

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

June 19, 2007 7:00 p.m.

Present were: Mayor Fred Costello, Lori Gillooly, Troy Kent, Ed Kelley, and Bill Partington, City Manager Isaac Turner, Assistant City Manager Ted MacLeod, City Attorney Randal Hayes, and City Clerk Veronica Patterson.

- 1) Meeting call to order by Mayor Costello.
- 2) Invocation.
- 3) Pledge of Allegiance.
- 4) **AUDIENCE REMARKS:**
- 5) **APPROVAL OF THE MINUTES** of the June 5, 2007, meeting.
- 6) **PRESENTATIONS:**
 - A) Government Finance Officers Association Distinguished Budget Presentation Award.
 - B) Presentation by Randell Brown, Regional Director, Department of Financial Services, Daytona Beach Service Center.
- 7) **INTERGOVERNMENTAL REPORTS:**
 - A) Metropolitan Planning Organization
 - B) Volusia Council of Governments
 - C) Water Authority of Volusia
- 8) **CONSENT AGENDA:** The action proposed is stated for each item on the Consent Agenda. Unless a City Commissioner removes an item from the Consent Agenda, no discussion on individual items will occur and a single motion will approve all items.
 - A) Resolution No. 2007-79 of the City Commission, also acting as the Community Redevelopment Agency of the City, authorizing the execution of a Property Improvement Grant Agreement between the City of Ormond Beach Community Redevelopment Agency and Tomoka Properties, LLC, a Florida Limited Liability Company. (163 Tomoka Avenue - \$50,000)
 - B) Streetscape Lighting Improvements:
 - 1) Resolution No. 2007-80 authorizing the sole source procurement of light poles and fixtures from SESCO Lighting regarding the Granada Boulevard Streetscape project; authorizing the approval and execution of a purchase authorization (Requisition No. 0000003901) and payment therefor. (\$43,611 – TIF Funds)
 - 2) Resolution No. 2007-81 accepting a bid from Paul's Electrical Contracting, Inc., for installation of light poles and fixtures for the Granada Boulevard Streetscape

project under Bid No. 2007-08; authorizing the execution of a contract and payment therefore; rejecting all other bids. (Thompson Creek Road and New Britain Avenue from N. Beach Street to N. Yonge Street) (\$89,100 - TIF funds)

- C) Resolution No. 2007-82 authorizing the renewal of a Right-of-way Maintenance Agreement between the City of Ormond Beach and the Florida Department of Transportation; authorizing the execution of a Renewal Agreement therefor. (\$132,000 FDOT payment)
- D) Resolution No. 2007-83 accepting a bid from Florida Contracting Company, Inc., for construction services regarding the Tymber Creek Road and Hand Avenue Force Mains project under Bid No. 2007-19; authorizing the execution of a contract and payment therefor; rejecting all other bids; and setting forth an effective date. (\$464,255)
- E) Resolution No. 2007-84 accepting a bid from P&S Paving, Inc., for the Cassen Park Parking Lot Improvements project under Bid No. 2007-15; authorizing the execution of a contract and payment therefor; rejecting all other bids; and setting forth an effective date. (\$224,224)
- F) Review of FY 2006-07 budget results.

DISPOSITION: Approve as recommended in City Manager memorandum dated June 14, 2007.

9) **PUBLIC HEARINGS:**

- A) Appeal of a final administrative decision of the Site Plan Review Committee relative to a development order submitted by Ormond Power Properties, LLC, relative to an office building to be located at the northeast corner of Nova Road and Fernery Trail.
- B) Resolution No. 2007-85 authorizing the execution and issuance of a Development Order for a Special Exception regarding “200 East Granada Boulevard” located at 200 East Granada Boulevard and being situated within the B-4 (Central Business District) zoning district within the Downtown Overlay District, by authorizing a waiver of parking requirements to allow the operation of a paid commercial parking lot; establishing conditions and expirations of approval.
- C) Resolution No. 2007-86 authorizing the execution and issuance of a Development Order for a Special Exception regarding “Kidsko Daycare Center” on a site located at 160 Business Center Drive and being situated within the I-1 (Light Industrial) zoning district to allow a child care facility consisting of three buildings totaling 13,799 square feet to be constructed in two phases; establishing conditions and expirations of approval.
- D) Ordinance No. 2007-20 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 0.30 acres located at 94 Plaza Grande Street, one hundred fifty (150’) feet east of Cordova Avenue, from Volusia County “Urban Medium Density” to Ormond Beach “Low Density Residential”; repealing all inconsistent ordinances or parts thereof; and setting forth an effective date. (First and Only Reading)
- E) Ordinance No. 2007-21 amending the Future Land Use Element of the Comprehensive Plan by amending the Future Land Use Map to change the designation of two (2) parcels of real property totaling 3.29 acres located on the northeast corner of Tymber Creek Road and West Granada Boulevard (SR40) (1951 and 1999 West Granada Boulevard) from Volusia County “Commercial” to Ormond Beach “Commercial”; repealing all inconsistent ordinances or parts thereof; and setting forth an effective date. (First and Only Reading)
- F) Ordinance No. 2007-22 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 0.19 acres located at 2 Plaza Drive from Volusia County “Urban Medium Density” to Ormond Beach “Low Density Residential”; repealing all inconsistent ordinances or parts thereof; and setting forth an effective date. (First and Only Reading)

10) **SECOND READING OF ORDINANCES:**

- A) Ordinance No. 2007-17 changing the name of a portion of “Thornhill Chase Court” to “Thornhill Chase Circle,” within Briargate Subdivision, Unit I, Phase II, of the “Hunter’s Ridge” Development of Regional Impact; repealing all inconsistent ordinances or parts thereof; and setting forth an effective date.
- B) Ordinance No. 2007-18 approving a replat of “Briargate,” Unit 1, Phase I, located within “Hunter’s Ridge” Development of Regional Impact by eliminating Lot 13, to create a new road, renumbering Lots 12 and 14, to become Lots 1 and 2; establishing conditions and expiration dates of approval; and setting forth an effective date.
- C) Ordinance No. 2007-19 approving a replat of “Westland Village, Phase I,” located within the OB-II Phase of the “Hunter’s Ridge” Development of Regional Impact by changing Lot 45 from a residential lot to a wildlife/water management area; changing the common area between Lots 39 and 40 to a developable residential lot; renumbering lots 40 to 44 consistent therewith; establishing conditions and expiration date of approval; and setting forth an effective date.

11) **RESOLUTIONS:**

- A) Resolution No. 2007-87 of the City Commission of the City of Ormond Beach, Florida, authorizing the issuance of not-to-exceed \$7,000,000 in principal amount of its Water and Sewer Revenue Bond, Series 2007, for the purpose of financing the construction and acquisition of certain additions, extensions, and improvements to the water and sewer system of the City; determining certain details of said bonds; providing for the security of said bonds; awarding the sale of said bonds to the successful proposer for said bonds; appointing a paying agent and registrar for said bonds; authorizing proper officials to do all things deemed necessary in connection with the issuance, sale and delivery of said bonds. (Branch Banking & Trust Company – 4.15% fixed)
- B) Resolution No. 2007-88 accepting the bid of McMahan Construction Co., Inc., for construction services regarding the Water Treatment Plant Softening Area Modifications project (Bid No. 2007-20); rejecting all other bids; authorizing the execution of a contract between the City and McMahan Construction Co., Inc., and payment thereunder; and setting forth an effective date. (\$2,691,000)
- C) Resolution No. 2007-89 authorizing the execution of a contract for sale and purchase between the City and Johnson Tech Supply, Inc., regarding the purchase of vacant land on Orchard Street; ratifying and affirming an option agreement for the purchase thereof. (\$300,000)
- D) Resolution No. 2007-90 appointing a member to serve on the Volusia Growth Management Commission; establishing term and conditions of service. (Gerald Brandon)

12) **DISCUSSION ITEMS:**

- A) Disposition of surplus City property.
- B) Selection of an independent auditor.

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

14) **CLOSE THE MEETING**

Item #1 - Call to Order

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

Item #2 - Invocation

Deputy Mayor Kelley gave the invocation.

Item #3 - Pledge of Allegiance

Mayor Costello led in the Pledge of Allegiance.

Item #4 - Audience Remark

Don Seps

Mayor Costello stated that Mr. Don Seps was a City Attorney for Ormond Beach a number of years ago and he passed away recently. He advised the memorial service was held earlier today.

Staff Customer Service

Ms. Pat Behnke, 15 Malayan Sunbear Path, thanked the City Manager's secretary, Jackie Burke, for taking time out of her day to help find an earring she had lost in City Hall.

Mayor Costello noted he was proud of the Ormond Beach's team of employees.

John Anderson Drive

Mr. Glenn Jaspers, 160 Ocean Terrace, stated John Anderson Drive has needed stormwater repairs for many years and was listed on the Capital Improvements Project as a collector road in 2000. He stated a collector road was described as 12 feet wide with curbs and gutters and eight foot sidewalks; therefore, he recommended removing the designation of collector road from John Anderson Drive. Mr. Jaspers advised at the end of each fiscal year unappropriated funds were to be returned to the General Fund; and if there was no action on a project after five years, any unappropriated funds were to be returned to the General Fund.

Mayor Costello asked staff to address this in the Friday letter. He noted this had been on the Capital Improvements Project list but was never funded, which he believed was the reason the project remained. Mayor Costello stated it may be appropriate to change the definition of a collector road because no Commission member favored 12-foot lanes and an eight-foot sidewalk on John Anderson Drive.

Fluoridation

Mr. Jim Schultz, 117 Harvard Drive, stated he did not see the warning regarding fluoride in water for infants in the City's water report. He expressed appreciation for the City including this information in the newsletter, but noted that one warning was not adequate and recommended this notice be included on the City's website.

Mayor Costello stated he believed it was appropriate in future years for the Water Quality Report to mention the situation regarding the fluoride in the water for infants. He stated he was proud Ormond Beach fluoridated their water from between .7 and 1.2.

Item #5 - Approval of Minutes

Mayor Costello advised the minutes of the June 5, 2007, meeting had been sent to the Commissioners for review and asked if there were any corrections, additions, or omissions.

Mayor Costello stated that the minutes were approved as submitted.

Item #6(A) - Government Finance Officers Association Distinguished Budget Presentation Award

Mayor Costello presented the Government Finance Officers Association Distinguished Budget Presentation Award to Ms. Kelly McGuire, Budget Director. He noted this was a national award.

Ms. McGuire explained the Government Finance Officers Association Distinguished Budget Presentation Award was specifically for the presentation of the budget, which would have to meet various criteria set by the General Finance Officers Association (GFOA).

Mr. Isaac Turner, City Manager, stated one of the most coveted responsibilities staff had was to make certain the finances were tracked properly with proper accounting, and this award provided some added assurances to make certain the City was performing these duties appropriately. He noted the GFOA added certain restrictions and standards on those cities applying for this award.

Mayor Costello stated this was a good benchmarking tool and best practices measurement.

Item #6(B) - Randell Brown, Regional Director, Department of Financial Services, Daytona Beach Service Center

Mr. Randell Brown, Regional Director, Department of Financial Services, 135 Executive Circle, Daytona Beach, stated House Bill 1A changed the insurance laws in Florida. He explained consumers were now permitted to drop windstorm from their policy with the approval of their mortgage company, should they have a mortgage. Mr. Brown advised consumers were also allowed to drop contents from their policy in an effort to save money. He stated that last year reinsurance was purchased from a reinsurance company at high premiums, but this year the State was selling reinsurance to the insurance companies at a lower premium to pass the savings on to the consumer. Mr. Brown cautioned that should there be another hurricane season as in 2004, there would be problems because there would be giant assessments. He advised companies were no longer allowed to “cherry pick” explaining that if a company sold homeowners’ insurance in other states, they must sell homeowners’ insurance in Florida. Mr. Brown stated a company can no longer deny coverage based strictly on the age of the home. He advised Citizens was now allowed to be competitive, and this may allow for lower rates. Mr. Brown reported Citizens now had a commercial property insurance policy with a \$1 million cap. He offered his assistance indicating, he could be reached by calling his office at 1-800-342-2762 or his local number at 386-323-0900.

Mayor Costello stated at one time it was best to have the entire Ormond Beach political boundary inside the wind pool because business may not have been able to obtain insurance outside of the wind pool. He asked if it the City were to change to a geographical line if it would now be easier for businesses to get insurance whether they are inside or outside the wind pool. Mayor Costello clarified his question was whether it would be an advantage for Ormond Beach businesses to be inside the line.

Mr. Brown stated there was no advantage or disadvantage to staying in the line, but he offered to investigate the issue.

Mayor Costello asked Mr. Paul Lane, Finance Director, to assist Mr. Brown in investigating this question under the new provisions.

Item #7(A) - Metropolitan Planning Organizations

Mayor Costello reported there was nothing new to report regarding the Metropolitan Planning Organization (MPO).

Item #7(B) - Volusia Council of Governments

Mayor Costello reported the budget seminar and “How Shall We Live” seminar just concluded, and summaries of these would be sent. He stated Volusia Council of Governments (VCOG) tried to figure out how to save land that they could not afford to purchase.

Item #7(C) - Water Authority of Volusia

Commissioner Kelley stated the Water Authority of Volusia (WAV) would meet tomorrow.

Item #8 - Consent Agenda

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

Mayor Costello stated that Item No. 8(C) would be pulled for discussion.

Commissioner Kent requested removing Item No. 8(E) for discussion.

Commissioner Partington moved, seconded by Commissioner Kelley, for approval of the Consent Agenda, minus Item Nos. 8(C) and 8(E).

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

Item #8(C) - Right-of-way Maintenance Agreement with the Florida Department of Transportation

RESOLUTION NO. 2007-82

A RESOLUTION AUTHORIZING THE RENEWAL OF A RIGHT-OF-WAY MAINTENANCE AGREEMENT BETWEEN THE CITY OF ORMOND BEACH AND THE FLORIDA DEPARTMENT OF TRANSPORTATION; AUTHORIZING THE EXECUTION OF A RENEWAL AGREEMENT THEREFOR; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Kelley moved, seconded by Commissioner Partington, to approve Resolution No. 2007-82, as read by title only.

Mr. Glenn Jaspers, 160 Ocean Terrace, stated the budget calls for \$175,000 to fund roadside and right-of-way maintenance, which was \$43,000 greater than what FDOT would reimburse, and the justification for the expense was because the City's level of maintenance was commensurate with Ormond Beach's standards and expectations which exceeded FDOT requirements. He urged the City call FDOT to maintain their roadside and right-of-way saving the \$43,000.

Mayor Costello stated very few communities adopt FDOT standards. He noted FDOT provides enough money that would provide safety, but most cities augment those funds. Mayor Costello pointed out that noted this was another State unfunded mandate.

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

Item #8(E) - Cassen Park Parking Lot Improvements Project

RESOLUTION NO. 2007-84

A RESOLUTION ACCEPTING A BID FROM P&S PAVING, INC., FOR THE CASSEN PARK PARKING LOT IMPROVEMENTS PROJECT UNDER BID NO. 2007-15; AUTHORIZING THE EXECUTION OF A CONTRACT AND PAYMENT THEREFOR; REJECTING ALL OTHER BIDS; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Kelley moved, seconded by Commissioner Partington, to approve Resolution No. 2007-84, as read by title only.

Mr. Worley Pruett, 129 Seminole Avenue, stated he did not believe it was necessary to pave Cassen Park. He pointed out that to pave the park the City had to go to the St. Johns River Water Management District for a stormwater permit. Mr. Pruett reported the box would be high maintenance and cost \$30,000 including installation. He noted nothing was being done to help the boaters, and \$224,000 of taxpayers' money was being spent.

Commissioner Kent stated he heard from residents years ago that they wanted the park paved, but he expressed concern regarding spending \$250,000 of Tax Increment Financing (TIF) funds. He asked if this use of TIF funds would increase the value at Cassen Park, City Hall, or the library.

Mr. Paul Lane, Finance Director, stated this would probably not enhance the value of the TIF district; but money was previously spent on parks, and this was an improvement to an existing park. He pointed out that Fortunato Park was developed and paved with TIF money.

Commissioner Kelley stated his understanding of a TIF district was such that the funds would be utilized to help improve the value of the property so that in the future there would be more money to go into the General Fund. He noted he was a proponent of using TIF funds for improving property if it was necessary and it would generate something in the future. Commissioner Kelley reported this may make the park more aesthetically pleasing, but he questioned if it would generate more for the community in the future.

Commissioner Gillooly advised she would prefer to hear from Ormond Main Street as to whether or not they believe this was an economic enhancement to the district, particularly in

light of the exorbitant cost of the project. She noted she understood why paving would enhance the look and keep it cleaner, but there may be a better way to accomplish that.

Commissioner Kent questioned the cost for this project.

Ms. Judy Sloane, Public Works Director, stated this came to the Commission as a request from Commissioner Kent. She noted originally the hope was that it would be a simple project; however, the initial proposal to take out all of the landscaping was not acceptable, and it led to the more costly pervious pavement and treatment box. Ms. Sloane pointed out that the City had a number of these types of treatment boxes in the City, since there was not a great deal of room in already developed areas to treat the stormwater. She noted the runoff would be improved because there would no longer be dirt draining into the river, therefore creating an environmental benefit. Ms. Sloane concurred that this was an extremely high cost for the amount of paving involved. She explained most of the pollutants were in the sediment, and by installing the treatment box, the sediments would be collected and vacuumed out. Ms. Sloane noted these boxes were approved by St. Johns as a water quality improvement devise.

Mayor Costello reported he was pleased to see porous concrete would be used. He noted he would prefer extending the length of the bays for the trailers, and he questioned if the park could be redesigned to create longer bays.

Ms. Sloane stated she would investigate the possibility to make modifications, but there was a limit on what could be provided and what the ramp could accommodate.

Commissioner Gillooly stated she could not vote for this tonight because she would prefer having Ormond Main Street discuss any use of TIF funds and because she would prefer staff investigate redesigning the park.

Mr. Randal Hayes, City Attorney, expressed caution any time the City used a private board to make recommendations to the Commission that it may implicate Sunshine Law requirements.

Commissioner Gillooly suggested that the group come to the Commission to make a formal statement.

Mr. Hayes asked the Commission to allow him to examine this issue further to provide better guidance.

Mayor Costello stated that even if the Commission would not be provided a formal recommendation from Ormond Main Street, he requested they review any TIF expenditures before bringing it to the Commission.

Mr. Hayes stated Ormond Main Street may certainly discuss any issue they choose; but when the Commission would rely on the board as a regular part of the process, the Sunshine Law may need to come into consideration. He noted if this was what the Commission wanted to do, he would prefer a procedure be in place to make sure the Commission's wishes were being followed.

Mayor Costello noted he would reserve the right to not vote as the board would recommend, but it would be appropriate for a board discussion.

Call Vote:	Commissioner Kelley	no
	Commissioner Partington	no
	Commissioner Gillooly	no
	Commissioner Kent	no
Failed.	Mayor Costello	no

Item #8(F) - Budget Results

Mayor Costello stated the tax revenue was up \$75,000; the sales tax was down \$132,000; construction and building permits were down \$300,000; and interest income was up \$200,000. He noted it was difficult to come up with a budget considering the multi-million dollars involved, and he commended staff for how close they come to the actual figures. Mayor Costello thanked staff for the budget reports.

Item #9(A) - Expert Med Office Project

Mayor Costello reported this was a public hearing involving an appeal by residents of the Whispering Oaks subdivision regarding a final administrative site plan approval of the City's Site

Plan Review Committee regarding a development approval for the Expert Med Office project at the corner of Nova Road and Fernery Trail.

Mayor Costello called for a recess at 7:42 p.m. to allow everyone who wanted to speak an opportunity to submit a speaker's card. He reconvened the meeting at 7:45 p.m.

Mayor Costello stated since this was a quasi-judicial proceeding, he would ask everyone who wished to offer testimony in this matter to please stand to be sworn in.

Ms. Veronica Patterson, City Clerk, swore in all of those about to speak at the public hearing.

Mayor Costello advised residents and appellants have the burden to produce competent, substantial evidence showing that the decision of the Site Plan Review Committee to approve the site plan development order with respect to the issues on appeal were inconsistent with the Comprehensive Plan and did not meet the standards and criteria set forth in the Land Development Code. He stated: 1) hearsay evidence was admissible, but insufficient on its own to support a position or decision; 2) lay testimony and citizen testimony was admissible if it was based on fact; however, generalized statements of opposition do not constitute competent, substantial evidence and are inadmissible and should be disregarded; 3) expert witness testimony was admissible, but the Commission was not bound to accept expert testimony where other competent substantial evidence supported a contrary result; 4) written reports, records, maps, diagrams, and other official records constitute competent substantial evidence; and 5) argument from attorneys was not evidence.

Mr. Dennis Bayer, attorney representing the residents of the Whispering Oaks subdivision, stated the letter of appeal was not attempting to completely stop this project, but there were significant concerns. He noted once a developer meets the technical requirements of the code, staff becomes somewhat limited in their options. Mr. Bayer urged the Commission to consider not only the technical requirements of the code, but also the policies in the Land Development Code and Comprehensive Plan. He outlined that there were three primary issues: traffic, buffering, and stormwater. Mr. Bayer pointed out this project was originally over 10,000 square feet, which would trigger a special exception process requiring more review along with public hearings and input before a decision would be made. He explained a suggestion was made by staff which resulted in a building with a first floor of 7,297 square feet and a second floor of 2,632 square feet or slightly under the 10,000 square feet threshold that would trigger the special exception review. Mr. Bayer stated the second floor was proposed for storage, but the concern was that more use could be added at a later date that would only require administrative review by staff. He noted Mr. Ervin indicated tonight that should the 10,000 square foot threshold be met, the project would have to go through the special exception process; however, since the building required a significant investment, it would be a great deal easier to add the additional office space when the impacts would not have been computed into what was under consideration tonight.

Mr. Bayer reported this was part of a lot split with the office on the back portion of the property. He noted none of the analysis considered any of the traffic created by the front parcel. Mr. Bayer advised the concern was that all of the traffic would come out onto Fernery Trail, which was a cul-de-sac and not a street. He noted it was the City's policy to put traffic out onto a lower classified street.

Mayor Costello advised the question for tonight was not whether or not the policy was right, but whether or not staff interpreted the policy correctly.

Mr. Bayer advised his position was that this was a cul-de-sac and not a street in that it would not provide any relief to congestion on Nova Road. He stated the traffic counts that were performed showed that if this office complex would drain onto Fernery Trail, it would violate the City's standards and level of service for a cul-de-sac based upon the number of trips generated. Mr. Bayer reported more than 200 trips per day were not permitted on a cul-de-sac.

Mr. Bayer reported the staff report indicated a 30-foot buffer was required where it abuts residential, but on portions of residential property there was no 30-foot buffer, and a six-foot buffer was proposed where a portion of the buffer had a dry retention pond. He noted a significant number of the larger trees in this corner of the property were where the most buffering was needed because of the line of sight to Nova Road. Mr. Bayer contended that the buffer was not a true buffer by allowing the retention system in the area. He advised that by reconfiguring the road as recommended exiting onto Nova Road, a significant number of oak trees could be saved. Mr. Bayer displayed the plans and pointed out that in the southeast corner where the driveway access was proposed, there were a number of large oak trees. He noted while this was originally a single project in 1987, there were two driveways accessing onto

Fernery Trail. Mr. Bayer stated the plan clearly indicated the drives were shown for illustrative purposes only; therefore, this would not create any entitlement to allow the use of Fernery Trail for driveway access. He reported these plans show only one commercial lot, which would deny the developer the opportunity to have a lot split.

Mr. Bayer questioned why there was to be a second story on the office building if it was only meant for storage; how staff would monitor if the occupants added offices to the second floor; why they were not using Nova Road as an access road; and how much traffic would result from the front lot if that access was also placed on Fernery Trail. He requested the Commission consider the definition of B-8 zoning, which was to provide for the establishment of general commercial activities on the properties that abut arterial roads, and this property, once divided, would not abut an arterial road. Mr. Bayer stated these district regulations were intended to promote the preservation of natural resources, increase opportunities for beautification, and provide extensive buffering between non-residential and residential uses. He reported allowable uses were restricted to those most compatible with residential uses; however, as designed, the project was not compatible with existing residential uses. Mr. Bayer reported Section 3-53 of the code indicated that permanent dead end streets should not exceed 660 feet in length, service more than 20 homes, or generate more than 200 average daily trips and shall be provided with a cul-de-sac having a minimum pavement of 25 feet. He explained the evidence would clearly establish these provisions would be violated. Mr. Bayer asked the Commission to apply common sense to the codes and reverse staff's decision.

Mr. Scott Steman, 14 Fernery Trail, a Civil Engineer with Daytona Beach, stated this project did not comply with the City's Land Development Code in that cul-de-sacs should not exceed 660 feet in length or generate over 200 average daily trips, and this street was over 1,200 feet long and would clearly generate over 200 trips. He pointed out these standards have been in place since the beginning of residential street design and directed to access, egress, secondary outlets, and safety; however, they are not developed to dictate the thickness of asphalt as was asserted. Mr. Steman stated the City should exercise all options to alleviate the non-conformance rather than contribute to it. Mr. Steman advised he had asked for a traffic study, and the study concluded there would be some impact, but nothing that could be alleviated by an additional lane. He explained there was no procedure set up to analyze an intersection consisting of a six-lane arterial and a two-lane, dead end cul-de-sac. Mr. Steman reported among the many problems with the study was the conclusion that in the peak p.m. hour there would be 15 trips leaving Fernery Trail, but there were between 40 and 60 employees shown on the plans; therefore, there would be a minimum of 40 trips plus the residents' trips or three times the estimated peak p.m. trips. He pointed out that since the parcel has been split, there was no way to know what the use of the other parcel would be, pushing the threshold further past the 200 trips and making the p.m. trips six to seven times the study estimate, leaving it impossible to turn left out of the neighborhood. Mr. Steman noted there would be a long wait for all cars in that some would turn left and some would turn right, and there was only one lane out. He advised this project could use Nova Road, eliminating this entire discussion and leaving the development with minimal impact on the neighborhood. Mr. Steman advised he spoke to the FDOT permit engineer who informed him this project would qualify for a driveway permit on Nova Road.

Mr. Jim Teters, 9 Fernery Trail, reported this development violated the B-8 definition of commercial property and buffering. He noted staff was helpful in providing information and reported the developer had met the technical specifications. Mr. Teters pointed out the first plans submitted to the Site Plan Review Committee depicted a storage facility with 20 employees. He noted he would provide the plans, transcripts from the meetings, copies of pages from the blueprints, and the actual blueprints as evidence. Mr. Teters advised this originally was a 10,000 square foot two-story building, which would require a special exception; but staff recommended the developer construct the building under 10,000 square feet to avoid the public hearing process and that he could come back at a later date and obtain staff approval for use other than storage for the second floor. He reported the building then came in slightly under the 10,000 square foot threshold. Mr. Teters advised that the landscape architect pointed out that the lot split would remove basically all of the trees from both lots. He stated the road had a beautiful tree canopy, but after grading the residents would be able to clearly see through to Nova Road; therefore, he recommended keeping the trees by constructing the building in the middle of the lot. He stated the developer commented that economic reasons prohibited that placement. Mr. Teters reported the plan was to place the largest portion of the commercial development on the back side of the property abutting the residential area, and the smallest lot with the least impact would be placed on Nova Road. He displayed a photo to show what would occur at 5:00 p.m. with only 20 of the proposed 60 employees lined up to exit Fernery Trail onto Nova Road. Mr. Teters explained the development would take out all of the trees, and it would be necessary to replant smaller trees that may obscure the view of the building and Nova Road in 20 to 30 years. He noted the out parcel was to become a Dunkin' Donuts, which would

compound the problem. Mr. Teters reported that after the first Site Plan Review Committee meeting he was told there would be 60 employees with 50 parking spaces, which was another issue he did not understand.

Mayor Costello stated the number of employees would not impact the size of the building, and the Commission could not evaluate that issue. He urged Mr. Teters concentrate on whether or not this project was consistent with the Comprehensive Plan.

Mr. Teters stated the number of employees was a serious consideration in the definition of the B-8 zoning in the Comprehensive Plan. He noted this would provide a substantial impact to the residents' access to their street, it would decrease the property values, and it would significantly change the character of neighborhood. Mr. Teters pointed out the entrance to the building was at the beginning of the residential area and could not have a more adverse effect on the residents when the ingress and egress should be on Nova Road. He stated this building was not appropriately included in the proper category in that it was a telemarketing business, not an office.

Mr. Ed Stevenson, 15 Fernery Trail, distributed photos depicting stormwater problems from Hurricane Charley in 2004. He noted the pond was not used only for overflow as the developer indicated. Mr. Stevenson reported there were no sidewalks in the subdivision and any additional traffic would be harmful to the residents.

Ms. Lori Bennett, 5 Fernery Trail, stated there were many issues such as safety concerns and water problems, but her main concern was traffic in that the residents deserve safety, privacy, and buffering between the homes and businesses. She read a letter by Ms. Bertha Lepeska, 1 Fernery Trail, who could not attend the meeting tonight and expressed her fears regarding how the new development would impact her privacy, safety, and traffic conditions with large trucks accessing the building.

Mr. Marc Hayes, 906 Quail Run, stated he did not oppose development, but this property would abut his home. He reported when purchasing his home he was concerned about the commercial zoning, and City staff informed him the property would require a 30-foot buffer. Mr. Hayes reported there was no preservation of the natural buffer, leaving a parking lot and garbage dumpster a few feet from his property line. He pointed out the plans call for the removal of all of the trees near the power lines leaving no natural buffer. Mr. Hayes stated this building would have an incompatible impact on the residents through its noise, exhaust fumes, and lights at night that a buffer was meant to remove or diminish. He noted should the City allow this intense commercial business to be placed so close to two quiet residential subdivisions, he would request the parking area, dumpster, and building location be placed further to the west moving the western retention area to the east which would allow a larger dry retention area along with a 30-foot natural buffer.

Mr. Richard Jones, 871 Old Mill Run, president of The Village Subdivision homeowners' association, stated the zoning was B-8, and he questioned how the back parcel could be B-8 when it would no longer abut an arterial road. He recommended it should be changed to R-3C zoning. He noted the code called for a natural vegetation buffer whenever possible. Mr. Jones stated the buffer should be made to obstruct the view, but this was not being done on this plan. He advised this project would generate more traffic and congestion with 60 employees, and he expressed concern regarding hazardous materials being introduced into the neighborhood. Mr. Jones asked the Commission to reconsider this project and asked the 30-foot buffer be kept in place.

Mr. Bayer submitted the plans that were sealed on January 24, 2007, as part of the record, along with the traffic study.

Mr. Clay Ervin, Chief Planner for Special Projects, stated the project had a commercial land use and was consistent with the Comprehensive Plan. He pointed out that the lot split takes the property in half on the north/south axis and the resulting parcels must meet the minimum standards of the Land Development Code for the B-8 zoning criteria. Mr. Ervin reported the lot split met all of the criteria; therefore, the development order for the lot split can be done through an administrative approval. He stated the lot split was consistent with Comprehensive Plan and Land Development Code regulations.

Mr. Ervin stated this site had not been approved for warehousing or any other uses identified and would be used for a use that was allowed in the B-8 zoning district. He advised this application did not warrant a traffic study based on the Comprehensive Plan or Land Development Code in that it did not create more than 1,000 trips on a daily basis or any of the other criteria required to warrant a study; however, when staff heard the concerns of the

citizens, staff hired a professional engineer, Mr. Chris Walsh, to perform a traffic study. Mr. Ervin stated Nova Road was a two-lane roadway and was changed to a divided roadway, which created a median from Fernery Trail to Division Avenue, and all of the residents in the area now have one point of access at Fernery Trail. He explained there would be a severe congestion problem because of the u-turns that would be required for residents. Mr. Ervin pointed out there have been new commercial developments on the west side of Nova Road. He advised that based on data Mr. Walsh had at the time of the analysis in January, the most up-to-date information was used, the scale of the impact resulting from the potential change would not be as significant in that there was still the situation where Moreland Boulevard was emptying out onto Nova Road because there was access for the commercial site onto Moreland Boulevard as well as from the new shopping center on the south side. Mr. Ervin stated the Nova Road right-of-way was open for only three years, and travel patterns would take time for people to get used to. He acknowledged it would be inconvenient; but compared to the previous two-lane road, the overall operation had improved.

Mr. Ervin stated the City's regulations regarding cul-de-sacs exceeding 660 feet and traffic volumes in excess of 200 average daily trips apply to all new development. He noted staff realized that there were non-conforming streets and cul-de-sacs, and staff was trying to make sure the operation was consistent with the safety requirements and overall design standards. Mr. Ervin reiterated the developer had the right to do a lot split. He explained a critical issue in the code in Section 3-53 H.4. indicated that every lot or parcel shall have direct access from a public street or private street approved by the City Commission and developed to the same standards as public streets. He pointed out that Fernery Trail was a public right-of-way. Mr. Ervin stated if all of the traffic from this site was forced onto Nova Road from one access point and the driver needed to go southbound, the only way that could be done would be to weave across three lanes of traffic to get to Woodland Boulevard to make a u-turn. He stated staff was examining the overall safety of the entire system. Mr. Ervin acknowledged there would be problems at peak periods, and a DOT study identified problems in the area with two solutions, which were to make the intersection a right-in-right-out only onto Fernery Trail and Moreland Boulevard or to install a signal, and installation of a signal would be difficult because it may not meet the spacing for a signal that DOT mandates.

Mr. Ervin advised Section 2-29 was a general statement established at the beginning of every zoning category that specifically states the generalized purpose of the category and to understand buffering regulations one must look further into the code. He reported the actual standards that implement this purpose are identified in the landscaping standards. Mr. Ervin noted staff updated the Land Development Code standards in 2004, and the buffering standard was a new standard in that the prior standard had considerably less depth than the 30 feet required now. He advised staff took a conservative estimate for a fair buffer. Mr. Ervin noted the developer should only be required to have a 10-foot buffer, but staff required a 30-foot buffer utilizing a higher standard with a higher impervious surface ratio.

Mr. Ervin reported staff realized there were many existing trees on the infill lots, and everything possible is done to preserve them; but between the standards that must be met from minimum floodplain elevations established by FEMA and stormwater requirements from the St. Johns River Water Management District, sites have to be raised up, cut, filled, and graded so there was practically no way to develop a site without having some impact on the vegetation. He explained the City's landscape architect required a tree survey to indicate every tree brought in or taken off, and this site required 12 specimen trees to be preserved while the developer was preserving 20 trees. Mr. Ervin noted the secondary site required five specimen trees while seven were shown. He stated there was a minimum of 200 tree credits, and 212 trees are being provided. Mr. Ervin pointed out there was an FP&L easement, and FP&L is autonomous in its decisions.

Mr. Ervin stated staff shared the concern that the occupants may create office space on the second floor, but that would be a code enforcement issue. He expressed concern regarding future uses of the property; therefore, Mr. Ellis, at the request of the City, voluntarily placed a deed restriction and covenant that stated that second floor could only be used for storage. Mr. Ervin explained any future expansion of the building must go through a special exception process.

Mr. Ervin reported this was an office building and not the typical retail, commercial, or restaurant uses that were allowed in this B-8 zoning; therefore, this was a transitional use leading out to Nova Road. He noted the more intensive use was directed further out where there was access to Fernery Trail and potential driveway cuts onto Nova Road. Mr. Ervin stated the staff report identified how staff reviewed the technical requirements of the Comprehensive Plan and Land Development Code to insure this site plan complied with the code. He noted it also identified the concerns voiced by the residents. Mr. Ervin reported staff did everything possible to insure

that the safety and security of the residential properties would be protected without being arbitrary and capricious. He advised in that the project meets the code requirements, he did not see how staff could deny the project.

Mr. Doyle Tumbleson, Country Club Drive, the developer's attorney, stated Mr. Ervin has always followed the City's Comprehensive Plan and Land Development Code. He noted he understood the residents' concerns, but noted many are not factual. Mr. Tumbleson reported Mr. Teter's concern related to a plan that was not before the Commission at this time in that the plan had materially changed.

Mr. Brad Bauknecht, 62 Aaron Circle, Upham Inc., reported he was the engineer on this project. He explained that to obtain a St. Johns River Water Management District permit, the post construction runoff must be less than the preconstruction runoff. Mr. Bauknecht reported the existing pond immediately to the south of the subject parcel does not currently meet St. Johns' standards. He noted the lack of maintenance resulted in outfall swales being overgrown. Mr. Bauknecht stated the City Engineering Department asked that the developer regrade and clean-up the existing swale so if a storm hits the water would flow on an outfall structure that would actually work. He stated the development will actually improve the existing drainage instead of compounding the prior problem.

In response to Mr. Hayes' concern with the landscape buffer required adjacent to the residential lot in the Village subdivision, Mr. Bauknecht reported the buffer was six feet on the west and 30 feet on the southwest corner of Mr. Hayes' property. He noted the buffer showed 32 feet, and the dumpster met the corner of the property. Mr. Bauknecht clarified that the westerly portion was the commercial development on the north side of the project, and Mr. Hayes was the only residential unit in the Village abutting this property.

Mr. Tumbleson stated uses permitted in the B-8 zoning district did not include hazardous material, and no 18-wheelers would be accessing the property in that this was not the warehouse for this business.

Mr. G.G. Galloway, 1305 Oak Forest Drive, representing the property owner, Mr. Fred Ellis, stated when a two-lane road was changed into a four and six-lane road, the empty parcels became more valuable for active business. He distributed a copy of the City's permitted principal use and structures that anyone could construct on the site and noted five or six of these were much more intrusive than an office complex, such as an assisted living facility up to 80 units, a 24-hour convenience store, up to 100 multi-family dwelling units, or a Type B restaurant. Mr. Galloway noted people were concerned about the values of the houses at Fox Hollow a few years ago when a very intensive use was placed there, but those homes have not lost their value. He pointed out shared parking was not a bad thing and would help the neighborhood. Mr. Galloway reported this was not a warehouse but an office complex. He advised he met with the homeowners' associations and tried to meet some of the residents' needs, such as agreeing to place a right-turn-only out to relieve some of the pressure. Mr. Galloway stated the building would be architecturally and aesthetically pleasing, and there could be much worse uses that were permitted by the Comprehensive Plan.

Mr. Scott Steman urged the Commission to focus on the facts rather than on emotional testimony. He noted there were no similar cul-de-sacs in that Fox Hollow had an exit to Old Kings Road and the Villages had a stoplight. Mr. Steman stated this development would exacerbate the traffic problems greatly. He stated Nova Road was not designed for u-turns.

Mr. Marc Hayes pointed out the dumpster would be abutting his property, which was not imagined. He questioned that he should lose his buffer merely because it was on the corner of the property.

Mr. Ervin stated that relative to the cul-de-sacs, Broadwater had more than 200 homes and access was a considerable challenge, and Moss Point was dealing with Tymber Creek Road in the morning. He reported since the 1980's the City has approved cul-de-sacs that exceed 660 linear feet. Mr. Ervin reported they do have the required emergency access. He advised he would check with Mr. Kevin Gray, Environmental Systems Manager, to see if the dumpster could be waived and tote service could be used. Mr. Ervin stated the buffer was angled along the rear property line since Nova Road was angled. He reported in order to address those concerns the buffering could be maintained.

Commissioner Gillooly requested the traffic engineer discuss the ingress/egress of this project to Nova Road.

Mr. Chris Walsh, Kimley-Horn and Associates, 851 Dunlawton Avenue, Port Orange, stated DOT tries to consolidate developments to come out at one primary access point to reduce conflict points and reduce friction on the main line, to enhance operation on the main line of the roadway, and to promote safety.

Commissioner Gillooly stated she would believe coming out at Fernery Trail would temper the traffic. She noted there was no reason for the office personnel to go all the way into the residential area.

Mr. Ervin reported he asked Mr. Walsh to analyze if the exiting median would have to be removed possibly for the installation of a left-turn lane with a separate lane for right-turns and through traffic. He noted another issue was the location for the driveway. Mr. Ervin stated there could be a right-in-right-out on Nova Road for the future development. He advised a critical point was that staff was not certain what type of use could go in since there were a variety of uses that could be allowed, and staff must rely on a formal application when one would come to staff.

Commissioner Partington disclosed that he met in January or February with two residents of Whispering Oaks, Mr. Steman and Mr. Stevenson, along with Mr. Ervin on the site. He noted he also went to Mr. Hayes' property and met with Mr. Jones and Mr. Upson, and he received a letter from Ms. Bennett. Commissioner Partington reported he listened to these people, but his decision was formulated only after hearing from both sides of the issue tonight. He advised he would vote to overturn the decision of the Site Plan Review Committee and not allow the project to go forward because of the greater weight of the evidence regarding the buffering and traffic issues. Commissioner Partington stated 6.21A of the code relative to purpose and intent indicates: "due to the proximity of lands in the district to residential areas, these district regulations are intended to promote the preservation of natural vegetation, increase opportunities for beautification, and provide extensive buffering between non-residential and residential uses not otherwise separated from each other by a collector or arterial road." He noted he believed this project could be a good neighbor, but he was disappointed the parties did not work together to a greater extent. Commissioner Partington reported the most obvious plan to make the project work was to invert the site plan, which would satisfy all concerns. He expressed concern procedurally that the project came in as a 10,000 square foot project, but was reduced in size to avoid the public hearing process, which only heightened the concerns and fears of the residents. Commissioner Partington stated the conditions of development approval indicated that the second floor was limited to 2,632 square feet for storage only with no expansion of office or storage use without review by City staff, but this would not trigger Commission review. He expressed doubt that this would have to exit on Fernery Trail and stated he preferred it exit onto Nova Road on the north side of the property.

Commissioner Kelley stated several months ago he spoke to Mr. Greg Venema and attorney Rick Brown last week, but his opinion was not divulged and his vote would be made after hearing the testimony tonight based on the information. He advised staff presented the facts that the project legally could go forward. Commissioner Kelley noted it was unfortunate the change would affect the neighbors, but property owners have the right to develop. He reported no traffic study was required, and the owner of the property went above and beyond by being willing to place a deed restriction regarding future land use. Commissioner Kelley questioned how he could vote against this project. He advised he believed staff had done their due diligence, and the Commission could do nothing less than approve the project.

Commissioner Kent stated a sheet was presented to the Commission as to what could have been placed by right on this land, and it was true that these uses could have been placed on this parcel. He noted he would also prefer the plan be flipped to provide a larger buffer for the residents. Commissioner Kent advised he considered the traffic a valid concern. He stated there would not be 60 cars at the same time, but there could easily be 10 to 20 cars at one time. Commissioner Kent noted the right turn only would tremendously help move the traffic. He stated staff indicated this was legally permissible; but at this time the Commission was charged with making the decision, and he would vote "no" unless the plan could be flipped.

Commissioner Gillooly commended the residents for speaking tonight. She reported staff was tasked to make certain projects legally meet all the codes, and she believed this project had met all of the parameters. Commissioner Gillooly noted there have been some concessions made by the owner, such as the deed restriction regarding the second story use. She stated another concern was allowing the windows, and she believed windows would be better aesthetically on the second floor. Commissioner Gillooly asked that a principal of the project speak to attempt to alleviate some of the emotional concerns.

Mr. Bill Stogner, 8 Foxfords Chase, reported Expert Med distributed medical, pharmaceutical, and surgical supplies, which was a very highly regulated industry. He reported the warehouse was on Andalusia, and they had no plans to move product to the office building. Mr. Stogner stated to do so would require State approval, licensing, permitting, Federal Drug Administration (FDA) approval, and Drug Enforcement Administration (DEA) approval. He advised they do not carry any hazardous material items, but they do carry aerosol products. Mr. Stogner stated there would be no reason for 18 wheelers to enter the property, other than possibly a Fed Ex or UPS truck with a delivery such as the residents may require.

Commissioner Gillooly reported she understood the emotional concerns of the residents, but there was a legality issue regarding the use of land. She noted concessions have been made to insure the development would not impact the residents to the extent the residents believe it would tonight.

Mayor Costello asked for confirmation that a lot split may be done by right without staff or Commission approval.

Mr. Ervin stated the lot split was by staff approval only after verifying that the lot split would not create a non-conforming lot size and the lots could be developed.

Mayor Costello asked for confirmation that a B-8 parcel had to open to a collector road.

Mr. Ervin advised it should open to a collector road and major thoroughfare, but the code did not indicate it had to front on a collector road. He cautioned the Commission not to enter into a spot zoning situation.

Mayor Costello summarized the developer had the right to subdivide the parcel and B-8 was the only zoning, other than residential, that was possible. He asked if the City could force a cross access easement across another lot.

Mr. Ervin stated the City did not have the ability to force an ingress/egress easement across parcels.

Mayor Costello stated he would base his decision on the fact that this was a legal lot split, the correct zoning existed, and the access of the road could not be stopped. He disclosed that he met with Mr. Frank Zadnik and received several e-mails. Mayor Costello noted he was pleased to hear about the right-turn out that would occur.

Mr. Ervin stated staff asked Kimley-Horn to analyze a separate right-turn lane.

Mayor Costello noted he would not approve this without widening Fernery Trail so there would be a right-turn and a left turn lane.

Mr. Ervin stated Mayor Costello was referencing his statement that when Kimley-Horn was hired they were asked to examine whether or not the median needed to be removed in order to install a left-turn lane.

Mayor Costello explained he would not approve this without additional right-of-way dedicated for a right-turn lane because he believed this could be required within the code due to the amount of traffic.

Mr. Ervin noted staff asked Kimley-Horn to review that specific issue.

Mr. Hayes advised the Commission they could either approve the appeal of the residents or affirm the decision of the Site Plan Review Committee, but not negotiate.

Mr. Walsh stated an office and a residential development have entirely different travel characteristics in that people in the residential developments are exiting in the morning and office personnel are coming into the office with the opposite occurring in the evening. He noted two days of counts were completed at the intersection, and in the morning there were 13 vehicles exiting out of Fernery Trail and this development would have two to three additional vehicles exiting in the morning, which would have almost no impact. Mr. Walsh stated there was an average of five vehicles exiting in the evening peak hour. He advised two vehicles were turning left and three turning right. Mr. Walsh noted this development would add 17 vehicles exiting left and 10 exiting right.

Mayor Costello stated he did not favor allowing the driveway onto Fernery Trail, but the City had no alternative but to allow it; however, an extra right-turn lane could be mandated. He advised

he appreciated the deed restriction that the building would stay less than 10,000 square feet. Mayor Costello stated he would also not approve this with the dumpster at the presently designated location. He noted if the developer would like to come back with this project, the dumpster must be moved, providing a 30-foot buffer in that he did not believe a six or eight-foot buffer was appropriate. Mayor Costello asked if there was any way to save more trees.

Mr. Ervin stated staff would investigate alternatives to save trees; however, the cost of placing this stormwater pond was doubled or tripled because of the amount of trees that would have to be replanted. He noted there was an economic disincentive to take out trees unnecessarily.

Mr. Tumbleson asked if a right turn lane had to be provided within the existing right-of-way or that additional right-of-way had to be provided.

Mayor Costello advised he could not answer Mr. Tumbleson's question, noting an additional right-lane needed to be provided. He pointed out the same owner owned both parcels, and there would probably be another driveway onto Fernery Trail; therefore, he believed a right-turn lane was needed.

Mr. Tumbleson advised that City staff and the traffic engineer indicated that, based on the project currently before the Commission, a right-turn lane was not required. He stated when the vacant parcel comes back for review this issue would be addressed.

Mayor Costello stated he understood but did not agree.

Mr. Tumbleson asked Mayor Costello or staff to point out where this was required in the Land Development Code or Comprehensive Plan.

Mayor Costello stated the Commission could look at traffic to determine if the project would be acceptable or not acceptable. He asked Mr. Ervin if traffic was an issue of consideration for the Commission in the Comprehensive Plan.

Mr. Ervin stated the Land Development Code and Comprehensive Plan have specific standards that had to be met. He reported based on technical expertise, the lane would not be required.

Mayor Costello stated the Commission had a right to reject this project on the basis of the dumpster and the buffer. He noted the developer had the right to build, and the City needed to find a way to accommodate both the developer and the homeowners; but he did not believe it was appropriate to have a dumpster so close to a home.

Commissioner Partington moved, seconded by Commissioner Kent, to approve the residents' appeal based on all of the statements of fact and findings of evidence previously recited.

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

Mayor Costello stated if the developer would correct what he considered to be deficiencies, he would approve the project.

Mayor Costello called for a break at 9:51 p.m. He reconvened the meeting at 9:56 p.m.

Mayor Costello summarized should the developer choose to make the amendments such that this would be a new site plan, they could take the project to staff; if staff were to approve the site plan and if the residents would not appeal the amended site plan, it would not come back to the Commission. He stated, however, if the amendments were not approved, it would come to the Commission again, and he would support it if certain changes were made.

Hearing no objection, Mayor Costello closed the public hearing on Item #9(A).

Item #9(B) - "200 East Granada Boulevard" Development Order

RESOLUTION NO. 2007-85
A RESOLUTION AUTHORIZING THE EXECUTION AND
ISSUANCE OF A DEVELOPMENT ORDER FOR A SPECIAL
EXCEPTION REGARDING "200 EAST GRANADA BOULEVARD"

LOCATED AT 200 EAST GRANADA BOULEVARD AND BEING SITUATED WITHIN THE B-4 (CENTRAL BUSINESS DISTRICT) ZONING DISTRICT WITHIN THE DOWNTOWN OVERLAY DISTRICT, BY AUTHORIZING A WAIVER OF PARKING REQUIREMENTS TO ALLOW THE OPERATION OF A PAID COMMERCIAL PARKING LOT; ESTABLISHING CONDITIONS AND EXPIRATIONS OF APPROVAL; AND SETTING FORTH AN EFFECTIVE DATE.

Mr. Ervin advised this was for a 100% waiver of the required parking for the 200 East Granada Boulevard site. He noted this was presented to the Development Review Board, which recommended denial. Mr. Ervin noted this was a unique situation in that there were seldom sites that had parking in excess of what was required by code. He explained there were 130 spaces provided on the site owned by MDSS, and only 86 spaces were required. Mr. Ervin advised that by right MDSS could use the surplus parking spaces for a commercial parking lot. He stated the applicant was requesting a 100% waiver, but provisions were included as part of the staff recommendation that those using 200 East Granada Boulevard as tenants or customers would continue to be able to use the lot. Mr. Ervin noted there were many questions, concerns, and comments made by the public. He pointed out the owner of this property did not have to allow this parking lot to be used by the public and could fence the area. Mr. Ervin stated this was an attempt to address a concern identified by the property owner with some of the projects, specifically a restaurant project, that had been approved in the area that would be utilizing some of the public parking. He advised the same study authorized the waiver of the parking for LuLu's restaurant as part of the staff recommendation for this project. Mr. Ervin reiterated that this was an attempt to expand the amount of public parking in a manner that would not establish a precedent and in a manner that the property owner would obtain the maximum flexibility of use of his property while still providing the City with a public benefit. He advised Ormond Main Street discussed this last night, and they recommended approval with the caveat for approval be only for two years at which time the applicant would have to come back for a continuation of the waiver. Mr. Ervin reported the commercial parking was not the issue; the special exception was for the waiver of the parking requirement.

Mr. Michael Woods, Cobb and Cole, 150 Magnolia Avenue, Daytona Beach, attorney representing the applicant, MDSS, stated this was to request a special exception to obtain a parking waiver pursuant to Chapter 2, Article 6, Section 20-70 of the Land Development Code. He noted the applicant was asking to take the existing parking facility, which services the Bank of America Building, to make it fully utilized by the general public as a commercial parking lot. Mr. Woods stated the City had a policy for the Downtown Overlay District that promoted and encouraged infill and redevelopment, particularly in relation to parking requirements. He noted there was a policy in the Land Development Code that allowed for a waiver of the parking requirements. Mr. Woods stated the City should want to do everything possible to allow a new business owner to relocate to the downtown area, and the last thing a city should do was discourage a new business due to lack of parking, which was done with LuLu's Restaurant. He advised this request would go a long way to address the parking issue for the downtown area in providing a fair and equitable solution. Mr. Woods pointed out a commercial parking lot was permitted by right in the Downtown Overlay District, and the issue at hand was utilizing all of the existing parking facility for use of a commercial parking lot. He stated the use of this facility would not negatively encumber the existing users of those parking spaces. Mr. Woods advised they had obligations to their tenants and their customers, and they would continue to satisfy those obligations. He noted the Bank of America building required 86 spaces, and they have 130 spaces that will remain available to tenants and customers of the Bank of America building. Mr. Woods stated the property was currently private and was posted as a tow-away area, but the policy was not harshly enforced at this time. He reported the concerns of the property owner were cost in maintenance of the facility and insurance liability for the general public to utilize the parking lot. Mr. Woods noted the Bank of America parking lot functions as a de facto municipal parking lot, which was unfair for any individual property owner. He advised this request was to allow a holistic approach for the entire parking lot because they had the right to make a portion commercial and wished to make it all commercial. Mr. Woods reported this would provide a safe, well lit option for downtown parking.

Mr. Edwin Byrd reported he owned property at 156 East Granada Boulevard, and he was required to improve the property before moving on to the property. He noted this applicant was asking the City to set aside over 100 parking spaces that he owned for his own benefit, and 86 of those spaces were mandated by the City for the commercial space that was currently being rented out. Mr. Byrd noted three of his neighboring businesses were unoccupied. He urged the Commission to order the 86 spaces remain set aside for the Bank of America building. Mr. Byrd advised the Bank of America employees informed him that if these parking spaces become

commercial, the Bank of America would move out of its location. He stated this action would be detrimental to the community.

Mr. Ron DeFilippo, 1081 Oceanshore Boulevard, reported he owned LuLu's restaurant, and he was not opposed to paying for parking; however, he expressed a concern about what the charge would be for towing vehicles. He noted the applicant had the right to pay for their property either by revenues from parking sources or other leases. Mr. DeFilippo advised he supported this request.

Mr. Gary Grayson, owner of a business located at 196 Vining Court located south of the proposed parking lot, reported he opposed this proposal. He stated people would not pay to park in the lot, and they would park on the side streets and other free parking lots. Mr. Grayson reported he did not consider this an effective use of the land. He suggested Mr. Selby and Mr. DeFilippo work some sort of deal regarding parking.

Mr. Vince Decapite, 200 Vining Court, expressed concern that people would pass on the pay for parking and park on his and other free lots. He concurred the best solution was a deal between Mr. Selby and Mr. DeFilippo.

Mr. Serge Brotsky, owner of an office building at 224 Vining Court, expressed concern regarding a 100% exemption for parking. He noted during a special event, the parking lot could be filled up with other users, and no spaces would be available for the tenants. Mr. Brotsky urged the 86 spaces be reserved for the use of the office building, but if the owner wanted the remaining spaces to be paid parking, that would be his option. He asked if the land owner could sell off the other property after a 100% exemption was approved and build condos or another use with no parking required for the building. Mr. Brotsky advised he did not want to have to tow away vehicles from his property.

Mayor Costello clarified the question before the Commission was if it wanted to allow people to park on a private parking lot. He noted the Commission could limit the parking to anything over the 86 spaces or allow more people to park where the City was trying to find existing parking. Mayor Costello pointed out Ormond Main Street recommended Commission approval for a period of two years, but he suggested an additional condition for an annual staff evaluation from that time forward. He noted the option was that the owner would start towing vehicles if this were not permitted.

Commissioner Kelley moved to approve the staff recommendation. The motion died for lack of a second.

Commissioner Partington moved, seconded by Commissioner Gillooly, to approve Resolution No. 2007-85, as read by title only, to include the two-year review.

Commissioner Kelley reported he met with Mr. Dwight Selby a week ago. He pointed out the property owner had every right to make this a commercial parking lot, and the City could not mandate Mr. Selby and Mr. DeFilippo work out a parking agreement. He reported he voted to deny the LuLu's application because they did not have enough parking and would take up all of the street parking. Commissioner Kelley noted the off-street parking satisfied the requirement for LuLu's, and he was told no one else would be granted that parking because it was already given to LuLu's, which did not seem fair. He stated this parking lot was less than 25 steps or approximately 75 feet further than the closest off-beach parking area at Neptune so it could provide beach access. Commissioner Kelley noted this would be closer than parking behind the church at the farthest point. He reported he believed people would be willing to pay for parking if it was made available. Commissioner Kelley stated he supported the motion without the two year review.

Commissioner Gillooly stated one of the ongoing problems in the downtown was the lack of parking. She noted she understood the concern of the other business owners, but it may benefit them in time to have this extra parking available. Commissioner Gillooly described this as a very creative, cooperative, and smart approach to gain parking in the downtown, and it would benefit the City. She stated she was pleased Ormond Main Street could weigh in on this issue. Commissioner Gillooly disclosed she spoke with Mr. Woods on behalf of the applicant.

Commissioner Kent disclosed that he met with Mr. Rob Merrill of Cobb and Cole on this issue. He reported he could empathize with those opposed to this project. Commissioner Kent stated he understood the concept of the 100% parking waiver in the downtown district, and he agreed with Commissioner Gillooly that this could be a positive for other businesses by bringing much needed attention to the downtown area. He noted he favored the two-year reconsideration.

Commissioner Partington disclosed he spoke to Mr. Dwight Selby. He stated from a personal perspective he knew the paid parking worked well. Commissioner Partington reported he preferred the City purchase the center lot on Coquina and charge for parking to recoup some of the costs. He recommended the County have similar lots to recoup their costs. Commissioner Partington noted people expect to pay for parking. He reported people frequently park in the shopping center for off-beach parking, and this would be a great location for that purpose. He advised he supported the two-year trial period when it could be reevaluated. Commissioner Partington requested staff address the citizen’s concern regarding the property being sold.

Mr. Ervin stated conditions were added after the Development Review Board meeting where any redevelopment of the building that would cause greater parking needs could be brought back to the Commission to ask for the waiver to be revoked if the conditions identified previously would have changed.

Commissioner Kent noted he hoped Lulu’s would be so successful they would be able to work a deal that they would pay for the parking.

Mayor Costello stated he would support the proposal for two years. He reported that if he believed this would drive people off onto someone else’s parking lot, he would be concerned; however, he believe it would provide an alternative to park legally rather than illegally. Mayor Costello noted his understanding was that people would either pay to park or risk getting towed. He stated he considered this a service to the other business owners in that it provided a place for overflow parking when needed. Mayor Costello disclosed he spoke to Mr. Dwight Selby.

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

Hearing no objection, Mayor Costello closed the public hearing on Item #9(B).

Item #9(C) - “Kidsko Daycare Center”

RESOLUTION NO. 2007-86

A RESOLUTION AUTHORIZING THE EXECUTION AND ISSUANCE OF A DEVELOPMENT ORDER FOR A SPECIAL EXCEPTION REGARDING “KIDSKO DAYCARE CENTER” ON A SITE LOCATED AT 160 BUSINESS CENTER DRIVE AND BEING SITUATED WITHIN THE I-1 (LIGHT INDUSTRIAL) ZONING DISTRICT TO ALLOW A CHILD CARE FACILITY CONSISTING OF THREE BUILDINGS TOTALING 13,799 SQUARE FEET TO BE CONSTRUCTED IN TWO PHASES; ESTABLISHING CONDITIONS AND EXPIRATIONS OF APPROVAL; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Kent moved, seconded by Commissioner Kelley, to approve Resolution No. 2007-86, as read by title only, subject to the three conditions of the Site Plan Review Committee.

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

Hearing no objection, Mayor Costello closed the public hearing on Item #9(C).

Item #9(D) - Future Land Use Element Change - 94 Plaza Grande Street

ORDINANCE NO. 2007-20

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 0.30 ACRES LOCATED AT 94 PLAZA GRANDE

STREET, ONE HUNDRED FIFTY (150') FEET EAST OF CORDOVA AVENUE, FROM VOLUSIA COUNTY "URBAN MEDIUM DENSITY" TO ORMOND BEACH "LOW DENSITY RESIDENTIAL"; REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Kent moved, seconded by Commissioner Partington, to approve Ordinance No. 2007-20, on the first and only reading, as read by title only.

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

Hearing no objection, Mayor Costello closed the public hearing on Item #9(D).

Item #9(E) - Future Land Use Element Change - 1951 and 1999 West Granada Boulevard

ORDINANCE NO. 2007-21

AN ORDINANCE AMENDING THE FUTURE LAND USE ELEMENT OF THE COMPREHENSIVE PLAN BY AMENDING THE FUTURE LAND USE MAP TO CHANGE THE DESIGNATION OF TWO (2) PARCELS OF REAL PROPERTY TOTALING 3.29 ACRES LOCATED ON THE NORTHEAST CORNER OF TYMBER CREEK ROAD AND WEST GRANADA BOULEVARD (SR40) (1951 AND 1999 WEST GRANADA BOULEVARD) FROM VOLUSIA COUNTY "COMMERCIAL" TO ORMOND BEACH "COMMERCIAL"; REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Kent moved, seconded by Commissioner Kelley, to approve Ordinance No. 2007-21, on the first and only reading, as read by title only.

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

Hearing no objection, Mayor Costello closed the public hearing on Item #9(E).

Item #9(F) - Future Land Use Element Change - 2 Plaza Drive

ORDINANCE NO. 2007-22

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 0.19 ACRES LOCATED AT 2 PLAZA DRIVE FROM VOLUSIA COUNTY "URBAN MEDIUM DENSITY" TO ORMOND BEACH "LOW DENSITY RESIDENTIAL"; REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Kent moved, seconded by Commissioner Kelley, to approve Ordinance No. 2007-22, on the first and only reading, as read by title only.

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

Hearing no objection, Mayor Costello closed the public hearing on Item #9(F).

Item #10(A) - Changing the Name of a Portion of “Thornhill Chase Court” to “Thornhill Chase Circle”

ORDINANCE NO. 2007-17

AN ORDINANCE CHANGING THE NAME OF A PORTION OF “THORNHILL CHASE COURT” TO “THORNHILL CHASE CIRCLE,” WITHIN BRIARGATE SUBDIVISION, UNIT I, PHASE II, OF THE “HUNTER’S RIDGE” DEVELOPMENT OF REGIONAL IMPACT; REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Kelley moved, seconded by Commissioner Gillooly, to approve Ordinance No. 2007-17, on second reading, as read by title only.

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

Item #10(B) - “Briargate” Unit 1, Phase I Replat

ORDINANCE NO. 2007-18

AN ORDINANCE APPROVING A REPLAT OF “BRIARGATE,” UNIT 1, PHASE I, LOCATED WITHIN “HUNTER’S RIDGE” DEVELOPMENT OF REGIONAL IMPACT BY ELIMINATING LOT 13, TO CREATE A NEW ROAD, RENUMBERING LOTS 12 AND 14, TO BECOME LOTS 1 AND 2; ESTABLISHING CONDITIONS AND EXPIRATION DATES OF APPROVAL; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Kelley moved, seconded by Commissioner Kent, to approve Ordinance No. 2007-18, on second reading, as read by title only.

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

Item #10(C) - “Westland Village, Phase I” Replat

ORDINANCE NO. 2007-19

AN ORDINANCE APPROVING A REPLAT OF “WESTLAND VILLAGE, PHASE I,” LOCATED WITHIN THE OB-II PHASE OF THE “HUNTER’S RIDGE” DEVELOPMENT OF REGIONAL IMPACT BY CHANGING LOT 45 FROM A RESIDENTIAL LOT TO A WILDLIFE/WATER MANAGEMENT AREA; CHANGING THE COMMON AREA BETWEEN LOTS 39 AND 40 TO A DEVELOPABLE RESIDENTIAL LOT; RENUMBERING LOTS 40 TO 44 CONSISTENT THEREWITH; ESTABLISHING CONDITIONS AND EXPIRATION DATE OF APPROVAL; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Kelley moved, seconded by Commissioner Partington, to approve Ordinance No. 2007-19, on second reading, as read by title only.

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

Item #11(A) - Issuance of Water and Sewer Revenue Bond

RESOLUTION NO. 2007-87

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF ORMOND BEACH, FLORIDA, AUTHORIZING THE ISSUANCE OF NOT-TO-EXCEED \$7,000,000 IN PRINCIPAL AMOUNT OF ITS WATER AND SEWER REVENUE BOND, SERIES 2007, FOR THE PURPOSE OF FINANCING THE CONSTRUCTION AND ACQUISITION OF CERTAIN ADDITIONS, EXTENSIONS, AND IMPROVEMENTS TO THE WATER AND SEWER SYSTEM OF THE CITY; DETERMINING CERTAIN DETAILS OF SAID BONDS; PROVIDING FOR THE SECURITY OF SAID BONDS; AWARDED THE SALE OF SAID BONDS TO THE SUCCESSFUL PROPOSER FOR SAID BONDS; APPOINTING A PAYING AGENT AND REGISTRAR FOR SAID BONDS; AUTHORIZING PROPER OFFICIALS TO DO ALL THINGS DEEMED NECESSARY IN CONNECTION WITH THE ISSUANCE, SALE AND DELIVERY OF SAID BONDS; AND PROVIDING AN EFFECTIVE DATE.

Mr. Glenn Jaspers, 160 Ocean Terrace, stated number ten of the budget review guidelines stated that water and wastewater impact fees would be set at a level that recovers at least 50% of the cost associated with new growth; whereas, all other impact fees would be set at a level that recovered 100% of the cost associated with new development. He questioned what the difference was and what the citizens would pay in the two percentages. Mr. Jaspers noted he believed there should be an explanation to the public for this difference.

Mr. Jaspers noted the report stated the City system operated five water wells where five million gallons of water per day were generated with a capacity of eight million. He advised this was a three million gallon excess on average. Mr. Jaspers stated the City now had a capacity over the average consumption of five million gallons to seven million gallons, and he questioned the reason the capacity was increasing so quickly. He reported this project cost \$23 million, and the City did not have the money. Mr. Jaspers questioned how grant money could be used for other items. He stated the impact fees were not even covering the interest on the loan. Mr. Jaspers recommended a two-million gallon capacity that could be increased as needed.

Mayor Costello requested an answer to the question regarding the 50% impact fee verses the 100% impact fee in the Friday letter.

Commissioner Kelley moved, seconded by Commissioner Partington, to approve Resolution No. 2007-87, as read by title only.

Commissioner Kelley advised many of Mr. Jaspers' questions have been answered previously in meetings and discussions. He noted the average capacity was exceeded many times during peak periods where last year the Health Department became involved and this action became necessary. Commissioner Kelley reported the additional two million gallons was added because of the grant funding from St. Johns River Water Management District to provide the citizens an adequate water supply for the next 20 years. He noted he considered it prudent to revamp the water facilities.

Commissioner Gillooly concurred the Commission had many public discussions regarding this issue. She noted last year the City was facing a water crisis, and it concluded with the understanding that this would not happen again. Commissioner Gillooly stated there were increases to construction costs as time goes on, and past decisions made by previous Commissions to not spend dollars on renewal and replacement brought the City to the position that now existed where a great deal needed to be done. She reported the Commission decided it was very important to insure the infrastructure and a safe water supply for the citizens. Commissioner Gillooly note a great deal of money was being spent, but only after a great deal of discussion and research.

Mayor Costello stated he did not want Ormond Beach to ever have any major water, wastewater, solid waste, and flooding issues again.

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

Item #11(B) - Water Treatment Plant Softening Area Modifications Project

RESOLUTION NO. 2007-88

A RESOLUTION ACCEPTING THE BID OF MCMAHAN CONSTRUCTION CO., INC., FOR CONSTRUCTION SERVICES REGARDING THE WATER TREATMENT PLANT SOFTENING AREA MODIFICATIONS PROJECT (BID NO. 2007-20); REJECTING ALL OTHER BIDS; AUTHORIZING THE EXECUTION OF A CONTRACT BETWEEN THE CITY AND MCMAHAN CONSTRUCTION CO., INC., AND PAYMENT THEREUNDER; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Partington moved, seconded by Commissioner Gillooly, to approve Resolution No. 2007-88, as read by title only.

Commissioner Kelley expressed concern that the Commission was rushing into something without asking the Health Department if they would allow an extension to obtain additional bids that may reduce the cost.

Ms. Sloane explained that before adding the additional days, staff had informal discussions with the Health Department; but she did not want to make a formal request until the Commission was made aware of the need for the additional time. She noted it was not a problem obtaining the additional time. Ms. Sloane reported there was originally a completion time in the contract, but in the pre-bid meetings the bidders notified the City indicating it was not possible to make that completion time; therefore, before receiving any bids the City made an addendum extending the time from 180 days to 300 days. She advised while there were only two bidders they both bid on the 300 day construction period.

Commissioner Kelley questioned if staff believed they may have received more bids if the additional time were given originally.

Ms. Sloane stated without a formal request, the additional time was added.

Commissioner Gillooly stated the bidders had the understanding that this contract would allow 300 days to do the work. She questioned what the City's legal obligation was if the Health Department did not accept the extension, and Ms. Sloane assured her asking the Health Department was merely a formality at this point. Ms. Sloane stated the Health Department merely wanted the City to move forward and see progress was being made on the repairs. She pointed out the amount of repairs in this contract far exceeded what was required to be completed by December 31.

Commissioner Gillooly asked if pushing beyond the 300 days would allow the City to obtain more bids.

Ms. Sloane reported the two general contractors were using the same subcontractor for the tank work, and she was not certain how many additional contractors the City would have been able to encourage with additional time. She noted staff would prefer getting this work started as soon as possible.

Commissioner Kelley stated during the advertisement period staff's consultant was informed by prospective bidders that due to the short contract time they would be unable to complete the work and would not be bidding on the project, which led him to assume that there may have been other bidders who may have bid if the time were extended.

Ms. Sloane reported there were only two bidders who expressed an interest at that time. She noted had the initial advertisement indicated more time, it was not certain if there would have been more bidders.

Mayor Costello stated if the Health Department gave time and if the City decided to rebid the entire job, he asked if Ms. Sloane believed the City would get better bids. He noted his understanding of Ms. Sloane's comments was that the two companies who bid on the project used the same subcontractors, and he would assume other bidders would probably use the same subcontractor and there would not be a significant difference.

Ms. Sloane concurred with Mayor Costello's assessment.

Mayor Costello reported he had concerns regarding the bid addition error, which could be someone manipulating the system. He stated bidders should be kept to what was bid, particularly in multi-million dollar deals where people should be responsible for what they submit.

Commissioner Gillooly concurred with Mayor Costello and questioned why the City should not cash in the bid bond.

Mr. Ted MacLeod, Assistant City Manager, stated he raised that question with staff when this process started, and he favored pursuing the bid bond whenever possible; however, in this instance, it was clearly demonstrated that this was an honest mistake by the contractor with no manipulation.

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

Item #11(C) - Purchase of Vacant Land on Orchard Street

RESOLUTION NO. 2007-89

A RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT FOR SALE AND PURCHASE BETWEEN THE CITY AND JOHNSON TECH SUPPLY, INC., REGARDING THE PURCHASE OF VACANT LAND ON ORCHARD STREET; RATIFYING AND AFFIRMING AN OPTION AGREEMENT FOR THE PURCHASE THEREOF; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Kent moved, seconded by Commissioner Kelley, to approve Resolution No. 2007-89, as read by title only.

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

Item #11(D) - Volusia Growth Management Commission Appointment

RESOLUTION NO. 2007-90

A RESOLUTION ACCEPTING APPOINTING A MEMBER TO SERVE ON THE VOLUSIA GROWTH MANAGEMENT COMMISSION; ESTABLISHING TERM AND CONDITIONS OF SERVICE; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Kelley moved, seconded by Commissioner Partington, to approve Resolution No. 2007-90, appointing Mr. Gerald Brandon to the Volusia Growth Management Commission.

Mayor Costello requested Mr. Bandon update the Commission on what was occurring on the Volusia Growth Management Commission and commended him for doing a great job.

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

Item #12(A) - Disposition of Surplus City Property

Commissioner Partington recommended this item be tabled to the July 3 Commission meeting.

Hearing no objection Mayor Costello reported this item would be postponed to the July 3 Commission meeting.

Item #12(B) - Selection of an Independent Auditor

Mayor Costello asked if there were any deficiencies or problems with the City's current auditor; whereby, Mr. Paul Lane, Finance Director, advised he was not aware of any deficiencies or problems.

Commissioner Gillooly moved, seconded by Commissioner Partington, to have Mr. Hayes bring the Commission a contract with James Moore and Company for independent auditing services.

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

Mr. Jim Warmus, Averett Warmus Durkee Bauder and Thompson, stated he did not disagree with the Commission's choice of auditors, and he did not believe to was necessary to change auditors every five years.

Mayor Costello reported had staff indicated there were problems with the current auditors, he would have allowed everyone to be heard prior to the vote. He thanked Mr. Warmus for submitting a proposal and attending the meeting.

Item #13 - Reports, Suggestions, Requests

John Anderson Drive

Commissioner Gillooly stated in the Commission's discussion regarding the John Anderson Drive issue last week some people thought the proposed \$2 increase in the stormwater fee would be used exclusively to fund the John Anderson Drive improvements; however, she clarified that the increase would be imposed to address all of the stormwater issues in the City and not only John Anderson Drive.

Commissioner Gillooly stated Ms. Coleman indicated her husband spoke to McKim and Creed, the City's engineers, regarding John Anderson Drive. She expressed concern that Mr. Coleman had information from McKim and Creed that was not shared with City staff.

Ms. Sloane noted the minutes from the last meeting were forwarded to the consultant who prepared a detailed response relating the actual discussions that took place and outlining some of the misinterpretations of that discussion. She stated this would be provided to the Commission.

Sports Complex Ribbon Cutting Ceremony

Commissioner Gillooly stated she previously indicated she would attend the sports complex ribbon cutting ceremony; however, last week she discovered Halifax Habitat for Humanity was invited to an affordable housing fair by the Daytona Beach Area Association of Realtors that she needed to attend. She advised this was a great opportunity for those trying to get into the housing market. Commissioner Gillooly asked Mayor Costello to please express her congratulations and apologies for not being able to attend the ribbon cutting ceremony.

Stealth Stat System

Commissioner Kent thanked Police Chief Michael Longfellow for implementing the Stealth Stat system to determine drivers' speeds in his neighborhood.

Mayor Costello noted one car on John Anderson Drive drove at 73 mph, but the average was 29 mph.

Commissioner Kelley noted the 73 mph driver was at 3:30 a.m.

August Meeting

Commissioner Kelley stated the Commission scheduled a meeting for August 6 so people could be free for "National Night Out;" however, he requested the meeting be changed to Wednesday, August 8 in that he discovered he had a conflict on Monday.

Commissioner Gillooly advised she also had a conflict on Monday and would prefer moving the meeting to Wednesday.

Mayor Costello asked Mr. Turner to make the change in the schedule moving the August 6 meeting to August 8.

John Anderson Drive

Commissioner Kelley stated he sent an e-mail to staff regarding a report from an individual stating things could be handled in a different way and staff did not having the same information. He stated he hoped this would prove to be a misinterpretation by the individual citizen; and if that was the case, he would like that read into the record.

Return from Iraq

Commissioner Partington welcomed Mr. Mika Coleman back from serving our country in Iraq.

Turtle Statue

Commissioner Partington reported the turtle statue was back at Riviera Park and looked wonderful. He noted people were enjoying the statue already.

PACE Center

Commissioner Partington reported he received a copy of a June 12 letter regarding the PACE Center. He noted the press release indicated the PACE Center was in the process of renovating the Rigby School campus, and when Mr. Mike Garrett, the Ormond Beach Chief Building Official/Fire Marshall, inspected the building, he wanted to show that his inspectors cared and wanted to serve the community in the construction process; therefore, he and the inspectors painted the interior of the building on their own time after working hours. Commissioner Partington requested special recognition be given to these employees who went above and beyond for the City and the PACE Center.

Road Work Improvements

Commissioner Partington reported he hoped Division Avenue between Ridgewood Avenue and Beach Street was slated for improvement soon since he did not know of any Ormond Beach street in worse condition. He offered to work with Commissioner Kent to improve this street in that this was in Zone 2. Commissioner Partington noted he would put Hand Avenue upgrades on hold in order to fix this street because it was so damaging to vehicles driving on the street.

Housing Authority Appointment

Mayor Costello advised that there had been a resignation on the Housing Authority and that he would welcome any recommendations from the Commission regarding individuals who may be interested in serving on the Housing Authority.

Personnel Budget

Mayor Costello stated he emailed a chart entitled "Calculation of General Fund Budget if Rollback was Implemented." He reported if the Commission had gone to roll back each year since 2003, the revenues would have been less, and with the same number of employees, the operating expenses would have decreased and the personnel budget, as a percent of the General Fund, would have been 89% this year. Mayor Costello pointed out that by approving the increases rather than having 11% of the budget available for renewal and replacement, capital improvements, and other expenses, the City now had 29%. He noted the City used to have approximately 35%.

Auditor Selection

Mayor Costello asked staff to send a letter to Mr. Warmus with an apology, noting he did not realize he was present until after the auditor selection vote was taken.

Airport Sports Complex

Mayor Costello stated there were people who were trying to build a concession stand and restroom facility with private money on public land for the City's children. He reported over 63,000 people use the Airport Sports Complex facility. Mayor Costello advised he understood that the utilities would be brought in, but the City was expecting the private funds to pay for a lift station with remote telemetry when he believed the City should pay for this. He reported he was excited to have volunteers and disappointed it took so long to go through the Site Plan Review Committee. Mayor Costello noted he believed the cost to be \$25,000.

Commissioner Kent moved, seconded by Commissioner Kelley, to waive the Thompson Rule.

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

Commissioner Kent moved, seconded by Commissioner Kelley, to provide the \$25,000 for the lift station at the Airport Sports Complex.

Commissioner Gillooly stated there would be private dollars invested in this. She noted she originally opposed this due to the fact the land was leased, but she favored this now in that a commitment was made.

Commissioner Kelley urged everything be done to expedite it.

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

Item #14 - Close the Meeting

The meeting was adjourned at 11:26 p.m.

APPROVED: _____ July 3, 2007

BY: _____
Fred Costello, Mayor

ATTEST:

Veronica Patterson, City Clerk