

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

September 29, 2014

5:30 p.m.

City Commission Conference Room

I. Call to Order

Mayor Ed Kelley called the meeting to order at 5:31 p.m.

Present were Mayor Ed Kelley, Commissioners James Stowers, Troy Kent, Rick Boehm, and Bill Partington, City Manager Joyce Shanahan and City Attorney Randy Hayes.

Mayor Kelley noted that there was no formal agenda and the purpose of the workshop was for the City Commission to share ideas with each other. He explained that because of the Sunshine Law, the Commission was unable to speak to each other in an informal setting about any ideas that they may have, and this workshop served as an opportunity for them to do so.

Ms. Joyce Shanahan, City Manager, stated that staff had some issues that they wanted to give the Commission the opportunity to discuss.

Mayor Kelley suggested that they discuss those items first.

II. Brainstorming Session

Medical Marijuana

Mr. Randy Hayes, City Attorney, stated that medical marijuana would be an issue that may soon need to be addressed. He explained that he and his staff were monitoring jurisdictions across the state in regards to their treatment of the issue. He noted that most jurisdictions treated it from a land use and zoning perspective. He explained that the constitutional amendment, if it passed, was very broad in scope and would allow the use of medical marijuana for medical purposes. He stated that the state legislature adopted a law during the last session to regulate medical marijuana. He noted that it appeared the state would issue licenses through a lottery system. He stated that most local jurisdictions had zoned it to be in industrial or highway commercial areas, treating it as a special exception or conditional use process. He explained that he was bringing it up to test the pulse of the Commission on the issue.

Mayor Kelley stated that the Volusia Council of Governments (VCOG) had been discussing the medical marijuana issue for the last several months, noting that some cities had taken action. He stated that he believed that the state would set regulations. He noted that the amendment had yet to pass.

Mr. Hayes stated that the state had adopted legislation regarding low level tetrahydrocannabinol (THC) for medical purposes, likely in a pill format. He stated that the question for local government was which zoning district they would want to

regulate it in. He noted that he expected to eventually see litigation around the topic, noting that it may provide difficult for a local jurisdiction to attempt to adopt and implement a regulatory framework consistent with the state's requirements. He suggested that one option could be to pass a moratorium.

Mayor Kelley asked if Mr. Hayes meant a moratorium prohibiting medical marijuana.

Mr. Hayes explained that a moratorium would be stopping the issue with the intention of adopting regulations. He further explained that there was a procedure to be followed for a moratorium by the city.

Ms. Joyce Shanahan, City Manager, stated that the city issued a moratorium for gaming. She asked about the issue of growing marijuana; whereby, Mayor Kelley stated that would be controlled by the state.

Ms. Shanahan asked if the city would want it grown in their jurisdiction; whereby, Commissioner Boehm stated that if the state let marijuana be grown, the city could not prevent it.

Mr. Hayes stated that the state's regulatory framework was fairly strict. He explained that medical marijuana dispensaries were being categorized as facilities that manufactured and distributed. He stated that the permits would be awarded by lottery and that the application for a permit had to be submitted with a \$150,000 non-refundable fee. He explained that when a permit-holder went to renew their permit, they had to pay a \$300,000 non-refundable fee. He opined that the city would want to treat it as a special exception or a conditional use.

Commissioner Boehm asked if there was concern that a medical marijuana shop would want to open in Ormond Beach.

Mr. Hayes stated that he believed it would be a matter of where and not if. He stated that from a zoning perspective they would need to decide where in Ormond Beach they would like the dispensaries located. He explained that regulations needed to be adopted in the event that someone came to them and requested it. He noted that if it was a use not defined by code, then the location could be anywhere under a special exception.

Commissioner Stowers noted that the growing and the dispensary component were different. He stated that he had a hard time seeing how a dispensary would be different than a pharmacy, as far as zoning went. He likened the issue of abusing medical marijuana to abusing Oxycontin, which was obtained by a prescription. He stated that pill mills were a result of the irresponsibility of doctors, which was a separate issue. He noted that issue could present itself again, with some writing prescriptions to anyone for medical marijuana. He stated that the issue of whether the system would be abused or not was not necessarily relevant to the zoning discussion.

Ms. Shanahan asked whether medical marijuana would also be covered by the prescription tracking program.

Mr. Hayes stated that he did not believe it would.

Mayor Kelley stated that the regulations did not allow for medical marijuana to be sold in pharmacies because it was a federally prohibited drug.

Commissioner Stowers noted that the Florida Planning and Zoning Association had a meeting a few months prior where this topic was discussed. He stated that a gentleman from South Florida spoke about his city being advised by their counsel to pass an ordinance putting it in the same zoning use category as a pharmacy or medical office, but then there was push back to have it zoned industrial.

Mayor Kelley suggested waiting to pass regulations until the amendment passed.

Mr. Hayes stated that the state already had adopted a framework to address some regulations and local governments would have to come up with their zoning.

Commissioner Partington stated that he would encourage them to go slow, but if it did pass he felt the legislature would do a lot of regulating which would affect what the city could do.

Commissioner Boehm asked how medical marijuana would be procured.

Mr. Hayes explained that it would be provided through dispensary treatment facilities, which had to have a physician available or accessible. He noted that it looked like the state legislation was strict in that regard. He also noted that recreational use would still be unlawful. He stated that medical marijuana could only be obtained by those with serious illnesses such as cancer. He noted that there would likely be some gaps that the state would need to address at some point.

Commissioner Partington asked if the city needed to do a moratorium to protect itself.

Mr. Hayes replied that it did not. He reiterated that it would be a matter of zoning for the city. He stated that he had met with a local lawyer recently who was interested in what Ormond Beach would do about medical marijuana. He stated that the lawyer told him that he would be surprised with the number of big dollar supporters waiting on the issue to pass. He stated that he told the lawyer that the Commission was watching and waiting.

Mayor Kelley stated that they should continue to go slow and wait and see if it even passed. He stated that they could revisit their options, including a temporary moratorium, if the amendment did pass.

Homeless Issues

Mr. Randy Hayes, City Attorney, stated that the city did not have regulations in their Land Development Code (LDC) that specifically dealt with homeless shelters and their regulation. He stated that there were a few areas in the city where those accommodations were made available but there were no requirements in terms of bedding or restroom facilities. He stated that the time to implement a regulatory framework had probably come.

Ms. Shanahan explained that there were a few churches in the city that provided sheltering for homeless at night. She noted that there was not formalized bedding

and that homeless utilized sleeping bags and the like. She stated that the city had received a couple of complaints as a result. She explained that one such complaint alleged the pastor of one church took money as a fee for those individuals to stay in the church overnight. She stated that a different church that provided shelter requested that the homeless leave in the morning at 6:00 a.m. She explained that those homeless persons then sometimes stayed on the property and used the outdoors as a bathroom. She noted that the city had no regulations prohibiting or allowing this activity to go on. She explained that she was not aware that churches were allowing the homeless to stay physically inside the church until hearing these complaints.

Mayor Kelley stated that his church had allowed homeless to stay inside during cold nights and were given blankets and a meal the next morning. He stated that they were asked to leave around 7:00 a.m. He asked if the city wanted to be in the business of telling a church what services to provide.

Commissioner Kent asked what types of complaints were being received. He noted that this was the first he had heard of this issue.

Mr. Hayes stated that there had been some calls to the police department regarding thefts, as well as issues related to public urination. He stated that the issues primarily stemmed from the church not having adequate facilities inside to accommodate the number of people they were allowing in. He noted that it did put some strain on police resources to have to respond to these calls. He stated that these calls were happening more frequently than in the past.

Mayor Kelley stated that he knew of one church on Nova Road north of Granada Boulevard that was having issues.

Ms. Shanahan stated that sometimes the police were called for disputes among those staying overnight. She noted that the city did not regulate this activity at all and did not know whether the Commission had any interest in doing so.

Mayor Kelley stated that he hoped that with the report on the homeless being released, that the county would get together with the municipalities and adopt a plan and a place to restrict those activities. He stated that if he lived next door to a church and every morning at 6:00 a.m. he had to watch public urination out his window he would not like it. He stated that kind of behavior was already against the law, homeless or not. He suggested that Ms. Shanahan or Mr. Hayes could send a letter to those places providing shelter to make them aware that public urination was unacceptable.

Commissioner Boehm stated that one of the tenants of churches was to help and serve the poor, which they had done for thousands of years. He stated that the separation of church and state also was about keeping governments out of the church. He stated that regulating what a church did to help poor people could be an awful look for a government body.

Mayor Kelley stated that they attempted to stop homeless feedings at City Island in Daytona Beach and in Orlando. He stated that they needed a designated area to be fed, housed, and for opportunities to better themselves.

Guidelines for Commission Email Responses

Mayor Kelley stated that sometimes the Commission received an email that was sent to all of them and they were all copied on it. He noted that they all wished to respond to it but could not because of Sunshine Laws. He stated that the first respondent limited the ability of anyone else on the Commission to respond. He noted that he sometimes noted to the person sending the email that he could not respond because another Commissioner already had. He asked if there were any guidelines governing this.

Mr. Hayes stated that there was nothing that prohibited a response, noting that this was a tricky area. He explained that the problem was that it unintentionally created pitfalls when more than one member of the Commission responded as it could be interpreted as a de facto decision by the Commission outside of a public meeting. He stated that there was no way to combat other than to except and not respond at all and calendar those items on a Commission agenda for a meeting; but noted that that would cause a delay in response to the citizen.

Mayor Kelley stated that most of the time if he received an email, sent only to him, which affected an issue that staff handled, he would reply and copy Ms. Shanahan and let the citizen know that he had passed the issue to management for them to address. He stated that the entire Commission wished to respond to the concerns of the residents. He asked how they could do that when an email was sent to all of them.

Mr. Hayes stated that Mayor Kelley's response was an appropriate response. He stated that Ms. Shanahan's office and his office were paid to handle such issues for the Commission and directing them to staff was a proper response. He stated that each member of the Commission could also respond individually to the email, not using the reply all feature. He stated that the pitfall of that was that laypersons who were not knowledgeable about Sunshine Laws may then reply with responses from everyone copied. He noted that while that did not necessarily constitute a violation it would muddy the waters. He explained that Sunshine Laws went through a higher decision-making process and there was no single answer to most issues. He stated that the conservative approach was to not respond collectively.

Mayor Kelley stated that the regulations could cause something to be construed incorrectly.

Mr. Hayes stated that he shared Mayor Kelley's frustrations.

Commissioner Stowers stated that he typically responded individually to the person and did not use the reply all function. He stated that he would often tell individuals not to tell him if they had spoken to anyone else on the Commission. He asked if there could be a tag on the end of their emails, with a two or three sentence summary expanding on the cautions of Sunshine Laws, so citizens would know about it when receiving email responses.

Mr. Hayes suggested that something could also be placed on the website to that effect. He stated that the current Commission did a wonderful job of operating in the Sunshine.

Emergency Transport

Commissioner Kent passed out an article entitled "Court Allows Higher Rescue Fees for City Visitors." He noted that he mentioned this at a previously Commission meeting and Mayor Kelley requested he bring it to the Brainstorming Session. He explained that it was about the State Appeals Court allowing the City of Miami to charge an extra \$100 for rescue crews to transport non-residents to hospitals for emergency care. He stated that it made him think about the fact that Ormond Beach could not perform emergency transport. He stated that they had heard the statistics and knew that Ormond Beach's firemen arrived on scene before EVAC a tremendous amount of the time. He stated that the firemen could not transport, however, so the ill person would have to sit there and wait. He asked if the Commission wanted to talk about the issue.

Commissioner Boehm stated that he understood that the County Medical Officer was the only one who could issue transport licenses. He stated that the city could not just decide to do it unless they allowed it. He noted that EVAC was under county control and would therefore not issue the city a license because it would hurt EVAC's business.

Commissioner commented that they never would if they did not bring it up and discuss it.

Mayor Kelley stated that maybe the pressure to the county should be that the city did not feel that they were getting the transport service that they needed, and unless they could provide that the city wanted to explore their own.

Commissioner Kent stated that was exactly the conversation he was trying to have. He stated that it would probably make transport better for people in Ormond Beach, just by bringing more attention to the issue. He stated that it would be a good thing for their residents.

Vacant Business Properties

Commissioner Kent stated that he felt like the city was being proactive on the zombie home issue. He noted that there were still issues with vacant business properties, such as the Texaco on Nova Road, which had been empty and run down for almost three years.

Mayor Kelley stated that it was almost gone.

Commissioner Kent stated that he had not heard that. He provided other examples including the former Food Lion property and the former Stacy's Buffet property. He stated that the Commission needed to have a positive discussion about what they were going to do to regarding business properties that went into disrepair. He stated that Ormond Beach was a great community and there must be something they could do so that their residents and visitors did not have to look at those types of properties. He stated that the Texaco location would look so much better if the owner had to do some improvements to the vegetation on the property.

Ms. Shanahan stated that the Commission had already directed staff to bring code regulations for businesses and residential properties to them. She stated that staff

had recently met about bringing something to them sometime that fall. She noted that it would not be the intrusive code that was initially brought before them in 2010 that was felt to be too onerous.

Commissioner Kent stated that he was glad that they were talking about it now. He asked Ms. Shanahan when that discussion would be had; whereby, Ms. Shanahan replied in October or November.

Mayor Kelley stated that he mistakenly had thought that the city had demolition by neglect in their code. He noted that it actually only applied to historic properties. He stated that something like that should also be applied to businesses. He stated that he hoped the private deal with the Texaco and Burger King properties, as well as the Trails Shopping Center, would be done soon. He noted that he only heard about these deals on the street and not in his capacity as Mayor.

Ms. Shanahan stated that she thought it had been mentioned in the Weekly Review the city sent out. She explained that the developer had been to the city to discuss combining those properties.

Commissioner Boehm stated that supposedly Publix wanted to expand and CVS wanted to move to that corner.

New Development

Commissioner Stowers stated that he was glad that Commissioner Kent brought the topic of business development up. He stated that the city had been waving the flag that they were business friendly, but it had not been enough for whatever reason. He stated that Daytona Beach and New Smyrna Beach both had two new hotel projects in the works. He stated that Daytona Beach Shores had a couple new condominium projects, as well. He noted that Ormond Beach was somewhat limited because of their 75-foot height limit, but he was not seeing those projects in the city. He stated that he would like to see it and felt that Ormond Beach was a community of choice. He stated that he was interested in the city marketing itself to show that they had the same commodities as other cities in the area.

Commissioner Stowers stated that he read planning magazines and literature and saw all sorts of innovative ideas around the country. He stated that those ideas could not be done according to local Land Development Codes (LDC) and Comprehensive Plans. He gave an example of tiny houses for pocket neighborhoods and another of 18-wheeler trailers turned into living facilities. He noted that these were high end unique structures. He explained that there was an opportunity to cross distressed properties with creativity and being an entrepreneur.

Commissioner Kent stated that he thought a lot about the downtown district and it was easy for him to forget what it looked like before developers like Mr. Bill Jones invested in the area. He noted that the property improvement grant offered was also great, but he thought that expanding that to other areas might help businesses. He stated that he was excited to tap into Commissioner Stowers' creative resources. He stated that what the city was presently doing was not working in those areas.

Mayor Kelley stated that he had spoken to the owner of the Alike Plaza, which was comprised mostly of office and retail, of which there was no demand. He stated that

he had suggested to the owner to put together a plan to create residential uses above the shops. He stated that the city did not have a mechanism that was not going to cost him \$25,000 - \$50,000, if not \$100,000, to have him come to them with the conception of the idea.

Commissioner Kent stated that would be a great place to live, next to the Fire Station playground and with open deck space. He stated that the idea was fantastic.

Mayor Kelley stated that if the city had a mechanism without all the costs, then he could have come and asked how he could do the project conceptually without it costing him a fortune. He noted that the city also sort of hassled him regarding an extra bathroom at one of his locations. He stated that there was also a conceptual idea a few years ago to do an office/residential/retail area with two levels over by Outback and the Food Lion location that did not go through. He stated that he thought that it was a great concept to have nice homes on smaller lots; he noted that it had been brought to the Commission before but the door was closed on it. He stated that most people did not want larger development costs now.

Commissioner Stowers stated that the context he referenced was a bit different. He gave an example of an undeveloped stretch of Little Ridgewood. He stated that type of area was where pocket concept neighborhoods would be. He stated that it was an odd shaped lot in the middle of single-family homes that did not really fit city codes but could be utilized for something creative to get four or five units in there.

Mayor Kelley stated that between Halifax Drive and John Anderson Drive there was a stretch of vacant space that a friend of his wanted to buy and develop. He stated that it was not a large enough cul-de-sac area for a fire truck to turn around in so he was unable to go through with it. He stated that Commissioner Stowers had made one of the best comments before, which was that if a regulation was added, then an old one should be removed.

Commissioner Boehm asked if these plans were stopped at the staff level. He noted that the city had a Site Plan Review Committee (SPRC). He stated that he had never seen any report from them in his years on the Commission. He stated that they did not know their thought process or why they were turning down projects.

Ms. Shanahan stated that she did not think that was fair. She stated that applicants were told what the issues were and they chose whether or not they wanted to move forward. She stated that staff tried hard to work with developers to resolve their issues and provided opportunities for them to change or correct any issues. She explained that the burden was on the developer, but staff tried to help them find solutions.

Mayor Kelley noted that sometimes there were no solutions because of the city's regulations.

Mr. Hayes stated that was a matter of changing the restrictions in the code.

Commissioner Stowers stated that some of the regulations were the same as they had been for 20 or 30 years and, as Commissioner Kent said, that was not working. He suggested being creative. He stated that he agreed with Ms. Shanahan that the SPRC were not being obstructionists but were following the adopted standards.

Land Development Code (LDC) Review

Mr. Hayes stated that he had a conversation with Municode as they were going through their review process for the Code of Ordinances. He stated that the conversation touched briefly on some of the issues with the LDC and he recalled the city's previous process of hiring a consultant that did not work out and the city's planning staff having to finish it. He stated that he personally did not like the LDC and never had but noted that the city's planning staff did a good job of making it work as best they could. He stated that it was another code that should be reviewed at some point. He noted that the economy was different from when that code was approved. He stated that when the Code of Ordinances review was completed, the LDC should probably be reviewed, as well.

Mayor Kelley asked what year the LDC went into effect.

Mr. Hayes stated that originally they were under a zoning ordinance in the late 1980s.

Mayor Kelley stated that the state changed it to LDC in the 1990s.

Mr. Hayes stated that it had been modified a few times and the LDC was finally adopted in 2003, but it was not the end product everyone hoped for.

Mayor Kelley stated that he believed a total review was warranted; whereby, Commissioner Kent agreed with Mayor Kelley.

Mr. Hayes stated that he could discuss a review with Municode and bring back an estimate.

Commissioner Kent stated that he was prepared to lean heavily on Commissioner Stowers, who was a land use attorney and dealt with these regulations on an everyday basis.

Mayor Kelley suggested that Commissioner Stowers redline the LDC and bring it back.

Commissioner Stowers stated that Daytona Beach had hired a consultant four years ago to review their LDC and the process had just recently started wrapping up. He stated that the consultant was tasked with reducing the size and making it more efficient, and in his opinion they had done anything but that. He stated that he would be happy to go through it and start the process.

Commissioner Kent stated that it was a huge undertaking for Commissioner Stowers to review the LDC himself, but he thought it would be a great asset to them to have him give his opinion.

Mayor Kelley stated that there would be areas that were obviously in need of change that Commissioner Stowers could probably easily identify and suggest changes for.

Commissioner Kent noted that Commissioner Stowers had earlier said that he read about ideas in magazines that could not be done in Volusia County or the area. He suggested that Ormond Beach could be the first place to allow such things.

Mr. Hayes suggested that a committee could be established to review the LDC, comprised of land use experts and those working in the marketplace. He stated that he would not suggest hiring a consultant. He noted that he would be interested to hear from Municode what they thought of the city's LDC compared to comparable ones. He stated that a cross pollination of ideas from various professionals in the industry was something to think about.

Commissioner Boehm asked if there was any means to collect data to show efforts made by developers to develop projects that were not allowed and what regulations caused their development to stop, noting that there may be particular areas of regulation which more frequently impaired the ability for those projects to move forward than others. He stated that a general review of the LDC was fine, but if there was a specific problem area identified, it could be shared with those doing the LDC review so they could focus on changing it.

Ms. Shanahan stated that it had to be balanced against residential desires. She noted that there were areas where codes were restrictive because of fire access and those types of things, but there were also areas where existing residents did not want development.

Commissioner Boehm stated that he did not know people who attempted to develop in Ormond Beach that were unable to but was hearing anecdotes about them now from Mayor Kelley. He noted that those ideas never came to them as a Commission.

Mayor Kelley stated that often what the city required was a set of detailed plans before any consideration would be given. He stated that there was no mechanism for someone to conceptually discuss options with staff.

Ms. Shanahan stated that it was great if the applicant was a known developer who did quality work but noted that there were those who came in that were just trying to take advantage of the community and the conceptual idea agreed upon would not be the end result. She noted that was the issue.

Mayor Kelley stated that could be discovered during the conceptual process.

Commissioner Kent stated that Ormond Beach was a community of choice and had excellent standards in the city. He stated that he felt like the city was failing in a couple of instances though, which he had mentioned earlier. He stated that you had to know the problem before you remedied anything. He suggested that all of the attorneys representing the developers could provide quick answers as to what the problems were attempting development in Ormond Beach. He suggested Commissioner Stowers start by looking into the top five or ten regulations that he felt most needed changed.

Mr. Hayes stated that he could get a proposal from Municode regarding what their review costs would be.

Mayor Kelley stated that he did not want to do what Daytona Beach did and hire a consultant that took four years and still was not finished.

Mr. Hayes stated that based on the experience the city had before with a consultant, it would not be high on his recommendation list to do that again.

Commissioner Boehm noted that Commissioner Stowers knew all of the local land use attorneys and could probably do his own informal survey just by asking them about Ormond Beach regulations. He stated that Commissioner Stowers would also understand the attorneys' responses best.

Commissioner Stowers stated that some of the issues they ran into made the development a non-starter from the conceptual stage.

III. Adjournment

The meeting was adjourned at 6:50 p.m.

Transcribed by: Colby Cilento