goss, Planning Director (386-676-3238)

12. REPORTS, SUGGESTIONS, REQUESTS

13. ADJOURNMENT

Item #1 – Meeting Call to Order

Mayor Kelley called the meeting to order at 7:01 p.m.

Item #2 – Invocation

Reverend Neal J. Ganzel, Jr., Coquina Presbyterian Church in America, gave the invocation.

Item #3 – Pledge of Allegiance

Mayor Kelley led the Pledge of Allegiance.

Item #4A – Proclamation for Lt. Godfrey

Mayor Kelley stated that Lieutenant Godfrey held a master's degree in public administration and a bachelor's degree in criminal justice. He stated that Lt. Godfrey was a graduate of Southern Police Institute's Command Officers Development Course and served as an Ormond Beach police officer for a little over a year in the 1980s before going to work for the Daytona Beach Police Department. He stated that as a Lieutenant with the Daytona Beach Police Department, Lt. Godfrey served in many divisions. He stated that Lt. Godfrey recently completed the 252nd session of the FBI National Academy, which was recognized globally among government leaders and law enforcement agencies as a premier provider of law enforcement expertise, training, education, and information. He stated that the prestigious ten-week course served to improve the administration of justice in police departments. He stated that Lt. Godfrey had served as Lieutenant with the Ormond Beach Police Department since May 2011 and was recently appointed to the position of second in command. He proclaimed April 2, 2013, as a day to recognize Lt. Godfrey in the City of Ormond Beach and urged all residents to join him and commend Lt. Godfrey for his accomplishments and service to the city. He presented Lt. Godfrey with the proclamation and thanked him for his service.

Item #5– Audience Remarks

Mr. Jim Schultz, 117 Harvard Drive, thanked the Commission for Andy Romano Beachfront Park and noted that he had been enjoying the park since it opened. He stated that he had sent the Commission an email with a link to a massive environmental study done by a gentleman in Ireland. He explained that there were only two countries in the world that mandated fluoridation and that the Republic of Ireland was one. He noted that Northern Ireland was not one of them. He stated that the gentleman's career was performing international environment assessments. He stated that, according to the European Union's data, the Republic of Ireland had the worst health in the union. He stated that the gentleman with the study took that information and assessed it to see if there was any potential that fluoridation might be related to poor health. He stated that the gentleman had been stonewalled by different departments in Ireland because of his study. He stated that he thought sometimes those charged with protecting people did not have that as their primary goal, and that their primary goal was in fact to protect policy.

Mr. Steven Brockett, 993 Stone Lake Drive, Air Traffic Manager at Ormond Beach Airport Control Tower, stated that the closing of the tower had been widely reported in the press. He noted that Ormond Beach was one of the first towers slated to be closed. He stated that he could not implore upon the audience the effect that the closure would have on the safety of the pilots and those at the airport. He stated that he knew that the city was doing what they could so far and were engaged in action with the Federal Aviation Administration (FAA). He stated that he fully supported that action and was very appreciative of it being taken. He stated that he would like to spark some interest

and do what could be done to keep the tower open past the timeframe allotted. He stated that it was very important for the city and the economic development of the airport to remain open. He explained that Ormond Beach's tower was one of the busiest federally contracted towers in the nation, but had fallen below the 150,000 operations barrier set by the FAA in the past year. He stated that of the 251 contract towers in the country, only six towers exceeded that number. He stated that when factoring in the city's traffic and hours of operation, they were still the fourth busiest in traffic density in the country. He stated that the three towers ahead of the city were remaining open. He stated that they would have like to have been the fourth tower to remain open and hoped that the steps that were being taken could assist with that goal.

Item #6A – Approval of Minutes

Mayor Kelley advised that the minutes of the March 19, 2013, regular meeting had been sent to the Commission for review, and were on the city's website for public viewing. He asked for any corrections, additions, or omissions. He stated that hearing no corrections, the minutes would stand approved as presented.

Item #7 – Consent Agenda

Mayor Kelley advised that the actions proposed for the items on the Consent Agenda were so stated on the agenda. He asked if any member of the Commission had questions or wished to discuss any items separately.

Commissioner Boehm moved, seconded by Commissioner Stowers, for approval of the Consent Agenda.

Call Vote:	Commissioner Stowers	Yes
	Commissioner Kent	Yes
	Commissioner Boehm	Yes
	Commissioner Partington	Yes
Carried.	Mayor Kelley	Yes

Item #8 – Public Hearing

Mayor Kelley opened the public hearing.

Item #8A – 250 Williamson Boulevard Annexation

City Clerk Scott McKee read by title only:

ORDINANCE NO. 2013-21
 AN ORDINANCE ANNEXING CERTAIN REAL PROPERTY INTO THE CITY OF ORMOND BEACH, SAID PROPERTY BEING GENERALLY LOCATED ALONG THE WEST SIDE OF WILLIAMSON BOULEVARD APPROXIMATELY 1,800 LINEAR FEET SOUTH OF WEST GRANADA BOULEVARD AND BEING COMMONLY LOCATED AT 250 WILLIAMSON BOULEVARD, INCLUDING THAT PORTION OF WILLIAMSON BOULEVARD ABUTTING THE PROPERTY; REDEFINING THE TERRITORIAL BOUNDARIES OF THE CITY OF ORMOND BEACH TO INCLUDE THE PROPERTY; RE-DESIGNATING THE BOUNDARIES OF ZONE 3 OF THE CITY OF ORMOND BEACH TO INCLUDE THE PROPERTY; SETTING FORTH ZONING PRIVILEGES, AND OBLIGATIONS OF SAID PROPERTY; PROVIDING FOR TRANSMISSION; PROVIDING FOR SEVERABILITY; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Partington moved, seconded by Commissioner Boehm, for approval of Ordinance No. 2013-21, on second reading, as read by title only.

Call Vote:	Commissioner Kent	Yes
	Commissioner Boehm	Yes
	Commissioner Partington	Yes
	Commissioner Stowers	Yes
Carried.	Mayor Kelley	Yes

Item #8B – 3 North Yonge Street Rezoning, Sunoco

City Clerk Scott McKee read by title only:

ORDINANCE NO. 2013-23

AN ORDINANCE AUTHORIZING THE EXECUTION AND ISSUANCE OF A DEVELOPMENT ORDER FOR A PLANNED BUSINESS DEVELOPMENT TO BE KNOWN AS “SUNOCO, STORE NO. 0405-2205”, AUTHORIZING THE CONSTRUCTION OF A 3,159 SQUARE-FOOT BUILDING WITH SIX FUELING DISPENSERS OR TWELVE INDIVIDUAL GAS PUMPS TO BE LOCATED AT 3 NORTH YONGE STREET AND 9 NORTH YONGE STREET; ESTABLISHING CONDITIONS AND EXPIRATIONS OF APPROVAL; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Boehm moved, seconded by Commissioner Kent, for approval of Ordinance No. 2013-23, on second reading, as read by title only.

Call Vote:	Commissioner Boehm	Yes
	Commissioner Partington	Yes
	Commissioner Stowers	Yes
	Commissioner Kent	Yes
Carried.	Mayor Kelley	Yes

Item #8C – 3 North Yonge Street Development Order, Sunoco

City Clerk Scott McKee read by title only:

ORDINANCE NO. 2013-24

AN ORDINANCE AUTHORIZING THE EXECUTION AND ISSUANCE OF A DEVELOPMENT ORDER FOR A PLANNED BUSINESS DEVELOPMENT TO BE KNOWN AS “SUNOCO, STORE NO. 0405-2205”, AUTHORIZING THE CONSTRUCTION OF A 3,159 SQUARE-FOOT BUILDING WITH SIX FUELING DISPENSERS OR TWELVE INDIVIDUAL GAS PUMPS TO BE LOCATED AT 3 NORTH YONGE STREET AND 9 NORTH YONGE STREET; ESTABLISHING CONDITIONS AND EXPIRATIONS OF APPROVAL; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Kent moved, seconded by Commissioner Partington, for approval of Ordinance No. 2013-24, on second reading, as read by title only.

Call Vote:	Commissioner Partington	Yes
	Commissioner Stowers	Yes
	Commissioner Kent	Yes
	Commissioner Boehm	Yes
Carried.	Mayor Kelley	Yes

Item #8D – 1546 West Granada Boulevard Rezoning, Sunoco

City Clerk Scott McKee read by title only:

ORDINANCE NO. 2013-24

AN ORDINANCE AMENDING PARAGRAPH C, OFFICIAL ZONING MAP, OF SECTION 2-01, ESTABLISHMENT OF ZONING DISTRICTS AND OFFICIAL ZONING MAP, OF ARTICLE 1, ESTABLISHMENT OF ZONING DISTRICTS AND OFFICIAL ZONING MAP, OF CHAPTER 2, DISTRICT AND GENERAL REGULATIONS, OF THE CITY OF ORMOND BEACH LAND DEVELOPMENT CODE, BY AMENDING THE OFFICIAL ZONING MAP TO REZONE CERTAIN REAL PROPERTY TOTALING APPROXIMATELY 0.99-ACRES LOCATED AT 3 NORTH YONGE STREET AND 9 NORTH YONGE STREET, FROM B-4 (CENTRAL BUSINESS) TO PBD (PLANNED BUSINESS DEVELOPMENT), AUTHORIZING REVISION OF OFFICIAL ZONING MAP; REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Stowers moved, seconded by Commissioner Boehm, for approval of Ordinance No. 2013-24, on second reading, as read by title only.

Call Vote:	Commissioner Stowers	Yes
	Commissioner Kent	Yes
	Commissioner Boehm	Yes
	Commissioner Partington	Yes
Carried.	Mayor Kelley	Yes

Item #8E – 1546 West Granada Boulevard PBD Development Order, Sunoco

City Clerk Scott McKee read by title only:

ORDINANCE NO. 2013-25

AN ORDINANCE AUTHORIZING THE EXECUTION AND ISSUANCE OF A DEVELOPMENT ORDER FOR A PLANNED BUSINESS DEVELOPMENT TO BE KNOWN AS "SUNOCO, STORE NO. 0041-8012", AUTHORIZING THE CONSTRUCTION OF A 3,159 SQUARE-FOOT BUILDING WITH EIGHT FUELING DISPENSERS OR SIXTEEN INDIVIDUAL GAS PUMPS TO BE LOCATED AT 1546 WEST GRANADA BOULEVARD AND 1566 WEST GRANADA BOULEVARD; ESTABLISHING CONDITIONS AND EXPIRATIONS OF APPROVAL; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Boehm moved, seconded by Commissioner Kent, for approval of Ordinance No. 2013-25, on second reading, as read by title only.

Call Vote:	Commissioner Kent	Yes
	Commissioner Boehm	Yes
	Commissioner Partington	Yes
	Commissioner Stowers	Yes
Carried.	Mayor Kelley	Yes

Mayor Kelley closed the public hearing.

Mayor Kelley stated that the five public hearing items were all second readings. He explained that they had been through public hearings with the Planning Board as well as first readings with the City Commission. He noted that it may have seemed like the approvals went fairly quickly and that was because the items had already been presented and discussed previously with information already furnished.

Item #9A– 1608 N US Hwy 1 Land Use Amendment

City Clerk Scott McKee read by title only:

ORDINANCE NO. 2013-27

AN ORDINANCE AMENDING THE FUTURE LAND USE ELEMENT OF THE COMPREHENSIVE PLAN BY AMENDING THE FUTURE LAND USE MAP TO CHANGE THE DESIGNATION OF ONE (1) PARCEL OF REAL PROPERTY TOTALING +6.88-ACRES LOCATED AT 1608 NORTH US HIGHWAY 1 (PARCEL ID NO. 3136-01-64-0170), FROM VOLUSIA COUNTY "COMMERCIAL" TO ORMOND BEACH "TOURIST COMMERCIAL"; AUTHORIZING TRANSMITTAL; PROVIDING FOR CONFLICT; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Partington moved, seconded by Commissioner Kent, for approval of Ordinance No. 2013-27, on first reading, as read by title only.

Mr. Ric Goss, Planning Director, stated that this item was the first of three land use amendments based upon the annexations that were approved by the City Commission in January 2013. He stated that the items would go to the Department of Economic Opportunity and would become effective thirty days after second reading. He stated that the Planning Board unanimously approved all three amendments at their March 2013 meeting. He stated that he would answer any questions that the Commission had.

Call Vote:	Commissioner Boehm	Yes
	Commissioner Partington	Yes
	Commissioner Stowers	Yes

Carried.	Commissioner Kent Mayor Kelley	Yes Yes
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Item #9B – 1622 N US Hwy 1 Land Use Amendment

City Clerk Scott McKee read by title only:

ORDINANCE NO. 2013-28

AN ORDINANCE AMENDING THE FUTURE LAND USE ELEMENT OF THE COMPREHENSIVE PLAN BY AMENDING THE FUTURE LAND USE MAP TO CHANGE THE DESIGNATION OF ONE (1) PARCEL OF REAL PROPERTY TOTALING +1.15-ACRES LOCATED AT 1622 NORTH US HIGHWAY 1 (PARCEL ID NO. 3136-01-64-0020), FROM VOLUSIA COUNTY "COMMERCIAL" TO ORMOND BEACH "TOURIST COMMERCIAL"; AUTHORIZING TRANSMITTAL; PROVIDING FOR CONFLICT; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Boehm moved, seconded by Commissioner Stowers, for approval of Ordinance No. 2013-28, on first reading, as read by title only.

Call Vote:	Commissioner Partington	Yes
	Commissioner Stowers	Yes
	Commissioner Kent	Yes
	Commissioner Boehm	Yes
Carried.	Mayor Kelley	Yes

Mayor Kelley closed the public hearing.

Item #9C – 1626 N US Hwy 1 Land Use Amendment

City Clerk Scott McKee read by title only:

ORDINANCE NO. 2013-26

AN ORDINANCE AMENDING THE DEFINITION OF FIXED BASE OPERATOR IN SECTION 3.3-1, DEFINITIONS, OF ARTICLE 1, IN GENERAL, OF CHAPTER 3.3, AIRCRAFT AND AIRPORT; AND AMENDING DIVISION 2, FIXED BASE OPERATOR AND GENERAL AIRPORT TENANT CATEGORIES, OF ARTICLE IV, COMMERCIAL OPERATIONS, OF CHAPTER 3.3, AIRCRAFT AND AIRPORT, OF THE CODE OF ORDINANCES, BY ADDING A NEW SECTION 3.3-65.2, SPECIALIZED AVIATION SERVICE OPERATION; REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Stowers moved, seconded by Commissioner Boehm, for approval of Ordinance No. 2013-26, on first reading, as read by title only.

Call Vote:	Commissioner Stowers	Yes
	Commissioner Kent	Yes
	Commissioner Boehm	Yes
	Commissioner Partington	Yes
Carried.	Mayor Kelley	Yes

Item #10A – Airport FBO Category 8

City Clerk Scott McKee read by title only:

ORDINANCE NO. 2013-29

AN ORDINANCE AMENDING THE FUTURE LAND USE ELEMENT OF THE COMPREHENSIVE PLAN BY AMENDING THE FUTURE LAND USE MAP TO CHANGE THE DESIGNATION OF ONE (1) PARCEL OF REAL PROPERTY TOTALING +0.46-ACRES LOCATED AT 1626 NORTH US HIGHWAY 1 (PARCEL ID NO. 3136-01-64-0022), FROM VOLUSIA COUNTY "COMMERCIAL" TO ORMOND BEACH "TOURIST COMMERCIAL"; AUTHORIZING TRANSMITTAL; PROVIDING FOR CONFLICT; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Partington moved, seconded by Commissioner Boehm, for approval of Ordinance No. 2013-26, on second reading, as read by title only.

Call Vote:	Commissioner Kent	Yes
	Commissioner Boehm	Yes
	Commissioner Partington	Yes
	Commissioner Stowers	Yes
Carried.	Mayor Kelley	Yes

Item #11A – Appeal of Planning Director’s Use Determination

Mr. Goss stated that the item before them was an appeal filed by Mr. William Sullivan, the Chief Executive Manager for Arena LAN Center, L.L.C. He stated that Mr. Sullivan came to the city’s Planning Department on February 7, 2013, and filed an application for a business tax receipt (BTR), which was located in the land use zoning category B8 at 777 South Nova Road. He explained that essentially when Mr. Sullivan filled out the application he indicated that the use that he was proposing was something similar to or was something like an arcade or video arcade. He stated that Mr. Sullivan proceeded to annotate several games’ examples within the application. He stated that the permit technician at the counter then brought the application to his office where he reviewed it under the code and determined that it was either an automated amusement center game room or was very similar to an automated amusement center game room, or, if it was neither of those options, then it was a use that they never contemplated. He noted that all three options required a special exception.

Mr. Goss stated that he indicated his findings to Mr. Sullivan on February 11, 2013, during a conversation with him. He stated that Mr. Sullivan expressed those definitions were not really consistent with the type of use he envisioned. He stated that he and Mr. Sullivan then together looked on the internet for a definition of a LAN (local area network) center. He stated that he then sent the definition they found of a LAN center to the City Attorney’s office. He noted that he sent the definition without the application because he did not want the application to taint the analysis of the definition. He reiterated that in his view he felt that it was still something like an automated amusement center. He stated that the legal department agreed that it looked like an automated amusement center to them, as well. He stated that he then made that determination on February 15, 2013, and wrote a letter to Mr. Sullivan indicating to him that he needed to file a special exception or appeal his decision to the City Commission, pursuant to the *Land Development Code* (LDC).

He stated that Mr. Sullivan wrote an appeal on March 7, 2013. He stated that Mr. Sullivan provided his appeal letter explaining why he thought his business would be under the retail sales and service classification. He stated that Mr. Sullivan did not believe that some of the definitions within the automated amusement center classification met the definition of his business. He noted that originally when he conducted a review of the application, he felt it appeared to be an automated amusement center game room and contained vocabulary consistent with that categorization. He stated that the hours of operation listed on the application described the business staying open Sunday through Thursday until 2:00 a.m. and on Friday and Saturday until 4:00 a.m. He noted that those hours also bothered him. He stated that the BTR application described the LAN center as a video arcade whereby games would be displayed on display screens or consoles, similar to the automated devices. He noted that the code required the description to be *similar* and that it did not have to be exactly the same description. He stated that the business use involved all ages, and noted the hours given in relation. He stated that there would be prepackaged food for purchase but the sale of such items was essentially to keep patrons there to play. He stated that patrons would be charged based upon the hour or minute to play games.

Mr. Goss stated that if the Commission determined that his determination was incorrect, then it was up to them to tell him what classification the business should be in. He stated that he did not believe it was retail sales and service under that definition. He noted that he included that definition in the packet information and that there was no product or neighborhood service related to the business. He stated that if the Commission decided to give it another principal use, then there would be no conditions applied to it if it was a permitted use under the LDC. He stated that if they decided that it was a use similar to or was an automated amusement center, then it would require a special exception. He stated that if they determined that the use was neither one of those categories and the city had no permitted uses like it, then it would require a special exception, as well. He stated that Mr. Sullivan believed it was retail sales and service

and would speak about his belief that evening to the Commission. He stated that his recommendation was to uphold his determination that it was an amusement game center or something similar to that.

Mr. Randy Hayes, City Attorney, stated that the Commission had some options. He stated that one was to uphold the determination as an amusement center, wherein a special exception would apply. He stated that they could also determine that the definition did not apply, noting that according to his review he believed that it did apply because it applied to video type devices and the application clearly indicated that it was such a service; and then it would be categorized as a use not listed in a district, and under section 2-01b7, the Commission would then determine by special exception what was allowed. He stated those two options both resulted in a special exception unless the Commission wanted to determine that it was a permitted use, such as retail sales and service.

Mr. Goss stated that it was important to note that the definition applied if it was *similar*. He stated that there was a provision that stated that if it was similar to a use, it was also by special exception. He stated that everything would be by special exception, unless they determined it was a permitted use.

Mayor Kelley confirmed that Mr. Goss provided Mr. Sullivan with the option of applying for a special exception or appealing Mr. Goss' determination to the City Commission.

Mr. William Sullivan, 259 Parkview Drive, owner of Arena LAN Center, thanked the Commission for the opportunity to speak on the matter. He stated that the Arena LAN Center was located at 777 S. Nova Road in the Tomoka Plaza, near where Hand Avenue and Nova Road intersected. He explained that the main issue was regarding the definition of an automatic amusement center, which was clearly defined in the LDC as a business that primarily operated automatic amusement devices. He stated his contention was that his business did not even have automatic amusement devices. He stated that the definition of an automatic amusement device was very specifically defined and he read the definition as follows:

"...any device operated as a game of skill which upon the insertion of a coin, slug, token, plate of disc, may be operated by the public generally for use as a game, entertainment, or amusement, whether or not registering a score,..."

Mr. Sullivan explained that the definition went on to give examples such as pinball machines, claw machines, and other arcade machines. He noted that those examples were coin operated, which was the key component that made them an automatic amusement device as opposed to any other amusement device that was not automatic. He stated that his business had personal computers and Xbox 360 consoles and that those devices did not contain a mechanism for inserting a coin or token. He stated that under the Planning Director's determination computers would be automatic amusement devices and that he thought that the City of Ormond Beach would be very surprised to find out that in their business and cubicles they had automatic amusement devices. He stated that under the Planning Director's determination games that would be displayed on display screens would also be constituted under the definition of an automatic amusement device.

Mr. Sullivan stated that he understood Mr. Goss' concerns about all ages being able to access an arcade with automatic amusement devices because those type of devices were not tended. He explained that an untended child could just go up to such a device and insert a coin to play it. He stated that was why the city's LDC specified that automatic amusement devices could not be within a certain range of schools and why the city would obviously want to limit the hours on such an establishment, noting that his business was such an establishment. He stated that he did not quite know where city staff had gotten the idea that his business accepted all ages as customers, because it did not. He explained that he had never stated that it did to any staff member and did not state that it did in the application. He stated that claim was completely unsubstantiated, and he would like to clarify that minors would not be accepted as customers. He stated that there were a couple of reasons for that, one of which was that the environment that they were cultivating was for older gamers who wanted a social environment to enjoy technology. He stated that he also wanted to point out that in the LDC it was not a criteria for automatic amusement device centers, but he understood the concerns regarding the hours. He noted that he wanted to again reiterate that the statement from staff alleging that the business was for all ages was inaccurate.

Mr. Sullivan stated that unfortunately there were also other inaccuracies in the prepared response that the city included in the agenda packet, such as the retelling of the process that he went through when applying for the permit. He noted that when he first went to the Planning Department, the Planning Technician he met with was very nice, friendly, and helpful. He stated that he explained to her that his business was a LAN center and that he had concerns about it being confused for an internet café. He explained that in the State of Florida, as well as other parts of the country, internet sweepstakes parlors co-opted the term "internet café" and used it as a front for gambling, so they were very concerned about being misconstrued as that type of establishment. He stated that was why he wanted to emphasize in the application that the business would be for playing games, such as Halo, and definitely not for gambling. He noted that Mr. Goss kept mentioning video arcade to describe the context of the business. He stated that if you looked at the original application you would see that the Permit Technician actually wrote in that description. He noted that he put in parentheses that it was not coin operated.

Mayor Kelley noted that Mr. Sullivan thought the business should be classified as retail sales and service. He asked Mr. Sullivan to explain why he thought that his business met that classification.

Mr. Sullivan stated that the business sold retail products in the form of beverages and snacks. He stated that was not a periphery business to them but was a major part of their sales and where they made their money. He stated that the cost charged per hour was very low and served as a low barrier to entry. He pointed out that it was not specifically tied to video games or even the use of those specific devices. He noted that a patron could bring in their own laptop computer if they desired. He stated that what they provided as a retail service was the LAN or local area network. He stated that he tried to explain that to the planning staff and Mr. Goss scoffed at his explanation of the infrastructure and logistics pertaining to the information technology network. He stated that the software that patrons would use would most often not be owned by them and would be licensed directly to the users. He noted that the users could play the games at home, but the reason that they would want to come and play at their business was because of the social and community atmosphere that the center would provide.

Mr. Michael Evans, 3610 Dame Street, Port Orange, part owner of Cloak and Dagger Comics, 799 S. Nova Road, stated that he had been friends with the owners of Arena LAN Center, L.L.C., for some time because they shared clientele. He stated that it was important to remember that the Arena LAN Center was providing more than just a place for people to play games. He stated that there was a lot that went into the culture and noted that there was not a lot of technology related business in the area. He stated that he had a hard time finding contractors locally. He stated that having an area where people could go and have access to technology that they might not have access to otherwise would help build the community. He noted that with his comic book store selling snacks and drinks was a large part of his business. He stated that they had an area where patrons could play board or card games where people could play for free so a large portion of their income came from concessions. He stated that for businesses in that type of industry, it was very important to have the ability to sell snacks and sodas so that the patrons would stay at the location. He noted that his location was in the same shopping center as the Arena LAN Center.

Mr. David Carter, 212 Integra Shores Drive, Daytona Beach, part owner of Arena LAN Center, stated that he worked every day from 9:00 a.m. to 5:00 p.m. during the week at a day job and liked to spend a lot of time gaming on his days off. He stated that he always wanted to create a business like Arena LAN Center so that he could create a community with people around the area to come together and socialize with kindred spirits.

Commissioner Partington noted that the business was in his zone and that he had met with the applicants at their request. He stated that he had also spoken to Mr. Goss about the item. He stated that the applicant wanted him to take his side and argue to the Commission on his behalf. He stated that he had to explain to him that he was neutral and was willing to listen but would not advocate one way or the other without listening to what staff had to say and weighing both sides. He noted that it was a very interesting case and a situation where technology had outpaced the city's archaic code, which did not really have a place or a definition for what it was that Mr. Sullivan wanted to do. He stated that the business seemed harmless enough to him. He noted that he did not see any gambling and did not think it could be an internet café. He stated that even if it was an internet café, the legislature was going to ban those shortly. He explained that he felt that one of staff's big fears was that it would turn into an internet café. He noted that one

thing that did concern him was the hours of operation. He stated that he felt that the use seemed like a retail sales and service to him. He stated that Mr. Sullivan had told him that other cities had classified similar businesses as such.

Mr. Sullivan stated that cities as nearby as Holly Hill had done so. He stated that the LAN centers located in Orlando were classified as retail sales and service, also. He stated that the one located in Winter Park was classified that way on the basis of selling prepackaged snacks. He stated that was what he was trying to communicate to city staff when he was going through the permit application process.

Commissioner Partington stated that he thought the concessions they would be selling would be similar to what you would get at a 7-Eleven. He clarified that the drinks that they would be selling would not be alcoholic, which to him were definitely retail sales. He noted that while it was not perfectly defined, he believed that the code had not caught up yet to the business use. He stated that for purposes of being business friendly he would approve it as a retail sales and service classification and ask the Planning Board and Planning Director to come up with a LDC provision category that may fit it better, and at a future renewal time it could be reclassified as that definition.

Commissioner Kent stated that he agreed with a lot of what Commissioner Partington said. He stated that he understood why staff was being extremely cautious. He stated that Commissioner Partington had helped him deal with any concerns he had because the state legislature would be banning internet cafés. He noted that the hours of operation did not really bother him. He stated that there were fans of all kinds of things including games. He explained that if the business was not serving alcohol, he would not care if they were open 24 hours. He asked City Attorney Randy Hayes what would happen if they attempted to get a beer and wine license and whether or not the Commission would be notified. He noted that the city had a restriction on when alcohol could be served.

Mr. Hayes stated that there were other restrictions that would apply. He stated that he did not know if it would come back before the Commission.

Commissioner Kent stated that he would have a concern if alcohol was to be served, but presently he did not have a problem with the business. He stated that he was glad that it was brought before the Commission so they could discuss it.

Commissioner Boehm stated that he had read the definition of retail sales and services five times. He explained that he agreed that the code did not currently correctly address the situation of the business. He stated that he was in the category of opinion that the LDC did not deal with this business in any way; and therefore, he did not think that it could be recognized as any currently described use listed in the LDC. He stated that he thought that the LDC needed to be amended so that it would cover businesses like this. He stated that he could not accept the idea that it was retail sales and service, however.

Commissioner Stowers thanked Mr. Goss for interpreting some antiquated language regarding automatic amusement devices. He stated that in reading that he would agree with some of the sentiments from Mr. Sullivan regarding language such as tokens and slugs. He noted that he also read the retail sales and service definition and agreed with Commissioner Boehm. He explained that when you read through all the uses, with the exception of perhaps a laundromat, they were all instances where a customer would go to a store to purchase something and then leave. He stated that the proposed use, in his opinion, was materially different than so many others of the retail sales and services in the LDC. He stated that under that interpretation the use presented was not interpreted by the code which put them in position to apply for a special exception. He stated that he would like to be business friendly and agree to go with the retail sales classification, but he thought that they had to continue to interpret and follow the code.

Mayor Kelley stated that he did not believe that it was retail sales but that it was a service industry that was providing time to play a game. He noted that the original concept was to sell time for game playing. He stated that the snacks came later and then became a dominate factor to try and justify a retail sales classification. He stated that reading through the material he could not find that the classification should be retail sales. He noted that he would agree that the code was antiquated and needed to be updated. He asked if the purchase of time fell under retail or a special exception category. He stated that he was as pro-business as anyone could be and had tried very hard to try and find a way to justify the retail selling of snacks to justify the selling of time on a computer but could not do so.

Commissioner Partington used an example of a laundromat. He asked what the difference was between paying for time to use a washing machine because it could do a heavier load, even if he had a washer at home, and paying to use a computer at the LAN center because it had more memory to run a program, even if he had a computer at home. He stated that the LAN center could have a lot of uses besides gaming.

Mayor Kelley stated that he thought that it boiled down to the fact that the LDC did not have a use pinned down to exactly what the applicant wanted to do.

Commissioner Boehm stated that in the applicant's own description the business was for very serious gaming and they did not speak about other uses. He noted that they were not telling him that he could not have the business, but that he had to get a special exception for it. He stated that he felt that the current way the code read was the best way to address it. He stated that with the special exception the applicant would be back in front of the Commission again, and it could be approved as a special exception and move forward. He stated that he did not think it should be approved without going back through the process and without the Planning Board seeing it and without the Commission seeing it with more specifics.

Commissioner Partington stated that the special exception went before the Board of Adjustments and Appeals, then the Planning Board, then the City Commission. He asked how many thousands of dollars it cost for that process.

Mr. Goss stated that it would cost \$2,400, as much of those costs went towards advertising.

Commissioner Kent noted that he had heard from several of the attorneys on the Commission that the LDC was outdated. He stated that he was having a hard time with the notion that they would be making the business suffer because the code was outdated and because the city was not ready for such a business. He stated that he understood the three opinions in favor of the special exception, but he was disappointed with the outcome because it would cost Mr. Sullivan money and time. He stated that he thought that Mr. Sullivan was coming before them with a very legitimate business and taking the risk involved. He noted that he paid attention to the sales when new games were released and they beat box office movies on the first day, noting that gaming was a major business around the world. He stated that he wished that they were a little more business friendly on this issue, because he thought what Mr. Sullivan had presented made sense, and he did not think that he was trying to put anything past them. He stated that he would be disappointed for Mr. Sullivan if a member of the Commission did not change their mind.

Mayor Kelley read Section 1-22 of the LDC to define automatic amusement centers as follows:

"...any premises upon which the principal business is the operation of automatic amusement devices."

Mayor Kelley stated that it was clear to him that was what the business intended to do, even on high speed computers. He noted that libraries also had free public internet access. He stated that he did not know how much higher internet speed the computers would have than what any citizen could independently purchase.

Commissioner Kent stated he thought that he could argue that going to the movies was an automatic amusement device.

Commissioner Stowers stated that he thought that all three speakers that evening were well spoken and he was very supportive of their business endeavor. He noted that he agreed that it was conservative that a use not listed in any district had to go through a special exception but that was the code that they had in place. He stated that the Commission's role as the policymakers on issues was to interpret the current code. He stated that he thought the use was new and innovative and not contemplated when the retail sales and services provisions were put into place. He stated that he would be open to changing that provision so that the Commission could interpret it and have a wider scope to place an innovative item into an existing category. He stated that he understood those that said if you consider it retail sales than it would be listed. He stated when he lived in Gainesville, he saw a similar business there.

Mayor Kelley asked how long it would take to go through the special exception process; whereby, Mr. Goss stated that it would take 45 to 60 days upon application.

Mayor Kelley asked how long it would take the city to change the code; whereby, Mr. Goss stated that it would take 45 to 60 days, as well. He stated that it was basically the same process.

Ms. Joyce Shanahan, City Manager, stated that if they changed the code, then the responsibility would be on the city for bearing the advertising costs for that rather than the business.

Mayor Kelley stated that at some point the code needed to be reviewed in order to accommodate this. He stated that he wished that he could find a way that it was retail sales, but he did not believe that it was. He believed that it fell into the category of an amusement center in his opinion. He explained that patrons were buying time, which was retail, but that it was for a game of skill, which would be an amusement center.

Mr. Hayes stated that he thought that it was one of the issues where there was merit to what each person had said. He stated that he thought the problem was that technology had outpaced the code which was not uncommon. He stated that to accommodate that event there had to be a procedure, which could find a very similar use, permitted or conditional. He stated that in this case it more similarly represented an amusement center, which was why the Planning Director made that determination, which he supported. He noted that the code could be amended to provide a LAN center as a permitted use and then standards would have to be developed for that as would any other use. He stated that he thought that the Commission had collectively struggled with the issue as well as anyone could and would not be able to fit it neatly in one package. He stated that there were really three choices: support the Planning Director's determination, give it a permitted use as retail sales, or determine it as a use not otherwise listed.

Mayor Kelley noted that no one on the Commission really objected to what Mr. Sullivan wanted to do at his business.

Mr. Sullivan stated that the broadest category in the LDC was retail sales and services. He stated that was the "catch-all" for a wide variety of products and services, compared to the very narrow and specific definition provided for an automatic amusement center. He stated that staff was willing to make the stretch for the more defined category, but he thought it was much easier to make the stretch for the retail sales and services classification, even if that was not perfect. He stated that the LDC was very specific that the automatic amusement device was used upon insertion of a coin into a device, not monies paid elsewhere. He stated that the personal computers at his business had no mechanism for coin insertion.

Mayor Kelley stated that was not how he read it and asked Mr. Hayes to weigh in.

Mr. Hayes stated that the first part of the definition for automatic amusement device included that language but what was missed in that discussion was the second part lower down in the definition which read:

"It shall include video type games or machines, or similar devices..."

Mr. Hayes explained that was where Mr. Goss' interpretation came in, which staff supported. He stated that the City Commission had to make the final call.

Commissioner Stowers stated that he thought that particular definition was somewhat ambiguous. He stated that he came to the special exception conclusion, because he believed it was something different than a defined use. He stated that the reason he was resistant to putting it into the retail sales and service category was because that could potentially allow someone who had an internet café to claim it was retail sales and service and a permitted use because they sold drinks and snacks, too. He stated that was where he was struggling with it, even with some of the elements of retail sales, the fact was that it was something different and not contemplated by the city's code. He stated that was where the conservative language came in that said if it was something not thought of, then the city had decided that it needed to go through the special exception process.

Mr. Sullivan stated that the easiest example he could give of a business that presently could come into Ormond Beach and be classified under retail sales and service and offer a service similar to his would be a FedEx Kinkos Office Center. He stated that in addition to the copying and printing, which was under the code's definition for retail sales and services, they also had an office center where you could pay by the hour to use their computers, in that case primarily with the expectation of using them for business purposes, but noted that they could theoretically be used for any other lawful purpose. He stated that with respect to Mayor Kelley's earlier comment about computers in the library, people could also pay to use computers at his business. He stated that the reason why all of the other possible uses were not listed on the original application in that level of specificity was simply because they ran out of room on the page. He stated that the Permit Technician originally assisting him had told him that she thought that the information he gave was acceptable and that they would contact him if they had any questions. He noted that unfortunately that did not happen. He stated that Mr. Goss' characterization of the process and of him changing directions was misleading. He explained that he was not trying to change directions but was trying to illustrate the other uses for the center besides video games. He stated that they were not renting the use of video games like an automatic amusement device center would be. He stated that they were renting the use of the facility.

Mayor Kelley stated that he doubted that the center would be used for faxing. He stated that he would also point out that Holly Hill had an internet café recently raided for being involved in gambling and that their definitions may have been loose enough to allow that.

Mr. Sullivan stated that the business he was referring to in Holly Hill was closed several years ago.

Commissioner Stowers asked Mr. Sullivan to discuss the retail aspects of his store. He stated that all he had heard was prepackaged food and drinks. He asked if there would be games or other items for sale.

Mr. Sullivan stated that there was a video game retailer in the same plaza so they would not sell video games in order to not compete. He stated that the video game store did not sell PC games; however, he noted that at the initial permit process they did not know whether or not they sold PC games, but now that he knew that they did not then his business would absolutely sell them. He explained that some of the games such as World of Warcraft or League of Legends sold timecards, which looked like gift cards, at such stores as Wal-Mart or Walgreens that added time to the user's account to use the game, whether at home or a LAN Center. He stated that they would also sell those timecards. He noted that there were a number of other retail products and services that were included in the Wikipedia definition of a LAN center that the Planning Director used and sent to the Legal Department. He stated that people had already expressed interest in using the LAN Center for their small business to access a very expensive powerful computer with high speed internet as needed rather than purchasing their own.

Mayor Kelley asked how fast the internet would be.

Mr. Sullivan stated that the maximum Brighthouse Networks sold was 70 megabytes per second download.

Mayor Kelley stated that they would be using the same Brighthouse internet that residents purchased.

Mr. Sullivan stated that it was the only option currently available in that area.

Commissioner Kent stated that he thought that Mr. Sullivan was a victim of bad timing because of internet cafés, which he felt was clearly not what Mr. Sullivan was trying to do. He stated that mindset of fear of internet cafes concerned him because Mr. Sullivan would be suffering for it.

Commissioner Partington stated that he actually liked the idea of the special exception process because he felt that it dealt with the concerns as far as hours but noted that he had less concerns after hearing from Commissioner Kent about why he was not bothered. He stated that he worried that they were saying they were trying to be business friendly, yet were delaying the business two months through the special exception process and costing it \$2,400 more.

Mayor Kelley asked Mr. Hayes and Ms. Shanahan if they could change the code in the same process as the special exception and offer Mr. Sullivan a rebate in the hindsight, noting that he would still have to spend the time going through the special exception.

Commissioner Stowers stated that he always said that he did not make up his mind until the vote was called, because as had often been the case, he would analyze and continue to go through the facts until then. He noted that the Commission could not decide on an item fully until they discussed it with each other, which they could not do until the meeting. He stated that they also needed to hear from all sides. He stated that the last time Mr. Sullivan spoke he thought he was persuasive in his reference to FedEx Kinkos and what they could or could not do. He stated that Mr. Sullivan also provided a list of retail sales items that he would have. He stated that he thought everyone would recognize that he had been on the fence with the issue. He noted that he recently had to fill out a BTR himself and just put "law office" because everyone knows what that was. He stated that unfortunately for Mr. Sullivan everyone did not have preconceived notions of what his business was or did in the wrong way so he did not have enough room to properly explain his business. He stated that he thought about the LAN center he knew when he lived in Gainesville and how there were a lot of retail aspects to it. He stated that he thought he had been given enough information that he would be comfortable with the retail sales and service classification.

Mayor Kelley stated that he recognized that there was a retail aspect of the business but it was a selling of time for a game of skill so it put it into the amusement center classification to him.

Commissioner Partington moved, seconded by Commissioner Kent, to recognize the Arena LAN Center, L.L.C as a retail sales and services use, which was a permitted use in the B8 Commercial Zoning District.

Call Vote:	Commissioner Boehm	No
	Commissioner Partington	Yes
	Commissioner Stowers	Yes
	Commissioner Kent	Yes
Carried.	Mayor Kelley	No

Mayor Kelley wished Mr. Sullivan the best of luck in his business.

Item #10 – Reports, Suggestions, Requests

2" Watermain Projects

Ms. Shanahan stated that bids had been received for the 2" watermain replacement project. She stated that there was a recommended low bid for the north peninsula and that would be brought to the Commission at the next meeting. She stated that the bid award for the south peninsula was also scheduled for the April 16, 2013, meeting.

Upcoming Projects

Ms. Shanahan stated that the Halifax Drive paving project had been finished. She stated work was still being done on Hand Avenue and they were preparing for the Central Park Lake Interconnects.

Riverside Drive

Ms. Shanahan stated that as part of her field day that week she would get to help install rumble strips on Riverside Drive. She stated that citizens had come before the Commission requesting something be done about traffic there. She stated that the city would also be doing a traffic study analysis regarding the traffic turning onto Riverside Drive. She stated that the rumble strips would be placed in front of the interested parties' homes.

Shade Meeting

Ms. Shanahan stated that she needed to schedule a shade meeting with the City Commission either on April 16 or May 7 prior to their regularly scheduled Commission meeting. She stated that the purpose of the meeting was to discuss the upcoming police employee contracts. She asked the Commission which date they would prefer.

Commissioner Boehm stated that Ms. Shanahan had promised there would be no workshops in April.

Ms. Shanahan confirmed that May 7, 2013, would be the date of the shade meeting.

Airport Tower Closure

Mr. Hayes stated that the airport tower closure date was scheduled to be April 7, 2013. He noted that it had been extended one week until April 14, 2013. He explained that the contract tower was approved in 2002 and had been operated since that time. He explained that as a result of the sequestration issues, the city had received a letter from the FAA dated March 5, 2013, indicating that the tower had been indentified for closure. He stated that city staff worked through the process with FAA to request that the tower remain open, and FAA responded on March 22, 2013, indicating that the tower would close on April 4, 2013. He stated that initially the city was of the opinion that the tower could be re-funded once it closed but had since learned that if it closed it was likely to be closed permanently. He stated that in order to have a new tower, the city would have to reapply at a later date and most likely under new standards, which would be very costly. He noted that the process they went through to obtain the tower in 2002 was very expensive.

Mr. Hayes stated that the city made the decision to join an effort by other affected airports to try and keep their towers open. He explained that one step of that process involved sending a letter to the FAA requesting that they voluntarily keep the tower open. He stated that the FAA indicated in response to that letter that they needed more time to respond and granted an extension to April 14, 2013, as a result. He stated that they were in the process now of awaiting a formal decision from the FAA as to whether or not they would grant the stay or not. He stated that they believed that they would most likely not grant it and that they expected to hear something from them by the next day. He stated that the city would file their motion for stay likely the next day in order to receive hearing time before April 14, 2013.

Mr. Hayes stated that if the city did not receive the stay and the tower closed, unfortunately they would likely be done at that point. He stated that he was not sure there would be much they could do after that. He stated that if they were granted the stay, they would ask the court to review the procedure the FAA had used in order to tag which towers were slated for closure. He stated that the basis of the complaint was that the FAA did not follow its own regulations to either defund or shut down the affected towers. He stated that he recently learned that of the approximately 149 contract towers in the United States, Ormond Beach was the fourth busiest tower by density. He stated that he would keep the Commission apprised of any new developments.

Mayor Kelley stated that he had a chance to hear Congressman Ron DeSantis speak about it and that Congressman DeSantis had stated that he did not understand the closures because the contract towers operated at a 25% lower cost than other towers that operated. He stated that it had been brought up that 70% of the towers being closed were in a specific political party arena. He stated that there was talk in Washington that a lot of the issue was political and that they were in fact being punished. He noted that it did not make sense to him to close the tower since it was the fourth busiest and had many student pilot operations, unless it was just as punishment. He stated that they were suffering as a result of political gamesmanship in Washington, D.C. He stated that he thought that the city had legal standing to ask for the stay and that the FAA would have to comply with their own regulations. He stated that he did not think that the FAA realized that they did not go through the proper process in closing the towers.

Commissioner Partington directed a question to Mr. Hayes or Ms. Shanahan. He noted that he believed the City Manager's was authorized to approve up to \$25,000; and if that had not been changed, he favored the Commission waiving the Thompson Rule that evening and confirming their decision to spend more than that amount, if applicable.

Mr. Hayes stated that the Commission did not need to do so. He stated that under the Charter, the decision was ultimately his as City Attorney. He stated that ordinarily traditional lawsuits did not come before the City Commission because they were a matter of routine, but with unusual items such as this they liked to bring before the Commission before they made a decision. He stated that he did not take lightly these types of decisions and noted that he consulted with the City Manager and everyone in the field that he could before making it. He stated that they were pretty comfortable on the cost end of it and would keep close tabs on that. He stated that they should know by April 14, 2013, whether or not they would receive a stay and reassess that as they went along. He stated that there would be points along the way in the process where the City Commission could make decisions as to whether to stay in the process or get out. He stated that because of the timeline they were given to work with, they did not have a lot of time to make decisions. He noted that early on in the process he was not fully on

board and neither was the City Manager. He explained that once they were able to collect additional information and understand the true impact of the potential closure and weighed the costs to keep it open versus going through the closure and reapplying, then they were on board.

Commissioner Partington thanked Mr. Hayes and stated that he wanted to make sure that they were following the proper procedure. He stated that he thought it was the smart move and even though he hated to have to do it in order to enforce their rights, sometimes legal action had to be taken.

Mr. Hayes stated that he had just received an update as they were speaking. He stated that it was from their legal counsel. He stated that it said they did not receive the stay from the FAA so they would be filing their motion for stay the next day in federal court.

Volusia Days

Commissioner Partington stated that two weeks prior he went to Tallahassee for Volusia Days. He stated that it was a distinctly different atmosphere this year than in recent years past. He stated that the legislature was lighthearted, joking, and affable. He stated that during the previous three or four years, during difficult budget crunches, it was grumpy, sober, and even angry. He stated that he met with the city's lobbyist, Mr. Doug Bell, and saw Senator Thrasher briefly. He stated that it looked like the Central Park drainage project funds would be approved, because they met all of the governor's criteria. He stated that pension concerns were all pressed to each of the city's legislative representatives' offices. He stated that overall it was a successful day.

Andy Romano Beachfront Park

Commissioner Partington stated that he had been to Andy Romano Beachfront Park a couple of times since the last meeting. He stated that each time it had been packed. He stated that it would continue to be a tremendous asset and noted that the Commission had been receiving unsolicited emails praising the park.

Granada Medians

Commissioner Stowers stated that he had received some emails and comments about the roadway improvements on Granada Boulevard. He stated that he had spoken to Ms. Shanahan about it and that it was a work in progress. He noted that the top layer of asphalt had not yet been put on and would not be until all the underground work was done. He stated that there had been great news on the medians with the Medjool palms, and he thanked Mr. Bill Partington, Sr., Mr. Ryck Hundredmark, Ms. Maggie Sacks, and Mr. Paul Momberger, and Ormond Beach Main Street for their resolute desire to beautify downtown and go through the median process. He stated that he believed that when the medians were done it was going to be a spectacular, beautiful thing. He noted that it would continue to lead to reinvestment in downtown and in the CRA.

Planning Director Determination

Commissioner Stowers addressed Mr. Goss and stated that he thought of the Lotus Boutique Inn that evening. He stated that was the last time they had reviewed Mr. Goss' determination. He stated that he wanted to tell Mr. Goss that he appreciated his analysis of the code and everything he did for the city. He stated that with everyone doing their jobs well, the system worked well.

John Anderson Drive

Commissioner Stowers stated that he had also received questions and comments about John Anderson Drive. He noted that he knew that the resurfacing would be coming forward very quickly. He stated that he believed there was a public meeting upcoming and asked Ms. Shanahan about it.

Ms. Shanahan stated that they were working on scheduling a time for that meeting.

Commissioner Stowers confirmed that it would be a public meeting just to discuss the resurfacing timing and so forth.

Andy Romano Beachfront Park

Commissioner Kent stated that he wanted to share an email that the Commission received about Andy Romano Beachfront Park with the subject "Kudos to All – Andy Romano Beachfront Park". He read as follows:

“Dear Mayor, City Commissioners, City Manager, Director of Leisure Services,

Kudos to all of you and to the support staff and contractors who created and now maintain the beautiful Andy Romano Beachfront Park. I have visited the park on several occasions, most recently on Saturday. I spent over an hour at the park waiting for my husband to return from a bicycle ride on the beach. I was wimpy that day and did not want to deal with the soft sand and wind in my face. The park was full of people all enjoying the sunny day, the holiday atmosphere, and each other. I talked with the maintenance man who was keeping the facility well groomed, took family group shots for visitors who used the blue water as background for their souvenir photos, watched shore birds, sea birds, and people. People of all ages and interests were using the varied facilities. Nearly all of the picnic tables were taken with groups. The jungle gym was a constant motion machine with kids exercising and having fun. The splash zone was filled with shrieking kids. And thanks too, for having the foresight to request a car-free zone in front of the park. It is difficult to think of a way that tax dollars could have been spent more efficiently. Keep up the good work.”

Commissioner Kent stated that the email had been sent by Ms. Paula Ware and they had received it the previous day at 7:43 a.m. He stated that when he read it he thought he wanted to bring it to the Commission meeting because she hit every high note. He stated that he had heard that on Easter Sunday, with the church service there and the turn-over of cars, that realistically there was a count of around 2,000 people at the park and beach. He stated that he was overwhelmed that many people were there enjoying the new beachfront park. He thanked Ms. Shanahan for the great choices made in hiring the two workers that worked the park for the city. He stated that they were ambassadors to the city.

Ms. Shanahan stated that the thanks should go to Mr. Robert Carolin, Leisure Services Director.

Commissioner Kent stated that Ms. Shanahan had Mr. Carolin under her so he was passing the thanks to her to pass to Mr. Carolin. He stated that he had been down there and seen one of the workers named Basil a couple of times. He stated that he was sweating nonstop, taking out trash, taking pictures, and sweeping the pavers so that there was no sand. He stated that he was impressed and complimented Mr. Carolin on his choice.

Granada Medians

Commissioner Kent stated that he was excited about the Medjool palms and up lighting going into the medians. He stated that he would be remiss if he did not mention a problem he believed they had. He stated that he was sorry that he did not realize it before. He noted that the little medians on the right hand side of Granada Boulevard, right before the parking on the street, had tire marks on them from being hit by cars. He stated that to him personally he felt they needed to be removed. He stated that they were a serious problem waiting to happen. He stated that if you were coming down the bridge on a bicycle you would have to go into traffic because of that little median. He stated that he did not like hitting a median or curb at two miles per hour and he certainly did not want to hit one at 35 or 40 miles per hour. He stated that those were a concern of his and he noted that the lanes were narrower.

John Anderson Drive

Commissioner Boehm stated that it was amusing to him that when Commissioner Stowers mentioned a public meeting for John Anderson Drive that he and Mayor Kelley looked at one another as if to say “What meeting?”. He stated that was what the Sunshine Law did. He stated that because that project was in Commissioner Stowers’ zone, he had been talking to the City Manager about it and was aware that they were thinking of scheduling one, but he and the Mayor had not heard about it.

Ms. Shanahan stated that they would do a press release so that everyone was aware.

Artificial Reefs

Commissioner Boehm stated that he believed that the county was looking into putting in more artificial reefs. He noted that Commissioner Kent and Commissioner Partington were also in favor of the city participating. He stated that he certainly would hope that Ormond Beach was capable of having an artificial reef created as that was something

else they could offer people who were visiting the area, as well as to the citizens. He hoped that Ormond Beach could be considered and involved in the program. He noted that Ms. Shanahan was sending someone to the county's workshop on the issue to obtain more information.

Meeting Preparation

Commissioner Boehm stated that sometimes it seemed like the Commission quickly went through a lot of the agenda. He stated that people may not realize that they had previously received an over 800-page agenda packet to read and that they had the opportunity to ask the City Manager and city staff about any questions they had. He stated that it was not that they were flying through things without considering them but they had read a great deal of material beforehand. He noted that the Commission worked very hard before the meeting so that they did not waste a lot of time but still had to deal with the constraints of the Sunshine Law, which did not allow them to talk about anything that was on the agenda, so sometimes during meetings they learned information from their fellow Commissioners they did not have previously.

Artificial Reef

Mayor Kelley stated that he mentioned to County Manager Dinneen that the city supported the reef program. He stated that he was hopeful that they could have one.

Andy Romano Beachfront Park

Mayor Kelley stated that he finally convinced his daughter to go to Andy Romano Beachfront Park. He stated that she texted him this morning after she went: "Wow! Awesome, Awesome, Awesome." He noted that the email that Commissioner Kent read said it all. He stated that staff was doing a great job with the park.

Proclamation

Mayor Kelley stated that he delivered a proclamation to Adams Cameron Realty for their 50th anniversary in business.

Bankruptcy in Municipalities

Mayor Kelley stated that Stockton, California, recently became the largest city to file for bankruptcy in the United States. He stated that they had almost a billion dollars in debt and were driven to that primarily by unfunded pension liabilities. He noted that they could not include the pensions in the bankruptcy, because they were in the California pension system.

Item #11 – Adjournment

The meeting was adjourned at 8:58 p.m.

APPROVED: April 16, 2012

BY:

Ed Kelley, Mayor

ATTEST:

J. Scott McKee, City Clerk