

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

June 27, 2005 7:00 p.m.

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

A G E N D A

- 1) Meeting call to order by Mayor Costello.
- 2) Resolution No. 2005-137 consenting to the assignment, transfer or conveyance of River Bend Investment Group, Inc.'s interest in the River Bend Golf Course ground lease to Harold E. Layman; authorizing the execution of a Memorandum of Understanding between the City of Ormond Beach and Harold E. Layman, for the lease of certain premises regarding the River Bend Golf Course; and setting forth an effective date.
- 3) Close the meeting.

Item #1 - Call to Order

Mayor Costello called the meeting to order at 6:00 p.m.

Item #2 – Memorandum of Understanding with River Bend Investment Group, Inc.

RESOLUTION NO. 2005-137

A RESOLUTION CONSENTING TO THE ASSIGNMENT, TRANSFER OR CONVEYANCE OF RIVER BEND INVESTMENT GROUP, INC.'S INTEREST IN THE RIVER BEND GOLF COURSE GROUND LEASE TO HAROLD E. LAYMAN; AUTHORIZING THE EXECUTION OF A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF ORMOND BEACH AND HAROLD E. LAYMAN, FOR THE LEASE OF CERTAIN PREMISES REGARDING THE RIVER BEND GOLF COURSE; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Partington moved, seconded by Commissioner Kelley, to approve Resolution No. 2005-137, as read by title only.

Mayor Costello noted changes were made to the resolution and Memorandum of Understanding, and he asked Mr. Hayes to highlight those changes.

Mr. Randall Hayes, City Attorney, advised there was a change to Section 1 of the resolution, which was a redundancy in that it indicated the resolution intended to serve as a formal written consent for the assignment of the River Bend lease from the Eddy's to Mr. Layman. He explained the following changes were made to the Memorandum of Understanding: in Paragraph A the height of the berm was supposed to be 10 feet as opposed to eight feet; Paragraph B clarified that the golf cart path was intended to accommodate two-way traffic, a

parking area for cars shall be at the 18th green as opposed to at the 10th green, and the carts shall be run from the tee to the green; a sum not to exceed \$350,000 was included in Paragraph C; Paragraph D indicated the construction would not adversely impact the greenbelt buffer areas that are to be maintained as greenbelt buffer areas or the premises that are to be leased to Mr. Layman; Paragraph F clarified the basis of rights and obligations as they relate to the preservation and identification of greenbelt areas were those currently described and depicted in Exhibit D of the River Bend Master Development Plan as well as the City's ground lease with River Bend; the location of River Bend Park was eliminated in Paragraph G in that there was only one River Bend Park; Paragraph I indicated the market value for the determination of rent shall not include the value of any privately financed improvements to be made by Mr. Layman or that of River Bend; Paragraph J clarified the point that the City shall accept the conveyance of the sanitary lift station and thereafter be responsible for its operation, maintenance, and upgrades; Paragraph K indicated a survey should be made and referenced Exhibit D to the River Bend Master Development Plan as a basis for conducting the survey; and Paragraph O indicated that to the best of the City's knowledge, River Bend Investment Group was currently in compliance with the ground lease.

Mayor Costello asked Mr. Hayes to reread Paragraph D.

Mr. Hayes stated that with the construction of the buffering concept described above, Mr. Layman and the City agreed that the construction described in the attached plan for the Southeast Quad project would not adversely impact any greenbelt buffer areas that are to be maintained as greenbelt buffer areas or the premises that are to be leased to Mr. Layman.

Mayor Costello asked Commissioner Partington and Commissioner Kelley, as those moving and seconding the motion, if it was their intent to include this language; whereby, Commissioner Partington and Commissioner Kelley concurred that was their intent.

Commissioner Kelley asked if the words: "as approved by Layman" was added in Paragraph A.

Mr. Hayes stated Mr. Layman wanted to have the ability to have influence in terms of the vegetation that was planted.

Commissioner Boyle questioned if the landscape mitigation described not to exceed \$350,000 would include the cart path; whereby, Mr. Turner reported the \$350,000 would include the cart path and all other costs.

Commissioner Boyle pointed out that all of the figures were estimates, and Mr. Turner concurred that was correct. Commissioner Boyle stated Item E indicated full rent abatement from May 1 to the completion of project, but this seemed to be open ended. He noted that in March, the Commission approved \$28,000 in rent abatement; therefore, he asked if the total could be greater than \$28,000.

Mr. Turner stated this project was to be completed by the end of August and would be within the parameters approved in March.

Commissioner Boyle asked if staff had a cost associated with Item G where the City would acquire and maintain River Bend Park; whereby, Mr. Turner noted he did not have that cost at this time.

City Commission – June 27, 2005

Commissioner Boyle reported the Commission was being asked to accept the concept of a lodge in Item H, but he questioned if staff assumed there would be any associated City cost with the development of the lodge; whereby, Mr. Turner reported he did not anticipate any City cost. Commissioner Boyle asked if staff was satisfied to assume the lodge would meet Land Development Code and FAA requirements regarding the use of the land; whereby, Mr. Turner stated there have not been any plans to date, but the City was hopeful.

Commissioner Boyle stated that Item I indicated a new appraisal and new methodology for calculating the rent. He noted the rent was currently approximately \$85,000 annually. Commissioner Boyle questioned what the new rent might be based on the new appraisal and new methodology.

Mr. Turner explained the methodology was not as much changed as it was clarified. He noted the last time an appraisal was done, the rent actually went down.

Commissioner Boyle noted it would probably be correct to assume the rent would not be reduced significantly; whereby, Mr. Turner noted he could not be certain.

Commissioner Boyle asked if there was any identified cost on Item J where the City would acquire the River Bend lift station and sewer system cost. He noted the City would have to maintain the River Bend lift station and sewer system.

Mr. Tim Sheahan, Utilities Manager, reported the system would need a \$50,000 upgrade to bring it up to standard.

Commissioner Boyle asked if the City would have to be concerned about acquiring the private sewer line feeding into the River Bend line or pay any costs.

Mr. Ted MacLeod, Assistant City Manager, stated the lease with the persons who built the sewer stipulated the City may connect to or extend the sewer line. He pointed out this was in writing in the lease.

Commissioner Boyle stated the City would pay to survey the greenbelt buffer area in Item K. He asked if the City had an estimate of this cost.

Mr. Turner reported this cost was estimated at less than \$10,000.

Commissioner Boyle asked if he could assume that if the City were to discover as a result of that survey that there were other incursions into the greenbelt buffer area, that this language would eliminate any reason for concern about future issues with Mr. Layman.

Mr. Turner reported that this was certainly not the intent. He explained the survey was originally to be done by the lessee, which did not occur. He noted the premises area has been surveyed, but the greenbelt buffer has not, and a survey would help better protect the area and make it possible for better decisions regarding developing in that area.

Commissioner Boyle stated that Mr. Layman had some concerns about the Airport Master Plan calling for three more incursions. He asked if the language in Item D would satisfy Mr. Layman's concern on that issue.

Mr. Tom Lipps, Support Services Director/Airport Manager, stated the future incursions were not meant to be covered by this language. He noted any future incursions would have to be discussed and approved by Mr. Layman.

Commissioner Boyle expressed concern about a 100-year lease and questioned if the City would be creating an inequity in terms of other airport leases.

Commissioner Boyle stated relative to the “not-to-exceed \$350,000” cost, staff was recommending transferring these costs from the General Fund, from funds previously designated for airport improvements. He questioned if this could be done legally.

Mr. Turner reported these funds were part of the General Fund held in the fund balance with a special designation for airport projects. He assured Commissioner Boyle these funds could be transferred and noted the Commission reaffirms that designation every year. Mr. Turner pointed out that last year the transfer was \$236,000 from these designated funds to the fund balance. He reiterated the Commission had that authority.

Commissioner Boyle noted he appreciated the report and explanation by Mr. Clay Ervin, Planning Director, which answered a great many questions. He accepted it had been standard practice to not require Site Plan Review Committee (SPRC), board, or Commission review; however, he had difficulty grasping that even in that event, the City still had a requirement to follow all of the other Land Development Code mandates, specifically the permits required prior to construction such as the tree and the land clearing permits. Commissioner Boyle noted the report indicated “as long as the City Commission received all information”; however, there may be a dispute as to whether the Commission received all of the information by March 15 when it approved the grant application. He stated there was another failsafe, which was for the Public Works Department to realize the extent of the massive clearing of land that was to take place. Commissioner Boyle reported he agreed the City could waive the board and SPRC process, but that did not mean the City did not have the opportunity to leave that process in place to avoid these types of difficulties. He urged that in the future, the City err on the side of caution. Commissioner Boyle reiterated that at least the City needed land clearing and tree permits.

Commissioner Boyle stated a landscape architect, engineer, and Neighborhood Improvement officer examined the trees taken down on these 4½ to nine acres, but the City had never accepted a visual survey from a private developer. He noted his personal visual survey concluded there were trees much greater than 14 inches, and he testified that three to four trees of equal size disappeared in this process. Commissioner Boyle stated he appreciated Mr. Joe Young’s report on gopher tortoises, but he pointed out the City allowed its consultants to hire subcontractors, taking the Commission and staff one step out of the process. He clarified he saw problems with the relocations, and while the City was in total compliance with State requirements, the problem was that the City proceeded when Item #4 stated that the City should not proceed without the permit in hand. Commissioner Boyle reported the City did the tree clearing on May 3, 6, and 13, and applied for the permit on May 12; the permit was received on May 16. He stated he spoke to people in Tallahassee, and he provided the Commission with their names, phone numbers, and their positions. Commissioner Boyle reported he asked the State if the City would have been legally allowed to go onto the land and begin the clearing before having the permit in hand, and the unequivocal answer was to the negative. He stated it was noted that the City may need an incidental take permit as well. Commissioner Boyle reported an environmental group was ready to file a complaint with the State agency on this issue.

Commissioner Boyle reported there have been numerous staff errors, and now the Commission was being asked to trust staff. He stated the Commission had to make a quick vote on an emergency situation on a Memorandum of Agreement. Commissioner Boyle noted he was very pleased with what was put together in such a short time and did not have a problem with any of the terms other than the fact that staff could not place firm numbers on the items. He stated this was being done backwards in that this party has no current standing with the City, and there was a large claim from the party with standing in the City. Commissioner Boyle noted he understood that should the City work out the problems with the new tenant, the City could reduce a great deal of exposure with the incumbent leaseholder. He reported he also understood how important Mr. Layman was to the City. Commissioner Boyle noted while this may be a good deal, he did not have enough information to vote tonight, just as he did not have adequate information in March. He pointed out that Commissioner Kelley indicated the Commission could approve the issue in March and withdraw the application or give the grant back should that be necessary. Commissioner Boyle stated that here again there was a short timetable since the City had only 60 days to cure the problem from May 4; therefore, he could understand staff's haste, but he needed firm numbers before he could approve it.

Commissioner Kent thanked Commissioner Boyle for the flow chart and information he compiled. He stated he would also prefer to know actual cost.

Commissioner Kelley concurred with Commissioner Boyle relative to staff errors and oversights, and he urged the Commission to make certain policies and procedures are put into effect so this would never happen again. He reported staff was working on this, and they understood the seriousness of this instance. Commissioner Kelley noted there were also many errors made in 1989 by not having the survey, which led to many problems and misunderstandings. He stated Joe Young was highly qualified. Commissioner Kelley reported the permit could be acquired after the fact. He noted while the permit was not obtained until March 12, everything was marked prior to construction, which would probably satisfy any legal challenge. Commissioner Kelley explained he had a fairly good idea of the cost and noted he understood that staff was coming back to the Commission before starting construction. He stated that whatever the cost to the City would be, it was well worth it for the City to care for the park since it was currently a disaster. Commissioner Kelley recommended placing the park in the Capital Improvements Project to make it more than a nature park. He stated the City cost associated with the lodge construction was not of great concern at this time in that it may not even happen. Commissioner Kelley stated the cost of the appraisal was approximately \$10,000, the lift sewer system would be \$50,000, and the cost to construct the private sewer line was probably built into the cost of the construction. He noted he did not have a problem with cost if they would fall within the parameters presented.

Commissioner Partington expressed appreciation for the packet of information. He stated he was comfortable that this was the right thing to do for the City. Commissioner Partington urged regulations be initiated requiring the City to go through a more strenuous process, to figure out the appropriate process for government which should be close to that for a private individual, and then it should be run through that process. He explained this will cost citizens more money, and the taxes would have to be increased to do so; but it would save this type of thing from happening again. Commissioner Partington stated that since the Commission would not fund an airport manager position, they could not complain about how this situation occurred, since there was no single person who had the responsibility, knowledge, and history to be certain this situation did not develop. He noted sometimes trying to save money could cost more in the long run.

Mr. Charles Carter, 212 Arlington Way, stated as a member of the Aviation Advisory Board, he was aware that there were many problems at the airport. He stated taking the money from the airport fund would disallow needed airport projects. Mr. Carter stated the City often borrowed money from the Solid Waste Fund. He urged the \$500,000 cost be taken from the Stormwater Fund and the money left in the Airport Fund to do what was needed at the airport. Mr. Carter cautioned that while this problem may be solved, taking these funds may close the airport, which would cause even worse more problems for the City.

Mr. Thomas Hart, Cobb and Cole, 150 Magnolia Avenue, Daytona Beach, stated he was representing the Eddy's and the River Bend Investment Group. He noted this resolution addressed the request by Mr. Layman to be the assignee of the lease and consent pursuant to the agreement. Mr. Hart noted the Memorandum of Understanding was comprehensive and addressed most of the issues of which Mr. Layman was concerned, but this was only half of the equation because the interests of the River Bend Investment Group were not addressed. He stated it had been stated that the City wanted to make the golf course whole, but this was less than whole, and the question was how to compensate the loss of River Bend by these efforts.

Ms. Lucille Bornmann, 6 Windsor Drive, questioned who was responsible for this as to what was to be bulldozed down.

Mayor Costello replied the majority of the City Commission who approved the resolution was ultimately responsible. He stated the issue of the damages to the Eddy's must be addressed, and he urged the Eddy's to provide written documentation to the City Attorney so the Claims Committee could make an evaluation. Mayor Costello noted that he, personally, would be amenable to resolving the claim for an amount up to \$100,000, including attorneys' fees. He stated this action will make Mr. Layman whole, and this recommendation would make the Eddy's whole such that when they sign the contract with Mr. Layman, they would not have to put out additional dollars. Mayor Costello noted the Eddy's wanted more, but it was his fiduciary responsibility to limit what would be reimbursed for expenses incurred.

Mr. Hayes stated the resolution was meant to be basic. He reported the Eddy's have asked the City for consent to assigning their interest in the lease to Mr. Layman. Mr. Hayes stated this resolution was designed to grant that consent, not to address any other issues. He noted he anticipated addressing these other complex issues at another time. Mr. Hayes pointed out the contract with the River Bend Investment Group indicated that if a violation were to occur, after being put on notice of the violation, the City has an obligation to fix it if it were a curable defect in 60 days; but if it was non-curable, the agreement requires the City to take diligent and reasonable efforts to cure the defect. He noted in this instance, the City can not replant the same trees taken down. Mr. Hayes reiterated the Commission was not being asked to sort through the Eddy's claim tonight, only to grant written consent to allow the transfer from the Eddy's to Mr. Layman and then the City could move forward with fixing the problems with the current agreement and handle the outstanding issues relative to damages.

Mayor Costello stated this issue would be complete tonight with three votes, but he considered it something the City needed to do ethically to take care of the Eddy's.

Commissioner Boyle stated the golf course portion of the lease in the greenbelt buffer was inviolate; but on the airport portion, the City had the power to move hangars and infrastructure under the lease terms.

Mr. Hayes noted this was a complicated issue to evaluate, but basically all of the land in this area was airport land. He explained there was a restrictive covenant in the River Bend Golf Course agreement that restricted activity in the greenbelt buffer area; therefore, in order to impact the greenbelt buffer area, the City and River Bend would have to mutually amend the agreement. Mr. Hayes advised the City would either have to amend the agreement or enter into a new agreement, which was a portion of what was being proposed.

Commissioner Boyle noted the City acted backwards in not altering the airport lease while infringing on the golf course lease.

Mr. Turner reported the City did not have unilateral authority, and there may be issues related to the lease done in 1994 in the greenbelt buffer areas.

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

Mr. Turner acknowledged the City made a mistake and did not do this project as it should have been done, and he apologized to the Commission and to the public.

Mayor Costello reported that should anyone have any comments relative to his closing remarks, they could be made at the regular City Commission meeting tomorrow night during the “Commissioner Comments” portion or, preferably, at the upcoming focus meeting.

Mayor Costello stated he was not pleased the City may have to spend approximately \$500,000 plus staff times to correct a situation that should never have occurred. He noted he did not find the current staff, along with the City Manager, fully at fault because there was enough fault to share, including himself, since he should have asked to see a survey prior to approval. Mayor Costello noted had this been a new project such that a new prospective tenant wanted to lease the cleared lands, the City would have required a survey, and this should have had a survey. He stated the staff consequences in response to this unacceptable mistake would need to be of a greater magnitude had this project been initiated within the past couple of years; however, the lands in question had been leased by a private enterprise since 1994, making him believe the greatest fault lay with the previous City leaders who allowed the lease to occur without a survey at that time and without gaining written permission from River Bend. Mayor Costello noted it was difficult to fully fault the current staff for proceeding with a development plan on land that had been leased since 1994. He stated he preferred not to dwell on the past, but live in the present and focus on the future; however, the City must learn from the past. Mayor Costello noted “the buck stops” with Mr. Turner, and the Commission and he were not pleased he had to offer this direction; however, he deemed it appropriate to encourage Mr. Turner to institute an improved system of increased accountability before anything irreversible was done. He stated the City needed the signature of the staff member who obtained the approvals from the necessary parties or was the lead in the project or investigation, the signature from the department head who oversaw the project, and from Mr. Turner for all future projects. Mayor Costello stated the City Manager and Commission needed assurances of compliance and accountability, such as the following: 1) making sure they obtain a signature from owners, tenants, and adjacent property owners, nearby neighbors, homeowners' associations, and other impacted parties, assuring there had been notification and approval of the clearing for development, mosquito control, drainage, items such as a change in land use

prior to rezoning, and issuing a building permit; 2) signing off on a project some may deem has outstanding issues and informing the Commission there were no problems; 3) accepting the results of any employee investigation that gives or removes permanent rights without making certain that comments from all who wish to be heard have been received; and 4) accepting the results from any investigation into what went wrong with any City procedures when any department employee believes that fault had been misplaced or transferred away from a supervisor.

Mayor Costello stated he believed there had been statements made in the press that bordered on planting seeds of discontent with and negotiating for the parties who had a position adversarial to the City. He noted such statements were also made on the radio, and he considered this a breach of the Commission's fiduciary responsibility. Mayor Costello noted he had no problem with anyone stating their displeasure with the situation or even calling for consequences for the staff members they deem to be responsible; however, it was not the Commission's calling to scare the residents by quoting exorbitant numbers and publicly calling to question if the City would need to invest \$8 million or \$20 million. He pointed out the Commission members do not need to agree with the City position, but it was not appropriate to undermine the City position in public. Mayor Costello recommended going to the City Manager or City Attorney and to bring up questions at public meetings rather than air the issues in public via the press.

Mayor Costello stated that in response to the issues presented in the prior issue, when he as mayor of Ormond Beach, would be presented with an opportunity to investigate possible situations that may be beneficial to the City, he would no longer have any hesitation to do fact finding that some may consider negotiating of his personal position with those interested in doing business with Ormond Beach. He reported he would then bring back said proposal to the Commission for consideration, and he would consider this part of his mayoral duty. Mayor Costello noted he would not negotiate via the press, and he would do all he could to support what was in the best interest of the City, whether or not he would personally support that position.

Item #3 – Close the Meeting

The meeting was adjourned at 6:53 p.m.

APPROVED: _____ July 12, 2005

BY: _____
Fred Costello, Mayor

ATTEST:

Veronica Patterson, City Clerk