

**MINUTES
CITY OF ORMOND BEACH
CITY COMMISSION WORKSHOP**

November 13, 2012

5:30 PM

Training Room

I. Call to Order

Mayor Ed Kelley called the meeting to order at 5:30 p.m.

Present were Mayor Ed Kelley, Commissioners James Stowers, Troy Kent, Rick Boehm, and Bill Partington, City Manager Joyce Shanahan, Assistant City Manager and Public Works Director Ted MacLeod, City Attorney Randy Hayes, City Engineer John Noble, Planning Director Ric Goss, and City Clerk Scott McKee.

II. Environmental Learning Center

Mr. John Noble, City Engineer, stated that the Environmental Learning Center had been on the city's radar for quite some time and that the engineering department was looking forward to making the project a reality. He stated that Mark Dowst & Associates were the consultants working on the project and assisting staff with the grant application and the final design. He explained that the project was to be constructed in fiscal year 2013-2014 with the funding from a Volusia County ECHO ("ECHO") grant. He stated that the file submittal to ECHO was due December 6, 2012. He stated that as such, the Commission needed to decide what architectural style the building would have and any cost issues so that staff could submit a resolution to approve the funding and final conceptual design on the December 4, 2012, Commission agenda. He explained that the grant application would then be submitted to ECHO along with the approved resolution.

Mr. Mark Dowst, P.E., of Mark Dowst & Associates, stated that the project was very exciting and had a lot to offer to the city and the citizens of Ormond Beach. He introduced his team: Ms. Cara Culliver, Landscape Designer, Mr. Brian Fredley, BPF Design Incorporated, and Mr. Scott McCarthy, LEED Certified General Contractor. He read the mission statement for the project as follows:

"The City of Ormond Beach's Environmental Learning Center (ELC) mission is to foster an awareness and appreciation of the natural environment by providing stimulating environmental education programs that inspire participants to be active stewards of their surrounding natural resources."

Mr. Dowst explained that the city already had a natural site for the center in Central Park. He stated that Central Park was about 149 acres, well used, and contained a lot of environmental features. He stated that it was a natural setting for the Environmental Learning Center. He explained that the park would be located on the north side of Division Avenue, as the park itself would be very centrally located in Ormond Beach. He stated that the particular site offered views of the lake. He stated that there was existing stormwater retention that could also be utilized.

Mr. Dowst stated that the conceptual site plan was a constant even with the different architectural styles. He noted that the only differences would be the side in which the building was accessed. He pointed out a parking area and a proposed bus drop off area, as they anticipated classrooms would be visiting the center. He explained that the large natural vegetated area at the site would remain intact for the most part with an entry either going through it or around the outside of it. He stated that the basic site layout also incorporated a deck.

Mr. Dowst stated that they were in the ECHO grant process. He stated that his firm had initially been brought on to meet an October 11, 2012, deadline to submit an ECHO application with a proposal for technical completeness review. He explained that on December 6, 2012, the final ECHO application would need to be submitted, which could be the present application. He stated that after the application was submitted, the applications would be ranked in February 2013, and the Volusia County Council would select applications for approval in March or April 2013. He stated that funding could be available in October 2013, if approved.

Mr. Dowst showed the conceptual building design submissions options which included Florida Vernacular Architecture, Old Florida Cracker Architecture, and Neo Eclectic – Modern Architecture. He stated that the Florida Vernacular Architecture proposed a metal roof and deck on two sides. He explained that in the building there would be a central exhibit area, a classroom area, an office, and public restrooms; which would remain consistent in all three concepts. He stated that the Old Florida Cracker Architecture contained a walk around porch and had additional windows. He stated that the Neo Eclectic – Modern Architecture was quite a bit different with a wall shield in the front with expansive glass in the rear.

Mr. Dowst stated that \$400,000 was currently in the budget. He stated that \$125,000 of that was from the CIP (Capital Improvement Projects) and \$75,000 was from public private partnership. He stated that all of the estimates for the project cost came in around \$700,000.

Ms. Joyce Shanahan, City Manager, stated that a good two-thirds of the project costs were the site costs, which included bringing utilities to the site and site development. She noted that the buildings themselves cost relatively the same.

Mr. Dowst stated that bringing water and sewer to the site would cost at least \$100,000. He stated that there were some options such as reducing bus drop off area. He explained that the next steps would be approval of the proposed location and selection of the architectural concept. He stated that the ECHO grant application would then be modified to reflect those changes and a resolution would be executed at the December 4, 2012, Commission meeting. He noted that the CIP budget amount for fiscal year 2013-2014 would also then need to be revised.

Mayor Kelley stated that he was surprised at the additional costs. He stated that he thought that the \$400,000 in the budget would have been close to the building cost. He stated that he thought that the location was great but asked if there was a location where the costs would not be that great.

Mr. Dowst stated that the major cost that would be different would be the site utilities. He stated that if a location was provided that had site utilities it could save about \$100,000. He explained that the other costs would probably be the same in any

location, unless there was an existing parking lot or other existing facilities. He opined that it would be harder to find a better place to integrate the environmental learning center than Central Park.

Commissioner Partington stated that he liked the second concept, Old Florida Cracker Architecture; whereby, Mayor Kelley asked the other Commissioners if they liked that one and they demonstrated that they did.

Commissioner Partington stated that he agreed with the Mayor as far as the costs were concerned. He stated that if the project was as expensive as it was being shown, then it might not happen or they might have to consider an alternate form of it.

Commissioner Boehm asked if they could ask for more funds with the ECHO grant.

Ms. Shanahan stated that the maximum they could receive from ECHO was \$400,000 and that they would ask for the maximum amount.

Mayor Kelley stated that with the new County Council being seated, he felt the city would be lucky to receive anything.

Commissioner Boehm stated that it was time for the new District Four County Councilman to do something for Ormond Beach. He stated that the city had not received much out of any prior ones and he felt it was about time someone stepped up and did something for them. He stated they should try and talk to him about the project.

Ms. Shanahan stated that they could have a meeting with Mr. Doug Daniels, District Four County Councilman, and show him the presentation well in advance of the ECHO approval in the spring in order to have him on board early.

Commissioner Kent stated that they could have other council members attend as well.

Ms. Shanahan summarized that the Commission had approved concept two, Old Florida Cracker Architecture, in theory, and the site location, in theory. She stated that the grant would be based on the figures shown but that the numbers could always be refined.

Mayor Kelley stated that there had to be some efficiency somewhere that they could gain.

Ms. Shanahan explained that the costs shown were very rough numbers for a conceptual plan.

Commissioner Boehm stated that there was not much time before the application would need to be resubmitted to ECHO and they would have to ask for a certain amount.

Ms. Shanahan stated that the plan would be to ask for the costs estimated and then they could still cut costs on the final design.

III. Central Park Lake Interconnects

Ms. Shanahan stated that Mr. Paul Duncan came to a Commission meeting and was concerned about the potential interconnects at Central Park and how that was going to impact his property. She stated that Mr. Duncan had asserted that the water there belonged to him and he had the right to control what happened to it. She stated that staff met with Mr. Duncan and discussed the issues.

Mr. Randy Hayes, City Attorney, stated that staff had two good meetings with Mr. Duncan. He stated that while both parties were not in agreement on all of the issues, they found some common ground on some. He stated that the city expressed a commitment to Mr. Duncan to work through his concerns. He noted that as a legal basis the city was confident that they owned the water rights. He stated that Attorneys Mr. John Upchurch and Mr. J. Steven Garthe had reviewed and provided legal analysis of the issues.

Mr. Noble explained that the lake interconnects had been identified through the May 2009 stormwater study. He stated a study had been performed by CDM after the flooding that occurred in the Central Park area and it found that the interconnects would be beneficial to alleviate flooding. He stated that they anticipated the interconnects being done on Hand Avenue, which was under construction, and on Division Avenue and Hammock Lane. He explained that the interconnects would be creating an open channel ditch with a culvert system over the roadway to allow kayaks or canoes to travel to the various lakes.

Ms. Shanahan stated that the project had been permitted by St. John's River Water Management District (SJRWMD).

Mr. John Upchurch displayed boards with aerial photographs of the aforementioned area during different time periods. He stated that in 1958 there was the beginning of some of the shell removal and of the formation of the lakes. He explained that in 1963 more of the vegetation had been removed closer to Mr. Duncan's property and the beginnings of some of the lakes were being formed. He stated that in 1967 there was a dramatic change and the lakes were being formed more clearly. He noted that in 1975 you could see a long lake. He stated that in 1994, there was the shape and forms of the lakes that were in place today.

Mr. Upchurch stated that there was a distinction in Florida law between navigable and non-navigable bodies of water. He stated that it was determined as of 1845, when Florida became a state, as to whether it was navigable or non-navigable, or existed at the time. He explained that the photographs were obvious proof that the water did not exist in 1845. He stated since that area had been dug out and water formed the different lakes, the owner of the land underneath the water owned all of the land and the water above the lakes. He stated that there had been a couple of different cases through the Florida District Court of Appeals and all the way to the Supreme Court involving similar issues. He stated that one of the more famous ones had been a Publix case in Lakeland, where a finger lake chain had been dug out and a nice subdivision was built. He stated that Publix came in and bought the land underneath the lake closest to the road with the intent to fill the lakes in order to build their project. He stated that the homeowners filed a lawsuit against Publix, but because they owned the land underneath the water, Publix was able to fill the lake with sand to build their project on it. He stated that he believed that the city was

standing on firm ground. He stated that it would be very difficult to try and get an injunction to prevent the city from getting the interconnects. He stated that they had the approval and permits from SJRWMD, which he believed was vital to the case.

Mr. Hayes stated that one of the renderings showed where the interconnects were proposed; whereby, Mr. Upchurch pointed out the interconnects and where Mr. Duncan's property was.

Mr. Noble stated that the interconnects would be 20 feet wide and 4 feet deep.

Mr. Duncan asked if it was four feet from the top of the water; whereby, Mr. Noble stated that was correct.

Ms. Shanahan stated that essentially the issue was that Mr. Duncan had experienced some security problems on his property with people accessing his property via the water without his permission to remove things from his property. She explained that he believed that by having the interconnects, especially the one on Division Avenue, that it would provide additional access and pose a greater threat to his property. She stated that he had asked that they not put the interconnect there and require people to put in or take out their canoes on either side of Division Avenue. She stated that staff's concern was one of safety with people crossing that area with canoes. She noted that it would also sort of defeat the purpose of the interconnect. She stated that staff was trying to find a solution with Mr. Duncan. She stated that there was an observation point and they were discussing the ability to put some sort of security camera there to protect the city's property but also provide Mr. Duncan some extra protection.

Mayor Kelley stated that particular location would be close to the Environmental Learning Center.

Ms. Shanahan stated that it would be and the city would need security there for that structure as well. She stated that staff wanted the Commission to understand that they believed the law provided the city with the authority to continue with the interconnect process but for them to be aware that there was a concern that Mr. Duncan had that they had not fully resolved. She stated that Mr. Duncan had been very gracious in meeting with them a couple of times.

Commissioner Boehm stated that if the Environmental Learning Center was built in the proposed location, it would provide access for the public to those waters 24/7, irrespective to the interconnect. He asked what marking off or not adding the interconnect would accomplish, because the public would still be able to get to the parking lot of the Environmental Learning Center and to that body of water.

Ms. Shanahan stated that she believed that the Environmental Learning Center would actually help Mr. Duncan's situation because there would be more access and activity.

Commissioner Boehm questioned why they would hesitate or not complete the interconnect. He noted that the interconnects' greatest value in the event of flooding would be drainage and the ability to control water levels. He stated that would be of value to the entire area and not just the one piece of property. He stated not completing or limiting the interconnect because of concern over security for one

piece of property seemed very limiting in its view, particularly when there would be an Environmental Learning Center with public access nearby.

Mayor Kelley stated that he was not so sure about the city's legal obligation to protect one's private property, even an adjacent one. He stated that he knew that the city tried to protect where it could. He stated that the city owned some of the Sports Complex. He asked if the city were then to be obligated to make sure that people that came to the Sports Complex did not go to adjoining properties. He asked how that could be prevented.

Mr. Hayes stated that they were trying to balance interests, sometimes competing and sometimes common. He stated that the argument was two-fold from Mr. Duncan's perspective.

Mayor Kelley asked if the problem was caused by the city doing something.

Mr. Hayes responded that it was not. He stated that Mr. Duncan's concern was that his existing problem may be exacerbated by having more people in the area. He explained that the counter argument to that was that having more people at the Environmental Learning Center would actually be a good thing as they would have more eyes and more police patrols. He stated that there would be better security there once the project was developed.

Mayor Kelley asked Mr. Hayes if Mr. Duncan had explained what property he had lost.

Mr. Hayes stated that he had and he would let Mr. Duncan elaborate in a minute. He stated that it would certainly be in the city's interest to make sure that their property was secure. He stated that the city may be able to include portions of Mr. Duncan's property in the surveillance of their own property. He stated that they were exploring things of that nature. He explained that the goal was to reach an amicable solution and have the project developed on a friendly basis with neighboring properties. He stated that in terms of the legal right to develop the park and have the interconnects, the city had the legal right to proceed with the project.

Ms. Shanahan stated that staff was not suggesting that the interconnects not be completed, but they just wanted the Commission to be aware of the issues.

Mr. Hayes stated that at a staff level it had been discussed whether or not the interconnects could not be done and from an engineering standpoint it was not a suitable alternative not to complete them.

Mr. Duncan stated that the case law that Mr. Upchurch quoted did not apply to his particular situation.

Mayor Kelley asked Mr. Duncan not to discuss legal issues.

Mr. Duncan stated that he and Mr. Hayes agreed to disagree on who owns the water. He stated that once he proved it, eventually the city would sign a document to him stating that he owned it. He stated that the city did not need the interconnect because they already had one. He explained that there was a canal that came into his property then turned into the lake and continued on to the pumping station. He

noted that it happened to be the proper dimensions but needed to be dug out a little bit deeper. He stated that to connect it they needed to take lake number three and connect it to the mosquito control canal. He stated that it was closer to do that than to take it into his lake. He stated that the pumping station could handle it from there.

Mayor Kelley stated that he did not think they had agreed that that was his lake.

Mr. Duncan stated that the city could call it their lake and he would call it his.

Mayor Kelley stated that it was on city property; whereby, Mr. Duncan stated that it was on his property. He stated that the 50 feet on his end was the original natural pond, which was why Mr. Upchurch's case law did not work. He stated that his was a natural lake and that Mr. Rex Dills had bought the back of his property but not the lake. He stated that it was dug from there on and was an artificial lake. He stated that the water from his natural lake flowed into that lake.

Mayor Kelley stated that was the part that they could not determine that evening.

Mr. Duncan stated that the city could use the mosquito control canal that existed instead of an interconnect. He stated that both lakes had been pumping down for ten years. He asked why all of a sudden they needed an "interstate" to connect it to another lake when all they had to do was tie it into a canal.

Mayor Kelley asked if Mr. Duncan meant to say 'interconnect' instead of interstate.

Mr. Duncan responded that to him it would be an interstate because there would be traffic on it. He stated that if the whole project was just for flooding purposes then the city would not even think about making them large enough for boats. He stated that he would end up shooting someone who was trying to steal his belongings. He explained that he had lost 13 sailboats and last month lost another canoe that was within 50 feet of his home. He stated that the thieves came in from the lake.

Mayor Kelley asked how they got in from the lake.

Mr. Duncan responded that on one side they came in from the canal.

Mayor Kelley asked if they were walking on the land.

Mr. Duncan stated that they were walking on someone else's land and going around his fence. He stated that he also had his fences cut down. He stated that he parked a fifth wheel RV with the intent of spending a week by the lake and two days later there was not a window in it and half of the aluminum was off of it. He stated that he knew it was not the city's fault and that the police department could not do anything. He explained that they could not see it because the only place they could see even a portion of his land was a bench at the end of the canal off of Division Avenue. He stated that police officers were not going to park their cars and walk down there to look around. He noted that they had more to do than that and he understood.

Mayor Kelley stated that no one wanted to do anything that would cause additional harm, destruction, or theft of Mr. Duncan's property. He stated that the study that was done recommended the interconnects, that permits had been obtained from SJRWMD, and that the project had been worked on for three years.

Mr. Duncan stated that he did have one serious problem with the permit. He noted that he read through every bit of it. He stated that there was a statement in there that no environmental damage would be done and he felt that was absolutely not true. He stated that if they were going to dig down six feet that meant that water would be pulled from everything on either side and not just from the lake. He stated that the land on either side would be drained.

Mayor Kelley asked what the elevation was there, as he thought it was 12 feet.

Mr. Duncan replied that it was something like that. He stated that when the two mosquito control canals had been put in, the water poured out of the sidewalls of the canal to where he could see tunnels of water pouring out of the land. He stated that his property used to have some of the nicest, largest oak trees you had ever seen. He stated that they maybe had three or four left as they kept dying and falling because his property was now four feet above the water level. He stated that now 50 years later he looked at the devastation that had caused. He noted that there used to be a complete canopy of trees.

Mayor Kelley stated that the city would try and not cause any additional trespassing on Mr. Duncan's property. He explained that the biggest reason for doing the interconnects was a result of the flood control study commissioned as a result of the unnamed rainstorm that produced 25 to 27 inches of rain. He stated that the people in the Lake Park Circle area sustained a tremendous amount of damage and the city wanted to be able to correct that so that those residents did not have a problem again. He stated that Mr. Duncan and the city would have to agree to disagree. He stated that if Mr. Duncan had to go to court to say he owned the water, then they would have to do that. He stated that he would like to see them not have to do that though.

Mr. Duncan asked what it took to look into the archive of the City Commission records. He stated that back in the 1980s and 1990s the Commission knew he owned the water and tried to purchase his land and the water from him. He asked how he would get access to that information; whereby, Mayor Kelley stated that staff could find it for him.

Mr. Duncan stated that he brought it up many times but none of the attorneys seemed to be concerned with it and instead were looking at case law that he felt did not apply.

Mr. Hayes stated that he spent several months reviewing the archives.

Mr. Duncan asked Mr. Hayes if he found where Mr. Bernie Murphy had an appraisal done on his property and the water rights and subsequently made an offer.

Mr. Hayes responded that the city had a number of deeds for property that the city acquired and were confident in that what had been mapped out for the parameters of the park was what the city owned. He stated that they were confident that the city had identified Mr. Duncan's property location, as well. He stated that if in the future Mr. Duncan would like to sell his property to the city that would be a discussion for a future Commission.

Mayor Kelley asked if Mr. Duncan would like to sell his property to the city.

Mr. Duncan responded that he made an offer to sell to the city back in the 1980s, for 10% below the appraised value.

Mayor Kelley asked Mr. Duncan if he would sell it now.

Mr. Duncan responded that he told the city then that they would never get the lake or the land, as he put it in a trust. He stated that he did not want the city to own it. He stated that the city had made the mistake of screwing with him one time too many back then. He stated that he realized that the current staff and Commission were not the same people he dealt with then. He explained that the property was worth more to him than the city could pay for it.

Mayor Kelley stated that he did not think from what he was hearing that they would be able to come to a mutually satisfying resolution, if they proceeded with staff's recommendation for the interconnects. He stated that sometimes there had to be a trade-off; and to prevent environmental impact and damage on a larger area, a smaller area may have to suffer a little. He stated that it was a terrible situation to be flooded.

Mr. Duncan stated that he agreed that flooding was a terrible situation and that he had helped haul containers for the flood victims after the storm.

Ms. Shanahan explained that they were on the precipice of sending the documents out to bid. She stated that when the issue came up it was researched and staff wanted to share their findings with the Commission.

Mr. Noble noted that there was a period of performance and that the work would have to be completed by January 2014, as in their grant agreement. He stated that they needed to get the bid documents out by December.

Commissioner Partington stated that based on the legal findings he would move that they move forward with sending the documents out for bid. He stated that they should try to work with Mr. Duncan but not let him slow them down. He noted that the project had been in the planning stages for years and needed to happen to protect the people that lived in that area. He stated that his was his primary concern. He stated that no matter where they ended up he wanted to protect those people so that he did not have to walk through the flooded houses with those folks anymore.

Mr. Duncan stated that if the only issue was the flooding, then they could use the mosquito control canal.

Ms. Shanahan stated that they did not need a motion tonight and just needed the consensus of the Commission.

Mayor Kelley stated that he heard no objections to what Commissioner Partington said and requested that staff bring back the item to them at a Commission meeting; whereby, Ms. Shanahan stated that they would and would also continue to work with Mr. Duncan.

IV. Doggy Dining

Ms. Shanahan stated that the Commission had received several letters from Mr. Patrick Daugherty who was very interested in doggy dining. She stated that the state initiated enabling legislation that allowed restaurants to allow dogs into their outside environment provided there was access to the patio from the outside. She stated that local cities must adopt ordinances that allowed restaurants to apply to the city to have outside doggy dining. She stated that the ordinance would not compel any restaurant to do it. She stated that staff was looking for direction from the Commission.

Commissioner Boehm asked Mr. Goss what he would charge for a permit; whereby, Mr. Goss stated that he did not know at this time.

Ms. Shanahan stated that typically it was somewhere between \$50 and \$100.

Commissioner Boehm stated that he viewed doggy dining as something that was business friendly and an opt-in by the businesses. He stated that any patron who did not like the idea did not have to go where it was allowed. He stated that he thought the Commission ought to approve it.

Commissioner Stowers stated that he agreed but also had some level of concern that, depending on the regulations they attached to the permit, it would become a city issue. He stated that he could imagine the phone calls they would receive when someone violated a rule with their dog and the angered individual would be yelling at the restaurant staff, and then calling their Commissioner when they felt like they did not have any recourse but to have code enforcement deal with the issue. He stated that he did not want code enforcement to be spending all their time and resources going out and babysitting what the permitted businesses should be dealing with. He stated that if a business took on the permit then it should be their responsibility. He stated that he agreed with Commissioner Boehm. He stated that it was market driven and if people did not want to be around dogs and the business owner decided to do the doggy dining, then they would have to balance possibly losing some customers while they gained others.

Commissioner Partington stated that he would accept it but had some concerns as well. He stated that he was concerned about the cost and the need for it to be properly enforced. He explained that according to the state legislation, there had to be appropriate signage, each table outside had to have a hand sanitizer on it, and customers had to be told that they needed to wash their hands before they ate. He asked who would enforce all of that and make sure that those things happened. He stated that the Neighborhood Improvement Division (NID) did not have currently enough staff to do it. He stated that it was market driven and he did not have to go somewhere that allowed customers to bring their animals if he did not want dog hair or dog fecal matter in his food. He noted that those were all things that could happen quite easily. He stated that making sure the city charged enough to recoup their costs was a priority. He stated that he did not think that Ormond Beach citizens should have to subsidize people who wanted to bring their dogs to a restaurant.

Ms. Shanahan stated that health inspection would also provide some degree of enforcement and that if there was a health complaint the health department would intercede. She stated that the health department had responded to several

complaints at Einstein Bagels by an individual who did not like a dog being outside. She stated that technically that was currently not allowed.

Commissioner Kent stated that he was fine with permitting doggy dining.

Mayor Kelley stated that the state requirements had to be posted where they would be visible to everyone. He stated that he knew it was market driven. He stated that he had a dog and he did not sit with him and eat. He explained that his dog had a place where he had to sit while he ate. He stated that he did not want to walk through a herd of dogs to get to where he wanted to eat. He stated that he spoke to several restaurants that day and he felt that the city would be doing something for five or six restaurants that may want to participate, and depending on how it turned out, may not. He stated that as Commissioner Stowers and Commissioner Partington pointed out, it would be opening up a major issue. He stated that the first time there was an incident, the city would have to have strict enforcement.

Commissioner Boehm stated that regulations would have to be established. He stated that to him it seemed that before the restaurant received the permit they would have to sign that they read and were provided with a copy of the ordinance and regulations. He noted that if the restaurant or their employees violated the terms that they could lose their permit.

Mr. Goss stated that the draft ordinance contained a revocation clause if the restaurant was found not in compliance with the standard. He stated that the revocation would go for a period of 180 days after which the restaurant could re-apply. He stated that if they were caught again after that, they would not be able to re-apply.

Commissioner Partington asked if there was a way to make sure, prior to the permit being issued, that the required signage was up.

Mr. Goss stated that an inspection would be done. He stated that a typical zoning review would be performed and an inspector would go to the restaurant and make sure the requirements were done before a business tax receipt (BTR) for doggy dining was issued.

Commissioner Partington asked what the cost of that would be; whereby, Mr. Goss stated that he did not know. He stated that there would be a separate charge for the inspection and for processing.

Mayor Kelley stated that he believed that \$50 was too low for a fee. He stated that he did not believe you could make it high enough to cover the costs.

Ms. Shanahan stated that staff would shop around and see what other communities were charging.

Mayor Kelley stated that Daytona Beach enabled similar legislation. He stated that he believed that he read that their fee was \$500.

Mr. Goss stated that he had their ordinance but the fee was not included. He stated that he added a provision to the ordinance that the city would not be assuming any responsibility, obligation, or liability from the Florida Division of Hotels and

Restaurants. He stated that it was still their responsibility to enforce standards in restaurants.

Mayor Kelley stated that he was not keeping count for or against, but during the last several months, he had had more people email him to complain about allowing it than restaurants clamoring to have it that were not approached by someone to sign a petition.

Commissioner Stowers stated that in terms of enforcement, he always said that if any of the regulations were, in effect, unenforceable, he would not want to include them. He noted that he knew that they had to include the state regulations. He stated that he read that if a dog got up in a chair it would be a violation. He stated that his concern would be that if someone saw that happen, got angry, and called the city to complain; then Ms. Joanne Naumann, Neighborhood Improvement Manager, would have to go to the restaurant and it would be he-said, she-said because the dog would be down or gone. He stated that would just be wasting everyone's time and city resources. He stated that he would even be in favor of adding fines to violations. He stated that he had received emails that he believed were a result of misinformation. He explained that he received emails from people assuming that they were approving doggy dining and not approving a process where restaurants applied for a permit and had to meet standards. He stated that he believed it was business friendly.

Mr. Goss stated that there were no regulations in the ordinance that did not come from the state required statute. He stated that they were required to include all of it.

Mayor Kelley asked staff to prepare an ordinance to bring to the Commission for a vote.

Ms. Shanahan stated that it would have to go before the Planning Board first because it was a Land Development Code amendment.

Mr. Daugherty stated that he heard a couple of things that he did not think were quite correct.

Mayor Kelley stated that Mr. Daugherty would have two or three future times to comment on the item as it made its way through the process. He stated that he did not want to get into a debate or argument with him and that the Commission had heard from him a few times. He stated that audience comments were limited at workshops because the Commission was not voting and was getting its first chance to discuss an issue collectively.

Mr. Daugherty stated that Mayor Kelley mentioned that the city might be allowing doggy dining for the benefit of five restaurants. He stated that he had delivered in writing eight restaurants that strongly supported it; whereby, Mayor Kelley stated that he stood corrected.

Mr. Daugherty stated that of all the restaurants in the city, it would only apply to those with exterior patios and dining areas. He stated that his approximation was that there were about 15 of those so they had eight of 15 in favor. He stated that Daytona Beach did something very smart and required in their application process a hold harmless agreement. He stated that he thought that was wise because he did

not want his city to get in trouble over allowing doggy dining. He stated that if a restaurateur had a patio they could designate certain areas for the dogs and other areas to not have them. He stated that may alleviate some of Commissioner Partington's concern about eating with dog hair.

V. Close the Meeting

Ms. Shanahan stated that staff had sent letters to all of the Advisory Boards and Committee members asking if they wished to serve again, since the two year term was expiring. She stated that City Clerk Scott McKee would be sending a worksheet to each member of the Commission regarding whom they were interested in appointing or re-appointing and it would also indicate who was willing to serve again or not. She stated that she was looking to see when the Commission would want to have a workshop on that. She stated that previously at the term expiration, there was a workshop, the Commission discussed their appointments, and then staff finalized that information in a meeting. She stated that December 11, 2012, was the Tuesday in between the two December Commission meetings, if they wanted to hold it then. She stated that they could also try and hold the workshop before the meeting on December 4, 2012, or December 18, 2012 at 5:30 p.m.

Mayor Kelley asked if they would need a meeting on December 18, 2012.

Ms. Shanahan stated that they would need another meeting before the January meeting.

Commissioner Boehm requested the workshop be held before the meeting on December 4, 2012. He stated that if they did not finish they could finish after the meeting. He stated that there would probably only be a few collective appointments they needed to make.

Mayor Kelley stated that, for those in support of doggy dining, he was still 100% in support of a dog park. He stated that he had been looking for a space for that and hoped it would come up in their discussions next year.

The meeting was adjourned at 6:32 p.m.

Transcribed by: Colby Cilento